Vol. II

THE STATE OF SOUTH CAROLINA
In the 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 2

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

Creighton B. Coleman
Coleman & Tolen, LLC
Post Office Box 1006
Winnsboro, South Carolina 29180

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

William O. Sweeney
Sweeney Wingate & Barrow, PA
Post Office Box 12129
Columbia, South Carolina, 29211

Attorneys for Respondent Marion L. Eadon d/b/a C&B Fabrication, C&B Fabrications, Inc. and Low Country Signs, Inc.

TABLE OF CONTENTS

THE STATE OF SOUTH CAROLINA
In the 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

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..

Promotions, Inc.'s documents of leasing of the signs in question, so that is why I am asking. Do you know of any injury that you have suffered other than your loss of income to Piedmont Productions for leasing the signs and, of course, the money they put into buying the signs and cleaning up the loss? I have been produced all of that.

A. Yes, sir, there is a lot of losses.

Q. I know I have been produced documents reflecting cleanup of the signs, original purchase of the signs, and documents reflecting prior rental and, therefore, I imply loss of future rental on the signs. Is there anything that doesn't fall in one of those categories that you are aware of?

A. Yes, sir.

Q. What would that be?

A. Loss of value of real estate.

Q. And explain that to me. Explain how you come up with that as a damage, or how you are looking at it.

A. Well, my real estate is not worth what it was with the signs up.

Q. The same property that we were talking

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

they did as far as what 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.

(DEPOSITION EXHIBIT #6, #7, #8, #9 MARKED FOR IDENTIFICATION.)

Q. I have got some correspondence to Mr. Eadon at C&B Fabricators. Exhibit 6 is a December 29th letter. Exhibit 7 is a December 29th letter but it is different. Exhibit 8 is a letter from Marion L. Eadon to you dated December 29th, and Exhibit 9 is a January 16th letter to Mr. Eadon from you dated January 16th. Let me take a minute and let you look over these.

A. (Deponent reviewing document.) Okay.

Q. Have you had a chance to look over those letters? Do you recall those letters?

the interstate, so there are other things that result that I may not know at this time in the future.

Q. What do you mean? What type of things?

A. Like it may keep me from getting other signs because of the strained relationship with the Highway Department.

Q. Have they told you that or you are just concerned about it?

A. No, I am concerned.

(DEPOSITION EXHIBIT #15 MARKED FOR IDENTIFICATION.)

Q. Exhibit number 15 is dated January 23rd, 2001, and according to that letter at this point in time one of the signs had actually fallen out onto the road, is that accurate?

A. Yes, sir.

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.

Q. And at that time according to this letter did they say all the signs needed to be removed at that time?

A. Yes, sir.

Q. And it cancelled the permits if I am reading that accurately?

A. That is correct.

Q. Were the signs still up at this time or had they already been removed, do you recall?

A. We had been told to take them down when the first one fell in the interstate.

Q. I am going to let you look at this for a minute because it looks like it may relate, and I will get to these and mark them, but those are dated 1/20, does that appear when probably the signs were actually moved?

A. 1/20 was probably when the sign actually fell.

(DEPOSITION EXHIBIT #16 MARKED

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY

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

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, 2001

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

RESERVATION OF RIGHTS

FIRST CLASS MAIL

C & B Fabrications, Inc. & Low Country Signs, Inc.
Route 2 Box 825
Manning, S. C. 29102

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

EXHIBIT
2

0 1 4

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".

015

AC- 005

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

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.,	:	JANUARY 22, 2004
PIEDMONT PROMOTIONS, INC.)		YORK, SOUTH CAROLINA
LOW COUNTRY SIGNS, INC.	:	
	)	

B E F O R E:

THE HONORABLE S. JACKSON KIMBALL, MASTER IN EQUITY

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

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
tabbies 3

EXPENSE TO BE BORNE BY THE INSURED CONTRACTOR IN ORDER TO SATISFY HIS CUSTOMERS.

LOOKING AT THIS SITUATION - AND THERE ARE SOME CASES THAT TALK ABOUT THIS – THE ONE SIGN THAT FELL DOWN AND CAUSED DAMAGES TO THE HIGHWAY DEPARTMENT AND WHATNOT, 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. BUT THERE HAS BEEN NO OCCURRENCE—

THE COURT: WHAT ALL DID YOU PAY FOR OUT OF, ARISING OUT OF THE FIRST ACCIDENT?

MR. COX: WE PAID FOR - AND I BELIEVE THAT'S IN—

THE COURT: YES.

MR. COX: THE FALLING OF THE SIGN, JUDGE, AND THAT IS IN THE AFFIDAVIT OF CARL ANDERS. LET ME SEE IF I CAN FIND THAT. BUT WE PAID— THERE WAS— REMOVING THE SIGN FROM I-77.

THE COURT: YEAH. DID YOU PAY ANY OF THE SAME ELEMENTS THAT THEY CLAIM—

MR. COX: ALL OF IT.

THE COURT: THAT THEY CLAIM THEY'RE DUE IN THIS—

MR. COX: YES SIR.

THE COURT: —IN THIS ACTION?

MR. COX: YES SIR. IN FACT, WE PAID ALL OF THE DAMAGES THAT THEY CLAIMED IN PARAGRAPH FOUR OF THEIR COMPLAINT.

THE COURT: WHEN I SAY, THEY, I MEAN....

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

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

August 2, 2001

Piedmont Promotions, Inc.
Attn: Sam Rhodes
P. O. Box 4234
Rock Hill, S. C. 29732

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

030

AO 0020

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY

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

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
Rt. 2 Box 825
Manning, S. C. 29102

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.

EXHIBIT 5 tabbies

- 021

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)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)

MAR 6 8 51 AM '03
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

Samuel W. Rhodes, Jr., and Piedmont Promotions, Inc.,) CIVIL ACTION NO.: 01-CP-20-334

Plaintiffs,

NOTICE OF MOTION AND MOTION TO INTERVENE ON BEHALF OF AUTO-OWNERS INSURANCE COMPANY

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

Defendants.

I, Betty Jo Beckham, Clerk of Court for Fairfield County, South Carolina, do hereby certify that the above is a true copy of the original as filed in this office.
9/24/04
Deputy Clerk of Court

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 6

MOTION FEE PAID

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)
IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)

Mar 6 8 52 AM '03
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

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 for Fairfield County, South Carolina, do hereby certify this is a true copy of the original on file in this office.
9/21/04
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 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 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	)	CIVIL ACTION NO.: 01-CP-20-334
Samuel W. Rhodes, Jr., and Piedmont Promotions, Inc.,	)	
Plaintiff,	)	**CERTIFICATE OF SERVICE**
v.	)	
Marion L. Eadon, d/b/a C&B Fabrication,	)	
Defendants.	)	

MAR 6 8 52 AM '03
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

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
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

Betty Jo Beckham, Clerk of Court, Fairfield County, South Carolina, do hereby certify this is a true copy of the original on file in this office. 9/21/04 Clerk of Court

FAIRFIELD COUNTY CLERK OF COURT BECKHAM

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 7

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

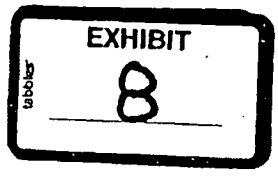
ATTORNEYS FOR AUTO-OWNERS INSURANCE COMPANY

Columbia, South Carolina
April 17, 2003

STATE OF SOUTH CAROLINA COUNTY OF FAIRFIELD	)	IN THE COURT OF COMMON PLEAS
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 **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



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 courts 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

SECRETARY OF STATE
FILED
MAY 0 1 2000
AM 7 8 9 10 11 12 1 2 3 4 5 6 PM

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 625 (Street Address)

Manning (City) Clarendon (County) SC (State) 29102 (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 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)

Route 2, Box 625 Manning, SC 29102 (Address)

Marion Eadon (Signature)

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 0 7 2004

00-020063CC

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

EXHIBIT
tabbies
9

Lowcountry Signs & Fabrication, Inc.
Name of Corporation

a.

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 April 6, 2000

Ricci Land Welch
Signature

Ricci Land Welch
Type or Print Name

PO Box 139
Address

Manning, South Carolina

803-435-8894
Telephone Number

FILING INSTRUCTIONS

1. Two copies of this form, the original and either a duplicate original or a conformed 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 ON 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) 734-2511.

C:\...\ARTICLES OF INCORPORATION.doc

Form Revised by South Carolina
Secretary of State, January 1999

Marion L. Eadon
P.O. Drawer H
Manning, SC 29102
(803)473-5808

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes
P.O. Box 4234
Rock Hill, SC 29732

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.

Marion Eadon

EXHIBIT
10

BAKER, KAVENEL & BENDER, L.L.P.
ATTORNEYS AND COUNSELORS AT LAW
1730 MAIN STREET • POST OFFICE BOX 8057
COLUMBIA, SOUTH CAROLINA 29202

CHARLES E. BAKER
D. CRAVENS KAVENEL
JAY BENDER
S. MARKEY STUBBS
CATHARINE GARBEE GRIFFIN
WILLIAM PEARCE DAVIS
SUSAN DRAKE DUBOSE
KIRBY D. SHEALY III
ELIZABETH M. DALZELL
HOLLY L. PALMER

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

EXHIBIT
11

1-10-05

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)

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 12

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 16, 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 EADON JR D/B/A
C & B FABRICATIONS

LOAN NOTICE

Mail A Copy Of This Notice and Payment To:
NBSC
[redacted]
P.O. Box [redacted]
[redacted]

BR 0000002 Officer: GWD BWB 65

Account No.	Note No.	Rate	Original Amount	Maturity Date
	00003C	9.00%	$48,000.00	Aug 15, 2002

PRINCIPAL PAYMENT	$1,309.45
INTEREST TO 01-15-01	$219.34
TOTAL DUE ON 01-15-01	$1,528.79

BILL DATE	CURRENT BALANCE
12-29-00	$28,301.83

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 04-27-00 4006 4003 14 0502
LOW COUNTRY SIGN FABRICATION INC 67-66/532

DATE 17-Apr-00

PAY TO THE ORDER OF Mrinco $ 314.23

Three Hundred fourteen + 23/100 DOLLARS

NBSC THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Holly Baldwin

0502 ⑈000031423⑈

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC 0503
67-66/532

DATE 17-Apr-00

PAY TO THE ORDER OF Sam Smith $ 636.81

Six Hundred Thirty-Six + 81/100 DOLLARS

NBSC THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Fuel 02 [illegible] T SMITH CK Holly Baldwin

0503 ⑈000063681⑈

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC 0504
67-66/532

DATE 17-Apr-00

PAY TO THE ORDER OF Ken Faircloth $ 102.82

One Hundred two + 82/100 DOLLARS

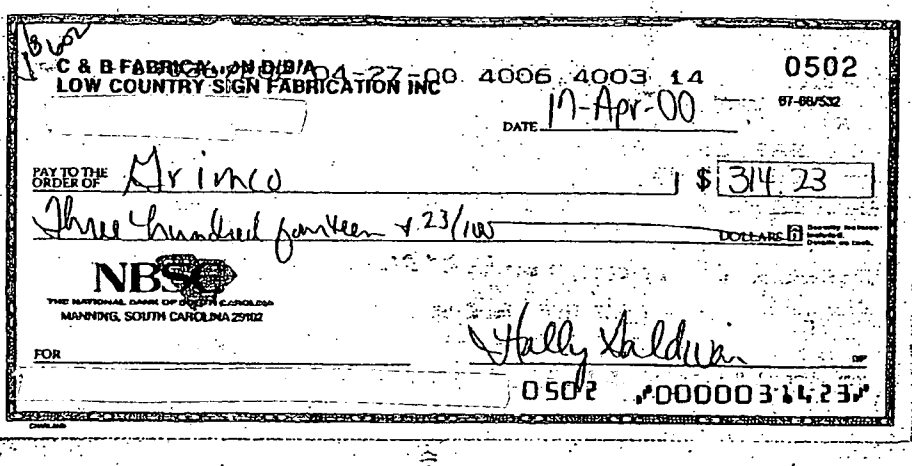
NBSC 0276 0002 116 0231 04/25/00 13:09 T
THE NATIONAL BANK OF SOUTH CAROLINA 0501 $102.82 CCOM
MANNING, SOUTH CAROLINA 29102

FOR Tools Holly Baldwin

0504 ⑈000010282⑈

EXHIBIT
14

00016



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0502

DATE 17-Apr-00

PAY TO THE ORDER OF Mrinco $ 314.23

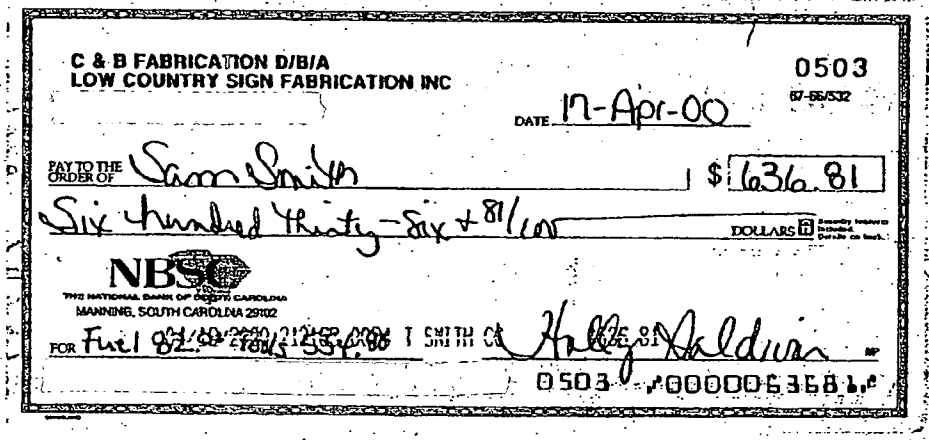
Three Hundred fourteen + 23/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR

Holly Haldiman

0502 ⑈000003 14 23⑈



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0503

DATE 17-Apr-00

PAY TO THE ORDER OF Sam Smith $ 636.81

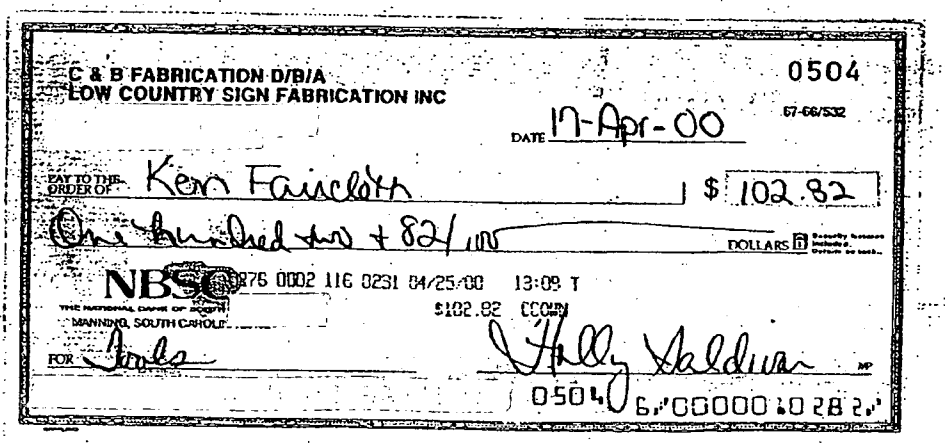
Six Hundred Thirty-Six + 81/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Fuel 82 Tools 554.99 T SMITH CO

Holly Haldiman

0503 ⑈000006 36 81⑈



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0504

DATE 17-Apr-00

PAY TO THE ORDER OF Ken Faircloth $ 102.82

One Hundred two + 82/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA

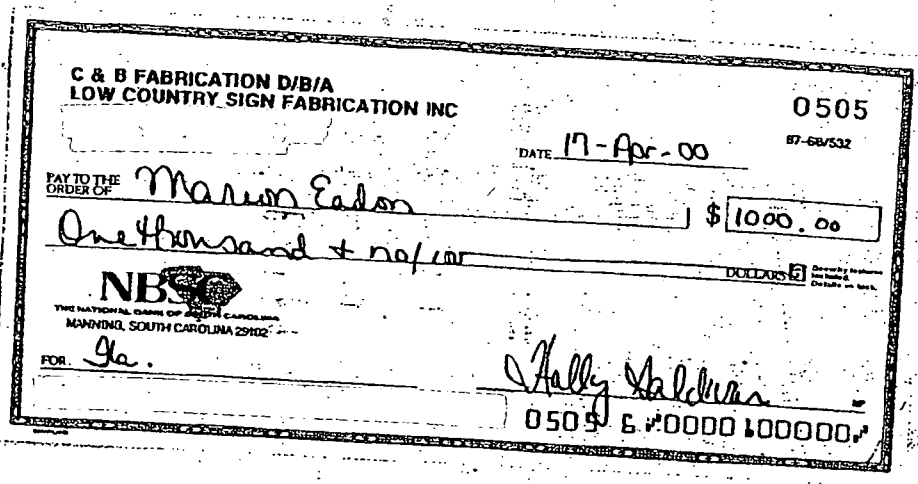
0876 0002 116 0231 04/25/00 13:09 T
$102.82 CCOMM

FOR Tools

Holly Haldiman

0504 ⑈000010 28 2⑈

00016



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0505

87-68/532

DATE 17-Apr-00

PAY TO THE ORDER OF Marion Eadon $ 1000.00

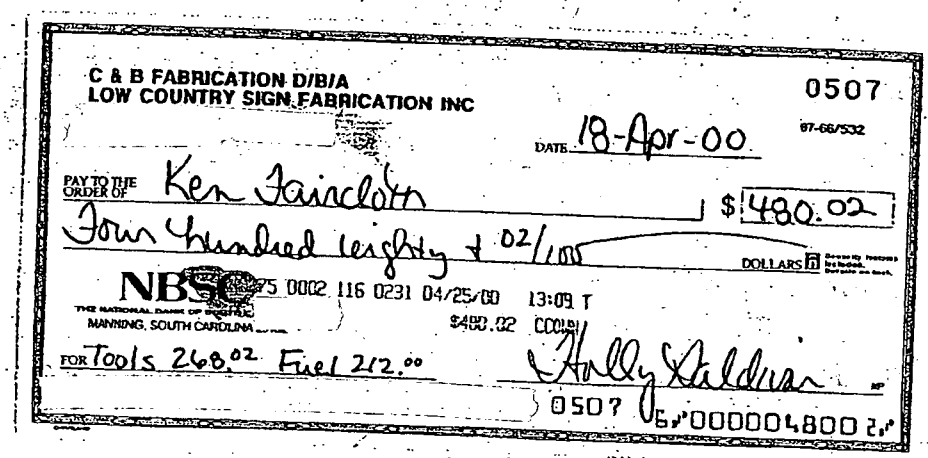
One Thousand + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Ga.

Holly Baldwin

0505 ⑆000000100000⑆



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0507

87-68/532

DATE 18-Apr-00

PAY TO THE ORDER OF Ken Faircloth $ 480.02

Four Hundred eighty + 02/100 DOLLARS

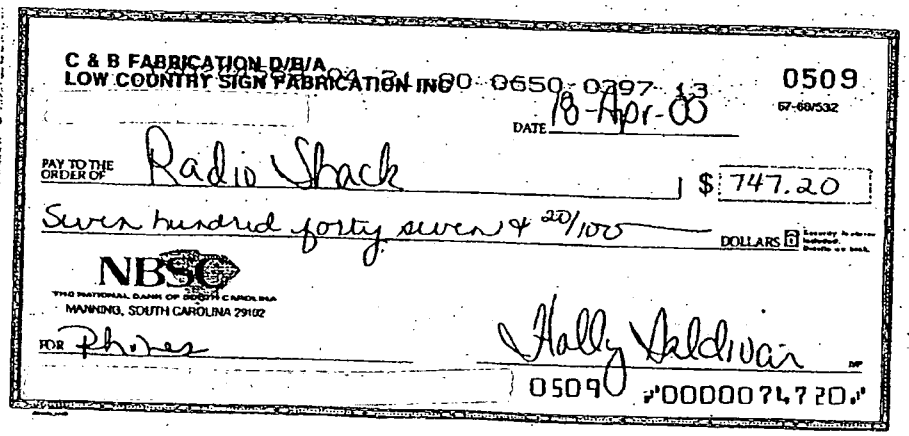
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA

5 0002 116 0231 04/25/00 13:09 T
$480.02 CCOUR

FOR Tools 268.02 Fuel 212.00

Holly Baldwin

0507 ⑆000004800 2⑆



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0650-0297 13

0509

87-68/532

DATE 18-Apr-00

PAY TO THE ORDER OF Radio Shack $ 747.20

Seven hundred forty seven + 20/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Phones

Holly Baldwin

0509 ⑆000000747 20⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0510

67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Holly Saldivar $ 175.00

One Hundred Seventy-five + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR

Holly Saldivar

0510 "00000 17500"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0511

67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Chuck Benenhaley $ 500.00

Five Hundred + no/100 DOLLARS

0136 0002 805 0222 04/21/00NX 16:28 T
$500.00 CCOIN

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Saldivar

0511 "00000 50000"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0512

67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Eric Touchberry $ 254.52

Two Hundred fifty-four + 52/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Saldivar

0512 "00000 25452"

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 Faircloth $ 588.77

Five Hundred Eighty-Eight + 77/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0772 0002 102 0221 04/24/00 15:08
$588.77 CCOUN

FOR P.R.

Holly Haldiman

0513 ⑆000005887 7⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0514

67-68/532

DATE 21-Apr-00

PAY TO THE ORDER OF Joanne Erickson $ 306.17

Three Hundred Six + 17/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Haldiman

0514 ⑆000003061 7⑆

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 Haldiman $ 413.31

Four Hundred Thirteen + 31/100 DOLLARS

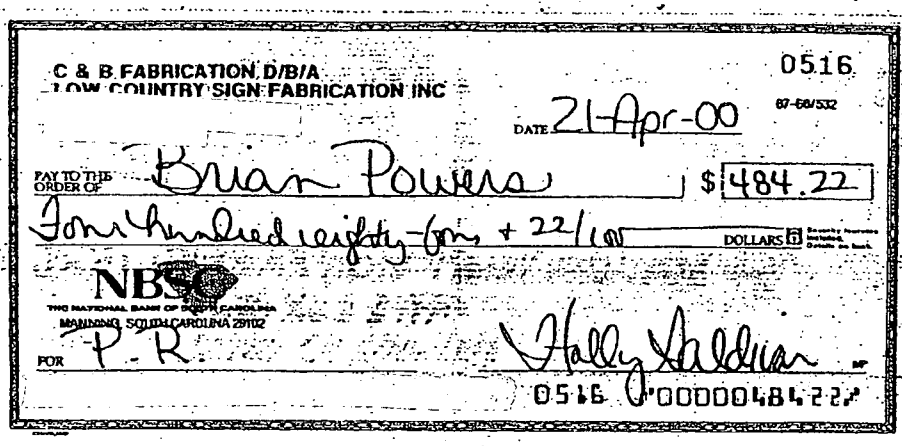
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Haldiman

0515 ⑆000004133 1⑆

00019



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0516

67-66/532

DATE 21-Apr-00

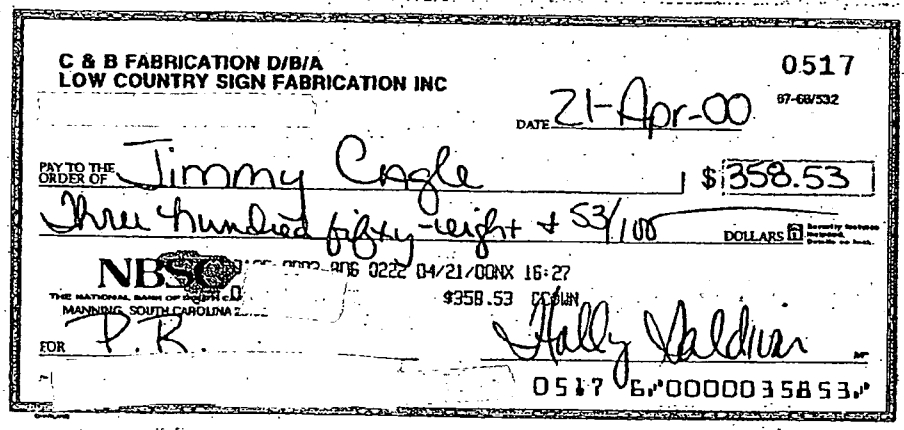
PAY TO THE ORDER OF Brian Powers $ 484.22

Four Hundred eighty-four + 22/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Haldivar

0516 B:000000484 22:



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0517

67-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Jimmy Cagle $ 358.53

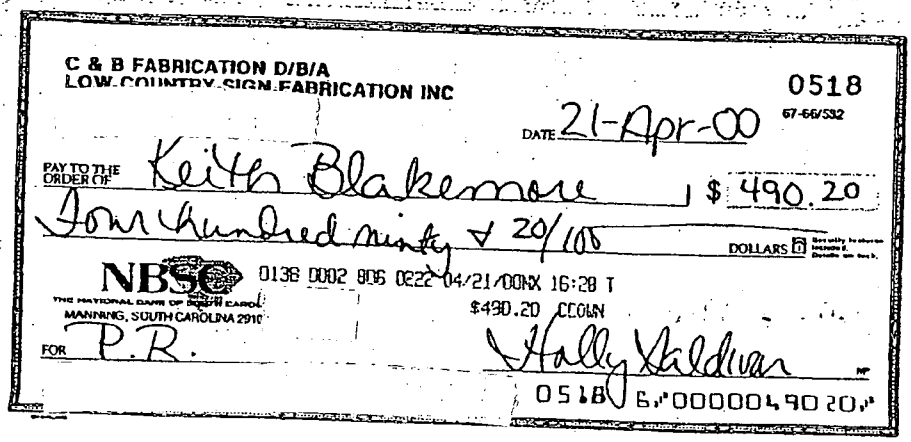
Three Hundred fifty-eight + 53/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 2...

0136 0002 806 0222 04/21/00NX 16:27
$358.53 CCOIN

FOR P.R. Holly Haldivar

0517 B:000000358 53:



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0518

67-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Keith Blakemore $ 490.20

Four Hundred ninety + 20/100 DOLLARS

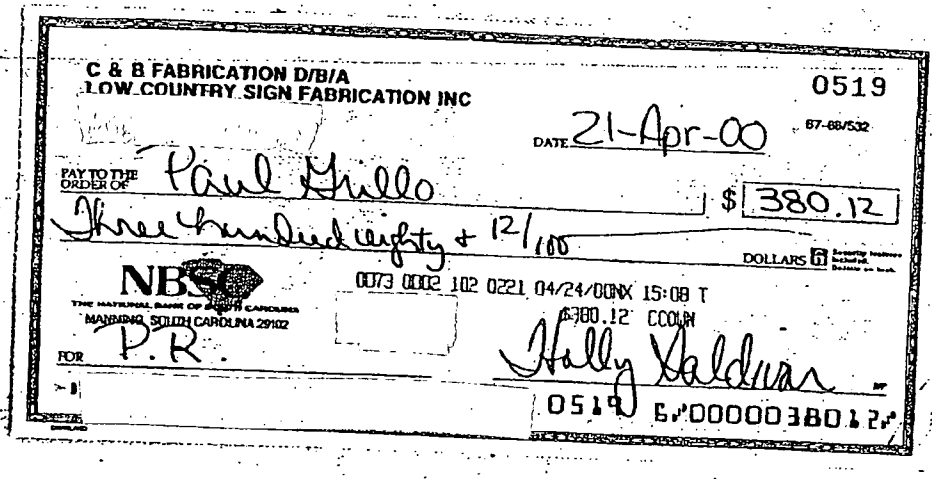
NBSC
THE NATIONAL BANK OF SOUTH CAROL
MANNING, SOUTH CAROLINA 2910

0136 0002 806 0222 04/21/00NX 16:28 T
$490.20 CCOIN

FOR P.R. Holly Haldivar

0518 B:000000490 20:

00020



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0519

DATE 21-Apr-00

67-68/532

PAY TO THE ORDER OF Paul Grillo

$ 380.12

Three Hundred eighty + 12/100 DOLLARS

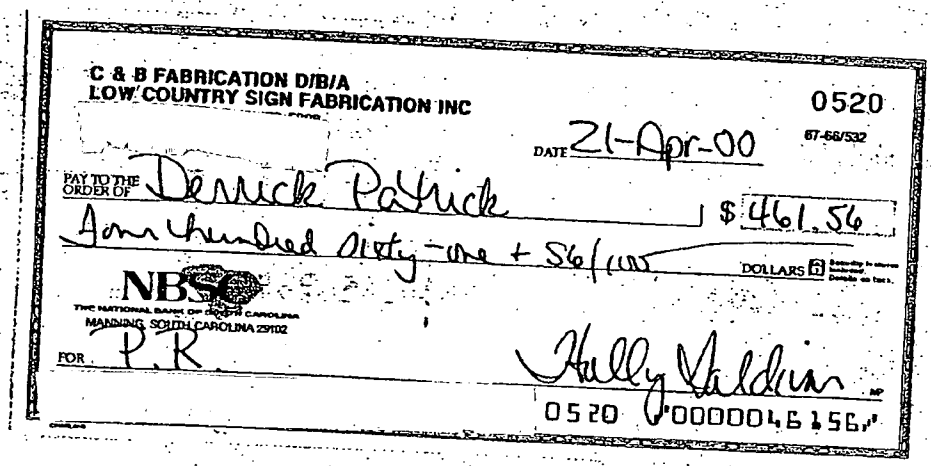
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0073 0002 102 0221 04/24/00NX 15:08 T
380.12 CCOLN

FOR P.R.

Holly Waldrop

0519 C'000000380 12'



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0520

DATE 21-Apr-00

67-68/532

PAY TO THE ORDER OF Derrick Patrick

$ 461.56

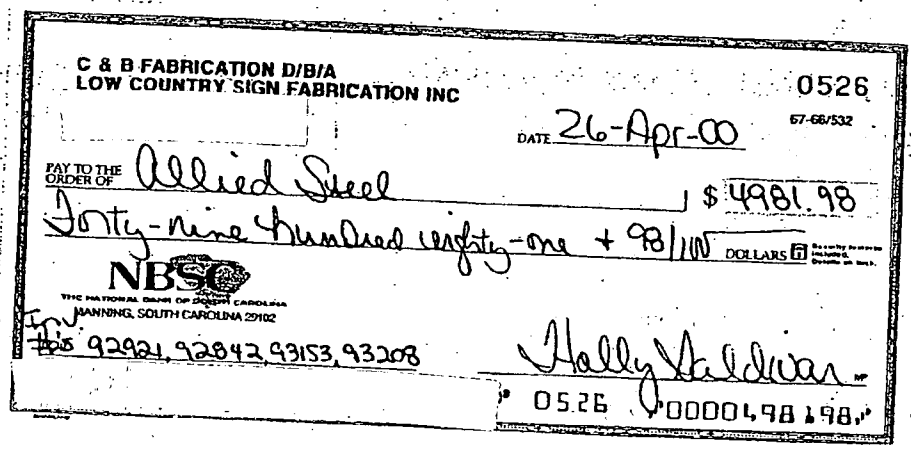
Four Hundred Sixty-one + 56/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Waldrop

0520 C'000004 61 56'



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0526

DATE 26-Apr-00

67-68/532

PAY TO THE ORDER OF Allied Steel

$ 4981.98

Forty-nine Hundred eighty-one + 98/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

For #'s 92921, 92842, 93153, 93208

Holly Waldrop

0526 C'000049 81 98'

00021

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0529

67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF PHP

$ 3396.59

Thirty-three Hundred Ninety-six & 59/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

Invt # 100122106985 Cmd# 47037

Holly Haldiman

0529 ⑆000033965⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0532

67-66/532

DATE 27-Apr-00

PAY TO THE ORDER OF Cash

$ 1550.00

Fifteen Hundred fifty + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0428 0002 102 0221 04/27/00 11:26
0214618501 $1,550.00 CCOUN

FOR Florida

Holly Haldiman

0532 ⑆000015500⑆

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0535

67-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Chuck Benenhaley

$ 500.00

Five Hundred + no/100 DOLLARS

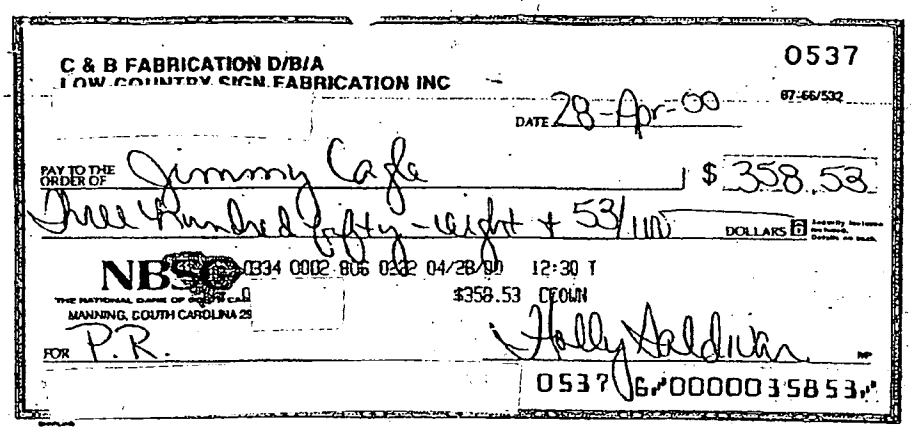
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0933 0002 806 0222 04/28/00 12:30 T
$500.00 CCOUN

FOR P.R.

Holly Haldiman

0535 ⑆000005000⑆



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0537
07-66/532

DATE 28-Apr-00

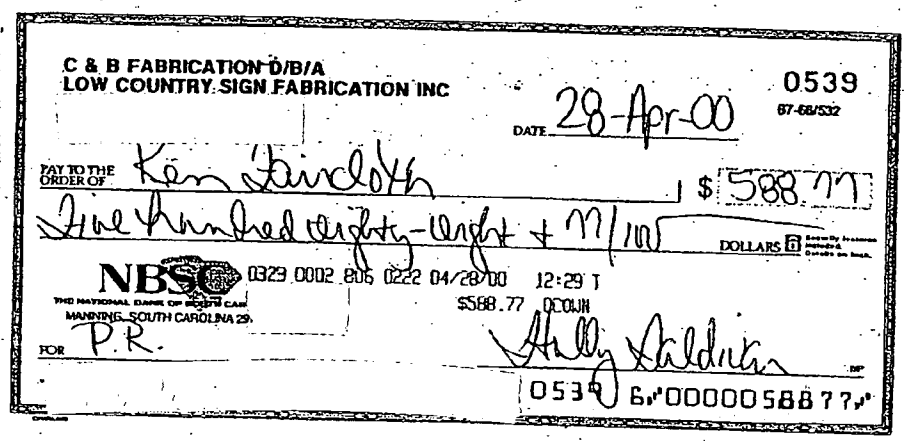
PAY TO THE ORDER OF Jimmy Cafe $ 358.53

Three Hundred fifty-eight + 53/100 DOLLARS

NBSC 0334 0002 806 0222 04/28/00 12:30 T
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29
$358.53 DCDWN

FOR P.R. Holly Haldiman

0537 ⑆000003585 3⑈



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0539
07-66/532

DATE 28-Apr-00

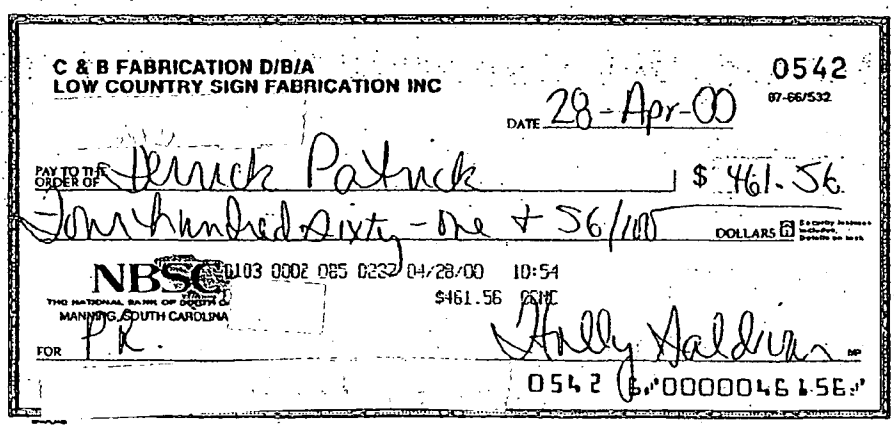
PAY TO THE ORDER OF Ken Faircloth $ 588.77

Five Hundred eighty-eight + 77/100 DOLLARS

NBSC 0329 0002 806 0222 04/28/00 12:29 T
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29
$588.77 DCDWN

FOR P.R. Holly Haldiman

0539 ⑆000005887 7⑈



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0542
07-66/532

DATE 28-Apr-00

PAY TO THE ORDER OF Derrick Patrick $ 461.56

Four Hundred Sixty-One + 56/100 DOLLARS

NBSC 0103 0002 085 0222 04/28/00 10:54
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA
$461.56 DCNC

FOR P.R. Holly Haldiman

0542 ⑆000004615 6⑈

00023

543

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

DATE 28-Apr-00 67-68/532

PAY TO THE ORDER OF Hurd Mills $ 441.87

Four Hundred forty-One + 87/100 DOLLARS

NBSC THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0331 0002 806 0222 04/28/00 12:30 T
$441.87 CCOWH

FOR PR

Holly Haldiman

0543 ⑆000004418 7⑈

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0547

DATE 28-Apr-00 67-68/532

PAY TO THE ORDER OF Ken Faircloth $ 195.81

One Hundred ninety-five + 81/100 DOLLARS

NBSC THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 291

0330 0002 806 0222 04/28/00 12:30 T
$195.81 CCOWH

FOR Incl no-imbarrassment

Holly Haldiman

0547 ⑆000001958 1⑈

Customer Credit

MONTH 04 DAY 25 YEAR 00

ACCOUNT NAME C & B Fabrication d/b/a Low Country Sign
PLEASE PRINT

DESCRIPTION Advance

PREPARED BY

APPROVED BY

0147 0002 098 0223 04/25/00 09:46

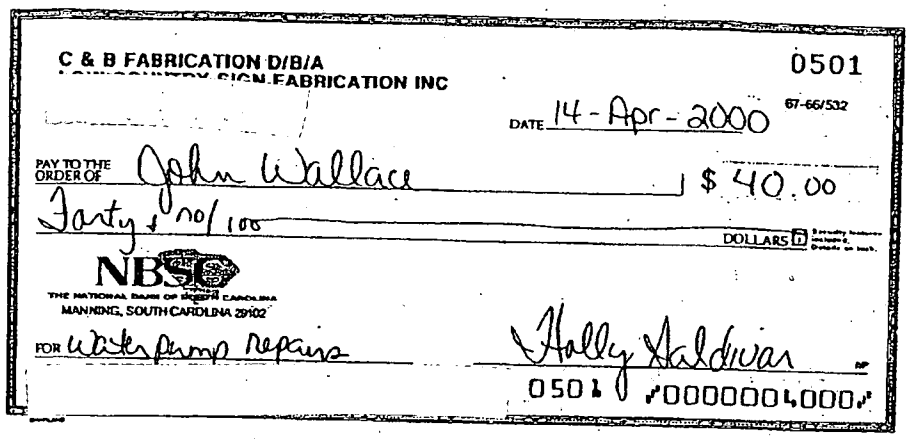
ACCOUNT NUMBER

TRANCODE

$20,000.00 20,000.00

⑆29⑈000 2000000⑈

00024



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0501

67-66/532

DATE 14-Apr-2000

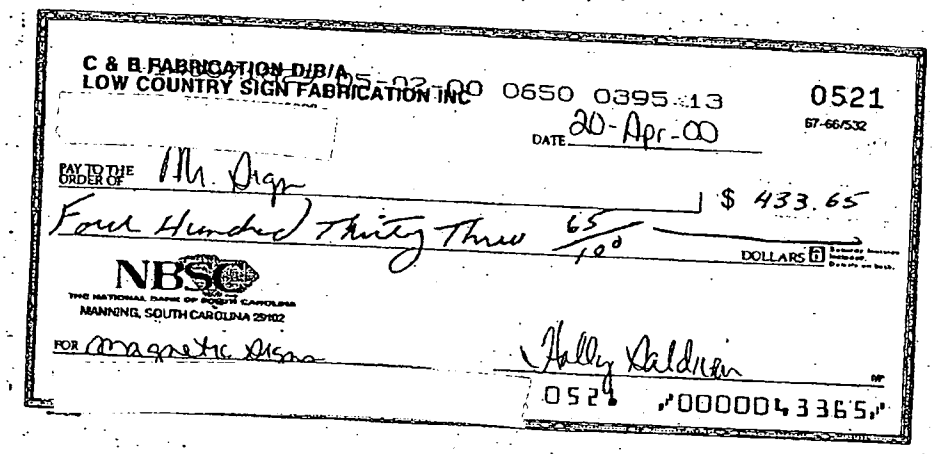
PAY TO THE ORDER OF John Wallace $ 40.00

Forty + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Water pump repairs Holly Baldwin

0501 "000000 4000"



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0650 0395 13

0521

67-66/532

DATE 20-Apr-00

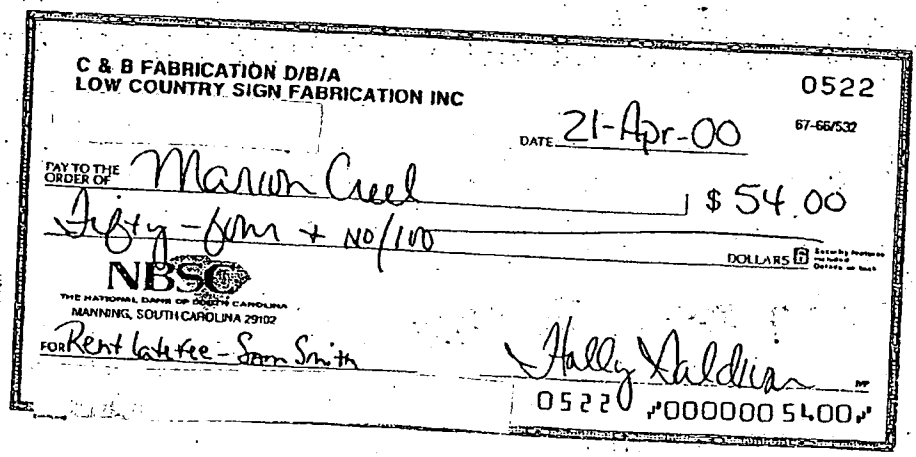
PAY TO THE ORDER OF Mr. Sign $ 433.65

Four Hundred Thirty Three 65/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Magnetic Signs Holly Baldwin

0521 "000004 3365"



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0522

67-66/532

DATE 21-Apr-00

PAY TO THE ORDER OF Marion Creel $ 54.00

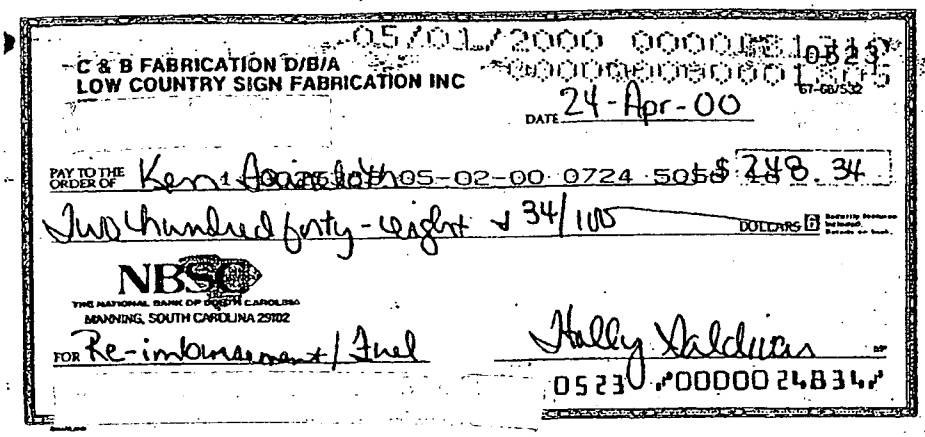
Fifty-four + NO/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Rent Late Fee - Sam Smith Holly Baldwin

0522 "000000 5400"

00027



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

05/01/2000 0000013149 0523
67-66/532

DATE 24-Apr-00

PAY TO THE ORDER OF Kent Aquaculture 05-02-00 0724 505 $ 248.34

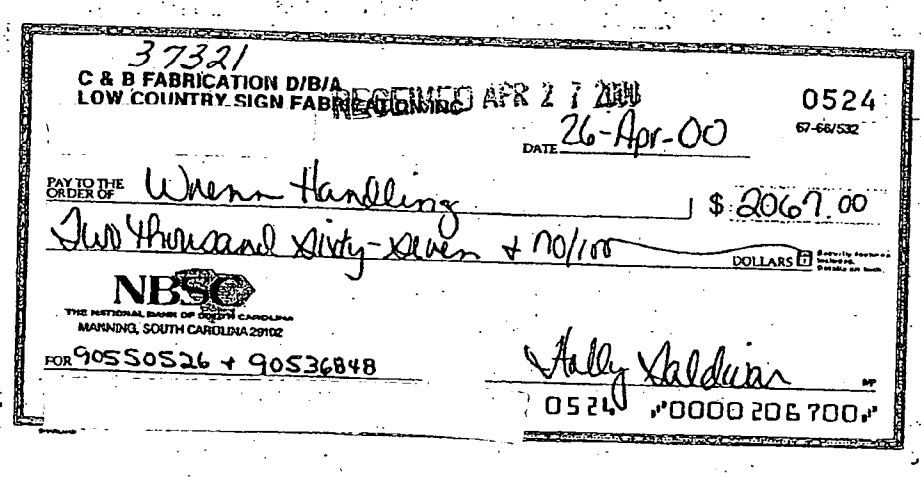
Two Hundred forty-eight + 34/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Re-imbursement / Fuel

Holly Haldeman

0523 "00000 24834"



37321

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

RECEIVED APR 27 2000

0524
67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Wrenn Handling $ 2067.00

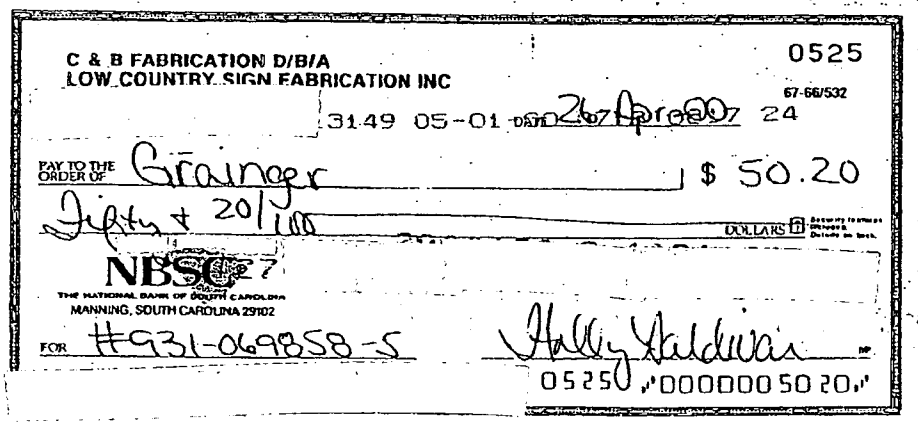
Two Thousand Sixty-seven + 00/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR 90550526 + 90536848

Holly Haldeman

0524 "0000 206 700"



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0525
67-66/532

3149 05-01 DATE 26 Apr 2000 24

PAY TO THE ORDER OF Grainger $ 50.20

Fifty + 20/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR #931-069858-5

Holly Haldeman

0525 "000000 50 20"

00028

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

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Inv. # 81

Holly Haldiman

0527 "000000112501"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0528

0694 05-03-00 ~~9773~~ 0851 16 67-66/532

DATE 26-Apr-00

PAY TO THE ORDER OF Quill Corporation $ 69.45

Sixty-Nine + 45/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Inv# 7778180

Holly Haldiman

0528 "000000694511"

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 Creel $ 545.00

Five Hundred forty-five + 00/100 DOLLARS

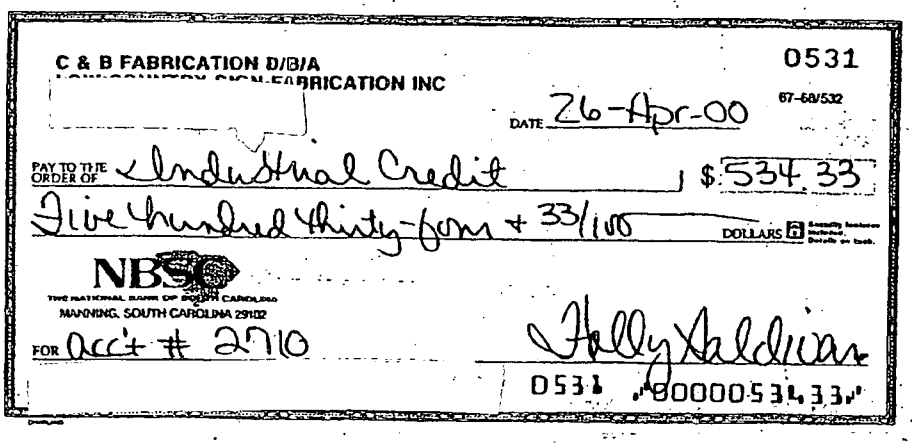
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Bldg. Rent Tom Smith

Holly Haldiman

0530 "000005450011"

00029



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0531

67-68/532

DATE 26-Apr-00

PAY TO THE ORDER OF Industrial Credit $ 534.33

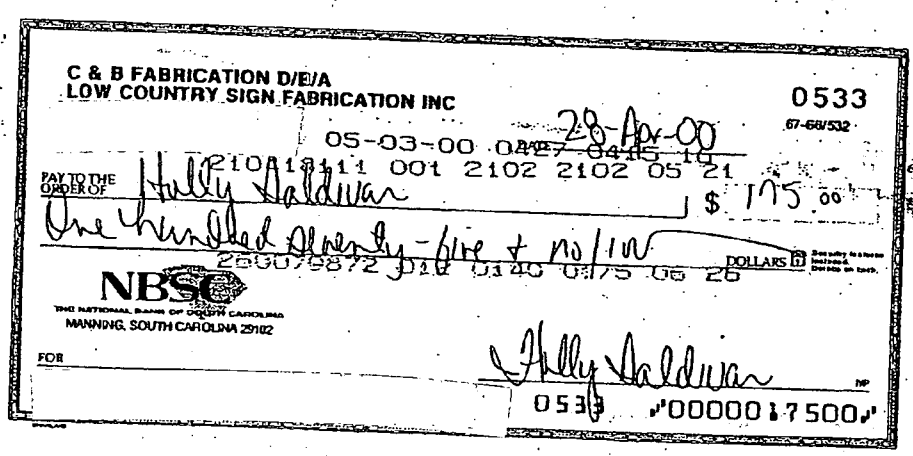
Five Hundred Thirty-four + 33/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Acct # 2710

Holly Baldwin

0531 "00000534.33"



C & B FABRICATION D/E/A
LOW COUNTRY SIGN FABRICATION INC

0533

67-68/532

28-Apr-00

05-03-00 0427-0445 10

PAY TO THE ORDER OF Holly Baldwin $ 175 00

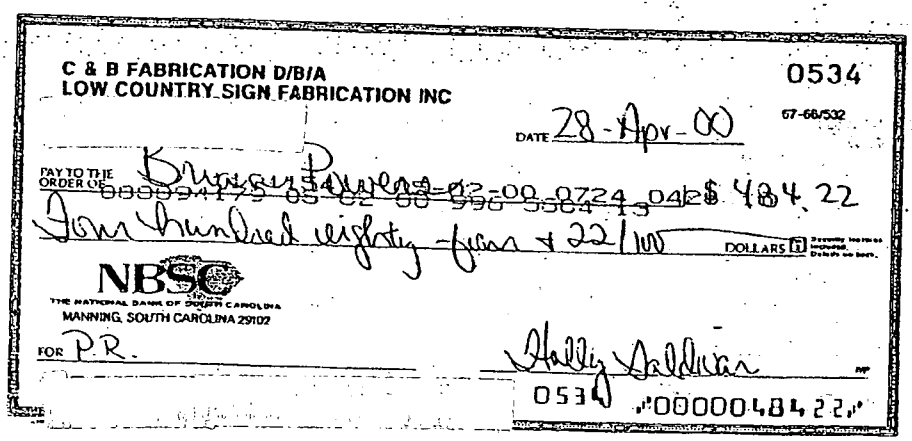
One Hundred Seventy-five + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR

Holly Baldwin

0533 "00000175 00"



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0534

67-68/532

DATE 28-Apr-00

PAY TO THE ORDER OF Bruce Powers 05-02-00 0724 042 $ 484.22

Four Hundred eighty-four + 22/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Baldwin

0534 "00000484.22"

00030

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0536
67-68/532

DATE 28-Apr-00

PAY TO THE ORDER OF Eric Jonchberry $ 279.52

Two Hundred Seventy Nine + 52/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Haldiman

0536 "000002795 2"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0538
67-68/532

DATE 28-Apr-00

PAY TO THE ORDER OF Keith Blakemore $ 419.85

Four Hundred Nineteen + 85/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Haldiman

0538 "000004198 5"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0540
67-68/532

28-Apr-00

05-05-00 ~~03/30-0397.13~~

PAY TO THE ORDER OF Jason Erickson $ 306.17

Three Hundred Six + 17/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R. Holly Haldiman

0540 "00000306 17"

00031

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0541

67-66/532

DATE 28-Apr-00

05-03-00 04 0815 16
210418112 001 2102 2102 05 21

PAY TO THE ORDER OF Holly Saldivar $ 413.31

Four hundred thirteen + 31/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R.

Holly Saldivar

0541 ⑈000041331⑈

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

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR P.R

Holly Saldivar

0544 ⑈000016247⑈

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

0222 05/02/00 12:16
$256.65 CCNC

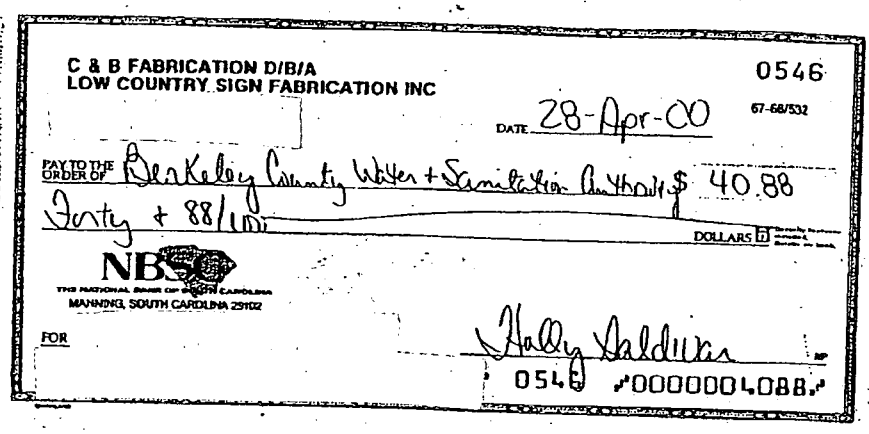
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Re-imbursement Fuel

Holly Saldivar

0545 ⑈000025665⑈

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

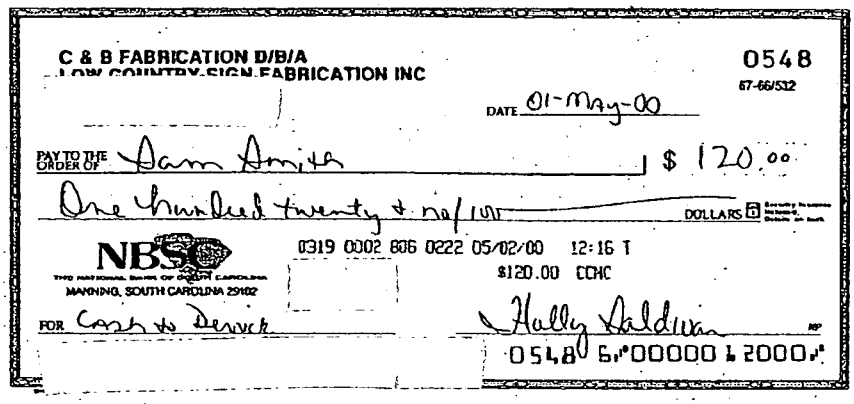
Forty + 88/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR

Holly Baldwin

0546 ⑆000000 4088⑆



C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0548

67-66/532

DATE 01-May-00

PAY TO THE ORDER OF Sam Smith $ 120.00

One Hundred twenty + no/100 DOLLARS

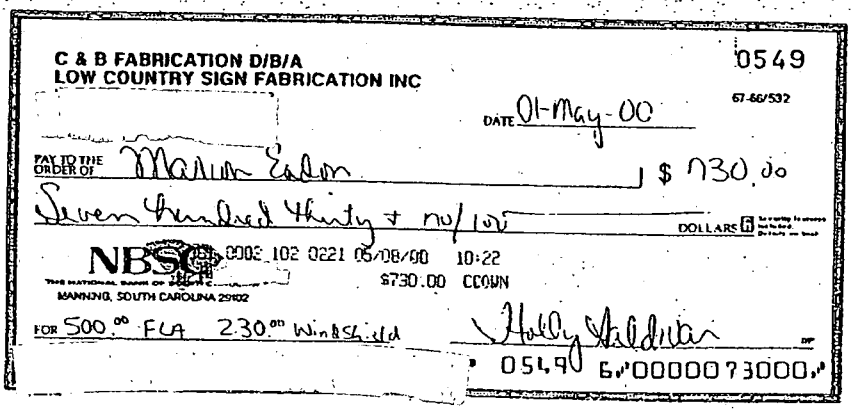
NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0319 0002 806 0222 05/02/00 12:16 T
$120.00 CCHC

FOR Cash to Derrick

Holly Baldwin

0548 ⑆00000 1 2000⑆



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 Eaton $ 730.00

Seven Hundred Thirty + no/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

0319 0002 102 0221 05/08/00 10:22
$730.00 CCOUN

FOR 500.00 FUA 230.00 Windshield

Holly Baldwin

0549 ⑆00000 73000⑆

00033

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0551

5283 09-12-00 DATE 9894-9828 16 67-66/532

PAY TO THE ORDER OF Berkeley Electric Coop. $66.00

Sixty-Six dollars DOLLARS

3411 0533 17

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Electric

0551 "0000006600"

C & B FABRICATION D/B/A
LOW COUNTRY SIGN FABRICATION INC

0552

DATE 9-4-00 67-66/532

PAY TO THE ORDER OF Berkeley County Water + Sanitation Authority 40.88

forty dollars & 88/100 DOLLARS

NBSC
THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SOUTH CAROLINA 29102

FOR Water

0552 "0000004088"

EXHIBIT
15

LOW COUNTRY SIGN FABRICATION, INC.

THE NATIONAL BANK OF SOUTH CAROLINA
MANNING, SC 29102
67-66/532

1-970

PAY TO THE ORDER OF Marion Creel

Five Hundred Ninety-Nine and 50/100

Marion Creel

Office Rent Sam Smith

AUTHORIZED SIGNATURE

"014970" "000005995D"

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

00163

NBSC
The South Carolina Bank for you.

Statement of Account

Last statement: April 11, 2000
This statement: April 30, 2000

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

58

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		$8,725.43

Small Business Checking

Account Number 58-2415660

Beginning balance	0.00
Withdrawals/debits	31,274.57 ✓
Deposits/credits	40,000.00 ✓
Ending balance	8,725.43

Checks

Number	Date	Amount	Reference Number
0	04-17	512.89	012064624
0	04-17	140.01	012064621
0	04-17	31.79	012064622
0	04-17	24.45	012064625
0	04-17	1,846.00	012064907
0	04-17	750.00	012064909
0	04-17	500.00	012064908
0	04-17	500.00	012068010
0	04-17	306.17	012033029
0	04-17	247.76	012064904
0	04-17	99.49	012064905
0	04-17	58.25	012064906
0	04-18	419.86	012014535
0	04-18	349.78	012020004
0	04-18	295.17	012019548
0	04-18	287.48	012019566
0	04-18	254.52	012019535
0	04-18	20.00	012020003
0	04-20	365.52	011032402
0	04-24	435.50	011034245
0	04-24	175.00	011034244
92	04-17	202.74	012064582
93	04-17	127.17	012033040
94	04-13	150.00	012064451
95	04-17	95.57	012064583
96	04-13	534.00	012046452
97	04-21	1,313.89	012025106
98	04-19	545.00	011020232
99	04-17	177.90	012118937
100	04-18	155.13	012033297
502 *	04-28	314.23	011026704
503	04-20	636.81	011022124
504	04-25	102.82	012058409
505	04-20	1,000.00	011042018
507 *	04-25	480.02	012058408
508	04-20	135.00	011017539
509	04-21	747.20	012023306
510	04-26	175.00	011028075
511	04-21	500.00	012042433
512	04-25	254.52	012029531
513	04-24	588.77	011053063
514	04-26	306.17	011034275
515	04-26	413.31	011028076
516	04-25	484.22	012015889
517	04-21	358.53	012042432
518	04-21	490.20	012042431
519	04-24	380.12	011053064
520	04-25	461.56	012034322
526 *	04-28	4,981.98	011002091
529 *	04-28	3,396.59	011007725
532 *	04-27	1,550.00	012034511
535 *	04-28	500.00	011042382
537 *	04-28	358.53	011042386
539 *	04-28	588.77	011042385
542 *	04-28	461.56	011047248
543	04-28	441.87	011042383
547 *	04-28	195.81	011042384

* Skip in check sequence

Other Debits

Date	Description	Reference Number	Description	Amount
04-20	#Preauthorized Wd	1021R6023	Harland Checks Chk Orders 000420 003 00108009260	49.95 ✓

EXHIBIT 16

NBSC
The South Carolina [illegible] for you.

Deposits/ Credits

Date	Description	Reference Number	Description	Amount
04-12	#Deposit	012064950		20,000.00 ✓
04-25	Credit Memo	012058343		20,000.00 ✓

Balance Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
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

NBSC

Statement of Account

Last statement: April 30, 2000
This statement: May 31, 2000

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 29102-2917

102

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		33,749.59

Small Business Checking

Account number
Number
56-2415660

Beginning balance	8,725.43
Withdrawals/debits	47,721.65
Deposits/credits	42,745.81
Ending balance	3,749.59

Checks

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	012050265
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	012079830
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

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	(108)	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	4,546.84		

00026

THE NATIONAL BANK OF SOUTH CAROLINA MEMBER FDIC

NBSC
The South Carolina Bank for you.

Statement of Account

Last statement: May 31, 2000
This statement: June 30, 2000

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

107

THE EASY WAY TO PAY EVERY DAY! APPLY FOR YOUR NBSC VISA CHECK CARD TODAY.

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		47,754.44

Small Business Checking

58-2415660 *Number*

Beginning balance	3,749.59
Withdrawals/debits	66,465.14
Deposits/credits	70,469.99
Ending balance	7,754.44

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12571	06-05	448.47	011053206	12630	06-12	45.15	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	012019896
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	012039563
12610	06-08	481.34	011005428	12648	06-12	541.06	011080892
12611	06-08	376.30	011031535	12649	06-21	3,089.80	012027634
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	012024650
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	12661	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	011016550
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

00061

NBSC
The South Carolina bank for you.

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	012041675
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	06-15	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		1,106.49
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	14,572.64	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

THE NATIONAL BANK OF SOUTH CAROLINA MEMBER FDIC

NBSC

Statement of Account

Last statement: June 30, 2000
This statement: July 31, 2000

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

96

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		$5,385.31

Small Business Checking

Account number

Beginning balance	7,754.44
Withdrawals/debits	-60,945.99
Deposits/credits	58,576.86
Ending balance	5,385.31

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12657	07-05	2,982.00	012020779	12761	07-14	225.81	012040550
12718 *	07-05	249.00	012049365	12762	07-14	1,350.56	012072765
12719	07-05	363.77	012009028	12763	07-18	287.14	012004759
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	011007251	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	011036076
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

NBSC
The South Carolina National Bank

July 31, 2000
C & B Fabrication

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	1,528.79	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	460.00	011023623	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	011079825
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	* Skip in check sequence			
12814	07-21	395.33	011046969				

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	011042655		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

Balance 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

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

78

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		$1,517.09

Small Business Checking

Account number

Beginning balance	5,385.31
Withdrawals/debits	35,715.23
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	011004696
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	757.86	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	011022615

00133

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		5,150.00
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	7,572.15	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

THE NATIONAL BANK OF SOUTH CAROLINA MEMBER FDIC

NBSC
The South Carolina Bank for you.

Statement of Account
Last statement: August 31, 2000
This statement: September 30, 2000

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DBA LON COUNTRY SIGN FABRICATION INC

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	011009528
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	1,620.63	012031886	12973	09-15	214.64	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

NBSC
The South Carolina bank for you.

September 30, 2000
C & R Fabrication

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

10920
200

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

THE NATIONAL BANK OF SOUTH CAROLINA MEMBER FDIC

NBSC
The South Carolina bank for you.

Statement of Account

Last statement: September 30, 2000
This statement: October 31, 2000

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

25

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		$6,591.22

Small Business Checking

Account number

Beginning balance	2,787.25
Withdrawals/debits	31,223.13
Deposits/credits	35,027.10
Ending balance	6,591.22

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12999	10-02	100.00	011024075	13015	10-18	196.66	011030797
13001 *	10-03	77.50	012044262	13016	10-20	1,911.80	011003280
13002	10-04	1,815.36	011042334	13017	10-20	528.93	011003157
13003	10-02	54.34	011044041	13018	10-17	263.34	011011720
13005 *	10-23	1,764.41	012029761	13019	10-19	2,882.83	012007082
13006	10-19	8.36	012024631	13020	10-27	230.75	011031531
13007	10-23	64.03	012034743	13021	10-30	384.98	011036267
13008	10-19	151.79	012023606	13022	10-27	5,693.82	011001135
13009	10-20	788.26	011017570	13023	10-30	255.00	011023977
13011 *	10-23	45.52	012028808	13024	10-27	1,484.47	011003710
13012	10-20	52.52	011010248	13026 *	10-30	5,617.50	011034705
13013	10-23	362.52	012039783	13027	10-30	4,909.65	011034704
13014	10-17	1,578.79	011011719				

* *Skip in check sequence*

Deposits/ Credits

Date	Description	Reference Number	Description	Amount
10-13	#Deposit	012068290		✓ 11,390.00
10-26	#Deposit	011035579		✓ 21,712.10
10-30	#Deposit	011083479		✓ 1,925.00

Balance Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
09-30	2,787.25	10-13	12,130.05	10-20	3,766.77	10-30	6,591.22
10-02	2,632.91	10-17	10,287.92	10-23	1,530.29		
10-03	2,555.41	10-18	10,091.26	10-26	23,242.39		
10-04	740.05	10-19	7,048.28	10-27	15,833.35		

00188

THE NATIONAL BANK OF SOUTH CAROLINA MEMBER FDIC

Statement of Account

Last statement: October 31, 2000
This statement: November 30, 2000

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

4

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		$718.98

Small Business Checking

Account number

Beginning balance	6,591.22
Withdrawals/debits	23,955.52
Deposits/credits	18,083.28
Ending balance	718.98

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
13025	11-02	3,997.19	011005880	13030	11-20	375.06	011105260
13028 *	11-03	1,500.00	011047260				
13029	11-14	18,083.28	011057606				

* Skip in check sequence

Deposits/ Credits

Date	Description	Reference Number	Description	Amount
11-14	#Deposit	011057609		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	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
v.	)	**MOTION FOR SUMMARY JUDGMENT BY DEFENDANTS SAMUEL W. RHODES, JR. AND PIEDMONT PROMOTIONS, INC.**
	)	
Samuel W. Rhodes, Piedmont Promotions, Inc. and Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	

TO: A. JOHNSTON COX, ESQUIRE, AS ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc., on the eleventh day following service hereof, at such time and place as may be set by the Court, will move the Court for Summary Judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure and related Rules as to the issues framed by the Complaint and Answers filed in this case.

The ground of the Motion is that there is no genuine issue as to material facts as between the Plaintiff and these Defendants as to the basis upon which the Motion for Summary Judgment is made and these Defendants are entitled to a judgment in their favor as a matter of law because the pleadings in the underlying action, the issues framed and the result of the jury verdict in the underlying action resolving factual issues as a matter of law, establish that there is insurance coverage under the Plaintiff's policy of insurance for the

event upon which the verdict of the jury in the underlying action was rendered.

The Motion is supported by the pleadings in this action, the pleadings in the underlying action, the transcript of the trial in the underlying action, the verdict of the jury and the judgment entered thereon, the transcript of the hearing of Plaintiff's First Summary Judgment Motion, the documents and deposition excerpts submitted, the Affidavit of Samuel W. Rhodes, Jr., submitted herewith, and such other evidence as may be received by the Court. The factual details and the applicable law in support of the Motion is more fully set forth in the Brief of these Defendants in Support of their Motion, which is incorporated herein by reference.

This Motion contains no affirmation by moving counsel pursuant to Rule 11(a) SCRCP because a Motion for Summary Judgment is exempt.

Creighton B. Coleman
120 Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180
(803) 635-0884

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.

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

STATE OF SOUTH CAROLINA	)	
	)	**AFFIDAVIT**
COUNTY OF YORK	)	

PERSONALLY appeared before me, Samuel W. Rhodes, Jr., who, first being sworn, says:

1. He is a Defendant in the above-captioned civil action and makes this Affidavit in opposition to the Plaintiff's Motion for Summary Judgment.

2. Prior to receiving a proposal to design, fabricate and install the three signs, he had conversations with Marion L. Eadon and also met with Mr. Eadon at his place of business in Manning, South Carolina. He also met and talked with Mr. Eadon's assistant Chuck Benenhaley. The undersigned informed Mr. Eadon of the height and size of the signs he desired to have made and Mr. Eadon personally assured him that he could design, fabricate and install the signs. Mr. Eadon personally assured him that the signs would be correctly designed, fabricated and installed and that he personally would stand behind the work. That was an inducement and was relied upon to accept the proposal to design,

fabricate, deliver and install the three signs.

3. The written proposal that was submitted was negotiated down from $155,460.00 to $153,960.00 for three signs. When this figure was agreed upon he accepted the proposal. A copy of the written proposal dated July 9, 1999, accepted by him on August 4, 1999 is attached as Exhibit 1.

4. The accepted proposal is on the letterhead of C&B Fabrication . Nothing on the proposal says that C&B Fabrication is a corporation. In the discussions with Mr. Eadon and Mr. Benenhaley there was never any mention of a corporate entity. He saw no sign or other displayed information when at the business location of Mr. Eadon in Manning that indicated the existence of a corporation.

5. The signs were designed, fabricated, delivered and installed pursuant to the proposal submitted to the undersigned by Mr. Eadon. When installation of the signs was completed by Mr. Eadon in February of 2000, the undersigned requested and required that he be furnished a copy of the engineering drawings for the signs as a condition of making the final payment. A copy of the engineering drawings were furnished the undersigned at that time. He had not previously seen them. They were prepared by Thompson Engineering Group, LLC of Athens, Tennessee. They were prepared for C&B Fabrication, Rt. 2 , Box 825, Manning, SC 29102. This is the same name and address as is on the letterhead of the proposal submitted to the undersigned which he accepted. Nothing on this drawing indicates the existence of a corporate entity. A portion of this drawing, identifying the originator and the date (but not the entire drawing) is attached as Exhibit 2.

6. In December 2000 when it was learned that one of the signs was leaning, he contacted Mr. Eadon requesting that the leaning sign be repaired and the other two signs inspected. One response from Mr. Eadon was by facsimile transmission of a letter dated December 29, 2000 in which he said "C&B Fabricators went out of business April 3, 2000" and that it "does not have any assets." This letter is on the letterhead of Marion L. Eadon. It also shows the facsimile origin as being with C&B Fabrication and the fax number is 803 473 5854. That is the fax number on the letterhead of the C&B Fabrication proposal accepted by the undersigned on August 4, 1999. A copy of the Marion L. Eadon letter of December 29, 2000 is attached as Exhibit 3. In response to Mr. Eadon's facsimile letter of December 29, 2000, the undersigned faxed to him a letter the same date, December 29, 2000, reminding Mr. Eadon that "you assured me that the signs would be built correctly and that you would stand behind them" and that "you personally assured me that the job would be done correctly." A copy of that letter is attached as Exhibit 4.

7. On or about Wednesday, January 17, 2001 Mr. Eadon sent men and equipment to make adjustments to the sign that was leaning. The undersigned was present during part of the time they were there and he was assured by them that they would inspect the other two signs in addition to repairing the leaning sign.

8. Three days later, on January 20, 2001, one of the signs fell on the traffic lanes of I-77.

9. As a result of the sign falling on I-77 the South Carolina Department of Transportation required the remaining two signs to be taken down because of safety concerns. He requested Mr. Eadon to take down the signs. Mr. Eadon took down one of the signs but refused to take down the remaining sign.

10. The three signs were installed in the Fairfield County real estate, which was at the time, and to the present time, owned by the undersigned. The signs were intended to be and did become permanent fixtures on his real estate when installed. As a result of one sign falling and the other two signs being taken down at the mandate of the South Carolina Department of Transportation, his real estate has been damaged.

11. At the trial of the action by the undersigned and Piedmont Promotions, Inc., against Marion L. Eadon, d/b/a C & B Fabrications, in Fairfield County, the plaintiffs' expert real estate appraiser, C. Duke Durden, testified that the Fairfield County real estate on which the signs were installed has been damaged as a result of the sign having fallen and the consequences flowing therefrom. The jury's verdict in favor of the plaintiff in that action was based in part upon that evidence.

Samuel W. Rhodes, Jr.

Sworn to before me this
24th day of January, 2005

Notary Public for South Carolina
My Commission Expires: My Commission Expires April 2, 2012.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF CO ON PLEAS

Auto-Owners Insurance Company,

( ) Plaintiffs,

vs.

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

(X) Defendants.

Check box above indicating submitting party

Case No.: 02-CP-46-2369

MOTION INFORMATION FORM AND COVER SHEET

Name, SC Bar No. and Address of Plaintiff's attorneys:
A. Johnston Cox, Esquire
Post Office Box 2285
Columbia, South Carolina 29202
telephone: fax: ✓
email: other:

Name, SC Bar No. and Address of Defendant's attorney:
Creighton B. Coleman (S.C. Bar # 006521)
Post Office Box 1006
Winnsboro, SC 29180

telephone: 803-635-6884 fax:
email: other:

Name, SC Bar No. and Address of Defendant's attorney:
Hoover C. Blanton (S.C. Bar # 0731)
Post Office Drawer 11209
Columbia, SC 29211-1209

telephone: 803-799-9791 fax: 803-253-6084
email: other:

(X) **MOTION HEARING REQUESTED** (attached written motion and complete **SECTIONS I AND III**)
( ) **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II AND III**)

SECTION I: Hearing Information

Nature of Motion: DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
Estimated Time Needed: 40 minutes Court Reporter Needed: YES/No

SECTION II: Motion Type

(X) Written motion attached
( ) Form Motion –
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff/ Defendant: Hoover C. Blanton Date Submitted 2-15-05

SECTION III: Motion Fee

(X) PAID - AMOUNT $25.00
( ) EXEMPT: (check reason)
( ) Rule to Show Cause in Child or Spousal Support
( ) Domestic Abuse or Abuse and Neglect
( ) Indigent Status ( ) State Agency v. Indigent Party
( ) Sexually Violent Predator Act ( ) Post-Conviction Relief
( ) Motion for Stay in Bankruptcy
( ) Motion for Publication ( ) Motion for Execution (Rule 69, SCRCP)
( ) Proposed order submitted at request of the court; or reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: /

JUDGE'S SECTION

( ) Motion Fee to be paid upon filing of the attached order
( ) Other

Judge
Code: Date:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(Print Name)
( ) MOTION FEE COLLECTED: _____
( ) CONTESTED - AMOUNT DUE: _____

President
M.L. Eadon

C&B FABRICATION

RT. 2, BOX 825
Manning, South Carolina 29102
Phone: (803) 473-5809 (803) 435-8330 • Fax (803) 473-5854

Manager
Chuck Beneninaley

PROPOSAL SUBMITTED TO:

SAM RHODES
803-367-8355

SPECIFY JOB # AND DATE
DATE: 7-9-99
FOB: MANNING, S.C.
TO: ROCK HILL, S.C.

WE HEREBY SUBMIT OUR PROPOSAL TO: Fabricate, deliver and install the following per your specifications:

STRUCTURE DESCRIPTION: 10'6" X 36' CENTER MOUNT STACKED (15' VEE)
130' BOTTOM HAGL

	TOTAL FOR (1) UNIT		TOTAL FOR (3) UNITS
	$ 35,000.00		$ 105,000.00
FORMETCO PANELS (4)	4,000.00	(12) SETS	12,000.00
400 WATT HOLOPHANE (12)	4,320.00	(36)	12,960.00
LIGHTS	$ 43,320.00		$ 129,960.00
INSTALLATION	8,500.00		25,500.00
	$ 51,820.00		$ 155,460.00

153,960.00 C.B.

INCLUDES: DESIGNED AND BUILT TO MEET LOCAL BUILDING CODES.
36" OUTSIDE CATWALKS WITH WALK/AROUNDS, SAFETY CABLES
24" INSIDE UPPER AND LOWER CATWALKS
(3) STRINGERS, (1) HANGRAIL, ACCESS LADDERS, 3' METAL APRONS,
PRIMED AND PAINTED AS PER YOUR SPECS., ELECTRICAL HOOK-UPS.

** Please note, price does not include licenses, permits, demolition costs or any other miscellaneous fees connected with this project.

The above proposal is quoted F.O.B. Manning, South Carolina, with freight allowed to the job site.

WE HEREBY PROPOSE To furnish labor and materials complete in accordance with the above specifications for the sum of $ as specified above with payment to be made as follows: Fifty percent (50%) of total contract with order, balance due upon delivery and installation of fabricated materials.

C&B Fabrication reserves the right to substitute structural components (including the support column, billboard head section members and connections) in lieu of those noted on the design drawings, provided the substituted component can be verified and approved by the responsible engineer to be of adequate strength and capacity.

SUBSURFACE CLAUSE: If erected, the installation portion of the above quote has been calculated based on easy site access: no obstructions and average bearing soil. No allowance has been made for rock or abnormal soil or site conditions. If a problem is encountered, you or your representative will be contacted before we proceed and corrective measures will be taken on a time and material basis. Access difficulties requiring additional equipment to move vehicles in and out or down-time for crew and equipment due to access or subsurface problems will be billed to the owner as extra to this contract. If quoted, C&B Fabrication will assemble and install panels for the unit with mounting of light fixtures only. Electrical hook-ups will be the sole responsibility of the owner unless specified otherwise.

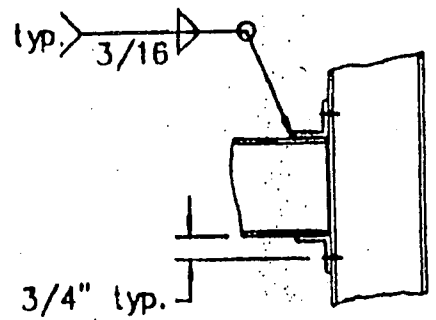
The manufacturer shall retain ownership of the fabricated steel until the owner has paid in full, the contract price, plus addendum.

ACCEPTANCE OF PROPOSAL: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

EXHIBIT
1

Date 7-9-99

EXHIBIT 2



SECTION G–G
N.T.S.

SOUTH CAROLINA
THOMPSON ENGINEERING GROUP, LLC
No. 15935
CERTIFICATE OF AUTHORIZATION

NOTICE
This drawing is for permitting purposes only and is for the sole use of TEG and its designees. Unauthorized use is strictly prohibited.

Location: *Columbia, SC Area*

C & B Fabrication
Rt. 2 Box 825
Manning, SC 29102

10'6 X 36' CM, Stack, 15'V @ 127'–0" O.A.H.

SOUTH CAROLINA
REGISTERED PROFESSIONAL ENGINEER
No. 15935
EVERETT THOMPSON

E. THOMPSON, JR., P.E.

TEG THOMPSON ENGINEERING GROUP, LLC
P.O. BOX 747
ATHENS, TN 37371–0747
(423)745–0644

DRAWN BY:	BAB
DATE:	07/13/99
SCALE:	1/4"=1'–0"
PROJ.#	073499
DWG.#	ED–2120

Marion L. Eadon
P.O. Drawer H
Manning, SC 29102
(803)473-5808

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes
P.O. Box 4234
Rock Hill, SC 29732

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.

Marion Eadon

EXHIBIT
3

Piedmont Promotions

P.O. Box 4234
Rock Hill, S.C. 29732

Phone (803)327-6600
Fax (803)324-5360

December 29, 2000

Mr. Marion Eadon
C & B Fabricators
P.O. Drawer H
Manning, S.C. 29102
(803) 473-5854

Dear Marion,

In response to your fax of December 29,2000. I have not taken advantage of you not knowing enough about the business. I am not nor have ever been in the sign fabrication business. I contracted with you to build three signs at a price that you bid and that we agreed upon. It took you much longer to build the signs because you would send your crews to other jobs. You assured me that the signs would be built correctly and that you would stand behind them. I have tried to work with you the entire time. All I have ever asked is that you do the job promised, a first quality job, and all I am asking now is that you correct work that was not performed correctly. You personally assured me that the job would be done correctly.

The sign in question that you recently built for me has begun leaning and has become dangerous. It is in need of immediate repair. Please repair this immediately since it was not built correctly. I need to know your response to this matter immediately.

I may be reached at (803)367-8355,(803)366-7164,3033037-6600, or faxed at (803)324-5360. My address is P.O. Box 4234, Rock Hill, S.C. 29732

Sincerely,

Samuel W. Rhodes, Jr.

EXHIBIT
4

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 **Motion for Summary Judgment by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. with attached Affidavit of Samuel W. Rhodes, Jr.** 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

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
	)	**BRIEF OF DEFENDANTS SAMUEL W. RHODES, JR. AND PIEDMONT PROMOTIONS, INC.**
v.	)	
	)	
Samuel W. Rhodes, Piedmont Promotions, Inc. and Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	**1. IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT; AND**
	)	
Defendants.	)	**2. IN OPPOSITION TO PLAINTIFF'S 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.2nd 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 repai." 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 it 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 <u>are</u> 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

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,	)	
	)	
v.	)	**DEFENDANTS EADON'S, C & B FABRICATIONS, INC.'S AND LOW COUNTRY SIGNS, INC.'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND ITS PREVIOUSLY-AMENDED COMPLAINT**
	)	
Samuel W. Rhodes, Jr., Piedmont Promotions, Inc., Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	
Defendants.	)	

FACTS BEARING ON THE MOTION

This case was set for trail on September 13, 2004. The Defendants and their attorneys came to court, ready for trail. At the pretrial conference in chambers, Plaintiff insurance company asked for continuance solely to be able to review the transcript of the recently-completed tort trial.

On the Friday prior to the scheduled start of the trial on Monday, the insurance company filed a motion to amend again its previously amended complaint. The motion did not, however, include a proposed second-amended complaint. Only now, more than six months later, has Plaintiff served a proposed amended complaint seeking to add grounds for denial of coverage of which Plaintiff would have been aware three years earlier.

At the pretrial, in-chambers conference, the Court said in essence that he did not intend to allow substantive amendments at that late date.

ARGUMENT

I. A PLAINTIFF DOES NOT HAVE AN UNRESTRICTED RIGHT TO AMEND ITS COMPLAINT.

A Plaintiff's one-time, unrestricted right to amend its complaint freely ends 30 days after a responsive pleading is filed or – if the case has not been put on the trial roster – 30 days after service of a pleading which requires no response. Thereafter, or if the matter has been put on the trial roster, a party must obtain the Court's leave before amending. Rule 15(a) SCRCP. Leave to amend is to be freely given, but only if 1) justice requires the amendment and 2) no other party is prejudiced. Id.

Neither of these conditions for amendment is met nor is the implicit principle of judicial economy.

II. JUSTICE DOES NOT REQUIRE THAT THE INSURANCE COMPANY BE GRANTED LEAVE TO AMEND ITS ALREADY-AMENDED COMPLAINT.

The insurance company initiated this lawsuit initially in October, 2002. In the original complaint, the insurance company sought a declaration that it had "no obligation to defend Maron L. Eadon d/b/a C & B Fabrications, Inc. in the litigation bearing docket number 01-CP-20-334." Complaint, p.6. The insured said nothing about Mr. Eadon not being insured in that original complaint, as it had said in the three prior reservation of rights letters sent to Mr. Eadon on February 8, 2001; August 2, 2001; and February 8, 2002.

The letter of August 2, 2001, from the insurance company's senior claim representative, copy at Exhibit 1, in fact, states that:

> 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.

Both by phone and letter, therefore, the insurance company told Mr. Eadon that he was an insured – the only issue was whether certain damages were covered.

After Mr. Eadon answered the insurance company's original complaint and counterclaimed for bad faith and breach of contract, Auto-Owners voluntarily dismissed its original complaint. In its stead, on March 13,2003, the insurance company filed an amended complaint which dropped any claim that it had no duty to defend Mr. Eadon in the underlying tort suit.

By the time that Auto-Owners filed its motion to amend on September 8, 2004, it had had five separate opportunities to review its position and raise the issue of whether Mr. Eadon d/b/a C & B Fabrications was an insured: three reservation of rights letters, going back to February 8, 2001, and the two complaints, in October, 2002, and March, 2003. Auto-Owners knew who the Defendants were in Rhodes v. Eadon d/b/a C & B Fabrications before it filed its original complaint – specifically that Mr. Rhodes and his corporation had brought claims against Mr. Eadon d/b/a C & B Fabrications. Clearly the insurance company has no limitations on assets that would have precluded its acting with reasonable promptness. Justice does not require that the insurance company be allowed another bite at the apple. Even if Auto-Owners and Mr. Eadon had equal assets, which they clearly do not, because of the time and opportunities that Auto-Owners has squandered, justice would not be served by allowing Auto-Owners to amend their Complaint yet again.

III. MR. EADON WOULD BE SUBJECTED TO EXTREME PREJUDICE IF AUTO-OWNERS WERE ALLOWED TO AMEND ITS COMPLAINT AND PRACTICALLY RESTART THIS LITIGATION.

A judgment of $6.5 million was entered against Mr. Eadon on September 2, 2004. The legal rate of post-judgment interest is 12 percent per annum. S.C. CODE ANN. § 34-31-20 (Supp. 2004). That amounts to $780,000 per year or $2,136.99 per day. That interest is, of course, accruing in the tort action, which is on appeal.

Nonetheless the accrual of that post-judgment interest against Mr. Eadon creates tremendous pressure on him. Allowing Auto-Owners to amend its Complaint raises the specter that this case will extend litigation past the appeal.

While the insurance company implies that amending its complaint will not entail any substantial additional time, that is likely not the case. Mr. Eadon and the Defendants associated with him have retained an expert on coverage, Gerald Finkel, but he has examined only the claims that Auto-Owners propounded in its Amended Complaint. A copy of the Expert's Report is at Exhibit 2. Those claims did not entail any allegation that Mr. Eadon was not insured. Mr. Eadon had no notice that this issue was to be tried, which is what the requirement for prejudice primarily entails. Collins Entertainment, Inc. v. White, ____ S.E. 2d, ____ 2004 WL 3142458 (Ct. App. 2005). As pointed out above, Mr. Eadon had been implicitly told that he was an insured. Therefore, Defendant's present expert, or another expert, will need to review the policy and the facts established by testimony at the tort trial and prepare a supplementary report. All of that takes time, especially reviewing the 4-volume trial transcript, and must fit into the expert's own schedule. The trial transcript must be reviewed for evidence of whether Mr. Eadon was acting "with respect to his duties as [an] officer" of the named- insured corporation, which is the key determination in assessing whether he was an "insured." Auto-Owners will thereafter seek to

depose Defendants' expert and likely name its own expert, who will have to be deposed by Defendants. Allowing the insurance company to amend could conservatively add six months to the length of this litigation. That could very well take this case past the end of the tort appeal and the post-judgment interest against Mr. Eadon would be accruing on this case alone. Such an eventuality would unquestionably be extremely prejudicial to Mr. Eadon.

Extending the duration of this declaratory action would also be prejudicial to Mr. Eadon in the matter of attorney fees. Further extending this litigation is a minor matter to a company like Auto-Owners, but to Mr. Eadon, who must individually pay the attorney fees generated by this action, they are a substantial burden. He, moreover, does not have the option of not defending the action.

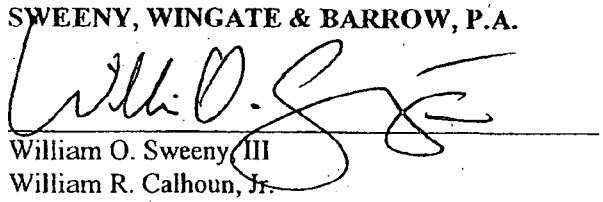
Allowing Auto-Owners to amend its Amended Complaint would, therefore, be thoroughly prejudicial to Mr. Eadon inasmuch as Mr. Eadon did not have notice that this issue was to be tried until virtually the day scheduled for trial, despite this litigation having gone on since October 2002, over two and one half years ago. The reservation of rights letter of August 2, 2001 informed him that he was an insured and paid him for some of the damages. Auto-Owners did not change its position on this issue until the pretrial conference. At that time, the Court suggested that new matters would not be allowed to be introduced. That preliminary assessment was sound.

CONCLUSION

Plaintiff's motion to amend its Amended Complaint should be denied. Further delay will prejudice Mr. Eadon substantially.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



William O. Sweeny, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Defendant

Columbia, South Carolina

April 27, 2005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 02-CP-46-2369
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	**SECOND AMENDED COMPLAINT**
Samuel W. Rhodes, Piedmont Promotions, Inc. and Marion L. Eadon, C&B Fabrications, Inc. and Low Country Signs, Inc.,	)	(Declaratory Judgment Action)
	)	
Defendants.	)	
	)	

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 ("Eadon"), is a citizen and resident of the State of South Carolina, County of Clarendon.

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 Eadon d/b/a C&B Fabrication 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 Eadon d/b/a C&B Fabrication completed and installed the signs in February 2000. The signs were put to their intended use by Piedmont Promotions, Inc. 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, the South Carolina Department of Transportation ordered the remaining two signs removed, because they were defective and unsafe.

9. Defendants Samuel W. Rhodes 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 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 2, 2004, the jury returned a verdict against Marion L. Eadon d/b/a C&B Fabrication in the Rhodes case in the amount of three million dollars actual damages and three million five hundred thousand dollars punitive damages.

11. 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. A certified copy of this policy is attached to this Complaint, is labeled "Exhibit B," and is adopted herein by this reference.

12. The Policy contains, among others, the following 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).*

13. 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).*

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

15. The term "insured" is defined, in part, as follows: "If you are designated in the Declarations as: and organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders."

16. 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.'"

17. 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."

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

(a) Exclusion a., which states, "This insurance does not apply to: . . . "property damage" expected or intended from the standpoint of the insured."

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

(c) 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'."

(d) 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."

(e) 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.

19. Eadon has demanded that the Plaintiff indemnify him for the damages awarded by the jury in the Rhodes case.

20. Auto-Owners has provided Eadon with a defense and has done so under a reservation of rights.

21. Upon information and belief, Plaintiff's policy of insurance provides no coverage to Marion L. Eadon d/b/a C&B Fabrication with respect to the described lawsuit, by reason of the provisions of the insurance policy and the applicable laws.

22. 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 Fabrication with respect to 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; and;

b. The Plaintiff has no duty to indemnify Marion L. Eadon d/b/a C&B Fabrication with respect to 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; and;

c. For such other and further relief as the Court may provide.

ELLIS, LAWHORNE & SIMS, P.A.

By: _____

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

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

_____, 2005

AUTO-OWNERS INSURANCE COMPANY
TO-OWNERS LIFE INSURANCE COMPANY
OME-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

August 2, 2001

Piedmont Promotions, Inc.
Attn: Sam Rhodes

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
1

030

Auto-Owners Ins. Co.
-v-
Samuel W. Rhodes, Jr.
and
Piedmont Promotions, Inc. and Marion L. Eadon,
C&B Fabrication, Inc., and
Low Country Signs, Inc.
Civil Action Number: 02-CP-46-2369
Our File Number: 52370/15705

SUMMARY

It is our opinion the allegations within the complaint trigger Auto-Owners' duty to defend.

FACTUAL/PROCEDURAL BACKGROUND

According to the complaint:

On May 6, 1999, the South Carolina Department of Transportation ("SCDOT") granted three permits to Samuel W. Rhodes and Piedmont Promotions, Inc. ("Owners") to erect three billboards on property adjacent to I-77.

On August 4, 1999, Marion L. Eadon, d/b/a C&B Fabrications ("Construction Company") agreed to construct three billboards for Owners. Additionally, Construction Company agreed to install the billboards on Owners' property.

On February 22, 2000, Construction Company completed installation of the billboards.

On September 17, 2000, Auto-Owners Ins. Co. ("Insurance Company") issued a commercial general liability ("CGL") policy to Construction Company and Low Country Signs, Inc. The policy number is 036064416. The policy coverage period is from 09-17-2000 to 09-17-2001.

On December 2000, pursuant to a request by Owners, Construction Company performed maintenance on one of the billboards, as it was leaning towards I-77. Construction Company also inspected the remaining two billboards for potential flaws.

On January 20, 2001, one of the three billboards fell into the southbound lanes of I-77. Thereafter, the South Carolina Department of Transportation ("SCDOT") ordered Owners to remove the remaining billboards. Additionally, SCDOT revoked Owners' permits for the billboards.

Owners sued Construction Company, alleging causes of action for breach of contract, breach of warranty, strict liability, fraudulent breach of contract, fraud, constructive fraud, negligent misrepresentation, negligence, bad faith, nuisance, and violations of the Unfair Trade

EXHIBIT
tabbies
2

Practices Act. Owners alleged the following as damages: 1) injuries to real property; 2) costs of cutting the signs into manageable pieces for removal; 3) costs for removing the signs both from the interstate and from the Owners' property; 4) lost economic opportunity; 5) lost revenue; and 6) diminution in value of the signs. The suit is styled: *Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. -v- Marion C. Eaden d/b/a C&B Fabrication*, Civil Action Number: 01-CP-20-334.

Construction Company sought defense and coverage from Insurance Company. Insurance Company filed a declaratory judgment action to determine if its coverage under the policy was triggered by the complaint. The declaratory judgment action is styled: *Auto-Owners Insurance Company v. Samuel W. Rhodes, Piedmont Promotions, Inc. and Marion L. Eadon, C&B Fabrications, Inc. and Law Country Signs, Inc.*, Civil Action Number: 02-CP-46-2369.[1]

POLICY

Section I - Coverages

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement.
   a. We will pay those sums that the insured becomes legal obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.
   b. "This insurance applied to . . . 'property damage' only if:
      (1) "The . . . 'property damage' is caused by an 'occurrence' that takes place in the 'coverage territory'; and
      (2) The . . . 'property damage' occurs during the policy period."

2. Exclusions.

This insurance does not apply to:

a. '[P]roperty damage' expected or intended from the standpoint of the insured.

j. 'Property damage' to:
   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 . . . ."

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.

---

[1]Insurance Company named Low Country Signs as a defendant in its Declaratory Judgment Action. Low Country Signs, Inc. is not mentioned in the allegations of the complaint.

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 . . . 'your product' . . . 'your work'; or . . . '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."

Section V. Definitions

4. 'Coverage territory' means . . . The United State of America . . . .

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 of thought to be defective, deficient, inadequate or dangerous; or
   b. You have failed to fulfill the terms of a contract or agreement;

   If such property can be restored to use by:

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

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

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 within your 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 the 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 . . . 'property damage' arising out of:
    (1) The transportation of property . . .
    (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.

14. 'Your product' means:
    a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

1. You;

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."

INFORMATION REVIEWED

I. Letter from William R. Calhoun to Gerald M. Finkel, dated April 29, 2004.

II. Letter from William O. Sweeny, III, to Gerald M. Finkel, dated April 29, 2004.

III. Complaint styled *Auto-Owners Insurance Company v. Samuel W. Rhoades, et al.*, Civil Action Number: 02-CP-46-2369.

IV. Complaint styled *Samuel W. Rhoades, Jr., and Piedmont Promotions, Inc., v. Marion L. Eadon, d/b/a C & B Fabrication*, Civil Action Number: 01-CP-20-334.

V. Insurance Policy. Policy Number: 984616-36064416.

ANALYSIS

I. Did the complaint allege facts sufficient to trigger Insurance Company's duty to defend?

A. The determination of whether an insurer is obligated to defend is based on the allegations of the complaint. If alleged facts fail to bring the case within policy coverage, no duty to defend exists. *First Financial Insurance Company v. Sea Island Sport Fishing Society, Inc.* 490 S.E.2d 257, 258 (S.C. 1997); *Town of Duncan v. State Budget and Control Board*, 482 S.E.2d 768, 772 (S.C. 1997).

The duty of a general liability insurer to provide a defense for claims asserted against its insured is contractual, and the courts will therefore look to the language of the policy at issue to determine an insurer's defense obligations. B. R. Ostrager & Thomas R. Newman, 1 Insurance Coverage Disputes § 5.01 (Aspen Publishers, Inc. 2002).

The covenant to defend is separate from and broader than the covenant to indemnify. An insurer has a duty to defend a claim against its insured unless it can establish "as a matter of law, that there is no possible factual or legal basis on which the insurer might eventually be obligated to indemnify him under any provision contained in the policy." *See generally* B.R. Ostrager & Thomas R. Newman, 1 Handbook On Insurance Coverage Disputes § 5.02 (Aspen Publishing Co. 11th Edition, 2002).

"[T]he inclusion of some non-covered claims does not abrogate an insurer's duty to defend when a complaint raises claims covered by the policy." *Isle of Palms Pest Control Co. v. Monticello Ins. Co.*, 319 S.C. 12, 14, 459 S.E.2d 318, 319 (Ct. App. 1994).

B. Does the insuring agreement provide coverage for the allegations within the complaint?

1. The insuring agreement provides coverage for property damages, caused by an occurrence, happening within the coverage territory and during the coverage period.

A. **The complaint alleges property damages:**

1. Property damage is "[p]hysical injury to tangible property, including all resulting loss of use of that property."

2. The complaint alleges Construction Company constructed and installed billboards on Owners' property, the billboards becoming permanent fixtures. The complaint alleges the construction and installation of the billboards was negligent, causing one billboard to fall and the other two to be removed. The complaint alleges that as a result, Owners sustained "significant injury to the [their] real property . . . ." Additionally, the complaint alleges Construction Company's negligence "has significantly impaired [the real property's] value and usefulness . . . ." This is sufficient to allege a physical injury.

3. The complaint alleges the removal of the billboards caused damages to Owners' real property. Real property is tangible property. *See Graber v. State Farm Fire and Cas. Co.*, 797 P.2d 214, 216 (Montana 1990) ("Tangible property is property that is capable of being handled, **touched** or physically possessed.") (emphasis added).

B. **The complaint alleges an occurrence happened:**

1. An occurrence is an accident. An accident is "[a]n unintended and unforeseen injurious" event. BLACK'S LAW DICTIONARY 11 (7th ed. 2000); *see General Ins. Co. v. Palmetto Bank*, 268 S.C. 355, 360, 233 S.E.2d 699, 701 (1977) (holding damage that was expected and intended is not within the definition of occurrence); *American States Ins. Co. v. Mathis*, 974 S.W.2d 647, 650 (holding an accident is "[a]n event that takes place without one's foresight or expectation; an undesigned, sudden and unexpected event. Hence, often, an undesigned and unforeseen occurrence of an afflictive or unfortunate character; a mishap resulting in injury to a person or damage to a thing; a casualty; as to die by an accident.").

2. The allegations within the complaint allege Construction Company constructed and installed three billboards for Owners. Upon installation, the billboards became permanent fixtures on and to the real property. Subsequently, one of the

billboards fell, damaging the real property and requiring the removal of the remaining two billboards. These allegations are sufficient to allege Owners' real property sustained damages as a result of an accident or occurrence. *See L-J, Inc. v. Bituminous Fire & Marine Ins.* Co., 350 S.C. 549, 556, 567 S.E.2d 489, 493 (Ct. App. 2002) (holding workmanship, without more, does not constitute an occurrence; however, faulty workmanship that causes damages to other property is an occurrence); *Kalchthaler v. Keller Constr. Co.*, 591 N.W.2d 169, 172 (Wis. Ct. App. 1999) (holding although faulty workmanship is not an occurrence under a standard CGL policy, faulty workmanship that causes damage to other property is an occurrence under a standard CGL policy).[2]

C. **The complaint alleges the occurrence happened within the coverage territory:**

1. 'Coverage territory' includes any place within the United States. The allegations within the complaint allege the occurrence took place in South Carolina. South Carolina is within the United States. These allegations sufficiently allege the occurrence took place within the 'coverage territory.'

D. **The complaint alleges the occurrence happened within the coverage period:**

1. The South Carolina Supreme Court has adopted the injury-in-fact test for determining when an occurrence happens. *Joe Harden Builders v. Aetna Cas. & Sur. Co.*, 326 S.C. 231, 236, 486 S.E.2d 89, 91 (1997). The injury-in-fact test provides an occurrence-based insurance policy is triggered "whenever the damage can be shown in fact to have first occurred, even if it is before the damage became apparent, and the policy in effect at the time of the injury-in-fact covers all the ensuing damages." *Id.*

2. In the present case, the damage in fact to the real property occurred when the first billboard fell. The first billboard fell in January 2001, within the policy coverage.

3. **The loss of use occurred within the coverage period.** If the alleged property damage is physical injury to tangible property, any resulting use will be deemed to occur at the time of the physical injury causing it. If the alleged damage is injury to tangible property that is not physically injured, then

---

[2]For purposes of the duty to indemnity, if any, the removal of the remaining two billboards, although intentional, was caused by an occurrence, as the removal of the remaining two billboards ensued from the first billboard falling, an unexpected, unintended event.

any resulting loss of use will be deemed to occur at the time of the occurrence causing it.

a. **The complaint alleges physical injuries:**

1. The complaint alleges Construction Company constructed and installed billboards on Owners' property, the billboards becoming permanent fixtures. The complaint alleges the construction and installation of the billboards was negligent, causing one billboard to fall and the removal of the remaining two billboards. The complaint alleges that as a result, Owners sustained "significant injury to the [their] real property . . . ." Additionally, the complaint alleges Construction Company's negligence "has significantly impaired [the real property's] value and usefulness . . . ."

2. This is sufficient to allege a physical injury to tangible property. Accordingly, the damage and resulting loss are deemed to occur at the time of the physical injury that caused them. The physical injury to the real property occurred when the first billboard fell in January 2001. This is within the coverage period, as Insurance Company provided coverage for Construction Company between September 17, 2000 and September 17, 2001.

b. **The complaint does not allege physical injuries:**

1. Assuming the complaint has not alleged physical injuries, any loss of use of tangible property would be deemed to occur at the time of the occurrence causing it.

2. As stated earlier, the injury-in-fact to the real property occurred, at the earliest, when the first billboard began to fall. This is within the coverage period.

C. Does the insuring agreement exclude coverage for the allegations within the complaint?

1. Exclusion 2(a) states the policy does not cover "'property damage' expected or intended from the standpoint of the insured." The allegations within the complaint allege Construction Company negligently constructed the billboards, and, as a result, one of the billboards fell, causing damages to the real property. The complaint does not allege Construction Company

expected or intended to damage Owners' real property. This exclusion does not apply.[3]

2. Exclusion 2(j)(5) states the policy does not cover "'Property damage' to: 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 . . . ." (emphasis added).

   a. At the time of the occurrence, neither Construction Company, nor any of its contractors or subcontractors, were performing operations on the Owners' property. This exclusion does not apply. *See Spears v. Smith*, 690 N.E.2d 557, 559 (1996) ("[T]he phrase 'are performing operations' [in exclusion j(5)] is written in the present tense . . . . Thus, in unambiguous terms, exclusion 2 (j)(5) bars coverage only for damage involving 'works in progress.'")

3. Exclusion 2(j)(6) states the policy does not cover "That particular part of any property that must be restored, repaired or replaced because 'your work' was incorrectly performed on it . . . . **[This paragraph] does not apply to 'property damage' included in the 'products completed operations hazard.'**" (emphasis added).

   a. 'Your work' means . . . Work or operations performed by you or on your behalf; and . . . Materials, parts or equipment furnished in connection with such work or operations."

   b. 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[,]'" unless the work has not yet been completed.

   c. "'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."

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

   e. Construction Company negligently installed three billboards on Owners' real property - property that was not owned or rented by Construction Company. Subsequently, one of the signs fell, causing

---

[3]For purposes of the duty to indemnity, if any, the removal of the remaining two billboards was not an intentional act. Rather, the removal of the remaining two billboards ensued from the falling of the first billboard, an unintentional act. Accordingly, this exclusion would not bar coverage.

damages to the real property and requiring the removal of the other two signs, which also caused damage to the real property.

f. The allegations are sufficient to allege the Owners' property damage arose out of Construction Company's work. The words "arise out of" are synomonous with "caused by." *McPherson v. Michigan Mut. Ins. Co.*, 310 S.C. 316, __, 426 S.E.2d 770, 771 (1993) ("[F]or the purpose of construing an exclusionary clause in a general liability policy, "arising out of" should be narrowly construed as "caused by."). The allegations within the complaint allege Construction Company's removal of the signs damaged the Owners' real property. The removal of the signs and the resulting damages "arose out of" or were "caused by" Construction Company's faulty work.

g. The work is complete. The signs were completely installed in February 2000. The damage to the property did not occur until, at the earliest, December 2000.

h. The damages within the complaint are within the products-completed operations hazard coverage. Accordingly, this exclusion does not apply.

4. Exclusion 2(k) states the policy does not cover "'Property damage' to 'your product' arising out of it or any part of it . . . ."

a. 'Your product' means . . . Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by . . . You . . . ."

b. The allegations within the complaint allege the Owners' real property was damaged as a result of the removal of the signs. Real property is not goods or products. Accordingly, the Owners' real property is not within the definition of "your product." This exclusion does not apply. *See L-J. Inc.*, 350 S.C. at 555-56, 567 S.E.2d 489, 492 (citing *Thommes v. Milwaukee Mut. Ins. Co.*, 622 N.W.2d 155, 159 (Minn. Ct. App. 2001) (holding exclusion (l) in a standard CGL policy only excludes coverage for damages to the insured's work arising out of the insured's work)).

5. Exclusion 2(l) states the policy does not cover "'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."

a. "'The damage to products or work exclusion is intended to exclude insurance for damage to [Construction Company's] product or work, but not for damage caused by [Construction Company's] product or work. Thus, the exclusion does not apply where the product or work causes damages to other persons or property. In such a situation, while there would not be coverage for damages to the work or product itself, damages caused by the product to other work or products would be covered.'" *Fisher v. American Family Mut. Ins.*

Co., 579 N.W.2d 599, 605 (N.D. 1998) (quoting 3 Rowland H. Long, The Law of Liability Insurance § 11.09[2] (1998)); *see L-J, Inc.*, 350 S.C. at 555, 567 S.E.2d at 492 ("The business risk doctrine is the expression of a public policy applied to the insurance coverage provided under commercial general liability policies. Reduced to its simplest terms, the risk that an insured's product will not meet contractual standards is a business risk not covered by a general liability policy. Significantly, under the business risk doctrine, harm to the property of a third party caused by the insured's defective work is *not* excluded from coverage) (emphasis in original) (citing *Thommes*, 622 N.W.2d at 159 (holding under the business risks doctrine, exclusion (l) in a standard CGL policy only excludes coverage for damages to the insured's work arising out of the insured's work)); *Joe Banks Drywall & Acoustics, Inc. v. Transcontinental Ins. Co.*, 753 So.2d 980, __ (La. Ct. App. 2000) (holding exclusion (l) only excludes coverage for damages to the insured's work, arising from the insured's work); *Sapp v. State Farm Fire & Cas. Co.*, 486 S.E.2d 71, 74 (Ga. Ct. App. 1997) (holding exclusion (l) is only designed to exclude coverage for damages to the insured's work arising out of the insured's work, not to exclude coverage for damages to third party's property); *Westfield Ins. Co. v. Riehle*, 680 N.E.2d 1025, 1028-29 (Ohio Ct. App. 1996) (holding exclusion (l) is only designed to exclude coverage for damages to the insured's work arising out of the insured's work, not to exclude coverage for damages to third party's property).

b. 'Your work' means . . . Work or operations performed by you or on your behalf; and . . . Materials, parts or equipment furnished in connection with such work or operations." The allegations within the complaint allege the Owners' real property was damaged as a result of the removal of the signs. The Owners' real property is not work, operations, materials, parts or equipment. Accordingly, this exclusion does not apply.

6. Exclusion 2(m) states the policy does not cover "'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'; or . . . 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.

a. The Owners' property is not impaired property. "'Impaired property' means tangible property, other than 'your product' or 'your work' that cannot be used or is less useful because . . . It **incorporates** 'your product' or 'your work' that is known or thought to be defective, deficient, inadequate, or dangerous; or . . . You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by: . . . The repair, replacement, adjustment or removal of 'your

product' or 'your work'; or . . . Your fulfilling the terms of the contract or agreement." (emphasis added).

1. The complaint alleges Construction Company constructed and installed defective billboards, and, because the billboards were defective, one billboard fell and the remaining two were removed, damaging the Owners' real property.
2. As stated before, the Owners' real property is tangible. The Owners' real property is not "your work" or "your product" within the meaning of the policy. Although the billboards are not "your product" or "your work" within the meaning of the policy, the Owners' real property has not become useless or less useful because it **incorporates** the billboards. Rather, the complaint alleges the real property has become less useful from the removal of the billboards, along with the resulting damage to the real property.
3. Additionally, the complaint does not allege the property has become useless or less useful because of a delay or failure by Construction Company to perform a contract. However, assuming the complaint does allege the property became less useful because of the failure by Construction Company to perform the contract, based on the allegations of the complaint, the property cannot be restored by the repair, replacement, adjustment, or removal of Construction Company's work. Rather, it was the removal of the work that damaged the property. Accordingly, the real property is not impaired property.

b. As stated earlier, the allegations of the complaint allege the Owners' real property was physically injured.

c. The Owners' real property is not impaired property within the meaning of the policy. The Owners' real property was physically injured. Accordingly, this exclusion does not apply.

7. Exclusion 2(n) states the policy does not cover "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 . . . 'your product' . . . 'your work'; or . . . '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."

a. This exclusion is known as the "sistership exclusion." "The 'sistership' exclusion excludes coverage 'in cases where, because of the actual failure of the insured's products, similar products are withdrawn from use to prevent the failure of these other products, which have not yet failed but are suspected of containing the same defect.'" B. R. Ostrager & Thomas R. Newman, 1 Insurance Coverage Disputes § 7.02 (Aspen Publishers, Inc. 2002) (quoting

Honeycomb Sys., Inc. v. Admiral Ins. Co., 567 F. Supp. 1400, 1406 (D. Me. 1983). The exclusion only applies to "the costs associated with the withdrawal, repair or replacement of the 'sister' products which have not yet failed . . . . It does not apply, however, to the product that has failed and already caused damage to the property of the third party."

b. The allegations within the complaint allege Owners had three billboards on their property. The complaint alleges one of the billboards fell, damaging the property. This exclusion does not apply.[4]

CONCLUSION

Owners' complaint triggers Insurance Company's duty to defend.

---

[4]For purposes of the duty to indemnity, if any, this exclusion bars the damages resulting from the removal of the remaining two billboards.

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,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Samuel W. Rhodes, Jr., Piedmont Promotions, Inc., Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	
Defendants.	)	

CERTIFICATE OF SERVICE

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 Pleading 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):

Hoover C. Blanton, Esquire
McCutchen, Blanton, Johnson & Barnette, LLP
Post Office Box 11209
1414 Lady Street
Columbia, South Carolina 29211-1209

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

Creighton B. Coleman
McCutchen, Blanton, Rhodes & Johnson
120 W. Washington Street
Post Office Box 1006
Winnsboro, South Carolina 29180

Bobbie J. Powell

Columbia, South Carolina
April 28, 2005

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

COUNTY OF YORK) CIVIL ACTION NO.: 02-CP-46-2369

Auto-Owners Insurance Company,

Plaintiff,

v.

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.

SECOND AMENDED COMPLAINT
(Declaratory Judgment Action)

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

1. 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 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 resident of the State of South Carolina, County of Clarendon. Rhodes and Piedmont Promotions, Inc. have alleged that Eadon did business as C&B Fabrication.

4. On September 17, 2000, Auto-Owners issued and delivered a Commercial General Liability Policy ("Policy"), policy number 036064416, to C&B Fabrications, Inc.

and Low Country Signs, Inc. The entity designated in the Policy's Declarations is "corporation." A certified copy of this policy is attached to this Amended Complaint, is labeled "Exhibit A," and is adopted herein by this reference.

5. 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 relative to the rights and obligations under the Policy. The Defendants are parties, pursuant to S.C. Code Ann. §15-53-80, who may have or claim an interest which would be affected by the declaration.

6. Rhodes 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 arising out of construction and eventual collapse/removal of certain highway billboards or 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. ("Rhodes Civil Action"). A copy of the First Amended Complaint in the action is attached as "Exhibit B" hereto and adopted by reference herein.

7. Rhodes and Piedmont Promotions, Inc. alleged in their First Amended Complaint that they contracted with Marion L. Eadon d/b/a C&B Fabrication to fabricate, deliver, and install three outdoor advertising billboard signs on Rhodes' and/or Piedmont Promotions, Inc.'s real property in Fairfield County South Carolina.

8. Rhodes and Piedmont Promotions, Inc. did not sue C&B Fabrications, Inc. or any other corporation in the Rhodes Civil Action.

9. Rhodes and Piedmont Promotions, Inc. alleged in their First Amended Complaint that Marion L. Eadon d/b/a C&B Fabrication completed the installation of the three signs in February 2000.

10. Rhodes and Piedmont Promotions, Inc. alleged in their First Amended Complaint that one of the signs fell on Interstate Highway I-77 on January 20, 2001.

11. Rhodes and Piedmont Promotions, Inc. alleged in their First Amended Complaint that the South Carolina Department of Transportation ordered Rhodes and/or Piedmont Promotions, Inc. to take down or remove the remaining two signs which had not fallen.

12. Pursuant to the Policy and applicable law, Auto-Owners has provided a defense to Eadon in the Rhodes Civil Action.

13. In the Rhodes Civil Action, Rhodes and Piedmont Promotions, Inc. alleged that Marion L. Eadon did business as C&B Fabrication.

14. Eadon defended the Rhodes Civil Action, in part, on the basis that a corporation, not Eadon doing business as C&B Fabrication, contracted with Rhodes and/or Piedmont Promotions, Inc.; that any act or omission on Eadon's part was done in his capacity as an officer or on behalf of a corporation; and therefore he was not personally liable to Rhodes and/or Piedmont Promotions, Inc.

15. The Rhodes Civil Action was tried before a jury the week of August 30, 2004. The Trial Court charged the jury: "If you conclude from the evidence that the party that committed the negligence in this case was the corporation, in other words, the defendant was not acting individually but was acting through a corporation and as a corporation, then you must return a verdict for the defendant."

16. On September 2, 2004, the jury returned a verdict against Marion L. Eadon d/b/a C&B Fabrication in the Rhodes Civil Action in the amount of three million dollars actual damages and three million five hundred thousand dollars punitive damages.

17. Eadon has demanded that Auto-Owners indemnify him for the damages awarded by the jury in the Rhodes Civil Action.

18. The Policy contains, among others that also apply to the controversy, the following 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).*

19. 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).*

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

21. The term "insured" is defined, in part, as follows: "If you are designated in the Declarations as: and organization other than a partnership or joint venture, you are an insured. Your executive officers and directors are insureds, but only with respect to

their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders."

22. 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.'"

23. 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."

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

(a) Exclusion a., which states, "This insurance does not apply to: . . . "property damage" expected or intended from the standpoint of the insured."

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

(c) 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'."

(d) 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."

(e) 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.

25. Upon information and belief, the Policy provides no indemnity to Marion L. Eadon d/b/a C&B Fabrication with respect to the damages awarded by the jury, by reason of the language of the Policy, including, but not limited to the language referenced above; and based on applicable law.

WHEREFORE, having set forth its Amended Complaint, Auto-Owners prays that the Court inquire more fully into the matters alleged herein and issue its Order and judgment declaring whether:

a. 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; and

b. For such other and further relief as the Court may provide.

ELLIS, LAWHORNE & SIMS, P.A.

By: _____

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

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

7/15, 2005

EXHIBIT A

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

55039 (11-87)
Issued 08-17-2000

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

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

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

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) ILD017 (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.

Tony Snyder

Date 7-8-03

54104 (07-87)
Issued 08-17-2000

Owners
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 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

55040 (11/87)
Issued 08-17-2000

Owners

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 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		Prem/Op Prem		
Commercial General Liability Plus Endorsement Included At 7% Of The Premises Operation Premium	Prem/Op	Inc	Inc	Inc
CODE 59058		Gross Sales	Each 1000	
Sign Mfg. - Noc	Prem/Op	1,127,333	.290	$327.00
	Prod/Comp Op	1,127,333	1.590	$1,792.00
CODE 98993		Payroll	Each 1000	
Sign Erection, Installation Or Repai	Prem/Op	106,902	23.711	$2,535.00
	Prod/Comp Op	106,902	17.463	$1,867.00
	LOCATION 001 PREMIUM			$6,521.00

CL 175 (2-86)

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.

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)

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.

Agency Code 16-0070-00 Policy Number 984616-36064416

COMMUNICABLE DISEASE EXCLUSION

55137 (6-92)

Commercial General Liability Coverage Form

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.

CG 21 47 09 89

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.

CG 00 01 11 88

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, 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 "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.

55029 (7-87)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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.

55050 (7-87)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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.

55064 (7-87)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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.

55069 (1-88)

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.

55091 (1-89)

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 subleassee) 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.

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:

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.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
BUSINESS AUTO 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
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY - NEW YORK

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

CP 00 90 07 88

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

B. CONTROL OF PROPERTY

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

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

C. INSURANCE UNDER TWO OR MORE COVERAGES

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

D. LEGAL ACTION AGAINST US

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

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

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
   a. During the policy period shown in the Declarations; and
   b. Within the coverage territory.
2. The coverage territory is:
   a. The United States of America (including its territories and possessions);
   b. Puerto Rico; and
   c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

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

This will not restrict your insurance.

CP 00 10 10 91
COMMERCIAL PROPERTY

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

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

A. COVERAGE

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

1. Covered Property

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

a. **Building**, meaning the building or structure described in the Declarations, including:

(1) Completed additions;

(2) Permanently installed:

(a) Fixtures;

(b) Machinery; and

(c) Equipment;

(3) Outdoor fixtures;

(4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:

(a) Fire extinguishing equipment;

(b) Outdoor furniture;

(c) Floor coverings; and

(d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;

(5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to the building or structure;

(b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. **Your Business Personal Property** located in or on the building described in the Declarations or in open (or in a vehicle) within 100 feet of the described premises, consisting of the following unless otherwise specified in the Declarations or on the Your Business Personal Property - Separation of Coverage form:

(1) Furniture and fixtures;

(2) Machinery and equipment;

(3) "Stock;"

(4) All other personal property owned by you and used in your business;

(5) Labor, materials or services furnished or arranged by you on personal property of others;

(6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

(7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property of Others.

c. Personal Property of Others that is:

(1) In your care, custody or control; and

(2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. **Property Not Covered**

Covered Property does not include:

a. Accounts, bills, currency, deeds, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of the buildings;

c. Automobiles held for sale;

d. Bridges, roadways, walks, patios or other paved surfaces;

e. Contraband, or property in the course of illegal transportation or trade;

f. The cost of excavations, grading, backfilling or filling;

g. Foundations of buildings, structures, machinery or boilers if their foundations are below:

(1) The lowest basement floor; or

(2) The surface of the ground, if there is no basement;

h. Land (including land on which the property is located), water, growing crops or lawns;

i. Personal property while airborne or waterborne;

j. Pilings, piers, wharves or docks;

k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

l. Retaining walls that are not part of the building described in the Declarations;

m. Underground pipes, flues or drains;

n. The cost to research, replace or restore the information on valuable papers and records, including those which exist on electronic or magnetic media, except as provided in the Coverage Extensions;

o. Vehicles or self-propelled machines (including aircraft or watercraft) that:

(1) Are licensed for use on public roads; or

(2) Are operated principally away from the described premises.

This paragraph does not apply to:

(a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

(b) Vehicles or self-propelled machines, other than autos, you hold for sale; or

(c) Rowboats or canoes out of water at the described premises;

p. The following property while outside of buildings:

(1) Grain, hay, straw or other crops;

(2) Fences, radio or television antennas, including their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. **Covered Causes Of Loss**

See applicable Causes of Loss Form as shown in the Declarations.

4. **Additional Coverages**

a. **Debris Removal**

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

(2) The most we will pay under this Additional Coverage is 25% of:

(a) The amount we pay for the direct physical loss of or damage to Covered Property; plus

(b) The deductible in this policy applicable to that loss or damage.

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

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

(a) Extract "pollutants" from land or water; or

(b) Remove, restore or replace polluted land or water.

b. Preservation of Property

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

(1) While it is being moved or while temporarily stored at another location; and

(2) Only if the loss or damage occurs within 10 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to $1,000 for your liability for fire department service charges:

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

(2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean Up and Removal

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

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is $10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12 month period of this policy.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more or, a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired or Constructed Property

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

(a) Your new buildings while being built on the described premises; and

(b) Buildings you acquire at locations, other than the described premises, intended for:

(i) Similar use as the building described in the Declarations; or

(ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is 25% of the Limit of Insurance for Building shown in the Declarations, but not more than $250,000 at each building.

(2) You may extend the insurance that applies to Your Business Personal Property to apply to that property at any location you acquire other than at fairs or exhibitions.

The most we will pay for loss or damage under this Extension is 10% of the Limit of Insurance for Your Business Personal Property shown in the Declarations, but not more than $100,000 at each building.

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

(a) This policy expires.

(b) 30 d[illegible] expire after you acquire or begin to construct the property; or

(c) You report values to us.

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

b. Personal Effects and Property of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

(1) Personal effects owned by you, your officers, your partners or your employees. This extension does not apply to loss or damage by theft.

(2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is $2,500 at each described premises. Our payment for loss of or damage to personal proeprty of others will only be for the account of the owner of the property.

c. Valuable Papers and Records - Cost of Research

You may extend the insurance that applies to Your Business Personal Property to apply to your costs to research, replace or restore the information on lost or damaged valuable papers and records, including those which exist on electronic or magnetic media, for which duplicates do not exist. The most we will pay under this Extension is $1,000 at each described premises.

d. Property Off-Premises

You may extend the insurance provided by this Coverage Form to apply to your Covered Property, other than "stock", that is temporarily at a location you do not own, lease or operate. This Extension does not apply to Covered Property:

(1) In or on a vehicle;

(2) In the care, custody or control or your salespersons; or

(3) At any fair or exhibition.

The most we will pay for loss or damage under this Extension is $5,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas, signs (other than signs attached to buildings), trees, shrubs and plants (other than "stock" of trees, shrubs or plants), including debris removal expense, caused by or resulting from any of the following cause of loss if they are Covered Causes of Loss:

(1) Fire;

(2) Lightning;

(3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

The most we will pay for loss or damage under this Extension is $1,000, but not more than $250 for any one tree, shrub or plant.

Each of these Exclusions is additional insurance. The Additional Condition, Coinsurance, does not apply to these Exclusions.

B. EXCLUSIONS

See applicable Causes of Loss Form as shown in the Declarations.

C. LIMITS OF INSURANCE

The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs attached to buildings is $1,000 per sign in any one occurrence.

The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

Payments under the following Additional Coverages will not increase the applicable Limit of Insurance:

1. Preservation of Property; or
2. Debris Removal; but if:
   a. The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
   b. The debris removal expense exceeds the amount payable under 25% limitation in the Debris Removal Additional Coverage;

we will pay up to an additional $5,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

D. DEDUCTIBLE

We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible, up to the applicable Limit of Insurance, after any deduction required by the Coinsurance condition or the Agreed Value Optional Coverage.

E. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

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

3. Duties In The Event Of Loss Or Damage

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

(1) Notify the police if a law may have been broken.

(2) Give us prompt notice of the loss or damage. Include a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage by a Covered Cause of Loss. If feasible, set the damaged property aside and in the best possible order for examination. Also keep a record of your expenses for emergency and temporary repairs, for consideration in the settlement of the claim. This will not increase the Limit of Insurance.

(5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.

(6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

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

(8) Cooperate with us in the investigation or settlement of the claim.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:

(1) Pay the value of loss or damaged property;

(2) Pay the cost of repairing or replacing the lost or damaged property;

(3) Take all or any part of the property at an agreed or appraised value; or

(4) Repair, rebuild or replace the property with other property of like kind and quality.

b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.

c. We will not pay you more than your financial interest in the Covered Property.

d. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

e. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.

f. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if:

(1) You have complied with all of the terms of this Coverage Part; and

(2) (a) We have reached agreement with you on the amount of loss; or

(b) An appraisal award has been made.

5. **Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. **Vacancy**

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

a. Not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(1) Vandalism;

(2) Sprinkler leakage, unless you have protected the system against freezing;

(3) Building glass breakage;

(4) Water damage;

(5) Theft; or

(6) Attempted theft.

b. Reduce the amount we would otherwise pay for the loss or damage by 15%.

A building is vacant when it does not contain enough business personal property to conduct customary operations.

Buildings under construction are not considered vacant.

7. **Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

a. At actual cash value as of the time of loss or damage, except as provided in b., c., d., e. and f. below.

b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is $2,500 or less, we will pay the cost of building repairs or replacement.

This provision does not apply to the following even when attached to the building:

(1) Awnings or floor coverings;

(2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or

(3) Outdoor equipment or furniture.

c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

d. Glass at the cost of replacement with safety glazing material if required by law.

e. Tenant's Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property if you make repairs promptly.

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

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

(b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

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

(3) Nothing if others pay for repairs or replacement.

f. Valuable Papers and Records, including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:

(1) Blank materials for reproducing the records; and

(2) Labor to transcribe or copy the records when there is a duplicate.

F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

(1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;

(2) Divide the Limit of Insurance of the property by the figure determined in step (1);

(3) Multiply the total amount of loss, before the application of any deductible by the figure determined in step (2); and

(4) Subtract the deductible from the figure determined in step (3).

We will pay the amount determined in step (4) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example No. 1 (Underinsurance):
When:

The value of property is	$250,000
The Coinsurance percentage for it is	80%
The Limit of Insurance for it is	$100,000
The Deductible is	$250
The amount of loss is	$ 40,000

Step (1): $250,000 x 80% = $200,000 (the minimum amount of insurance to meet your Coinsurance requirements)
Step (2): $100,000 ÷ $200,000 = .50
Step (3): $40,000 x .50 = $20,000
Step (4): $20,000 - $250 = $19,750

We will pay no more than $19,750. The remaining $20,250 is not covered.

Example No. 2 (Adequate Insurance):
When:

The value of the property is	$250,000
The Coinsurance percentage for it is	80%
The Limit of Insurance for it is	$200,000
The Deductible is	$250
The amount of loss is	$40,000

Step (1): $250,000 x 80% = $200,000 (the minimum amount of insurance to meet your Coinsurance requirements)
Step (2): $200,000 ÷ $200,000 = 1.00
Step (3): $40,000 x 1.00 = $40,000
Step (4): $40,000 - $250 = $39,750

We will cover the $39,750 loss in excess of the Deductible. No penalty applies.

b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example No. 3:
When:

The value of the property is:	
Bldg. at Location No. 1	$75,000
Bldg. at Location No. 2	$100,000
Personal Property at Location No. 2	$75,000
	$250,000
The Coinsurance percentage for it is	90%
The Limit of Insurance for Buildings and Personal Property at Location Nos. 1 and 2 is	$180,000
The Deductible is	$1,000
The amount of loss is Bldg. at Location No. 2	$30,000
Personal Property at Location No. 2	$20,000
	$50,000

Step (1): $250,000 x 90% = $225,000 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $180,000 ÷ $225,000 = .80

Step (3): $50,000 x .80 = $40,000

Step (4): $40,000 - $1,000 = $39,000.

We will pay no more than $39,000. The remaining $11,000 is not covered.

2. Mortgage Holders

a. The term "mortage holder" includes trustee.

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

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

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

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

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

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

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

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

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

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

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

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

(1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or

(2) 30 days before the effective date of cancellation if we cancel for any other reason.

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

G. OPTIONAL COVERAGES

If shown in the Declarations, the following Optional Coverages apply separately to each item.

1. Agreed Value

a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

c. The terms of this Optional Coverage apply only to loss or damage that occurs:

(1) On or after the effective date of this Optional Coverage; and

(2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.

b. The amount of increase will be:

(1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or

any other policy change amending the Limit of Insurance, times

(2) The percentage of annual increase shown in the Declarations, expressed a decimal (example: 8% is .08), times

(3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example:
If:

The applicable Limit of Insurance is	$100,000
The annual percentage increase is	8%
The number of days since the beginning of the policy year (or last policy change) is	146
The amount of increase is $100,000 x .08 x 146 ÷ 365 =	$3,200

3. Replacement Cost

a. Replacement Cost: (without deduction for depreciation) replaces Actual Cash Value in the Loss Condition, Valuation, of this Coverage Form.

b. This Optional Coverage does not apply to:

(1) Property of others;

(2) Contents of a residence;

(3) Manuscripts;

(4) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

(5) "Stock," unless the Including "Stock" option is shown in the Declarations.

c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.

d. We will not pay on a replacement cost basis for any loss or damage:

(1) Until the lost or damaged property is actually repaired or replaced; and

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

e. We will not pay more for loss or damage on a replacement cost basis than the least of:

(1) The Limit of Insurance applicable to the lost or damaged property;

(2) The cost to replace, on the same premises, the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

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

H. DEFINITIONS

1. **"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.

2. **"Stock"** means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

CP 10 30 10 91
COMMERCIAL PROPERTY

CAUSES OF LOSS - SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section F. - Definitions.

A. COVERED CAUSES OF LOSS

When Special is shown in the Declarations, Covered Causes of Loss means RISKS OF DIRECT PHYSICAL LOSS unless the loss is:

1. Excluded in Section B., Exclusions; or
2. Limited in Section C., Limitations;

that follow.

B. EXCLUSIONS

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

   a. **Ordinance or Law**

   The enforcement of any ordinance or law:

   (1) Regulating the construction, use or repair of any property; or

   (2) Requiring the tearing down of any property, including the cost of removing its debris.

   b. **Earth Movement**

   (1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if loss or damage by fire or explosion results, we will pay for that resulting loss or damage.

   (2) Volcanic eruption, explosion or effusion. But if loss or damage by fire, building glass breakage or volcanic actions results, we will pay for that resulting loss or damage.

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

   (a) Airborne volcanic blast or airborne shock waves;

   (b) Ash, dust or particulate matter; or

   (c) Lava flow.

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

   Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

   c. **Governmental Action**

   Seizure or destruction of property by order of governmental authority.

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

   d. **Nuclear Hazard**

   Nuclear reaction or radiation, or radioactive contamination, however caused.

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

   e. **Off-Premises Services**

   The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

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

   f. **War And Military Action**

   (1) War, including undeclared or civil war;

   (2) Warlike action by a military force, including action in hindering or defend-

ing against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. **Water**

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up from a sewer or drain; or

(4) Water under the ground surface pressing on, or flowing or seeping through:

(a) Foundations, walls, floors or paved surfaces;

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings.

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

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

a. Artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires.

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

b. Delay, loss of use or loss of market.

c. Smoke, vapor or gas from agricultural smudging or industrial operations.

d. (1) Wear and tear;

(2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

(3) Smog;

(4) Settling, cracking, shrinking or expansion;

(5) Insects, birds, rodents or other animals;

(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. However, this does not apply to any resulting loss or damage caused by elevator collision;

(7) The following causes of loss to personal property:

(a) Dampness or dryness of atmosphere;

(b) Changes in or extremes of temperature; or

(c) Marring or scratching.

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

e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if loss or damage by fire or combustion explosions results, we will pay for that resulting loss or damage. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

f. Continuous or repeated seepage or leakage of water that occurs over a period of 14 days or more.

g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

(1) You do your best to maintain heat in the building or structure; or

(2) You drain the equipment and shut off the supply if the heat is not maintained.

h. Dishonest or criminal act by you, any of your partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

(1) Acting alone or in collusion with others; or

(2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, except as provided below in the Additional Coverage for Collapse. But if loss or damage by a Covered Cause of Loss results at the described premises, we will pay for that resulting loss or damage.

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

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

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

(1) Planning, zoning, development, surveying, siting;

(2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;

(3) Materials used in repair, construction, renovation or remodeling; or

(4) Maintenance;

of part or all of any property on or off the described premises.

4. **Special Exclusions**

The following provisions apply only to the specified Coverage Forms.

a. **Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, or Extra Expense Coverage Form**

We will not pay for:

(1) Any loss caused by or resulting from:

(a) Damage or destruction of "finished stock;" or

(b) The time required to reproduce "finished stock."

This exclusion does not apply to Extra Expense.

(2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas, including their lead-in wiring, masts or towers.

(3) Any increase of loss caused by or resulting from:

(a) Delay in rebuilding, repairing or replacing the property or resuming "operations," due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations," we will cover such loss that affects your Business Income during the "period of restoration."

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration."

(5) Any other consequential loss.

b. **Leasehold Interest Coverage Form**

(1) Paragraph B.1.a. Ordinance or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

(a) Your cancelling the lease;

(b) The suspension, lapse or cancellation of any license; or

(c) Any other consequential loss.

c. **Legal Liability Coverage Form**

(1) The following Exclusions do not apply to insurance under this Coverage Form:

(a) Paragraph B.1.a., Ordinance or Law;

(b) Paragraph B.1.c., Governmental Action;

(c) Paragraph B.1.d., Nuclear Hazard;

(d) Paragraph B.1.e., Power Failure; and

(e) Paragraph B.1.f., War and Military Action.

(2) **Contractual Liability**

We will not defend any claim or "suit," or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement.

(3) **Nuclear Hazard**

We will not defend any claim or "suit," or pay any damges, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

C. LIMITATIONS

1. We will not pay for loss of or damage to:

a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

(1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or

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

d. Building materials and supplies not attached as part of the building or structure, unless held for sale by you, caused by or resulting from theft, except as provided in C.5.a. below.

e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

f. Gutters and downspouts caused by or resulting from weight of snow, ice or sleet.

g. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

2. We will not pay more for loss of or damage to glass that is part of a building or structure than $100 for each plate, pane, multiple plate insulating unit, radiant or solar heating panel, jalousie, louver or shutter. We will not pay more than $500 for all loss of or damage to building glass that occurs at any one time.

This Limitation does not apply to loss or damage by the "specified causes of loss," except vandalism.

3. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

a. Valuable papers and records, such as books of account, manuscripts, abstracts, drawings, card index systems, film, tape, disc, drum, cell or other data processing, recording or storage media, and other records;

b. Animals, and then only if they are killed or their destruction is made necessary.

c. Fragile articles such as glassware, statuary, marbles, chinaware and procelains, if broken. This restriction does not apply to:

(1) Glass that is part of a building or structure;

(2) Containers of property held for sale; or

(3) Photographic or scientific instrument lenses.

d. Builders' machinery, tools, and equipment you own or that are entrusted to you, while

away from the premises described in the Declarations, except as provided in paragraph C.5.b. below.

4. For loss or damage by theft, the following types of property are covered only up to the limits shown:

   a. $2,500 for furs, fur garments and garments trimmed with fur.

   b. $2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, plantinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth $100 or less per item.

   c. $2,500 for patterns, dies, molds and forms.

   d. $250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

5. **Builders' Risk Coverage Form Limitations**

   The following provisions apply only to the Builders' Risk Coverage Form.

   a. Limitation 1.d. is replaced by the following:

      d. Building materials and supplies not attached as part of the building or structure caused by or resulting from theft.

   b. Limitation 3.d. is replaced by the following:

      d. Builders' machinery, tools and equipment you own or that are entrusted to you.

6. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

   a. Results in discharge of any substance from an automatic fire protection system; or

   b. Is directly caused by freezing.

D. ADDITIONAL COVERAGE - COLLAPSE

We will pay for loss or damage caused by or resulting from risks of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

1. The "specified causes of loss" or breakage of building glass, all only as insured against in this Coverage Part;
2. Hidden decay;
3. Hidden insect or vermin damage;
4. Weight of people and personal property;
5. Weight of rain that collects on a roof;
6. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not pay for loss or damage to the following types of property, if otherwise covered in this Coverage Part, under items 2., 3., 4., 5. and 6. unless the loss or damage is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings, gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

This Additional Coverage will not increase the Limits of Insurance provided in this Coverage Part.

E. ADDITIONAL COVERAGE EXTENSIONS

1. **Property In Transit.** This Extension applies only to your personal property to which this form applies.

   a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.

   b. Loss or damage must be caused by or result from one of the following causes of loss:

      (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.

      (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the road bed.

      (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.

c. The most we will pay for loss or damage under this Extension is $1000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to the Extension.

2. **Water Damage, Other Liquids, Powder or Molten Material Damage.** If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes

F. DEFINITIONS

"Specified Causes of Loss" means the following:

Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of ice and snow, ice or sleet; water damage.

1. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

   a. The cost of filling sinkholes; or

   b. Sinking or collapse of land into man-made underground cavities.

2. Falling objects does not include loss or damage to:

   a. Personal property in the open; or

   b. The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

3. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking or cracking of any part of a system or appliance containing water or steam.

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C. A. NO. 01-CP-20-334
COUNTY OF FAIRFIELD	)	
		FIRST AMENDED COMPLAINT
Samuel W. Rhodes, Jr. and	)	**(Breach of Contract)**
Piedmont Promotions, Inc.,	)	**(Breach of Warranty)**
	)	**(Strict Liability)**
Plaintiffs,	)	**(Fraudulent Breach of Contract)**
	)	**(Fraud)**
v.	)	**(Constructive Fraud)**
	)	**(Negligent Misrepresentation)**
Marion L. Eadon, d/b/a C & B	)	**(Negligence)**
Fabrication,	)	**(Bad Faith)**
	)	**(Nuisance)**
Defendant.	)	**(UTPA)**
	)	**(Jury Trial Requested)**

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) 635-6884

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

May 8, 2003

ATTORNEYS FOR THE PLAINTIFFS

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-[illegible]

CERTIFICATE OF SERVICE

I, the undersigned, of McCutchen Blanton Johnson & Barnette, LLP, attorneys for the Plaintiffs, Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc., hereby certify that a copy of the foregoing **First Amended Complaint** was served on the Defendant, by mailing in the U. S. Mail, postage prepaid, a copy thereof, to the attorneys for the Defendant, this 8th day of May, 2003, addressed as follows:

Catherine G. Griffin, Esquire
Baker, Ravenel & Bender, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202

Hoover C. Blanton

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 OF DEFENDANTS MARION L. EADON D/B/A C&B FABRICATION, C&B FABRICATIONS, INC. AND LOW COUNTRY SIGNS, INC. TO PLAINTIFF'S SECOND AMENDED COMPLAINT**
	)	
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.	)	

COME NOW the Defendants, Marion L. Eadon, d/b/a C&B Fabrication, C&B Fabrications, Inc. and Low Country Signs, Inc., by and through its undersigned attorneys, answering the Seconded 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 allegation in Paragraphs 3 of the Complaint is admitted.

5. The allegation in Paragraph 4 that Auto-Owners issued a general liability policy to C&B Fabrications, Inc. and Low Country Signs, Inc., which were not, in fact, corporations or legal entities, in September, 2000 is admitted. Inasmuch as the policy purported to cover nullities, it is denied that Auto-Owners' policy is limited to corporations. It is admitted that the policy was intended by the parties to cover all of the advertising activities with which Mr. Eadon was associated. Regarding the other allegations in Paragraph 4, these Defendants state that the policy speaks for itself and the intentions of the parties and all parts of the policy must be considered.

6. The allegations in Paragraph 5 of the Complaint are legal conclusions and require no response.

7. The allegation in Paragraph 6 of the Complaint that Rhodes and Piedmont Promotions, Inc. commenced a lawsuit in Fairfield County is admitted. As to the other allegations in Paragraph 6, these Defendants state that the Complaint speaks for itself and that all parts must be considered.

8. As to the allegations in Paragraphs 7, 8, 9, 10, 11 and 13, these Defendants state that the Complaint speaks for itself. In Paragraph 8, it is denied that the Complaint named "C&B Fabrications, Inc." as a defendant, as there was no such legal entity.

9. Regarding Paragraph 12 of the Complaint, it is admitted that Auto-Owners provided a defense to its insured, Mr. Eadon d/b/a C&B Fabrication, in the underlying action.

10. As to the allegations in Paragraphs 14 and 15 of the Complaint, these Defendants plead that the transcript of trial speaks for itself and that the whole transcript needs to be considered.

11. The allegations in Paragraphs 16 and 17 of the Complaint are admitted.

12. Regarding Paragraphs 18-23 of the Complaint, these Defendants plead the policy, which speaks for itself, and that the whole policy needs to be considered.

13. Regarding Paragraph 24 of the Complaint, these Defendants plead the policy which speaks for itself, that the whole policy needs to be considered and deny that the cited exclusions preclude coverage for the damages assessed against Marion Eadon d/b/a C&B Fabrication.

14. The allegation in Paragraph 15 of the Complaint is denied.

FOR A SECOND DEFENSE

(Waiver/Estoppel)

15. The responses in Paragraphs 1-14 above are realleged as though repeated verbatim herein.

16. After the accident upon which this action is based, and until very recently, Plaintiff Insurance Company in reservation of rights letters and other correspondence failed to inform or notify Mr. Eadon that it did not consider Mr. Eadon to have been an insured under the policy.

17. Plaintiff Auto-Owners has thereby waived the right to now assert that Mr. Eadon is not an insured under the policy.

18. Mr. Eadon relied on Auto-Owners' silence about his insured status under the policy, and about which Auto-Owners had a duty to inform him, in developing a defense strategy in the underlying tort action.

19. Because of Mr. Eadon's reliance, to his detriment, on Auto-Owners' failure to inform him of its position, Auto-Owners is now equitably estopped from asserting that Mr. Eadon is not an insured under the policy.

FOR A THIRD DEFENSE

(Ratification)

20. The responses in Paragraphs 1-19 above are realleged as though repeated verbatim herein.

21. After the accident, Auto-Owners, under its policy purportedly with C&B Fabrication, Inc. and Low Country Signs, Inc., paid for some of the consequential damages. Auto-Owners also provided a defense to Mr. Eadon, which would not have been done if he had not been an insured.

22. Auto-Owners thereby ratified that its policy did provide coverage to the entity sued in the underlying Rhodes v. Eadon case, Mr. Eadon d/b/a C&B Fabrications.

23. Having ratified that Mr. Eadon was an insured under its policy, Auto-Owners should not now be heard to claim that Mr. Eadon was not an insured under that policy.

FOR A FOURTH DEFENSE

(Negligent Misrepresentation)

24. The responses in Paragraphs 1-23 above are realleged as though repeated verbatim herein.

25. After the accident that is the subject of this action, Auto-Owners misrepresented to Mr. Eadon that he was an insured under the general liability policy that Mr. Eadon had purchased for his advertising business.

26. Auto-Owners had a duty to provide true and correct information to Mr. Eadon about his status under the policy.

27. Auto-Owners breached that duty to Mr. Eadon.

28. Auto-Owners' breach of duty is the proximate cause of damages to Mr. Eadon to the extent that he is held to be personally liable for damages.

WHEREFORE, Defendants Marin L. Eadon d/b/a C&B Fabrication, C&B Fabrications, Inc. and Low Country Signs pray that Plaintiff's claim for a declaration of no coverage be denied, or alternatively, that Auto-Owners has waived, or is estopped from asserting, any claim that there was no coverage; or alternatively, that Auto-Owners' actions have ratified the insurance contract; or alternatively, that Auto-Owners' own negligent misrepresentation has caused Mr. Eadon's damages, for the costs and fees associated with this action; and for such other remedy as in the judgment of the Court is just and reasonable.

The Defendants demand a jury trial.

SWEENY, WINGATE & BARROW, P.A.

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

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

Columbia, South Carolina
August 5, 2005

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

CERTIFICATE OF SERVICE

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 Pleading 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):

Hoover C. Blanton, Esquire
McCutchen, Blanton, Johnson & Barnette, LLP
Post Office Box 11209
1414 Lady Street
Columbia, South Carolina 29211-1209

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

Bobbie J. Powell

Columbia, South Carolina
August 5, 2005

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,	)	
	)	
v.	)	**DEFENDANT MARION EADON D/B/A C & B FABRICATION'S POSITION REGARDING EXCLUSIONS IN THE POLICY**
	)	
Samuel W. Rhodes, Jr., Piedmont Promotions, Inc., Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	

INTRODUCTION

Per the Court's instruction, the parties are to submit short, summary briefs on three topics: 1) the effect of exclusions in the policy; 2) the effect of the judgment on the policy, specifically which damages awarded are covered by the policy; and 3) whether the judgment as rendered is covered. The Court has ordered that these matters be addressed sequentially. This brief provides Defendant Eadon's position on the first topic.

GENERAL PROPOSITIONS

• Under South Carolina law, exclusionary clauses in insurance policies are to be narrowly construed and clauses of inclusion are to be broadly construed, both to benefit the insured. McPherson v. Michigan Mut. Ins. Co., 310 S.C. 316, 319, 426 S.E.2d 770-71 (1993); South Carolina Municipal Ins. and Risk Fund v. City of Myrtle Beach, 368 S.C. 240, 243, 628 S.E.2d 276, 277 (Ct. App. 2006).

• The policy in issue has no exclusion for punitive damages.

• The Rhodes v. Eadon d/b/a C & B Fabrication jury awarded $3 million in actual damages. There was no specification as to what allegations of damages were covered by the award. There was evidence in the record that the jury could have found the following damages.

> $5,400,000 for loss of use/lost profits from the three sign posts (Plaintiff claimed damages for 50 years for 3 sign posts with 4 faces each which rented for $750 net per month; $750 x 12 sign faces x 12 months x 50 years = $5,400,000. (Transcript Vol. II, p. 116; Vol. I, pp. 61-62).

$1,734,500 for damages to real property ($1.8 million value w. sign posts - $65,500 value without sign posts = $1,734,500). (Transcript, Vol. III, pp. 27-28).

$155,460 – value of signs. (Transcript, Vol. I, p. 53).

$9,325 for bills that Rhodes had to pay as a result of sign falling. (Transcript, Vol. I. pp. 85-88, 96-97). Under collateral source rule, Rhodes is entitled to these as damages even if they have been reimbursed. (Jury Charge, Transcript, Vol. IV, pp. 372-374).

The Trial Court's charge to the jury about actual damages is in Transcript, Vol. IV, p. 368, line 13, p. 372, line 10.

If any one of these elements of damages is not excluded by the policy, the policy provides coverage. Owners Ins. Co. v. Clayton, 364 S.C. 555, 560-61, 614, S.E.2d 611, 614 (2005).

SPECIFIC EXCLUSIONS

Policy Exclusion	Mr. Eadon's Position
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.	Inapplicable, as there is no evidence that Mr. Eadon intended any damage to Mr. Rhodes.
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.	Inapplicable. Legal liability was found only for negligence Transcript. Vol. IV, p. 389, as Plaintiff elected that remedy.
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 alcohol beverages.	Inapplicable. No alcoholic beverages involved.

d. Any obligation of the insured under a workers' compensation , disability benefits or unemployment compensation law or any similar law.	Inapplicable. No such claim made.
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.	Inapplicable. No "bodily injury" involved.
f. (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants.	Inapplicable. No pollutants involved.
g. "Bodily injury" or property damage arising out of the ownership, maintenance, use or entrustment 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".	Inapplicable. No use of aircraft, "auto" or watercraft to involved.
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.	Inapplicable. No "mobile equipment" involved.
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.	Inapplicable. No act of war involved.
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 case, custody or control of the insured.	Inapplicable. The facts of Rhodes v. Eadon d/b/a C. & B Fabrications differ from (1), (2), (3) and (4). (5) does not apply because it refers to active operations going on on the property. (6) does not apply because the damages here

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

would be 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".

These exclusions, k and l, would exclude coverage for the $155,460 value of the signs. Given that there appears to be evidence in the record that supports over $7.1 million actual damages that appear to be covered, the applicability of these exclusions may be academic.

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.

See discussion below.

The policy 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 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.

Under this definition, the real property upon which the sign posts were erected is not "impaired property," as the property cannot be restored to use by repairing, replacing, adjusting or removing the sign posts or by C & B Fabrication fulfilling any contract.

Exclusion m is inapplicable. First, when the exclusion is construed narrowly against the insurer, as our law requires, Owner Ins. Co. v. Clayton, 364 S.C. 555, 560, 614 S.E.2d 611, 614 (2005) *reh'g denied*, and construing, "arising out of" as "caused by," as must be done, id. at 561, 614 S.E.2d at 614 citing McPherson v. Michigan Mut. Ins. Co., 310 S.C. 316, 426 S.E.2d 770 (1993), it is inapplicable because the "property damage" was not **caused** to the real property by a defect, deficiency, inadequacy or dangerous condition in the sign posts. The property damage to the real property was caused by the State not allowing signs to be re-erected on the property. Transcript, Vol. II, p. 226.

Even if the exclusion was otherwise applicable, however, the exception to the exclusion is effective to obviate exclusion m. The exclusion does not apply because the loss of use of the real property as a location for signs arose out of a sudden and accidental injury to a sign post after it had been put to its intended use. Our Supreme Court has construed "sudden" in an exception to an exclusion to mean "unexpected." Greenville County v. Insurance Reserve Fund, a Div. of the S.C. Budget and Control Bd., 313 S.C. 546, 548, 443 S.E.2d 552, 553 (1994) *reh'g denied*. Mr. Rhodes' deposition testimony makes clear that the fall of the sign was unexpected. Transcript, Vol. II, pp. 112-13. As in Greenville County, the exception to the exclusion applies, obviating exclusion m.

n. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawl, 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 organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.	See discussion below

Exclusion n is inapplicable as the real property is not, as addressed above, "impaired property" as defined by the policy, and it is not C & B Fabrication's "work' or "product". The loss of use of the real property is, therefore, not addressed in exclusion n, especially when the exclusion is construed narrowly in favor of coverage, as it must be. Horry County v. Insurance Reserve Fund, 344 S.C. 493, 499, 544 S.E.2d 637, 640 (Ct. App. 2001) ("[e]xclusions in an insurance policy are to be interpreted narrowly and to the benefit of the insured")citing McPherson, *supra.*

Exclusion n is also inapplicable because the real property was not withdrawn from use as a location for advertising signs "because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it"(emphasis added). There is no evidence in the record of any defect, deficiency, etc. **in the real property itself**, so the exclusion does not apply. If the exclusion is ambiguous, moreover, it is construed against the insurer. South Carolina State Budget and Control Bd., Div. of Gen'l Svcs, Ins. Reserve Fund v. Prince, 304 S.C. 241, 245-46, 403 S.E.2d 643, 646 (1991).

CONCLUSION

The only exclusions that have any applicability in this case are k and l, which exclude coverage for damage to C & B Fabrication's own "work" or "product," which is the sign posts themselves. The other exclusions should not be applicable for the reasons cited. See Owners Ins. Co. v. Clayton, 364 S.C. 555, 614 S.E.2d 611 (2005) reh'g denied; Abernathy v. Providential Ins. Co. of America, 274 S.C. 388, 264 S.E.2d 836 (1980).

Construction of the exclusions should also be informed by the general purposes and intention of a commercial general liability insurance policy. Our Supreme Court has defined the purpose and intention for such a policy as follows:

> A comprehensive general liability policy, such as the one at issue, provides coverage "for **all the risks of legal liability encountered by a business entity**", with coverage excluded for certain specific risks. Rowland H. Long, L.L.M., the *Law of Liability Insurance*, § 3.06[1] (2001). This type of insurance "is not intended to insure business risks, i.e., risks that are the normal, frequent, or predictable consequences of doing business, and which business management can and should control or manage." *Id.* § 10.01 [1]. Specifically, "[t]he policies do not insure [an insured's] work itself, but rather, they generally insure consequential risks that stem from that work." *Id.*

Century Indem. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 565-66, 561 S.E.2d 355, 358 (2002) (emphasis added).

Quoting Appleman's treatise on insurance law, our Supreme Court held as follows:

> We are of the opinion that the foregoing is the correct result under the plain and clear language of the policy which we regard as being free of any ambiguity. But if there conceivably be any doubt thereabout, the doubt or ambiguity, of course has to be resolved

against the [insurance company]. We quote the following from 13 Appleman Insurance Law and Practice, Sec. 7405:

> The courts have frequently stated that provisions limiting liability of the insurer – such as **exceptions from coverage, exclusions, restrictions, and conditions – are particularly deserving of strict construction so as not to cut down the coverage which the insured believed he was purchasing.**

Cited as authority for the foregoing are cases from twenty-two states, including the South Carolina case of Wheeler v. Globe & Rutgers Fire Ins. Co. (1923), 125 S.C. 320, 118 S.E. 609.

Milstead v. Life Ins. Co. of Virginia, 256 S.C. 449, 182 S.E.2d 867 (1971) (emphasis added).

This principle of our law should be applied in the case at hand.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

William O. Sweeny, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Marion L. Eadon

Columbia, South Carolina

June 30, 2006

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Marion L. Eadon, do hereby certify that I have served a copy of the foregoing *Blank Pleading 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.
1501 Main Street, 5th Floor
Post Office Box 2285
Columbia, South Carolina 29202

Creighton B. Coleman
McCutcheon, Blanton, Rhodes & Johnson
Post Office Drawer 11209
Columbia, South Carolina 29211

Hoover C. Blanton
McCutchen, Blanton, Johnson & Barnette, LLP
Post Office Box 11209
1414 Lady Street
Columbia, South Carolina 29211-1209

Bobbie J. Powell

Columbia, South Carolina
June 30, 2006

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,	)	
	)	
v.	)	**DEFENDANT MARION EADON D/B/A C & B FABRICATION'S POSITION REGARDING COVERAGE UNDER THE POLICY**
	)	
	)	
	)	
	)	
Samuel W. Rhodes, Jr., Piedmont Promotions, Inc., Marion L. Eadon, C&B Fabrications, Inc., and Low Country Signs, Inc.,	)	
	)	
	)	
	)	
Defendants.	)	

INTRODUCTION

Per the Court's instruction, the parties are to submit short, summary briefs on three topics: 1) the effect of exclusions in the policy; 2) the effect of the judgment on the policy, specifically which damages awarded are covered by the policy; and 3) whether the judgment as rendered is covered. The Court has ordered that these matters be addressed sequentially. This brief provides Defendant Eadon's position on the second topic.

GENERAL COVERAGE CONSIDERATIONS

The Policy's Insuring Statement is, in pertinent part as follows:

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 ... "property damage" to which this insurance applies.

Policy, p. 1 of 14.

The policy defines property damage as follows:

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.

Policy, pp. 13-14 of 14. This definition brings within the coverage provided by the Insuring Agreement all loss of use of tangible property that is a consequence of an "occurrence," whether the tangible property is physically injured or not. The jury in Rhodes v. Eadon d/b/a C & B Fabrication, which issued a general verdict that did not specify the source of the damages, could have found Mr. Eadon d/b/a C & B Fabrication legally liable for the loss of use of the real property, to include the loss of use of the signs themselves inasmuch as they had become fixtures on the property.

I. THE POLICY COVERS ALL UNEXCLUDED, CONSEQUENTIAL DAMAGES.

Commercial General Liability policies such as that Auto-Owners sold to Mr. Eadon's corporations – doing business under a trade name, C & B Fabrication – are intended to cover consequential damages resulting from the insured's work or product to other property. Our Supreme Court has stated the general rule as follows:

> A comprehensive general liability policy, such as the one at issue, provides coverage "for all the risks of legal liability encountered by a business entity," with coverage excluded for certain specific risks. Rowland H. Long, LL.M., *The Law of Liability Insurance*, §3.0-6[1] (2001). This type of insurance "is not intended to insure business risks, i.e., risks that are the normal, frequent, or predictable consequences of doing business, and which business manager can and should control or manage." *Id.* §10.01 [1]. Specifically, '[t]he policies do not insure [an insured's] work itself, but rather, they generally insure consequential risks that stem from that work." *Id.* See also Isle of Palms Pest Control Co. v. Monticello Ins. Co., 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), aff'd, 321 S.C. 310, 458 S.E.2d 304 (1996) (general liability policy is intended to provide coverage for tort liability for physical damage to property of others; it is not intended to provide coverage for insured's contractual liability which causes economic losses); Sapp v. State Farm Fire & Cas. Co., 226 Ga. App. 200, 486 S.E.2d 71, 75 (1997) (noting risk intended to be insured is possibility that work of insured, once completed, will cause bodily injury or damage to property other than to completed work itself, and for which insured may be found liable; coverage applicable under CGL policy is for tort liability for injury to persons and damage to other property and not for contractual liability of insured for economic loss because completed work is not that for which the damages person bargained).

Century Indemn. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 565-66, 561 S.E.2d 355, 358 (2002).

Here, the jury's award of $6.5 million was based on the negligence cause of action, so all of Mr. Eadon d/b/a C & B Fabrication's liability is tort liability.

It may be anticipated that the insurance company will assert that the damages assessed by the jury in the underlying case were for "economic losses." That assertion is incorrect under our law. A leading South Carolina case on economic loss, and the lack of coverage for it, is Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc., 356 S.C. 156, 588 S.E.2d 112 (2003). In that case, our Supreme Court answered the following certified question from the South Carolina District Court:

> Do the subject CGL policies obligate the plaintiffs to indemnify and defend the corporate defendants for the claims of the claimants which are economic in nature and based solely on the diminution in value of the claimants' respective properties?

In Carl Brazell, a declaratory action brought by Auto-Owners Insurance Company, the claimant-defendants had brought claims against the builder-defendants based on the presence of World War II explosives on the property where the claimants had purchased homes. They alleged that the value of their homes had been diminished. It was important to the Court that the **claimants had not alleged "any physical injury to their property,"** 356 S.C. at 63, 588 S.E.2d at 115-16, **so they had no "property damage" under the policy**. *Id.*

Here, as contrasted with Carl Brazell, there were allegations – accepted by the jury – that there was physical injury to the real property. That was, moreover, the basis upon which venue was retained for Rhodes v. Eadon d/b/a C & B Fabrication in Fairfield County.

The general law is that all damages that are causally related to "property damages" as defined in a CGL policy are covered by the policy. The following extract from the treatise, *Handbook on Insurance Coverage Disputes*, explains and provides examples of its application:

> The standard post-1973 CGL policy, which covers "damages because of ... property damage," defines "property damage" as: (1) the physical injury to or destruction of tangible property which occurs during the policy period including the loss of use thereof at any time resulting there from, or (2) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period. "[T]he most sensible reading of the ... phrase, 'damages because of ... property damage,' requires the insurer to pay all damages which are causally related to an item of 'property damage' which satisfies either of the policy's definitions. Federated Mut. Ins. Co. v. Concrete Units, Inc., 363 N.W.2d 751, 757 (Minn. 1985).
>
> Thus, courts must initially determine whether consequential damages follow either a direct physical injury to tangible property, or a loss of use of tangible property ... [I]f either of the two prongs of the "property damage" definition have been satisfied, consequential damages may constitute property damage. *See, e.g.* Westchester Fire. Ins. Co. v. Bell Lumber & Pole Co., No. 86 C 8948 (N.D.Ill. Oct. 23, 1991) (consequential damages were causally related to the railroad company's loss of use of its rail cars); Central Armature Works, Inc. v. American Motorists, Ins. Co., 520 F.Supp. 283, 289 (D.D.C. 1980) (lost profits stemming from loss of use of a shredder resulting from property damage inflicted by acts of the insured were covered by CGL

policy); Minnesota Mining & Mfg. Co. v. Travelers Indem. Co., 457 N.W.2d 175, 182 (Minn. 1990) ("Damages which are causally related to covered 'property damage' should also be covered under the language of the policy."); Federated Mut. Ins. Co. v. Concrete Units, *supra*, 363 N.W.2d at 756-57 (the loss of use of a grain elevator resulted in consequential damages); Marley Orchard Corp. v. Travelers Indem. Co., 50 Wash. App. 801, 750 P.2d 1294, 1297, *review denied*, 110 Wash.2d 1037 (1988) (stress to tress constituted property damages were covered by the insured's CGL policy).

A loss arising from "property damage" is recoverable, whether or not the loss itself is tangible. *See, e.g.* Aetna Casualty & Sur. Co. v. General Time Corp., 7094 F.2d 80, 83 (2d Cir. 1983) (lost profits resulting from defective motors incorporated into zone valves); Central Armature Works, Inc. v. American Motorists Ins. Co. *supra* 520 F.Supp. at 289 (lost profits resulting from negligently repaired scrap metal shredder); DiMambro-Northead Assocs.v. United Constr. Ins., 154 Mich.App. 306, 310, 313-16, 397 N.W.2d 547, 548, 550-51 (1986), *appeal denied*, 428 Mich. 893 (1987) (lost profits, additional overhead and labor costs following fire in a tunnel under construction); General Ins. Co. of Am.v. Gauger, 13 Wash.App. 928, 538 P.2d 563, 566 (1975) (lost profits resulting from defective crop seed); Safeco Ins. Co. v. Munroe, 165 Mont. 185, 527 P.2d 64, 68-69 (1974) (lost profits following injury to a wheat crop).

Barry R. Ostrager & Thomas R. Newman, *Handbook on Insurance Coverage Disputes* §7.03 (9th ed.1998). *See also* Jeffrey W. Stempel, *Law of Insurance Contract Disputes* 14-10 ('[W]here economic damage occurs as a fairly traceable consequences of tangible physical injury, property damage coverage is available.").

Mattiola Constr. Corp. v. Commercial Union Ins. Co., 2002 WL 434296 (Pa. Com. Pl. 2002). *See also,* First Newton Nat'l Bank v. General Cas. Co. of Wisconsin, 426 N.W.2d 618, 626 (Iowa 1988) ("Our conclusion is in step with the conclusions reached by the majority of courts that have interpreted similar provisions in the fact of similar arguments ... The guide to determination of coverage is the kind of property rather than the kind of injury. Tangible property rendered useless is injured and hence is covered, since the definition of damages includes loss of use property resulting from property damage." We, like a majority of courts include tangible damage such as diminution in value of tangible property" *quoting* Continental Casualty Co. v. Gilbane Bldg. Co., 391 Mass. 143, 147-48, 461 N.E.2d 209, 212-13 (1984) (citations omitted)); W.E. O'Neil Constr. Co. v. National Union Fire Ins. Co., 721 F.Supp. 984, 991-93 (N.D. Ill. 1989) ("National Union also contends that it is not liable because 'property damage' does not include economic losses, and that the only losses claimed by the Owner against O'Neil are such economic losses. The Court rejects National Union's argument that economic losses are not covered, based on two independent grounds. First, the policy specifically defines "property damage" as including "loss of use of tangible property which has not been physically injured or destroyed." Second, the Court disagrees with National Union's position that the case law has interpreted "property damage" as excluding all types of economic losses." The case also provides a history of case law).

It, therefore, appears that a majority of courts hold that CGL policy provides coverage for damages for lost profits and diminution in value if they are caused by "property damage" as defined

by the policy. That is entirely consistent with the South Carolina Supreme Court's holding in Century Indem. Co. v. Golden Hills Builders, *supra*, which essentially holds that CGL policies provide coverage for all tort liability, unless excluded, but not for the insured's **contractual** liability for economic loss.

The losses that Auto-Owners is being asked to cover are, therefore, not "economic losses" but are consequential damages from a tort. Such damages are generally within the intended coverage of a CGL policy.

II. THE SIGNS HAD BECOME FIXTURES, AND PART OF THE REAL PROPERTY.

In Rhodes v. Eadon d/b/a C & B Fabrication, Mr. Rhodes and Piedmont Promotions specifically did allege – and prove to a jury – physical injury to tangible property including the real property to which the signs had been attached. That property included, as fixtures, the signs. Specifically in their First Amended Complaint, the Plaintiffs allege the following:

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

First Amended Complaint (emphasis added).

Under South Carolina law, there is a four-part test for determining whether an item of personal property continues to be personal property or becomes a fixture on the real property to which it is attached. Carroll v. Britt, 227 S.C. 9, ___, 86 S.E.2d 612, 615 (1955). The four factors that govern this determination are: 1) the mode of attachment or annexation; 2) the character of the structure; 3) the intention of the party making the annexation; and 4) the relationship of the parties. Id. Here, all four of the factors support the idea that the sign posts were fixtures on the land, and the jury inferably held as a fact that the signs were fixtures, as Mr. Rhodes had alleged in his amended complaint. *See supra*, p.4.

There was plenty of evidence to support the jury's factual finding. Regarding the first factor, there was testimony that the base of the signs was inserted 27 feet into the ground, Transcript, Vol. I, pp. 59, 60, and was considered to have at least a 50 year useful life. Transcript, Vol. II, p. 116. That is virtually the same life span as many houses. It has been held by a South Carolina court that a mobile home, with a much diminished attachment to the land and shorter expected longevity, was a fixture. In re. Rebel Manufacturing and Marketing Corp., 54 B.R. 674 (Bankr. D.S.C. 1985).

Regarding the second factor, the character of the structure, the sign posts were constructed on site using various components, permanently joined. They could not be removed or transported in one piece, but required destructive disassembly. In Rebel Manufacturing and Marketing, the Court considered it significant that the mobile home "would have to be completely divided in order to be transported." 45 B.R. at 676. Far more extensive, and destructive, work would be – and was – required to dismantle the signs and transport their components.

As to the third factor – the intention of Mr. Rhodes – it was expressly his intention that the signs were to be fixtures and to be in service for 50 years. Transcript, Vol. I, p. 60; Vol. II, P.116.

The relationship of the parties was that Mr. Eadon's company was hired to fulfill the intention of Mr. Rhodes, as they inferably had the same intentions. Inasmuch as Mr. Rhodes owned both the land and, after their completion, the sign, Transcript, Vol. I, p.60, his stated intention would clearly apply to both.

Therefore, both the jury's verdict – based on Mr. Rhodes' testimony – and the law, confirm that the sign posts were fixtures on the land. Because the signs were fixtures on the land, they had become an integral part of the land. Under South Carolina law, fixtures are real property. Texaco, Inc. v. Warrington, 264 S.C. 18, 21, 212 S.E.2d 57, 60 (1975). They were, therefore, no longer C & B Fabrication's or Mr. Eadon's "work" or "product," as the real property was not their "work" or "product." The exclusions for damage to "your work" or "your product" are, therefore, inapplicable and do not exclude coverage for any damages.[1] *See* National Union Fire Ins. Co. of Pittsburg, Pa. v. Structural Systems Technology, Inc., 756 F. Supp. 1232 (E.D. Mo. 1991); Cincinnati Ins. Co. v. Fab Tech, Inc., 2005 WL 1492377 (D.N.H. 2005).

III. THERE IS COVERAGE FOR ACTUAL DAMAGES THAT WERE AWARDED BY THE JURY.

The Rhodes v. Eadon d/b/a C & B Fabrication jury awarded $3 million in actual damages. There was no specification as to what allegations of damages were covered by the award. There was evidence in the record that the jury could have found the following damages.

> $5,400,000 for loss of use/lost profits from the three sign posts (Plaintiff claimed damages for 50 years for 3 sign posts with 4 faces each which rented for $750 net per month; $750 x 12 sign faces x 12 months x 50 years = $5,400,000. (Transcript Vol. II, p. 116; Vol. I, pp. 61-62). An expert witness testified that Mr. Rhodes would lose, in present value, $4,212,386 from not having use of the signs. Transcript, Vol. II, pp. 255-261, 277-278.
>
> $1,734,500 for physical injury to real property ($1.8 million value w. fixtures - $65,500 value with fixtures removed = $1,734,500). (Transcript, Vol. III, pp. 27-28).
>
> $155,460 -- value of signs, integral parts of the real property. (Transcript, Vol. I, p. 53).
>
> $9,325 for bills that Rhodes had to pay as a result of sign falling. (Transcript, Vol. I. pp. 85-88, 96-97). Under collateral source rule, Rhodes is entitled to these as damages even if they have been reimbursed. (Jury Charge, Transcript, Vol. IV, pp. 372-374).

The Trial Court's charge to the jury about actual damages is in Transcript, Vol. IV, p. 368, line 13-p. 372, line 10.

[1] This represents a modification of Defendant Eadon's position as to exclusions.

The injuries alleged by Plaintiffs in the underlying action are physical injury to real property and the loss of use of the real property for the purpose of erecting signs. There was testimony at trial that the signs were part of the property – permanent fixtures. Trial Transcript, Vol. I, p. 60

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 OR USABLE VALUE OF THE PROPERTY CAUSE BY SUCH INJURY.

Transcript of Trial, v. IV at p. 369. 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.

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 could bring a $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.

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 sign fixtures. 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." [2] Land, therefore, 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 sign fixtures, 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. The property does not need to be rendered useless for there to be property damage, especially because the policy does not define the degree or extent of loss of use required to invoke coverage. The Alabama Supreme Court addresses this issue as follows:

> The failure of the loss of use provision of the Gerling policies to specify the extent of the loss of use, whether complete uselessness or diminishment in value for a particular purpose, means that, at a minimum, the provision is ambiguous and therefore due to be construed against Gerling under the circumstances of this case. *See* Georgia Farm Bureau Mut. Ins. Co. v. Meyers, Cherokee Credit Life Ins. Co. v. Baker,. We believe that the approach of the cases cited by the circuit court, where the courts involved addressed the definition of property damage under the particular facts before them, is more appropriate than a rigid rule of "uselessness" that would not accommodate a fact situation involving a diminishment in value. Thus, construing the loss-of-use provisions of its policies most strictly against Gerling, we conclude that the circuit court was correct in determining that Gerling owed coverage for Wheelwright's loss of use of its tractors as a result of the failure of Dorsey's trailers.

Liberty Mut. Ins. Co. v. Wheelwright Trucking Co., 851 So.2d 466, 494-95 (Ala. 2002).

There was, therefore, "property damage," to the real property as defined by the policy under both aspects of the definition or the other.

There was also property damage to the fence, Transcript, Vol. I, p. 96, and to the interstate highway, Transcript, Vol. I, pp. 85-87, on which the sign fell. These are clearly consequential damages to the property of others. They are, therefore, covered under Auto-Owners' CGL policy.

IV. THERE IS COVERAGE FOR PUNITIVE DAMAGES.

The jury awarded $3.5 million in punitive damages against Mr. Eadon d/b/a C & B Fabrication, 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

[2] Webster's New World Dictionary of the American Language.

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"). Our public policy, therefore, 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. 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 ... 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. *See also,* State Farm Mut. Auto. Ins. Co. v. Hamilton, 326 F. Supp. 931, 935-36 (D.S.C. 1971) (affirming that coverage of punitive damages is, based on State statutes and Carroway v. Johnson, 245 S.C. 200, 139 S.E.2d 908 (1965), consistent with the public policy of South Carolina. Quotes *Appleman Insurance Law and Practice* to effect that "[l]iability policies have been held to cover punitive, as well as compensatory, damages").

In the policy here, as in Prince, the phrase, "those sums the insured becomes legally obligated to pay as damages," is sufficiently broad to encompass punitive damages. If there is one dollar ($1.00) in covered 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,* damage to the fence, Transcript, Vol. I, p. 96; $300 for "cutting sign loose on I-77," Transcript. Vol. I, 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 appears to be no South Carolina case that holds 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.

The majority of other jurisdictions also hold that CGL policies cover punitive damages unless they contain words that unambiguously exclude them. The treatise, *Handbook on Insurance Coverage Disputes*, §12.02[a] states the following:

> The majority of courts have held that an insurance policy which provides coverage for "damages" includes coverage for punitive damages unless such coverage is specifically excluded elsewhere in the policy. *See e.g.* Ridgeway v. Gulf Life Ins. Co., 578 F.2d 1026 (5th Cir. 1978) (Texas law); Hensley v. Erie Ins. Co., 168 W. Va. 172, 283 S.E.2d 277 (1981); Dayton Hudson Corp. v. American Mut. Liab. Ins. Co., 621 P.2d 1155 (Okla. 1980); Harrell v. Travelers Indemn. Co., 279 Or. 199, 567 P.2d 1013 (1977); Scott v. Instant Parking, Inc., 105 Ill. App. 2d 133, 245 N.E.2d 124 (1st Dist. 1969); Lazenby v. Universal Underwriters Ins. Co., 214 Tenn. 639, 383 S.W2d 1 (1964).

In reversing a trial court's holding that an award of punitive damages was not covered by CGL policy, the Washington State Court of Appeals held as follows:

> A review of case law from other jurisdictions interpreting virtually identical policy language shows that the trial court's rationale is the minority rule. Most courts do not focus on the meaning of "because of"; they look instead to the phrase "all sums that the insured becomes legally obligated to pay as damages" [FN1] and interpret it as providing coverage for punitive damages. *See, e.g.*, Lazenby v. Universal Underwriters Ins. Co.; Price v. Hartford Acc. & Indemn. Co.; Abbie Uriguen Olds. Buick, Inc. v. United States Fire Ins. Co. ; Northfolk & Western Ry. Co. v. Hartford Acc. & Indemn, Co.; Harrell v. Travelers Indemnity Co.; State v. Glens Falls Ins. Co.; Hensley v. Erie Ins. Co.; Skyline Harvestore Systems, Inc. v. Centennial Ins. Co.; Providence Wash. Ins. Co. v. Valdez; Brown v. Maxey; South Carolina State Budget & Control Board v. Prince; *But see* Heartland Stores, Inc. v. Royal Ins. Co.
>
> FN1. Hartford's clause uses the words "those sums" instead of "all sums", an insignificant distinction in this context.
>
> **The majority rule emphasizes the absence of a specific exclusion for punitive damages and the absence of any other distinction in the policy between compensatory and punitive damages.**

Fluke Corp. v. Hartford Acc. & Indemn. Co., 7 P.3d 825, 828-29 (Wash. Ct. App. 2000) (emphasis added).

In this case, Auto-Owners' policy did not exclude punitive damages and it "could have explicitly excluded coverage for punitive damages had they intended such an outcome." Mathias, J. *et al., Insurance Coverage Disputes* §9-20.9[c] *citing, inter alia,* South Carolina State Budget & Control Board v. Prince, 304 S.C. 241, 249, 403 S.E.2d 643, 648 (1991). Given Auto-Owners' failure to exclude coverage for punitive damages, and that the policy expressly provides coverage for damages "that the insured becomes legally obligated to pay," there should be coverage under the policy for the $3.5 million awarded for punitive damages.

CONCLUSION

The Auto-Owners' policy should be held to provide coverage for actual damages and punitive damages up to the policy limits.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

William O. Sweeny, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233

Attorneys for Marion L. Eadon

Columbia, South Carolina

July 12, 2006

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Marion L. Eadon, do hereby certify that I have served a copy of the foregoing *Blank Pleading 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.
1501 Main Street, 5th Floor
Post Office Box 2285
Columbia, South Carolina 29202

Creighton B. Coleman
McCutcheon, Blanton, Rhodes & Johnson
Post Office Drawer 11209
Columbia, South Carolina 29211

Hoover C. Blanton
McCutchen, Blanton, Johnson & Barnette, LLP
Post Office Box 11209
1414 Lady Street
Columbia, South Carolina 29211-1209

Bobbie J. Powell

Columbia, South Carolina
July 12, 2006

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

Auto-Owners Insurance Company,

Plaintiff,

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.,

Defendants.

PLAINTIFF'S TRIAL BRIEF ON ISSUE OF DAMAGES

Plaintiff Auto-Owners Insurance Company ("Auto-Owners") submits this pretrial brief on the issues relating to whether the damages recovered by Defendants Samuel W. Rhodes ("Rhodes") and Piedmont Promotions, Inc. ("Piedmont") in the certain state court civil action against Marion L. Eadon d/b/a C&B Fabrication ("Eadon") are an insurable loss.

Auto-Owners issued a Commercial General Liability Policy to C&B Fabrications, Inc. and Low Country Signs, Inc. ("C&B") for the policy period beginning September 17, 2000 through September 17, 2001. Piedmont, owned by Rhodes, contracted with Eadon to fabricate, deliver and install three outdoor advertising billboard signs on property that Rhodes owned along Interstate 77 in Fairfield County. The signs were installed, completed and put to their intended use by Piedmont in February 2000. In December 2000, Piedmont reported that one of the signs was leaning towards the interstate. On or about January 20, 2001, one of the signs fell across the interstate.

Rhodes and Piedmont instituted an action against Marion L. Eadon d/b/a C&B Fabrication in the Fairfield County Court of Common Pleas, entitled, 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. The Amended Complaint alleges that the signs fabricated by Marion L. Eadon d/b/a C&B Fabrication were defective and unsuitable for their intended use.

The case was tried before a jury starting August 30, 2004. Piedmont and Rhodes sought the following damages at trial: $51,820.00 for the cost of each sign (total 3 @ $155,467.00); $300.00 for cutting the fallen sign loose from its base; $100.00 for bush hogging the area around the signs; and $1,835.00 and $5,590.00 for taking down and removing one of the signs that did not fall. (Trial Transcript Vol. I, p. 53, 86-88). They claimed $1,500.00 for cleaning up the fallen sign and repairing a fence. (Trial Transcript Vol. I, p. 96). Rhodes and Piedmont also sought past and future rental income for the signs of up to $12 million (Trial Transcript Vol. II, p. 116, 117, 255-263) and diminution of the value of the land upon which the signs were erected of $1.8 million (Trial Transcript Sept 1, 2004, p. 29).

The causes of action for negligence and breach of contract were submitted to the jury. The jury reached a verdict on September 2, 2004 and found Eadon liable to Rhodes and Piedmont. The jury returned a verdict in the amount of $3,000,000.00 actual damages and $3,500,000.00 punitive damages on the negligence cause of action.

I. There was not an occurrence of property damage that was not otherwise excluded by the policy.

The essential facts have been determined by the jury in the Rhodes case. Accordingly, the Court may now apply the language of the policy to those facts to determine whether the damages awarded are an insured loss. The analysis herein is threefold: 1) Is there "property damage"?; 2) Is there an "occurrence" of property damage?; and/or 3) Does an exclusion exclude coverage for an occurrence of a property damage? [1]

a. Property Damage

First, the term "property damage" is defined by the Policy as follows:

> **'Property damage' means:**
>
> **a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or**
>
> **b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the 'occurrence' that caused it.**

The fallen sign is arguably physically injured tangible property in that it was twisted and mangled from the fall. There was no physical injury to the remaining two (2) signs. The South Carolina Department of Transportation ("SCDOT") simply ordered Rhodes to take the signs down due to the "unsafe

[1] The Policy states that 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." *See, 1(a).* The Policy also states that "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).*

conditions of the signs" based on its investigation after the first sign fell to the ground. (Trial Transcript Pg. 102 L 18-19).

The order to remove the signs would not constitute "physical injury to tangible property." Braswell v. Faircloth, 300 S.C. 338, 344, 387 S.E.2d 707, 710 (Ct. App. 1989). In Braswell, the Court of Appeals found that a chemical spill that contaminated some land constituted an occurrence of property damage because the contamination physically injured the land. Id. The Plaintiff also sought damages for the costs to remove containers of stored waste (that had not spilled), which Plaintiff was required to remove pursuant to an order of the South Carolina Department of Health and Environmental Control. Id. at 341, 387 S.E.2d at 708. The Court of Appeals found that the later claim for damages was preventative in nature or had not yet caused contamination or physical injury and held the cost of removal of the stored waste was not a covered claim. Id. at 345, 387 S.E.2d at 711. The same can be said for the signs that did not fall.

The damages claimed regarding the fallen sign are the cost of the sign, costs to cut the fallen sign loose from its base, bush hog the area around the sign, clean up the fallen sign and repair a fence. In addition, one-third of the future rental income of the signs may be attributable to the fallen sign. The damages associated with the two signs that did not fall include the cost of the sign, costs to take down and remove the signs pursuant to the order of the SCDOT, and two-thirds of the future rental income of the signs. Although some of the damages claimed may meet the definition of "property damage" contained

in the policy, these damages are not recoverable if they were not the result of an "occurrence" or they are excluded under the terms of the policy.

b. Occurrence

Second, one must determine whether there is an "occurrence" of property damage. The Policy defines the word "occurrence" as follows:

> **'Occurrence' means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.**

In L-J, Inc. v. Bituminous Fire and Marine Ins. Co., 366 S.C. 117, 121, 621 S.E.2d 33, 36 (2005), the South Carolina Supreme Court addressed the CGL policy for a construction defect claim and analyzed the breadth of the word "occurrence." In L-J, Inc., the insured was a general contractor who constructed the roads for a residential subdivision. Id. at 119, 621 S.E.2d at 34. The owner/developer of the subdivision brought a claim against the insured alleging the roads had deteriorated and failed because of the insured's faulty work. Id. The issue was whether the failed roads were an occurrence of property damage. Id. at 121, 621 S.E.2d at 35.

The South Carolina Supreme Court held there was no occurrence of property damage. Id. at 123, 621 S.E.2d at 36. The Supreme Court held that the only accident or occurrence of property damage (cracked and settled roads) was the faulty workmanship of the insured. Id. The Supreme Court was persuaded that the "the only 'occurrences' were various negligent acts by Contractor during road design, preparation, and construction, which led to the premature deterioration of the roads." Id. The Supreme Court listed the negligent acts that

are similar (basically replace the word "road" with the word "sign") to the allegations made by Piedmont and Rhodes in their complaint: 1) negligent design of the signs; 2) negligent fabrication; 3) negligent erection; 4) negligent inspection of the signs; or 5) negligent repair of the signs. Id.

The Supreme Court found that the "negligent acts constitute faulty workmanship, which damaged the roadway system only." Id. These facts did not constitute an occurrence under a CGL policy. Id. The same applies herein. As to the fallen sign, the only damages possibly awarded are to or relate to the sign itself – namely the cost of the sign, costs to remove the sign and clean up the debris, the costs of the signs and the associated economic losses for the signs.

As stated by the Supreme Court, "[t]his type of insurance 'is not intended to insure business risks, i.e., risks that are the normal, frequent, or predictable consequences of doing business, and which business management can and should control or manage.'" Century Indem. Co. v. Golden Hills Builders, Inc., 348 S.C. 559, 565, 561 S.E.2d 355, 358 (2002). The Supreme Court in L-J, Inc. recognized, "this Court has held that a CGL policy is not intended to cover economic loss resulting from faulty workmanship." 366 S.C. at 121, 621 S.E.2d at 35 (citing Century, 348 S.C. at 563-64, 561 S.E.2d at 357). The Court also recognized that "our court of appeals has held that any liability that is incurred because of faulty workmanship is part of the insured's contractual liability, not an insurable event under a CGL policy." Id. at 122, 621 S.E.2d at 35 (citing Isle of

Palms Pest Control Co. v. Monticello Ins. Co., 319 S.C. 12, 16, 459 S.E.2d 318, 320 (Ct. App. 1984)).

The CGL policy does not cover what is a commercial, contractual matter between Eadon and Rhodes; or what are the predictable economic losses suffered by Rhodes because of Eadon's faulty work. The damages awarded are the predictable, foreseeable result of the faulty work – the cost to clean up and revenue for the signs. The sign did not fall and fortuitously physically injure a third, unrelated person or his/her property, e.g., a passing motorist.

The substance of the matter is not changed because Rhodes can state a cause of action in tort under South Carolina law. This is the point effectively made in Engineered Prod., Inc. v. Aetna Cas. & Sur. Co., 295 S.C. 375, 379, 368 S.E.2d 674, 676 (Ct. App. 1988)("Because the replacement of the rack system lost in the storm 'was made . . . necessary by reason of faulty workmanship thereon by or on behalf of [Engineered Products]' . . . we therefore hold that Aetna had no duty to defend Engineered Products in the action . . . irrespective of whether the action alleged a claim for a breach of contract or for tort."). Even if one interjects tort theories into construction law, the matter between Rhodes and Eadon is still a commercial, construction dispute. Moreover, South Carolina appellate courts have repeatedly stated that the economic losses foreseeably flowing from a contractor's work are a part of the business risk borne by a contractor and not an insurable loss under a CGL policy.

In an accompanying footnote, the Supreme Court in L-J, Inc. stated, "[t]he CGL policy may, however, provide coverage in cases where faulty workmanship

causes a third party bodily injury or [property] damage to other property, not in cases where faulty workmanship damages the work product alone." 366 S.C. at 123 n.4, 621 S.E.2d at 36 n.4. This line of reasoning is taken in part from an earlier decision of the South Carolina Court of Appeals, which stated the following:

> [T]he accidental injury to property or persons substantially caused by his unworkmanlike performance exposes the contractor to almost limitless liabilities. 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. In this regard Dean Henderson has remarked: 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 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.**

C.D. Walters Const. Co., Inc. v. Fireman's Ins. Co. of Newark, 281 S.C. 593, 596-97, 316 S.E.2d 709, 711-12 (Ct. App. 1984)(citing Henderson, Insurance Protection for Products Liability and Completed Operations--What Every Lawyer Should Know, 50 Neb. L.Rev. 415, 441 (1971)) (emphasis added).

Like in C.D. Walters and other decisions around the country, the Supreme Court in L-J, Inc. looked to the purpose of a CGL policy to determine whether the purported accident (negligent construction) constituted an occurrence. 366 S.C.

at 121, 621 S.E.2d at 36. In the field of construction, a CGL insurance policy is plainly different from a performance bond, which does "insure" workmanship:

> [T]he 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.
>
> . . .
>
> A performance bond guarantees that the work will be performed according to the specifications of the contract by providing a surety to stand in the place of the contractor should the contractor be unable to perform as required under the contract.

Id. at 122, 621 S.E.2d at 36-37.

Rhodes in effect argues that damage to his land is "other property" that has been physically injured by Eadon. First, Rhodes argues that the land was physically injured because it lost its value. He argues the land lost its value because it is no longer income producing and "that fact significantly reduced its value." In short, Rhodes claimed Eadon diminished the value of Rhodes' land.

First, Rhodes' land is not physically injured within the meaning of the term "property damage" in a CGL insurance policy. See Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc., 356 S.C. 156, 163, 588 S.E.2d 112, 115 (2003); Braswell, 300 S.C. at 344, 387 S.E.2d 710 (holding chemical contamination is physical injury). In Brazell Builders, the South Carolina Supreme Court held that diminution in value of real estate is not a physical injury that constitutes "property damage" so diminution in value therefore is not an insured loss under a CGL policy. Id. Here, Rhodes seeks coverage for damages that are losses claimed for clean up of "your work" and economic losses.

The land is not "other property" separate from the signs themselves. First, as will be discussed herein, Exclusion L does not draw the distinction between real property and your work. Second, as he has done in pleadings, Rhodes cannot on the one hand argue that the signs and land are two (2) separate property interests; and on the other hand, that the signs are fixtures. Third, the Supreme Court in L-J, Inc. does not distinguish the land from the road; nor does the Court of Appeals in C.D. Walters distinguish land from the trees. Fourth, this matter does not concern a fortuitous accident harming a third, unrelated parties' person or property.

c. Exclusions

Even if one concludes that there was an "occurrence" of "property damage", the damages are excluded by the policy.[2] The exclusions discussed herein exclude damages arising from the normal "business risks" of an insured contractor. Taken together with the rest of the policy discussed here, the business risks exclusions ensure a CGL policy is not a surety or performance bond.

Exclusion (k) may be applicable to the damages. Exclusion (k) states the insurance does not apply to "'property damage' to 'your product' arising out of it

[2] "Exclusions in an insurance policy are to be read independently of each other; they are not to be read cumulatively . . . 'If any one exclusion applies there should be no coverage, regardless of inferences that might be argued on the basis of exceptions or qualifications contained in other exclusions. There is no instance in which exclusion can properly be regarded as inconsistent with another exclusion, since they bear no relationship with one another.'" Engineered Prod., Inc., 295 S.C. at 378, 368 S.E.2d at 676.

or any part of it."[3] Exclusion L is applicable to all the damages. Exclusion L states the insurance does not apply to the following:

> 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.
>
> a. The Policy defines "your work" as: 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.

The definition of "your work" includes both the labor and materials. Therefore, the definition encompasses Eadon's negligent labor and the signs themselves.[4] In addition, the definition includes "any part of it" which then includes the land. Further, unlike Exclusion K, Exclusion L does not exclude "real property" from the definition of "your work". "Your work"- your labor and

---

[3] The definition of "your product" includes, "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.'"

[4] The Defendants concede that the contract price of the signs is excluded under the terms of the policy.

materials- logically become a fixture to real estate in the improvement to real estate or construction thereon.

This exclusion too is the essence of the business or economic loss principle. The definition of "property damage" includes "loss of use"; therefore, "loss of use" related to "your work" (or the signs) is excluded by Exclusion L. This means that the damages claimed for loss of future rental income due to the loss of use of the signs or the property upon which the signs are a fixture, if claimed, is not a covered loss.

Further, the second phrase of the first sentence in Exclusion L reads "and including in the products-completed operations hazard." The Policy defines "products-completed operations hazard" as follows:

> 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:
>
> . . .

The operative language in the definition above is in bold print. The definition states that the hazard includes, "all 'property damage' . . . arising out of 'your work'." In other words, Exclusion L incorporates the definition of the hazard and damages to "your work" and those damages "arising out of your work" are excluded. Whether the damages are the clean-up costs or the future rental income, such damages are excluded from coverage.

In addition to L, Exclusion N excludes the damages. Like Exclusion L, Exclusion N ensures that a CGL does not cover business or economic losses. Exclusion N reads as follows:

> **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.**

The operative words are in bold print and together read as follows. The Policy excludes 1) damages 2) for any loss 3) incurred by other 4) for the loss of use 5) removal 6) or disposal 7) of your work 8) if such work 9) is withdrawn 10) from use 11) by any organization 12) because of a 13) known or suspected 14) defect, deficiency, inadequacy or dangerous condition 15) in it.

Applying the exclusion to the facts, the sentence reads, the Policy excludes damages for any loss incurred by Rhodes for the loss of use, removal or disposal of the signs if such signs are withdrawn from use by the SCDOT because of a known or suspected "unsafe" condition in the signs.

The SCDOT required Rhodes to withdraw all three (3) signs from use because one fell, and the SCDOT determined the other two (2) signs "were basically unsafe also." (Transcript, 9/1/04, p. 102 L 18-19). Rhodes was precluded by the SCDOT from replacing the fallen sign. Based on Exclusion N, the removal and disposal costs (damages) and "loss of use" (damages) for the signs withdrawn from use by the SCDOT are not insured damages.

Eadon argues the SCDOT required Rhodes to remove the two (2) remaining signs because the signs were a non-conforming use, not because they were poorly built. This statement is untrue. Keith Melvin of the SCDOT testified at trial that the department required the removal of the two (2) remaining signs

because "we determined that those signs were basically unsafe also." (Transcript, 9/01/04, p. 102 L 18-19).

Keith Melvin testified as follows about the unsafe conditions:

> **Melvin: The southern most sign fell on the right of way, across the first lane and median lane. The sign was determined to be unsafe and basically a destroyed sign. So we cancelled that permit. After reviewing the two remaining signs, we determined that those signs were basically unsafe also. So we contacted Mr. Rhodes—actually, I told him by telephone first, and I followed up with a letter indicating that we would be canceling the permits as being unsafe.**

(Transcript, 9/1/04, p. 102 L-13-22)

Keith Melvin also testified that Rhodes could have kept the two (2) signs in place if non-conformance were the only issue:

> **Coleman: Okay. And under the non-conforming use that you had designated, even if the sign still remained standing if they were non-conforming, they would still be there; is that correct? They would still be able to rent advertising space; is that correct?**
>
> **Melvin: That's correct.**

(Transcript, 9/1/04, p. 112 L 15-20).

II. Even if the court finds that some of the damages are covered under Auto-Owners' policy, Eadon has the burden of proving that the verdict represents damages covered by Auto-Owners' policy as opposed to non-covered damages.

It is Auto-Owners' position that none of the damages awarded by the jury in the Rhodes case are covered by the policy issued to C&B Fabrications, Inc. and Low Country Signs, Inc. ("Policy"). However, even if the Court finds that Eadon was an insured under the Policy and that some (but not all) of the damages introduced at trial are covered by the Policy, Eadon has the burden of

proving that the verdict represents covered damages as opposed to non-covered damages. If he is unable to do so, Auto-Owners must prevail in this action.

The majority rule in the United States is that where a judgment includes elements for which an insurer is liable and also elements beyond the coverage of the policy, the burden of apportioning these damages is on the party seeking to recover from the insurer. Clark v. Globe Indemnity Co., 268 N.Y.S. 509 (NY 1933); Morris v. Western States Mut. Auto. Ins. Co., 268 F.2d 790 (7th Cir. 1959). Assuming that Auto-Owners has met its burden of showing that evidence of excluded damages was presented to the jury, the Defendants have the burden of proving that the damages awarded against Eadon constitute damages covered by the policy, as opposed to damages excluded by the policy. The majority rule comports with South Carolina law which holds that that the person seeking to recover insurance benefits has the burden of proving that a claim is covered by the terms of the policy. Sunex Intern., Inc. v. Travelers Indem. Co. of Ill., 185 F.Supp.2d 614, 617 (D.S.C. 2001).

In Clark, the Plaintiff received a verdict against a person insured under the Defendant's policy. During the trial, the Plaintiff submitted evidence of damages covered under the policy (bodily injury) and damages that were not covered under the policy (loss of services of wife). The jury returned a general verdict. The insurance company resisted payment upon the ground that the plaintiff had not shown how much the jury awarded to him for bodily injuries as opposed to loss of services.

Because of the general verdict, it was impossible to determine what, if anything, the jury awarded for bodily injury. However, the Court determined that the plaintiff had the burden of proving the amount of damages awarded for bodily injury, stating, "the plaintiff is required to show that he has recovered a judgment for bodily injuries. Having failed to show the amount of bodily injuries recovered, one of the essential facts is lacking upon which to base a judgment herein." Id. at 511. "When plaintiff's right to recover rests only upon possibility, conjecture, and speculation, then he has failed to establish his cause of action." Id. at 512.

Similarly, in Morris v. Western States Mut. Auto. Ins. Co., 268 F.2d 790 (7th Cir. 1959), the court stated, "Where the judgment includes elements for which the insurer is liable and elements outside the range of coverage, apportionment of damages to the respective causes of action is a burden on the party seeking to recover from the insurer." In Morris, the insurance company issued a policy to its insured with liability limits of $15,000 per person and $30,000 per accident and property damage limits of $5,000. Despite the insurance company's request for a special verdict allocating the damages between property damage and wrongful death, the jury returned a general verdict in the amount of $70,000. The court held that the insurance company only owed a single limit of $15,000, stating,

> Plaintiff has not proven and cannot prove that the general verdict and judgment for a total sum of $70,000, awarded solely to Mrs. Day, was in fact based on three different claims so as to entitle her to the maximum amount due under the insurance policy. The entire judgment may have been based on any one of several counts in Mrs. Day's complaint in which she sought damages of $100,000. There is no showing as to what amount, if any, was awarded for the

> wrongful death of Mr. Day; what amount, if any, for the personal injuries of Mr. or Mrs. Day; or what amount, if any, for the property damage.

Id. at 792.

In Yancey v. Utilities Ins. Co., 137 S.W.2d 318 (1939), the plaintiff argued that the insurance company should be estopped from disclaiming coverage for the general verdict because it controlled the defense of the previous trial. The Yancey court disagreed, noting that the insurance company had informed the insured before the trial that certain damages were not covered under the policy and the insurance company requested that the jury allocate damages. The Yancey court also found it significant that the insured, through his personal attorney, opposed the request for a special verdict. The court stated,

> In this view of the case, we are of the opinion that the complainant having failed to show by proof the amount of the judgment in favor of William A. Bowden that would be within the coverage as to him, there can be no recovery in the present suit against the defendant, Utilities Insurance Company. Any recovery would necessarily have to be the result of conjecture, speculation, or guess, and this is certainly not permissible under the settled rule against speculative judgments.

Id. at 326-327.

The same conclusion was reached by the court in Universal Underwriters Insurance Corp v. Reynolds, 129 So.2d 689 (Fl. App. 1961) and stated,

> The decision of Clark v. Globe Indemnity Co., supra, is illustrative of the majority rule in the United States, that where a judgment includes elements for which an insurer is liable and also elements beyond the coverage of the policy, the burden of apportioning these damages is on the party seeking to recover from the insurer. That it is impossible for the plaintiff to do so in the case at bar does not change the basic predicament in which he finds himself.

Id. at 691 (internal citations omitted).

Just as in Yancey, Auto-Owners informed Eadon that certain damages were not covered under the terms of the policy and requested that special interrogatories be submitted to the jury to clarify what damages the jury was awarding to Piedmont and Rhodes (Order Denying Motion to Intervene (7/30/03); Request for Special Interrogatories (6/9/04);Trial Transcript IV, p. 335-336, 381). Auto-Owners' request was opposed by Eadon's personal attorney (as well as Piedmont and Rhodes) and the special interrogatories were not submitted to the jury. (Sweeney letter dated September 9, 2004, p. 3). It stands to reason that the insured should have the burden of allocating damages between covered and non-covered claims, especially when the insured had the opportunity to have the issue determined by the jury in the Rhodes case, but failed to do so. Further, to the extent the Court finds that Defendants meet such burden, the Court should apportion or allocate punitive damages relative to the percentage of any covered damages.

The majority rule, which includes Clark, Yancey and Reynolds, should be applied to the facts of this case and the Court should find that it is the insured's burden to allocate the damages awarded for covered and non-covered claims. However, because Eadon opposed the special interrogatories, it may be impossible for him to do so. If so, Auto-Owners must prevail, because Eadon fails to prove that the jury's verdict represents a covered loss under the terms of the insurance policy.

Conclusion

Based upon the forgoing discussion, Auto-Owners requests that the Court enter a verdict in its favor.

ELLIS, LAWHORNE & SIMS, P.A.

By: _____

A. Johnston Cox
John L. McCants
Post Office Box 2285
1501 Main Street, 5th Floor
Columbia, South Carolina 29202
(803) 254-4190
Attorneys for Plaintiffs

Columbia, South Carolina

7/13, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
AUTO-OWNERS INSURANCE COMPANY,	)	
	)	CIVIL ACTION NO. 02-CP-46-2369
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
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.	)	

I, Anne Palmer, with the law firm of Ellis Lawhorne & Sims, PA, do hereby certify that I have on the date below written caused a copy of the foregoing pleading to be served upon opposing counsel via United States Mail, first class postage prepaid, to:

William O. Sweeny, Esquire
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211

Hoover C. Blanton, Esquire
McCutchen Blanton Johnson & Barnette, LLC
Post Office Drawer 11209
Columbia, SC 29211

Creighton B. Coleman, Esquire
McCutchen Blanton Johnson & Barnette, LLC
Post Office Box 1006
Winnsboro, SC 29180

Anne Palmer

Anne Palmer

Columbia, South Carolina

July 13, 2006

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,	)	
	)	
v.	)	DEFENDANT MARION EADON D/B/A C & B FABRICATION'S POSITION REGARDING WHETHER THE JUDGMENT AS RENDERED IS COVERED
	)	
Samuel W. Rhodes, Jr., Piedmont Promotions, Inc., Marion L. Eadon, C & B Fabrications, Inc., and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	

PREFACE

Per the Court's instruction, the parties are to submit short, summary briefs on three topics: 1) the effect of exclusions in the policy; 2) the effect of the judgment on the policy, specifically which damages awarded are covered by the policy; and 3) whether the judgment as rendered is covered. The Court has ordered that these matters be addressed sequentially. This brief provides Defendant Eadon's position on the third and final topic.

INTRODUCTION

Defendant Eadon's prior two briefs in this series have set forth – and provided support for – the positions that: 1) the damages awarded by the jury in Rhodes v. Eadon, based on Rhodes' negligence cause of action, were covered under Auto-Owner's policy; and 2) that no exclusions were effective to obviate coverage for the damage to real property, loss of use, or the costs of repairing the fence, clearing the highway or taking down the two remaining signs. Given that the jury necessarily held, and South Carolina law supports, that the signs, which had been put to use were fixtures, and that as such they had become integral parts of the real

property, the exclusions for " your work" and "your property" are also ineffective. There no exclusions for the $3.5 million punitive damages award.

The remaining question is whether the Rhodes v. Eadon jury's award against Marion L. Eadon D/B/a C &B Fabrication is covered under the policy. C & B Fabrication is covered under the policy. C & B Fabrication has been stipulated by all parties to be a trade name for the corporations that are named insureds under the policy: C & B Fabrication, Inc. and Low Country Signs, Inc. The essence of the question is whether Marion L. Eadon d/b/a C & Fabrication is an insured under the terms of Auto-Owners' policy.

Because the named insureds on the policy were corporations, the following provision from the policy's "Who is an Insured" section is applicable:

> 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.** Your stockholders are also insureds, but only with respect to their liability as stockholders.

Policy, pp. 6-7 of 14 (emphasis added).

It is unquestioned that Mr. Eadon was both an officer and a director of the corporations, both known as C & B Fabrication. Mr. Eadon testified, and the documentary evidence confirms, that he was the president, and inferably the director, of the corporations. Transcript, Vol. III, pp. 126, 140, Defendant's Ex. 17, 18, 19.

There is also testimony that Mr. Rhodes' contract was with C & B Fabrication, of which Mr. Eadon was the president and Chuck Benenhaley was the manager. That testimony was as follows:

Q. I want to show you what's marked as Plaintiff's Exhibit #4 and ask if you can identify that document.

A. This is the contract with C & B Fabrication for fabricating, delivery and installation specifications, 10'6" x 36', center mount stack, 15 foot, B, 130 foot bottom H.A.G.I.

Q. And what was the price?

A. The original price is $51,820 per unit, and for three units that would have been $155,460.

Q. What was the date of his proposal?

A. The date of this is 7/9/99.

Q. At the top of the page – read the top of the page to the jury.

A. "C & B Fabrication".

Q. Do you see "C & B Fabrication, Inc."?

A. No, sir.

Q Do you see "C & B Fabrication Company"?

A. No, sir.

Q. Do you see "President M. L. Eadon"?

A. I see "M. L. Eadon, President" and "Manager, Chuck Benenhaley".

Transcript, Vol. I, p. 53. Rhodes' contract was, therefore, with the corporation doing business under its trade name and Mr. Eadon, as president, was taking action on behalf of the corporation regarding its commitment to Mr. Rhodes. Mr. Eadon also testified that the payment from Rhodes/Piedmont Promotions was deposited in the corporation account of C & B Fabrication and that none was deposited in his personal account. His testimony, in pertinent part, was as follows:

Q. Did Piedmont Promotions pay for these signs?

A. Yes, Ma'am.

Q. And when the signs were paid for, checks were sent to C & B Fabrication. Where were those checks deposited?

A. They were deposed in C & B Fabrications, Incorporated, in the National Bank of South Carolina.

Q. And what branch would that have been?

A. The Manning branch.

Q. Did you deposit – let's start with the first check. Did you deposit that check, which is Plaintiff's Exhibit 5-A, was that check deposed into the account of C & B Fabrication?

A. Yes, Ma'am.

Q. And then check number – or Plaintiff's Exhibit No. 5-B from February 8, 2000, was that check also deposited into the checking account or C & B Fabrication?

A. Yes, Ma'am.

Transcript, Vol. III, pp. 132-33.

Q. Mr. Eadon, did you ever deposit any of the Piedmont Promotions money to any of your personal accounts?

A. No, Ma'am.

Id., p. 134. There is no evidence to the contrary.

Mr. Rhodes testified that he telephoned, faxed and wrote Mr. Eadon several times, but the leaning sign never was fixed. Transcript, Vol. I, pp. 70-76. Mr. Eadon's trial testimony confirmed the extensive communication from Mr. Rhodes, saying "Sam would call 10 times a day. I wouldn't answer it half the time." Transcript, Vol. III, pp. 160. From that statement,

along with Mr. Eadon's statement that he considered Rhodes a "pain in the butt", *Id.* at p. 167, the jury could certainly have decided that Mr. Eadon, acting for the corporation, C & B Fabrication, in following up on the corporation's contract, and thereby breached a duty to Mr. Rhodes. Mr. Eadon also testified that in response to the phone calls he sent Tracy Benenhaley and Chuck Benenhaley, several times, out to the sign location. *Id.* at p. 162. He told Chuck Benenhaley to "fix it." *Id.* This action would also have been to fulfill the corporation's obligation.

The trial transcript, therefore, provides plenty of evidence from which the jury could determine that Mr. Eadon was acting on behalf of C & B Fabrication. The trial court's charge to the jury without question made if possible for the jury to find Mr. Eadon liable even though he was doing business for C & B Fabrication, which, from the charge, could be inferred to be business for the corporation. The relevant charge was as follows:

> As a corporation can only act through its officers and agents, 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 tortuous 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, any more than are the directors or shareholders, **unless the president personally participates in the tort.**

Transcript, Vol. IV, p. 356 (emphasis added).

> I would further charge you that under South Carolina law, **a corporation is not required to do business with the public using its official corporation name. It is well known**

> **that corporations often [use] trade names** that are not their official corporate names. It is permissible to operate a business using a trade name.

Id., p. 357 (emphasis added).

> I charge you that an agent's liability for his own tortuous acts [is] unaffected by the fact that he acted in a representative capacity.

Transcript, Vol. IV, p. 365

The corporation was **not** named as a defendant in Rhodes v. Eadon, moreover, so the jury's verdict provides no evidence or indication that the jury excluded the possibility that the tort was a tort of the corporation for which Mr. Eadon was also personally liable. It would take speculation in this case to find that the jury in the tort case held that the torts were solely those of Mr. Eadon rather than corporate torts for which Mr. Eadon is also personally liable because of his participation in said torts. Any ambiguity as to this issue, moreover, should be construed in favor of the insured and strictly against the insurer.

Most importantly, the evidence is totally uncontested that Mr. Eadon only did sign business work on behalf of C & B. There is no evidence at all that any of his actions were outside the scope of his involvement with C & B, which encompasses C & B Fabrications, Inc; Low Country Signs, Inc.; and himself. C & B is the only way he did sign business.

II. THE COURT SHOULD HOLD THAT THE POLICY UNAMBIGUOUSLY PROVIDES THAT MR. EADON IS AN INSURED FOR HIS OWN NEGLIGENCE.

The key provision of the policy, regarding the issue of whether Mr. Eadon was covered for the damages assessed against him in Rhodes v. Eadon is "**but only with respect to their duties as your officers or directors.**" Policy, p. 7 of 14.

Under our law, the phrase, "but only with respect to their duties as officers," is to be construed narrowly because it is a phrase that is intended to exclude coverage. Our Supreme

Court has expressed the principle that policy provisions that have the effect of denying coverage are to be construed narrowly and noted our law's consistency in this regard with the general law, as expressed in a respected treatise addressing insurance law. The Court held as follows:

> We are of the opinion that the foregoing is the correct result under the plain and clear language of the policy which we regard as being free of any ambiguity. But if there conceivably be any doubt thereabout, the doubt or ambiguity, of course has to be resolved against the defendant. We quote the following from 13 Appleman Insurance Law and Practice 106, Sec. 7405:
>
> > 'The courts have frequently stated that provisions limiting liability of the insurer – such as exceptions from coverage, exclusions, restrictions, and conditions – are particularly deserving of strict construction so as not to cut down the coverage which the insured believed he was purchasing.'
>
> Cited as authority for the foregoing are cases from twenty-two states, including the South Carolina case of Wheeler v. Globe & Rutgers Fire Ins. Co., (1923), 125 S.C. 320, 118 S.C. 609. Also in 13 Appleman at page 170, Sec. 7439, we find the following:
>
> * * *
>
> > 'The courts have uniformly held that where the clause is one of inclusion it should be broadly construed for the benefit of the insured while in exclusion cases the same clause is given a more restricted interpretation. Jamestown Mutual Ins. Co. v. Nationwide Mutual Ins. Co., 266 N.C. 430, 146 S.E.2d 410. This is necessary because in both situations the courts favor an interpretation in favor of coverage.' Buddin v. Nationwide Mutual Ins. Co., 250 S.C. 332, 157 S.E.2d 633.
>
> For the foregoing reasons, the judgment of the lower court is reversed and the cause remanded for entry of judgment in favor of the plaintiff in accordance with the views herein expressed.

Millstead v. Life Ins. Co. of Virginia, 256 S.C. 449, 452-53, 182 S.E.2d 867, 868-69 (1971).

Therefore, in the case at hand, the phrase, "but only respect to their duties as your officers...." should be construed in a manner as to provide coverage for the insured, Mr. Eadon. It should be noted that the phrase does *not* say "arising out of their duties as your officers," which would entail a greater degree of causal relationship between the insured's duties as an officer and the damages for which coverage is sought. The phrase, "with respect to...", is broad enough to include any activity by the insured that has any connection to his duties as an officer

of the named insured, while "arising out of" implies that it is the performance of the insured's duty as an officer that has led to the damage. Our Supreme Court has held, however, if the phrase "arising out of" is being construed broadly, to provide coverage, it means more than "caused by." When used broadly, "in a clause of inclusion," the phrase "arising out of...connotes 'incident to,' 'flowing from' or 'having connection with' as well as 'causal relation to." Town of Duncan v. State Budget and Control Bd., 326 S.C. 6, 13, 482 S.E.2d 768, 772 (1997) *quoting* McPherson v. Michigan Mut. Ins. Co., 310 S.C. 316, 426 S.E.2d 770 (1993).

If "arising out of" is to be construed this broadly in a clause of inclusion, the even-broader phrase "with respect to" should be construed to mean "having any connection to or relationship with" the business of the named insured. In this case, the insurance policy, on the declarations page, states that the business of the named insured is "Sign Manufacturer." Mr. Eadon should, therefore, under our law be an insured for any damages resulting from the manufacture and sale of signs.

Auto-Owners has stated or implied that there is no coverage for Mr. Eadon because the jury did not find C&B Fabrications, Inc. or Low County Signs, Inc. liable for damages. That erroneous conclusion is premised on the idea that Mr. Eadon is covered only for vicarious liability, liability derived from the liability of the corporation itself. That is incorrect. The policy provides coverage for Mr. Eadon's individual liability for anything that has any connection with the business of the insured. The "who is an insured" provision quoted above says **absolutely nothing that would conclude that there was no coverage for Mr. Eadon unless the corporation itself was liable.** Having failed to state that in the policy, Auto-Owners should not be allowed to rely on such a concept.

Courts in other jurisdictions have addressed this issue. The Supreme Court of Missouri held that the chief operator of a city's water treatment plant was an "executive officer" whose

liability was covered by the commercial general liability policy purchased by the city. Martin v. United States Fidelity and Guaranty Co., 996 S.W.2d 506 (Mo.1999). The chief operator had personally installed a joint pipe flange assembly that exploded, injuring another employee. The employee obtained an $800,000 judgment against the chief operator, and the liability insurer declined coverage. Reversing the trial court, the Supreme Court held that the chief operator was an insured under the policy and that the policy covered his personal liability. The Court held as follows:

> As noted above, executive officers are insureds under the policy only with respect to their "duties as officers." USF & G argues, and the trial court agreed, that the conduct complained of in Mr. Martin's petition, the installation of a pipe, was not managerial or administrative in character and, therefore, not within the scope of his duties as an officer. While USF & G does not contest that Mr. Cauthon's actions in installing the pipe were within his job responsibilities as chief operator, USF & G argues that "duties as officers" include only those portions of an officer's position that are managerial in character. **Mr. Martin argues that all job responsibilities performed by executive officers are included in their duties as officers, whether or not the character of the particular act at issue was managerial. Again, the insurance policy on this point is ambiguous, at best, and the Court is bound to construe it against the insurer** and in favor of coverage. Melvin Cauthon was an "executive officer" of Boonville, and because he was performing his duties as such when his allegedly negligent conduct occurred, he was an insured under the city's commercial liability insurance policy with USF & G.

Martin, 996 S.W.2d at 509-510 (emphasis added).

The Tenth Circuit of the United States Court of Appeals has also addressed the situation which prevails here. Marathon Ashland Pipe Line LLC v. Maryland Cas. Co., 243 F.3d 1232 (10th Cir. 2001).

In Marathon Ashland, the Court addressed a situation in which a temporary worker brought an action against Marathon Ashland, which was an additional insured under a commercial general liability policy issued by Maryland Casualty to Steel Structures, Inc. ("SSI"). Maryland Casualty denied coverage on the ground that : 1) the injury did not "arise out

of" SSI's activities; and 2) it asserted that the named insured, SSI, must be primarily negligent, and the additional insured no more than vicariously liable for there to be coverage. The Tenth Circuit rejected both of Maryland Casualty's positions. Its holdings on these issues were as follows:

> Although we have agreed with the district court thus far, we reject its holding that Marathon's liability did not "arise out of" SSI's activities. Our review of the undisputed facts convinces us there was a sufficient causal connection between SSI's operations and Mr. Berg's injuries to trigger the additional insured endorsement. Under Wyoming law, "arising out of" language as used in insurance contracts carries a "natural consequence" level of causation.... Applying this standard, Marathon's liability must be "the natural and reasonable incident or consequence of" SSI's ongoing operations for Marathon, "the causal connection being reasonably apparent." Coverage will not lie, however, if Marathon's liability "was directly caused by some independent or intervening cause **wholly disassociated from, independent of or remote from**" SSI's operations for Marathon.... Therein lies the real crux of this dispute: while Marathon argues that Mr. Berg's injuries arose out of SSI's activity of employing persons who worked at Marathon's direction and control, Maryland Casualty contends that Mr. Berg's injuries arose solely out of Marathon's activities, independent and remote from SSI's operations. Because the "arising out of" language is "plain and unequivocal," this is a question of law for this court to resolve.... We are persuaded that SSI's act of hiring and paying Mr. Berg at Marathon's request and then sending him out to work under Marathon's sole direction and control was an ongoing operation out of which Mr. Berg's injuries were a natural consequence. We therefore disagree with the district court's ruling that Marathon was not an additional insured for purposes of its liability to Mr. Berg.

243 F.3d at 1239-40 (citations omitted)(emphasis added). Under the standards of Marathon Ashland, and considering that the current case has the broader "with respect to" wording rather than the narrower "arising out of," Mr. Eadon would certainly be an insured.

The Court also held that an insured was covered for his own negligence as well as negligence he incurred through the corporation. It held as follows:

> Finally, Maryland Casualty asserts that the named insured must be primarily negligent, with the additional insured no more than vicariously liable, for this endorsement provision to apply. Under this theory, Mr. Berg's injuries did not arise out of SSI's operations because SSI was not negligent. We have held, however, that an endorsement provision with identical language provides

> coverage for an additional insured's liability arising out of its own negligence. *See McIntosh v. Scottsdale Ins. Co.*, 992 F.2d 251 (10th Cir.1993) (applying Kansas law). In *McIntosh*, we were faced with the same additional insured endorsement provision at issue here and concluded the language was "ambiguous as to whose negligence is covered and whose negligence is excluded from coverage." *Id.* at 254. We therefore interpreted the policy as providing coverage for the additional insured's liability arising out of its sole negligence. *Id.* This appears to be the majority rule. *Accord Mid-Continent Cas. Co. v. Swift Energy Co.*, 206 F.3d 487, 499 (5th Cir.2000) (rejecting argument that identical policy language limited endorsement's coverage to additional insured's liability arising from named insured's negligence); *Admiral Ins. Co. v. Trident NGL, Inc.*, 988 S.W.2d 451 (Tex.Ct.App.1stDist.1999) (interpreting identical policy language and holding that coverage provided for additional insured's sole negligence resulting in injuries to named insured's employee) (citing *McIntosh* holding as the majority rule); *Acceptance Ins. Co. v. Syufy Enterprises*, 69 Cal.App.4th 321, 81 Cal.Rptr.2d 557, 561-62 (1999) (identical policy language does not allocate coverage based on named insured's fault. We are not persuaded the language presented here is clearer on that point, and we conclude this policy language does not limit coverage to the additional insured's vicarious liability.

243 F.3d at 1240. The fact that C&B Fabrication or Low Country Signs was not found liable in the underlying action is, therefore, irrelevant. Mr. Eadon is an insured under the policy, covered for his own negligence in the manufacture and sale of advertising signs.

Under the unambiguous words of the policy, construed consistently with South Carolina and general law, Mr. Eadon is an insured.

To the extent that the definition of "Who is an Insured," is ambiguous, that ambiguity must be construed in favor of coverage of the insured and strictly against the insurer. South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 349 S.C. 366, 370 n.4, 563 S.E.2d 648, 650 n.4 (2002) ("any ambiguity in an insurance policy must be construed liberally in favor of the insured"); Coakley v. Horace Mann Ins. Co., 363 S.C. 147, 152-53, 609 S.E.2d 537, 540 (Ct. App. 2005) ("ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer").

III. THE FACT THAT THE CAPTION IN THE TORT ACTION USED THE ABBREVIATION "D/B/A" DOES NOT NECESSARILY MEAN THAT MR. EADON WAS OPERATING A SOLE PROPRIETORSHIP.

The Defendant in the underlying tort action was Marion L. Eadon d/b/a/ C & B Fabrication. The abbreviation "d/b/a" represents the phrase, "doing business as." The phrase can indicate that a person is doing business as a sole proprietorship, but that is not necessarily the case. The "doing business as" description is sufficiently general to refer to other forms of business organizations, including partnerships and corporations. The caption of Jackson v. River Pines, Inc., 276 S.C. 29, 274 S.E.2d 912 (1981) includes a defendant, "... The above listed individuals d/b/a River Pines Company, a partnership." In Tallevast v. Herzog, 225 S.C. 563, 83 S.E.2d 204 (1954), a partnership was "doing business as" Firestone Home and Auto Supplies, a trade name. The caption of a Fourth Circuit case includes as parties, *inter alia*, individuals who are d/b/a a corporation, and apparent partnerships d/b/a a corporation. In re American Honda Motor Co., Inc. , Dealerships Relations Litigation, 315 F.3d 417 (4th Cir. 2003). Among the parties in American Honda are over 80 "d/b/a" entries, including the following:

"Claudia Close, d/b/a Jim Close House of Honda d/b/a House of Honda, as Executrix of the Estate of James R. Close, Humphrey Motors, Inc."

"Humphrey Motors, Incorporated a/k/a Jim Close House of Honda, a California Corporation"

"Breakaway Incorporated d/b/a Breakaway Honda, a South Carolina Corporation"

"Mildred Radar, d/b/a Pioneer Honda, a California resident, individually and on behalf of all others similarly situated"

"Bob Jackson & Son, d/b/a Honda Santa Ana, a California Corporation"

"C. H. Jurgenson, d/b/a Jurgenson's Honda, a Corporation"

"Henry Khachturian, d/b/a Hank Tarian, a California resident"

The American Honda caption alone demonstrates the variety of different business relationships that are encompassed in the general "doing business as" description. It is clearly not limited to sole proprietorships, despite Auto-Owners' assertions to that effect.

In this case, the parties have, in fact, stipulated that "C & B Fabrication" is a trade name for both of the corporations that are named insureds on Auto-Owners' policy. The caption in Rhodes v. Eadon, therefore, indicates that Mr. Eadon was doing business as the named insureds. He was, therefore, necessarily acting for the named insured, as both "doing business as" and "doing business for" mean that the was doing the business of the legal entity, the corporation. If he was doing business as a named insured for purposes of the allegations in Mr. Rhodes' Complaint, Mr. Eadon certainly fits within the policy's definition of an insured. If he is doing business as the corporation, he is certainly acting "with respect to [his] duties as [the insured corporation's] officer."

If there is any doubt, moreover, that "doing business as" the named insured would necessarily entail "acting with respect to" his duties to the named insured, that ambiguity must be resolved in favor of the insured's receiving coverage. South Carolina Farm Bureau Mut. Ins. Co. v. Courtney, 349 S.C. 366, 370 n.4, 563 S.E.2d 648, 650 n.4 (2002) ("any ambiguity in an insurance policy must be construed liberally in favor of the insured"); Coakley v. Horace Mann Ins. Co., 363 S.C. 147, 152-53, 609 S.E.2d 537, 540 (Ct. App. 2005) ("ambiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer").

CONCLUSION

Mr. Eadon was an insured under the terms of Auto-Owners policy in regard to the jury's award in Rhodes v. Marion L. Eadon d/b/a C & B Fabrication. He was an executive officer of the corporations that were named insureds under Auto-Owners' policy. Liability was found

against him individually based on his work "with respect to" the business of C & B Fabrication, which is stipulated to be a trade name for the named insureds. He, therefore, fits directly into the policy's definition of an insured. He is an insured for both his individual negligence as well as vicarious liability for the corporation's negligence. The fact that the judgment was against Marion L. Eadon d/b/a C & B Fabrication does not mean that the judgment was against a sole proprietorship, as the d/b/a abbreviation can apply in a wide variety of business relationships. In this case, it has been stipulated by all parties that C & B Fabrication was a trade name for the named corporations, so Marion Eadon was doing business as, and for, those named insureds. The Court should find that Auto-Owners' policy covers Marion L. Eadon d/b/a C & B Fabrication for the damages assessed by the jury in the underlying tort action.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

William O. Sweeny, III
William R. Calhoun, Jr.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
Attorneys for Marion L. Eadon

Columbia, South Carolina
July 24, 2006

CERTIFICATE OF SERVICE

I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Marion L. Eadon, do hereby certify that I have served a copy of the foregoing Defendant Marion Eadon D/B/A C & B Fabrication's Position Regarding Whether The Judgment As Rendered Is Covered 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.
1501 Main Street, 5th Floor
Post Office Box 2285
Columbia, South Carolina 29202

Creighton B. Coleman
McCutcheon, Blanton, Rhodes & Johnson
Post Office Drawer 11209
Columbia, South Carolina 29211

Hoover C. Blanton
McCutcheon Blanton Johnson & Barnette, LLP
Post Office Drawer 11209
Columbia, S. C. 29211-1209

Bobbie J. Powell

Columbia, South Carolina
July 24, 2006

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	
		CIVIL ACTION NO. 02-CP-46-2369
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	**PLAINTIFF'S TRIAL BRIEF REGARDING WHETHER MARION L. EADON MEETS THE DEFINITION OF AN INSURED UNDER THE TERMS OF THE INSURANCE POLICY**
	)	
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.,	)	
	)	
Defendants.	)	

I. Burden of Proof

Eadon and Rhodes have the burden of proof in this matter. In a declaratory judgment action, "[t]he burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract. The insurer bears the burden of establishing exclusions to coverage." Sunex Intern, Inc. v. Travelers Indem. Co. of Ill., 185 F.Supp.2d 614, 617 (D.S.C. 2001) (internal citations omitted); Gamble v. Travelers Ins. Co., 251 S.C. 98, 160 S.E.2d 523 (1968). The same is true for any person seeking coverage under an insurance policy. See, Rakestraw v. Allstate Ins. Co., 238 S.C. 217, 119 S.E.2d 746 (1961). In this matter, it is Eadon and Rhodes' burden to prove that the verdict awarded against Marion L. Eadon d/b/a C&B Fabrication in the Rhodes case was, in fact, awarded against an insured under the terms of the policy.

It is not Auto-Owner's obligation to prove that Eadon is **not** an insured, because the definition of an insured in the policy is not an exclusion. Id. The fact that Auto-Owners initiated the declaratory judgment action does not alter the burden of proof. See Penn America Ins. Co. v. Valade, 28 Fed.Appx. 253 (4th Cir. (N.C.) 2002) (stating that party seeking coverage under an insurance policy bears the burden of proving that any claimed damage falls within the policy's terms and this burden of proof remains

unchanged when the insurer initiates a declaratory judgment proceeding concerning its coverage obligations under an insurance policy); American Auto. Inc. Co. v. Mayfield, 287 F.Supp.2d 661, 664 (N.D.Tex. 2003) ("To assist in determining whether an insurer has a duty to defend, the Fifth Circuit has explained the parties' shifting burdens of proof as follows: The insured bears the initial burden of showing that the claim . . . is potentially within the insurance policy's scope of coverage. If the insurer relies on the policy's exclusions to deny coverage, the burden shifts back to the insured to show that an exception to the exclusion" applies.) (citations omitted); Royal Globe Ins. Co. v. Whitaker, 181 Cal.App.3d 532, 537 (Cal.App. 3 Dist. 1986) ("While the burden is on the insurer to prove a claim covered falls within an exclusion, the burden is on the insured initially to prove that an event is a claim within the scope of the basic coverage.") (internal citations omitted).

II. The verdict was rendered against an individual, Marion L. Eadon

The verdict in the Rhodes case was rendered against Marion L. Eadon d/b/a C&B Fabrication. As a d/b/a, the trade name "C&B Fabrication" is not a separate legal entity from Marion L. Eadon. "Doing business under another name does not create an entity distinct from the person operating the business." Carlson v. Doekson Gross, Inc., 372 N.W.2d 902, 905 (N.D.1985). "The designation 'd/b/a' means 'doing business as' but is merely descriptive of the person or corporation who does business under some other name. Doing business under another name does not create an entity distinct from the person operating the business. . . The business name is a fiction, and so too is any implication that the business is a legal entity separate from its owner." Providence Washington Ins. Co. v. Valley Forge, 42 Cal.App.4th 1194, 1200, 50 Cal.Rptr.2d 192 (Cal.App. 1 Dist. 1996) (internal citations omitted). See also, Am.Jur. 2d. Corporations § 2 (2004); Moore v. Moore, 360 S.C. 241, 599 S.E.2d 467 (Ct. App. 2004), Hall v. Auto-Owners Ins. Co., 658 N.W.2d 711, 720-721 (Neb. 2003), Toulousaine de Distrib. v. Tri-

State Seed & Grain,, 520 N.W.2d 210 (Neb. 1994); O'Hanlon v. Hartford Acc. & Indem. Co., 639 F.2d 1019 (3d Cir. 1981); Duval v. Midwest Auto City, Inc., 425 F.Supp. 1381 (D.Neb. 1977); Pinkerton's v. Superior Court (Schrieber), 57 Cal.Rptr.2d 356 (Cal. 1996); Providence Wash. Ins. v. Valley Forge, 50 Cal.Rptr.2d 192 (Cal. 1996); Allstate Ins. Co. v. Willison, 885 P.2d 342 (Colo.App. 1994); Chmielewski v. Aetna Cas. and Sur. Co., 591 A.2d 101, 113 (Conn. 1991)("property owned by an individual in a trade name is nonetheless owned by him"); Purcell v. Allstate Ins. Co., 310 S.E.2d 530 (Ga. App. 1983); Samples v. Ga. Mutual Ins. Co., 138 S.E.2d 463 (Ga. App. 1964) (holding that fact that plaintiff's husband purchased automobile in name that he used in doing business does not contradict fact that he owned automobile as individual); Georgantas v. Country Mut. Ins. Co., 570 N.E.2d 870 (Ill. App. 1991); Trombley v. Allstate Ins. Co., 640 So.2d 815 (La. App. 1994); Bushey v. Northern Assurance, 766 A.2d 598, 603 (Md. 2001)("sole proprietorship form of business provides 'complete identity of the business entity with the proprietor himself'"); Gabrelcik v. National Indemnity Co., 131 N.W.2d 534 (Minn. 1964); Carlson v. Doekson Gross, Inc., 372 N.W.2d 902, 906 (N.D. 1985)(holding that "when the designation of the named insured is in the form 'Individual dba ...' the individual is the named insured, irrespective of whatever language follows the 'dba' "); Recalde v. ITT Hartford, 492 S.E.2d 435 (Va. 1997) (holding that individual owner and proprietorship are single entity in insurance context).

Marion L. Eadon d/b/a C&B Fabrication is a sole proprietorship. "The sole proprietorship form of doing business encompasses the complete identity of the business entity with the proprietor himself or herself; thus, a sole proprietorship has no legal existence apart from its owner." 18 Am. Jur.2d Corporations § 6 (2004). "A sole proprietorship is *not* a legal entity itself. Rather, the term refers to a natural person who *directly* owns the business...." Providence, 42 Cal.App.4th at 1199.

In contrast to a sole proprietorship, "a corporation is a legal entity that is

completely separate and distinct from its shareholders...." Bogese, Inc. v. State Highway Comm'r., 250 Va. 226, 230, 462 S.E.2d 345, 348 (1995). A corporation, by definition, is not a form of sole proprietorship; the sole proprietorship is a business form in which an individual, rather than a partnership or corporation, owns the business. 18 Am. Jur.2d Corporations § 6 (2004); Ladd v. Scudder Kemper Investments, Inc., 741 N.E.2d 47 (Mass. 2001); Bogese, Inc. v. State Highway Comm'r, 462 S.E.2d 345, 348 (Va. 1995) (In contrast to a sole proprietorship, "a corporation is a legal entity that is completely separate and distinct from its shareholders...."). "[A]n individual obviously cannot 'do business as' a corporation." Carlson, 372 N.W.2d at 905.

By stipulation of the parties, the entities insured under the policy of insurance are corporations. The policy was reformed to identify the named insureds as C&B Fabricators, Inc. and LowCountry Signs & Fabrication, Inc. both d/b/a C&B Fabrication. The trade name "C&B Fabrication" is a fiction and does not constitute a separate legal entity from the corporations insured under the policy.

Therefore, despite the reformation the policy, the fact remains that the verdict was rendered against Marion L. Eadon, an individual, and not the corporations named in the policy. Marion L. Eadon and the corporations are distinct and separate legal entities. Therefore, the determination of whether he is entitled to indemnification depends on whether he meets the definition of an insured under the terms of the policy. Eadon does not meet the definition of an insured under the facts as determined by the jury in the Rhodes case and his own deposition testimony in this case.

III. Who is an Insured

As previously stated, the named insureds on the policy issued by Auto-Owners were corporations. The fact that the business entities being insured were corporations was plainly identified on the Declarations as "corporation." (See Declarations page of Policy). The Policy states, "[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." *See, 1(a).* The Policy further states the following:

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

(Policy, pp. 6-8).

Marion L. Eadon is not listed on the Declarations as an insured. Only the corporations C&B Fabricators, Inc. and LowCountry Signs & Fabrication, Inc. are listed as insureds. In addition, the Declarations page states that the entity being insured is a corporation. Therefore, to be an insured under the policy, Eadon must qualify under Section 1.c; - the damages awarded against him must have been as a result of carrying out his duties as an officer or director of C&B Fabricators, Inc. and LowCountry Signs & Fabrication, Inc. See Harrison v. Ohio Casualty Ins. Co., Inc., 199 F.Supp.2d 518 (S.D. Miss. 2000); Boso v. Erie Ins. Co., Erie Ins. Exchange, 669 N.E.2d 47 (Ct. App. Oh. 1995); Carpenter v. Federal Ins. Co., 637 A.2d 1008 (Pa. 1994); Bowie v. Home Ins. Co., 923 F.2d 705 (9th Cir. 1991).

An insurer's duty to indemnify an insured for damages awarded against it at trial is largely determined by the evidence introduced at the trial and the jury's verdict.

Likewise, in a subsequent action to determine coverage, all parties are bound by the evidence introduced at the trial, the legal rulings made by the trial judge, and the findings of fact made by the jury. The parties may not relitigate the factual findings essential to the judgment in the tort action. Sims v. Nationwide Mutual Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965).

"The insurer, however, is not bound as to issues not necessarily adjudicated in the prior action and can still present any [coverage] defenses not inconsistent with that judgment." Farmer v. Allstate Ins. Co., 311 F.Supp.2d 884 (2004). See also, Sims v. Nationwide Mutual Ins. Co., 247 S.C. 82, 87, 145 S.E.2d 523, 525 (1965) ("[T]he judgment against the indemnitee does not decide issues as to the existence and extent of the duty to indemnify, and that in a subsequent action the indemnitor may show that the circumstances under which he was required to give indemnity do not exist"). An insurer has the right to litigate coverage issues in a subsequent action, because the coverage issues, i.e., what damages, if any are actually covered by the insurance policy, were not litigated in the tort suit. Id. at 87, at 525-526; London v. The Surety Co., 250 S.C. 26, 156 S.E.2d 329 (1967).

The jury in the Rhodes case found that all of the actions regarding the billboard signs were taken by Marion Eadon individually doing business as C&B Fabrication, not as an officer, director or shareholder of C&B Fabricators, Inc. or LowCountry Signs & Fabrication, Inc. Eadon's status as an individual, as opposed to a corporate officer, cannot be relitigated in this action.

A review of the trial transcript reveals that Marion Eadon was sued individually d/b/a C&B Fabrication, that the jury found that Marion L. Eadon d/b/a C&B Fabrication was a separate entity from C&B Fabricators, Inc., and that Marion Eadon was acting *individually and* not as an officer, director or employee of any corporation. In fact, the

only way the jury could have found against Marion Eadon is if they determined that he was not working on behalf of a corporation.

The truth of this statement is learned by examining Judge Dennis' rulings from the bench and his charge of the law to the jury. Rhodes and Piedmont argued at trial that Eadon was doing business as an individual under the name of C&B Fabrication, which was a separate entity from his corporation, C&B Fabricators, Inc. Alternatively, they argued that Eadon was personally liable even if he was acting on behalf of a corporation because he negligently misrepresented facts to the plaintiffs, and he was personally involved in the construction of the signs.

However, Judge Dennis granted Eadon's motion for directed verdict, finding that there was no evidence of negligent misrepresentation. (Transcript, pp.74-75). In addition, Judge Dennis rejected Rhodes contention that Eadon was personally involved with the signs so as to make him liable individually.

> Mr. Blanton: As to the negligence count, your honor, if Mr. Eadon was an actor in the events, he is liable whether or not he's liable on the contract or not.
>
> The Court: Based on what theory if he's a corporation? If he was an agent doing work maybe there was a possibility, reading some of the cases, a possibility that would connect him individually, but if he's a corporation, I don't care what he is involved in. It's a corporate liability. . .
>
> Mr. Blanton: Because the actor in tort - - It doesn't matter whether he's an agent or not. He or she is still liable for what he or she does.
>
> The Court: Well. What proof do I have that he did anything other than talk on the phone?
>
> Mr. Blanton: He's the fellow that made the deal and promised to do it across the board.
>
> The Court: No sir. The deal is not the tort. The tort was building the sign improperly. That wasn't the deal. There's no evidence that he did any construction, none, zero.
>
> Mr. Blanton: If C&B Fabrication –

The Court: Thank you, Sir, I appreciate it. You can argue that one in Columbia. I'm comfortable with that one. I'm not the least bit concerned about him having responsibility personally because he didn't do anything with the construction. . .

In light of the evidence introduced at trial, the issue before the jury was simple.

> The question becomes, do you find it was a corporation? It's really simply charged this way, and I'm prepared to do it if you all agree to it because I'm charging on the facts, but it comes down to, if you believe the defendant was a corporation and not the individual, then that's it. But if you believe that the defendant – that this whole transaction was with Mr. Eadon, then you've got to find – you've got to determine how much damages, because then it simply shifts to the element of damages . . .
>
> But clearly, everything starts with, who was that person? Was that person the corporation or was that person the gentleman sitting at the table? It's that simple. . . .

(Transcript, Volume IV, Judge Dennis, p. 313, 315).

Judge Dennis correctly ruled that there was no evidence that Eadon personally participated in the alleged tortuous activities. Therefore, Eadon could not be individually liable to the plaintiffs if the jury concluded that he was acting as an officer, director or employee of a corporation. The only possible way that he could be liable to the plaintiffs individually is if the jury concluded that he was acting individually and not on behalf of any corporation. Judge Dennis charged the jury to that effect in explaining the verdict form:

> The third choice is, "we find for the Defendant." Now what will you be saying? One or two things, and one really incorporates the other. Obviously, the plaintiff has to prove the fault, the person who committed the negligence. **If you conclude from the evidence that the party that committed the negligence in this case was the corporation, in other words, the defendant was not acting individually but was acting through a corporation and as a corporation, then you must return a verdict for the defendant.**

(Transcript, Volume IV, Judge Dennis, p. 381) (emphasis added).

As previously stated, Eadon vigorously contended at trial that he was acting through and as a corporation in his dealings with the plaintiffs. Accordingly, Auto-Owners provided Eadon a defense to the action. However, in returning a verdict against

Eadon, it was necessary that the jury reject his contention and find that he was acting individually, and not on behalf of any corporation. Therefore, the parties should not be permitted to relitigate this issue.

Even if the Court permits the issue to be relitigated, Eadon does not meet the definition of an insured in relation to the verdict rendered against him. The Rhodes complaint alleges that Eadon negligently fabricated, erected, inspected and repaired the signs. (Rhodes Amended Complaint, p. 13). The complaint does not contain any allegation of vicarious or supervisory liability.

Eadon has testified that he intended to form a corporation for the purpose of engaging in the business of building billboard signs and intended for the policy to be issued to a corporation. He also admitted that he intended the policy to be issued to C&B Fabricators, Inc. (Eadon deposition, January 17, 2006, p. 12-14, 16-20). Furthermore, Eadon has testified that he knew nothing about the sign business. His only duty as an officer of C&B Fabricators, Inc and LowCountry Signs & Fabrication, Inc. was to provide money and insurance for the operation of the corporations. (Eadon deposition, January 17, 2006, p. 16, 32). Chuck Benenhaley, an employee of the corporation, was in charge of running the business and everything involved with building, erecting, inspecting and repairing signs. It was not within Eadon's duties as an officer to run the corporation, do any sign work, determine what materials were needed to perform sign work, negotiate any contracts or supervise the sign work or any of the employees. In was not within his duties as an officer of the corporations to design signs, build signs or repair signs. (Eadon deposition, January 17, 2006, p. 14-16, 32 ; Trial Transcript, Sept 1, 2004 p. 128-129, 130-132). All of those duties were assigned to Benenhaley.

Eadon had no duties as an officer of the corporation that could have subjected him to personal liability for the negligent acts alleged in the Rhodes case. He was not sued for, and therefore no verdict was rendered against him for, negligent performance

of any of his duties as an officer of the corporation. His duties did not include fabricating, inspecting, erecting or repairing the signs. He did not have any personal involvement in fabricating, inspecting, erecting or repairing the signs. Even if it was his duty to supervise these aspects of the business (which he denies), Rhodes did not allege any supervisory or vicarious liability. Rhodes simply alleged that Eadon himself failed to do these things, things that were not within his duties as an officer of the corporation.

Furthermore, Eadon's uncontroverted testimony is that C&B Fabricators, Inc. was no longer doing business and he was out of the sign business completely by the time that he began receiving calls from Rhodes about the leaning sign. (Trial Transcript Sept 1, 2004, p. 134-135; Letter from Eadon to Rhodes dated, December 29, 2000; Eadon deposition June 13, 2003, p. 93, 97). In addition, there is no evidence that LowCountry Signs & Fabrication, Inc. did any business with or had any relationship with Rhodes. Likewise, there is no evidence that Eadon undertook any action in regards to Rhodes within his duties as an officer of LowCountry Signs & Fabrication, Inc. (Eadon deposition, January 17, 2006, p. 35, 37).

Because Eadon is only covered under the policy with respect to his duties as an officer of the insured corporations, and his only duty as an officer (to supply money and insurance) could not have been the basis of the verdict against him, Auto-Owners has no duty to indemnify him for the damages awarded in the Rhodes case.

The facts of this case are similar to those in Creel v. Louisiana Pest Control Insurance, Inc., 723 So.2d 440 (La. App. 1998). Creel was injured in an automobile accident with Roy Slay. Slay was the president of Ray's Pest Control, Inc. At the time of the accident, Slay was traveling to a customer's house to spray for insects. Louisiana Pest Control Insurance, Inc. issued a CGL policy to Ray's. The policy contained the identical definition of "Who Is An Insured" as contained in Auto-Owner's policy. In analyzing the definitions, the Creel court stated the following:

> Under the language in (1)(c), an executive officer is only an insured if they are performing their duties as an executive officer. Pursuant to (2)(a), the employees of Ray's, other than its executive officers are also insureds under the policy. . . Thus, under the plain wording of the definition, an executive officer is precluded from being an employee and, thus, an insured except when performing his executive duties. Since we find that the language of the policy is clear and unambiguous, we must enforce the policy as written without resort to parol evidence concerning the intent of the parties with regard to what they intended the policy to provide.
>
> Slay testified that after he purchased Ray's, he assumed new duties associated with his position as president of the corporation. These duties included attending and participating in corporate meetings, the hiring and firing of personnel, handling financial dealings, and making corporate decisions. At the time of the accident, Slay was en route to spray a house for insects and pests. Under these facts, we find that he was not performing executive duties when the accident occurred, thus, the language of the policy plainly excludes him from being an employee and an insured.
>
> Id. at 443.

Creel makes clear that the relevant inquiry is whether an insured's performance of executive duties results in liability, not if the officer is in the course and scope of employment with the corporation. Therefore, despite being "on the job" at the time liability arose, the Creel court found that he was not an insured, because he was not performing any executive functions at the time liability arose.

Similarly, in Harrison v. Ohio Casualty Ins. Co., Inc., 199 F.Supp.2d 518 (S.D. Miss. 2000), a jury verdict was rendered against individual plaintiffs, Julia and Neil Harrison. The Harrisons were sued by a Dr. Fred McMillan after they had sold him a home they had built and had lived in for a number of years. McMillan alleged defective workmanship in the building of the home. The jury rendered a verdict against the Harrisons for the defects in the home. Id.

After the rendering of the jury's verdict, plaintiffs brought causes of action against several insurance companies, including American National Insurance Company. American National issued an umbrella coverage policy to "named insured," Service Air

Heating & Air Conditioning, Inc. The Policy Declarations page listed under "Named Insured" as: SERVICE AIR HEATING & AIR CONDITIONING, INC. ET AL. The Policy Declarations page also stated that the insured is an "Organization (Other than Partnership or Joint Venture)." Although the Harrisons were officers of the closely held corporation, no reference to the Harrisons was made on the Policy Declaration or throughout the body of the policy itself.

The policy at issue in Harrison contained the same definition of an insured as Auto-Owners' policy. The Court found that the Harrisons were not insureds under the terms of the policy. They failed to prove how their actions that led to the jury verdict against them qualified as part of their duties as officers or directors of the corporation. Basically, the Harrisons built the home on their own time and not as officers or directors of Service Air.

The main difference between the facts of Harrison and those in the present case is that the court in that action had to determine if the building of the home fell within the duties of officers and directors of Service Air. In our case, the issue has already been conclusively decided by the jury in the Rhodes case.

The case of Carpenter v. Federal Ins. Co., 637 A.2d 1008 (Pa. Super.1994) is also instructive. In that case, Robert Carpenter and Merle Kintigh formed a partnership for the purpose of constructing homes. One of their clients brought suit against Robert M. Carpenter and Merle R. Kintigh, individually, and trading and doing business as Kintigh and Carpenter Fine Homes. Carpenter brought a declaratory judgment action against several insurance companies. Two of the companies insured R.M. Carpenter d/b/a/ Wineman and Carpenter, Inc. Carpenter argued that these policies extended coverage to him as an individual, for his liability as a member of the partnership, which built the plaintiff's home (Kintigh and Carpenter a/k/a/ Kintigh and Carpenter Fine Homes).

The court ruled that Carpenter, the individual, was not an insured under the policy. The court relied heavily on the fact that the named insured on the policy, "R.M. Carpenter d/b/a/ Wineman and Carpenter, Inc." was identified as a corporation on the Declarations page. Id. at 1011. Therefore, Carpenter was included as an insured only with regard to his actions as an officer, director, and/or shareholder of the corporation. As in this case, it was undisputable that Carpenter was working on behalf of the partnership and not the corporation in building the home. Id.

In Lomes v. Hartford Financial Services Group, Inc., 105 CalRptr.2d 471 (2001) (Ca. App. 2004), Lomes and William Low were sole shareholders on Newton Wholesale Co, Inc. ("Newton"). Their business relationship soured and Low took control of the company, ousting Lomes as President and an employee of the corporation. However, Lomes remained a director and minority shareholder. Low and Newton sued Lomes as "an individual" for defamation and other causes of action. Lomes sought a defense from the insurance company that issued a CGL policy to the corporation.

At the time of the alleged defamation, Lomes was still a director, but not an officer or employee of the corporation. The policy issued by Hartford contained the identical definition of an insured used in the Auto-Owners policy. In finding that Lomes was not an insured under the policy, the court stated, "Lomes was sued as an individual, not as a director. And while it is undisputed that Lomes was still a director at the time of his alleged acts, he would also have had to be fulfilling his duties as an officer or director of Newton Wholesale to qualify for coverage." Lomes, 105 CalRptr.2d at 474.

Based upon the foregoing, the parties should be estopped from relitigating whether Eadon was acting on behalf of a corporation. Even if the issue is relitigated and the Court finds that he was acting on behalf of a corporation, he still does not meet the definition of an insured. Eadon's liability in the Rhodes case did not result from the performance of his executive duties as an officer of the corporation.

IV. Waiver and Estoppel

The Defendants claim that Auto-Owners has either waived or should be estopped from asserting that Marion L. Eadon d/b/a C&B Fabrication is not an insured under the policy issued in the name of C&B Fabrications, Inc. and Low Country Signs, Inc. They based their arguments on correspondence written to Piedmont Promotions, Inc. and C&B Fabrications, Inc. and Low Country Signs, Inc. by adjusters for Auto-Owners and court filings during the Rhodes case. However, their arguments fail.

Despite Defendants' arguments, an insurance company cannot waive into coverage by omitting a coverage issue from a reservation of rights letter or failing to inform an insured of a known coverage issue. South Carolina courts have repeatedly held that waiver does not apply in the insurance coverage context. "Waiver, like estoppel, is an affirmative defense and the burden of proof is upon the party who asserts it." Provident Life and Acc. Ins. Co. v. Driver, 317 S.C. 471, 478, 451 S.E.2d 924, 929 (Ct. App. 1994). "Waiver cannot create coverage and cannot bring into existence something not covered in the policy." Alverson v. Minnesota Mut. Life Ins. Co., 287 S.C. 432, 524 S.E.2d 140, 142 (Ct. App.1985); Laidlaw Environmental Services (TOC), Inc. v. Aetna Cas. & Sur. Co. of Illinois, 338 S.C. 43, 524 S.E.2d 847 (Ct. App. 1999); Johnson v. Wabash Life Ins. Co., 244 S.C. 95, 135 S.E.2d 620 (1964) (holding the doctrine cannot be invoked by an insured to create a primary liability of the insurer for which all elements of a binding contract are necessary.)

In Laidlaw, the insured attempted to argue that an adjuster for Aetna made certain admissions regarding coverage in a letter resulting in a waiver of a coverage defense. In adhering to the long-standing rule of law in South Carolina, the court rejected the argument, finding that an insurance company cannot waive into coverage. Laidlaw, 524 S.E.2d at 852. The Laidlaw court also discussed that there could be no waiver because Aetna, just like Auto-Owners in the present case, repeatedly reserved all

of its rights under the terms of the policy. Id. Therefore, the doctrine of waiver does not apply in this case and can not be used to prevent Auto-Owners from pursuing a valid coverage position in this case.

The Defendants also argue that Auto-Owners should be estopped from arguing that Eadon is not an insured as defined by the policy. Under South Carolina law, the essential elements of estoppel are divided between the estopped party and the party claiming estoppel. Southern Dev. Land and Golf Co., Ltd. v. South Carolina Pub. Serv. Auth., 311 S.C. 29, 426 S.E.2d 748 (1993). As to the estopped party, the essential elements are: (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions; (2) intention or expectation that such conduct be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. Id.

As to the party claiming estoppel, the essential elements are (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. Id. The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. Id.; Masonic Temple v. Ebert, 199 S.C. 5, 18 S.E.2d 584 (1942); Provident Life and Acc. Ins. Co. v. Driver, 451 S.E.2d 924 (Ct. App. 1994), 317 S.C. 471. "One with knowledge of the truth or the means by which with reasonable diligence he could acquire knowledge cannot claim to have been mislead." Southern Development Land and Golf Co., Ltd. v. South Carolina Pub Service Authority, 311 S.C. 29, 426 S.E.2d 748, 750 (1993); Regions Bank v. Schmauch, 354 S.C. 648, 582 S.E.2d 432 Ct .App. 2003).

The Defendants point to several letters written by Carl Anders and one written by Trevor Bedell, both adjusters, to Piedmont Promotions, Inc., C&B Fabrications, Inc. and

Low Country Signs, Inc. as evidence to support estoppel. They claim that Anders did not inform Eadon that he may not be an insured under the policy and therefore should be estopped from raising this issue. However, a review of the correspondence reveals that the letters dated February 8, 2001, May 22, 2001, and August 2, 2001 were written before any lawsuit was filed. Anders has testified that his records showed the insured as C&B Fabrications, Inc., and that the issue about whether Eadon would be individually covered under the policy was never a pre-suit issue. (Anders Deposition, p. 104, 124-125).

The two remaining letters, dated February 8, 2002 and September 25, 2002, were written following receipt of the suit papers. Although the pleadings named the Defendant as "Marion L. Eadon d/b/a C&B Fabrication", Anders and Bedell had no reason to believe that any such sole proprietorship existed. Eadon never informed Auto-Owners that he was doing business as a sole proprietorship. At all times before and during the litigation, Eadon took the position that no such sole proprietorship existed and that all alleged actions were undertaken by C&B Fabricators, Inc. (Anders Deposition, p 124-125; Answer to Amended Complaint in Rhodes). Auto-Owners assumed that all of the work was performed by C&B Fabricators(Fabrications), Inc. and that Rhodes intended to sue C&B Fabricators(Fabrications), Inc. Auto-Owners assumed that the pleadings would be amended to reflect the correct defendant and insured, C&B Fabricators(Fabrications), Inc. (Anders Deposition, p. 42-43)

In addition, the Defendants point to pleadings filed by Auto-Owners' coverage counsel as evidence of waiver or estoppel. It is true that Auto-Owners counsel used the term "Defendants" in one of its motions in the Rhodes case dated July 9, 2003. However, Auto-Owners believed at that time the motion was filed that Rhodes had intended to sue the named insured, C&B Fabrications, Inc. In addition, such misstatements of fact in a motion are not admissions in any way and do not alter the

undisputed fact that the policy was issued to C&B Fabricators, Inc. and LowCountry Signs & Fabrication, Inc., not Marion Eadon d/b/a C&B Fabrication. Furthermore, counsel for Auto-Owners clearly stated in oral arguments at summary judgment in this case that "Auto-Owners issued a general commercial liability policy to its insured, which was C&B Fabrications, Inc. Mr. Eadon is an officer of that corporation." (See transcript of record, Jan. 22, 2004, p. 2).

Auto-Owners, based on its policy issued to C&B Fabricators, Inc. and Eadon's position that no sole proprietorship existed, was under the impression that the pleadings would be amended to reflect the corporation it insured as the defendant. However, before the mediation that was scheduled in March 2004 began, Rhodes' counsel made it clear that he intended to sue Eadon individually acting outside the scope of any corporation. Once that became clear, Eadon and his counsel were informed at that time of the possibility that he may not be an insured under the policy, because he had not sued a named insured. (Anders Deposition, p. 36-37, 98, 102-104, 110-111, 124-125).

Following this revelation, Auto-Owners served also several requests to admit upon Rhodes on March 5, 2004. These requests addressed the specific issue that the Defendants now claim they were not aware of until after the trial. Rhodes admitted that C&B Fabrications, Inc. and Low Country Signs, Inc. were not defendants in the tort case and that they did not allege that "Eadon was acting as an officer, director, employee or agent of C&B Fabrications, Inc. or Low Country Signs, Inc. at the time of the events which are the subject of the allegations in the complaint." (Responses to Plaintiff's Request to Admit by Rhodes and Piedmont, served April 13, 2004). Eadon also served responses to the Request to Admit. (Responses to Request to Admit by Eadon, served March 29, 2004).

In addition, Rhodes served Requests to Admit of his own to Auto-Owners regarding this issue. This Request to Admit was forwarded to Eadon's counsel as well as to the Plaintiff. Rhodes sought the following:

> The Plaintiff's policy of insurance, effective September 17, 2000, identified in the Complaint in this action, which named as the insured "C&B Fabrications Inc. & Low Country Signs Inc" was issued for the purpose of insuring, within the provisions of the policy, the operation or operations conducted by Marion L. Eadon under whatever name and style used by him as either C&B Fabrications Inc, or C&B Fabrication, or C&B Erectors, Inc., or Low Country Signs Inc.

The request was denied as stated. (Plaintiff's Response to the First Request for Admission to Plaintiff, served May 5, 2004).

Rhodes and Eadon claim that these requests to admit did not put them on notice that Marion Eadon d/b/a C&B Fabrication may not be an insured under the policy. However, these assertions must viewed in light of the fact that both parties are arguing today, the exact position that Rhodes sought to be admitted in the request to admit served on Auto-Owners on May 5, 2004, some 4 months prior to the trial of the Rhodes case.

All parties to this litigation were aware of this potential issue months before the trial in the Rhodes case. Auto-Owners was not required to notify Eadon by way of reservation of rights letter that he may not be an insured under the policy if it was found that he was not acting for the corporation. At the time the issue arose, all parties were involved in a declaratory judgment action to determine whether coverage existed. Eadon and his counsel were made aware of the possibility that Eadon may not be insured individually in March 2004 and the requests to admit put the parties on notice that it was certainly an issue in this case. To claim that they were not aware of the issue before the trial is disingenuous and self-serving.

However, the issue really did not come to fruition until the trial of the Rhodes case. As discussed in other motions before the court, Judge Dennis found that Eadon

had not personally participated in any tortuous conduct that could result in a finding of liability against him unless he was, in fact, in business as a sole proprietorship as opposed to a corporation. He instructed the jury that the only way they could find Eadon individually liable was to find that he was not acting on behalf of any corporation. The jury found against Eadon (See Trial Transcript, Sept. 1, 2004, pp.74-75; Volume IV, Judge Dennis, p. 313, 315; Volume IV, Judge Dennis, p. 381).

It must also be remembered that this is an action to determine if Auto-Owners has a duty to indemnify Eadon for the damages awarded against him in the Rhodes suit. The allegations of the [c]omplaint are not determinative of the right to indemnity. Rather, such a determination is based upon the evidence and the facts found by the trier of fact. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999); Jourdan v. Boggs/Vaughn Contracting, Inc., 324 S.C. 309, 313-314, 476 S.E.2d 708, 711 (1996) (internal citations omitted). See also, Commercial Underwriters Ins. Co. v. Royal Surplus Lines Ins. Co., 345 F.Supp.2d 652 (S.D.Tex. 2004)(In general, the duty to indemnify is triggered by the actual facts establishing liability in the underlying suit); Winklevoss Consultants, Inc. v. Federal Ins. Co., 174 F.R.D. 416 (N.D.Ill. 1997)("finding while the duty to defend hinges on a liberal reading of the underlying complaint and thus can be determined on the pleadings, the duty to indemnify 'turns upon the facts of the underlying suit.'"); Hyman v. Nationwide Mut. Fire Ins. Co., 304 F.3d 1179, 1193 (11th Cir. Fla. 2002)("An insurer's duty to indemnify is ordinarily determined by analyzing the policy coverages based on the actual facts of the underlying case.").

The actual facts as determined by the jury established that Eadon was not acting on behalf of a corporation, and therefore did not meet the definition of an insured under the policy. This only became clear at the conclusion of the trial and only came about due to Judge Dennis' findings and charge to the jury regarding Eadon's potential liability.

In addition, all parties were fully aware in March of 2004 that whether Rhodes had sued an insured was a potential issue in the case. Therefore, the estoppel claim must fail.[1]

In addition, Eadon cannot prove that he reasonably relied on any statements contained in correspondence to him, therefore the estoppel claim must fail. All letters were addressed to the named insured as it appeared on the Declarations; C&B Fabrications, Inc. and Low Country Signs, Inc. In addition, none of the letters contain a statement by Auto-Owners that Eadon was individually covered under the policy of insurance. In fact, every reservation of rights letter written to C&B Fabrications, Inc., Auto-Owners reserves all of its rights under the policy and states, "The company reserves the right under the policy to deny coverage to you or anyone claiming coverage under the policy."

Furthermore, Eadon was at all times, in possession of the policy. The policy clearly states that officers of corporations are only insureds with respect to their duties as executive officers. The policy puts him on notice that if he is sued for something outside of his duties as an executive officer, he would not be considered an insured under the policy. Eadon had the "means of acquiring, with reasonable diligence, knowledge of the true facts" regarding coverages available under the policy. Having failed to read the policy, he can not now claim that Auto-Owners should be estopped from relying on the language contained in the policy as a defense to his claim of coverage. He had the policy for three years. He had every opportunity to read the policy and determine who and what was covered under the policy. See, Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 233 S.E.2d 111 (1977); Clinkscales v. North Carolina Mut. Life Ins. Co., 201 S.C. 375, 23 S.E.2d 1 (1942) ("[S]tatements contained in a writing duly signed cannot be avoided or evaded by failure of the signer to

[1] The Rhodes case was tried to verdict in September 2004.

read the same; and this rule is applicable to written contracts including insurance policies.").

Furthermore, Eadon has failed to prove that he relied on any misstatement of fact to his detriment. Eadon must prove that he made a prejudicial change in position due to his reasonable reliance upon a misstatement of fact. Provident Life, 451 S.E.2d at 928. He has testified that even if he had known that he would not be covered under the policy for a jury award, he would not have settled the case with Rhodes. He also has testified that he does not know what, if anything he would have done differently. (Eadon deposition 1/17/06, p. 48-52).

His attorneys have suggested that Eadon would not have permitted his lawyer to proceed under the defense that the sole proprietorship did not exist and that he was acting as a corporate officer. However, there is no competent evidence that Eadon would have done this. He has never testified that he would have done this. In fact, he has always maintained and continues to maintain that there never was a sole proprietorship, that he never did anything personally wrong and that he was acting on behalf of a corporation.

In addition, it would be nonsensical to abandon such a defense. Besides attacking the credibility of Rhodes' damages, this was the only defense available to him. If he did not pursue that defense, and as he has made abundantly clear that he would never consider settling with Rhodes under any circumstance, he would have had to admit liability and proceed directly to a trial on damages. At any rate, he would be in the same position he is now – a verdict rendered against him individually for acting outside of his duties as an officer of C&B Fabricators, Inc.

Eadon can point to no detrimental change in position due to any alleged *misrepresentation* of fact. He has had personal coverage counsel from the time that he received a reservation of rights letter through the present date. His personal counsel

collaborated with counsel retained by Auto-Owners to defend Eadon regarding the defense of the case and attended portions of the trial. Personal counsel replied to Requests to Admit on this very issue in March 2004, six months before the case went to trial in September. Simply stated, Eadon can not demonstrate that he was misled, that he reasonably relied on any statement or action of Auto-Owners or that he was prejudiced by any action taken or not taken by Auto-Owners.

Based upon the foregoing and evidence presented in this matter, Auto-Owners requests that the Court reject the Defendants' arguments of waiver and estoppel.

IV. Rhodes and Piedmont are judicially estopped from arguing that Marion L. Eadon d/b/a C&B Fabrication is the same as C&B Fabrications, Inc. or C&B Fabricators, Inc. or that Eadon was acting on behalf of a corporation in his dealings with Rhodes.

Rhodes claimed in the Fairfield County civil action that Marion Eadon did business only as Marion Eadon d/b/a C&B Fabrication, a sole proprietorship. Rhodes further claimed in the Fairfield County action that Marion Eadon held himself out as an individual and not one acting on behalf of a corporation. Rhodes, of course, prevailed on this theory. Marion Eadon defended himself in the Fairfield County action on the basis that his corporation, (or that a corporation regardless of the technical name (C&B Fabricators, Inc.)), was the real party in interest; any action on his part was done within the scope of his employment as an officer of the corporation. Marion Eadon failed on this theory and was found liable individually.

Rhodes cannot now argue that Marion L. Eadon d/b/a C&B Fabrication is the same as C&B Fabricators, Inc. Rhodes is bound by the doctrine of judicial estoppel from changing his position. In Hayne Federal Credit Union v. Bailey, 327 S.C. 242, 489 S.E.2d 472 (1997), the South Carolina Supreme Court formally adopted the doctrine of judicial estoppel as it relates to matters of fact, not law. Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict

with, a position the litigant has previously asserted in the same or related proceeding. Id. at 251, 477. See also Colleton Reg. Hosp. v. MRS Med. Rev. Systs., 866 F.Supp. 896, 900 (D.S.C. 1994)("Judicial estoppel is an equitable doctrine which precludes a party 'from adopting a legal position in conflict with one earlier taken in the same or related litigation.'") The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary. See Hawkins v. Bruno Yacht Sales, 353 S.C. 31, 42, 577 S.E.2d 202, 208 (2003).

The South Carolina Supreme Court adopted the following elements for judicial estoppel: (1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent. See Carrigg v. Cannon, 347 S.C. 75, 83, 552 S.E.2d 767, 772 (Ct. App. 2001).

Hayne involved a mortgage foreclosure. 327 S.C. 242, 489 S.E.2d 472. In defense of the foreclosure, the defendant debtor argued that he owned the real property. However, in a separate and prior civil action involving a divorce from his wife, the defendant debtor argued that his son owned the property. In Hayne, the defendant debtor was taking two "totally inconsistent" positions, while both positions could not be true at the same time. Id.

> To now argue that Marion d/b/a C&B Fabrication (a sole proprietorship) is the same as C&B Fabrications, Inc. (a corporation) would be to violate the foregoing principle. Rhodes and Piedmont presented evidence and argued to the jury that at all relevant times to the action, Marion Eadon was acting individually, doing business as an entity known as C&B Fabrication, and not as an employee, officer or director of any corporation. Eadon's only defense to the action was that at all relevant times, he was acting as an employee, officer or director of a corporation,

was not personally involved with the alleged negligent actions and, therefore, was not individually liable for the acts of the corporation.

As previously discussed, the transcript from the Fairfield County action reveals that Marion Eadon was sued individually d/b/a C&B Fabrication, that the jury found that Marion L. Eadon d/b/a C&B Fabrication was a separate entity from C&B Fabrications, Inc., and that Marion Eadon was acting individually and not as an officer, director or employee of any corporation. In fact, the only way the jury could have found against Marion Eadon is if they determined that he was not working on behalf of a corporation. (See **Who is an Insured** argument above).

Although Rhodes and Piedmont now try to obscure the jury's finding that Eadon was operating as a sole proprietorship and was not acting on behalf of a corporation, it was crystal clear to them when they successfully argued in response to Eadon's post-trial motions as follows:

> It was C&B Fabricators, Inc. which stopped doing business April 3, 2000 (before the sign began leaning), not C&B Fabrication. . . The contention of the defense, 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.

(See Plaintiff's Response to Defendant's Post Trial Motions, p. 11, n.1.) Rhodes further stated, "The testimony of Mr. Eadon, both on his deposition and at the trial confirm the true circumstances . . . that C&B Fabrication (not ever a corporate entity) . . ." Id.

Rhodes has also argued in this case that C&B Fabrication is and never was a corporate entity and that the jury in the Rhodes case "found (correctly so under clear facts) that the transaction was not between Rhodes and C&B Fabricators, Inc.", but between Rhodes and Marion L. Eadon d/b/a C&B Fabrication. (See Rhodes Brief in Support of Summary Judgment, p. 28).

Rhodes and Piedmont successfully argued and proved that Eadon was not acting on behalf on any corporation in the Rhodes case. They should be judicially estopped from arguing a different position in this action.

Conclusion

Based upon the foregoing, Auto-Owners requests that the Court find that Auto-Owners has no duty to indemnify Marion L. Eadon for the verdict awarded against him in the Rhodes case.

ELLIS, LAWHORNE & SIMS, P.A.

By: _____

A. Johnston Cox
John L. McCants
Post Office Box 2285
1501 Main Street, 5th Floor
Columbia, South Carolina 29202
(803) 254-4190
Attorneys for Plaintiffs

Columbia, South Carolina

7/24, 2006

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS FOR THE SIXTEENTH JUDICIAL CIRCUIT
AUTO-OWNERS INSURANCE COMPANY, Plaintiff, v. 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.	)	CIVIL ACTION NO. 02-CP-46-2369 **CERTIFICATE OF SERVICE**

I, Anne Palmer, with the law firm of Ellis Lawhorne & Sims, PA, do hereby certify that I have on the date below written caused a copy of the foregoing pleading to be served upon opposing counsel via United States Mail, first class postage prepaid, to:

William O. Sweeny, Esquire
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211

Hoover C. Blanton, Esquire
McCutchen Blanton Johnson & Barnette, LLC
Post Office Drawer 11209
Columbia, SC 29211

Creighton B. Coleman, Esquire
Coleman & Tolen, LLC
Post Office Box 1006
Winnsboro, SC 29180

Anne Palmer
Anne Palmer

Columbia, South Carolina

July 24, 2006

EXHIBITS

EXHIBITS

EXHIBIT 1

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:

EXHIBIT 2

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

I'VE THOUGHT ABOUT THAT, MR. BLANTON, ABOUT THE DEPARTURE FROM THE PLANS. IN FACT, I THOUGHT ABOUT THAT THIS MORNING.

IF I HAD SOME TESTIMONY, MAYBE, THAT THIS WOULD AT LEAST TO TRYING TO WORK IT THROUGH MY MIND THIS MORNING. IF THERE WAS SOME TESTIMONY, I COULDN'T REMEMBER ANY. MAYBE YOU CAN HELP ME -- THAT SAID THAT YOUR CLIENT, MR. RHODES, WENT AND SAID, WAIT A MINUTE, THAT DOESN'T LOOK LIKE THE PLANS AND HE SAID, OH, YES, IT IS. THEN -- THEN -- THEN WE'RE IN A DIFFERENT SITUATION, BECAUSE NOW I HAVE A POLE THAT'S EXISTING AND HE'S MAKING A REPRESENTATION THAT IT IS PRECISELY.

HE WAS GIVEN PLANS AND TOLD TO BUILD A --BUILD A BILLBOARD THAT WOULD STAY THERE. AND, FRANKLY, MR. RHODES DIDN'T HAVE ANY SPECIFIC OTHER THAN HE WANTED A BILLBOARD TO BE PUT THERE. HE GOT SOME PLANS, AND HE MODIFIED THEM; THAT WAS CLEARLY NEGLIGENT AND COULD BE RECKLESS, BUT CLEARLY NEGLIGENT. NO QUESTION BREACH OF THE CONTRACT. ABSOLUTELY, UNEQUIVOCALLY, I MEAN, I DON'T KNOW. YOU HAVEN'T MADE A MOTION YET BUT I HAVEN'T HEARD THE OTHER SIDE, BUT THAT'S GOING TO BE TOUGH.

BUT, CLEARLY, THE NEGLIGENCE ISSUE IS THERE. BUT, CLEARLY, IT'S NOT FRAUDULENT BREACH OF CONTRACT.

SO I WOULD GRANT THE MOTION FOR DIRECTED VERDICT ON FRAUDULENT BREACH OF CONTRACT. MIGHT AS WELL JUST SAY THE

SAME WOULD HOLD TRUE FOR FRAUD BECAUSE YOU'VE GOT TO PROVE ALL NINE ELEMENTS BY CLEAR, CONVINCING, AND COGENT EVIDENCE, AND I DON'T HAVE THAT BEFORE ME, SO THAT TAKES CARE OF THAT, THOSE TWO.

WHAT ELSE? MISREPRESENTATION, I THINK.

MS. GRIFFIN: ALL RIGHT. NEGLIGENT MISREPRESENTATION, YOUR HONOR, WE ALSO MOVE FOR A DIRECTED VERDICT ON THAT CAUSE OF ACTION FOR THE SAME REASON THAT ANY STATEMENT MADE BY MR. EADON IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF WOULD BE JUST SALES TALK OR ACCOMMODATION OF THE PRODUCT ITSELF, AND SO THAT WOULD NOT BE ACTIONABLE UNDER A NEGLIGENT MISREPRESENTATION.

THE COURT: YOUR ARGUMENT WOULD BE THE SAME OR SIMILAR, I THINK, MR. BLANTON, ON THAT. AND I REALLY THINK THIS IS A CASE OF BREACH OF CONTRACT IN NEGLIGENCE, AND I DON'T THINK THOSE CAUSES OF ACTION GIVE YOU ANY DAMAGE THAT YOU CAN'T SEEK IN THE FIRST TWO, SO. GIVES YOU A CHANCE -- I MEAN, I REALLY DON'T THINK THERE'S ANY PREJUDICE AT ALL TO THE PLAINTIFF AT ALL, BUT I DON'T REALLY THINK THAT THERE'S ANY NEGLIGENT MISREPRESENTATION OF MATERIAL FACT HERE.

ALL RIGHT. WHAT ELSE?

MS. GRIFFIN: YOUR HONOR, THE DEFENDANT ALSO MOVES FOR A DIRECTED VERDICT ON THE UNFAIR TRADE PRACTICE CAUSE OF ACTION ON THE BASIS THAT FIRST IS INDUSTRY, THE MAKING OF

EXHIBIT 3

STATE OF SOUTH CAROLINA)	
)	IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)	
SAMUEL W. RHODES AND)	DOCKET NO. 01-CP-20-334
PIEDMONT PROMOTIONS, INC.,)	
)	
PLAINTIFF,)	
)	
V.)	TRANSCRIPT OF RECORD
)	(JURY TRIAL)
MARION L. EADON, D/B/A C&B)	VOLUME IV
FABRICATION,)	
)	
DEFENDANT.)	
)	

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

BUILT IN ACCORDANCE WITH THE CONTRACT. SO THAT'S A DONE DEAL.

THE QUESTION COMES, DO YOU FIND IT WAS A CORPORATION? IT'S REALLY SIMPLY CHARGED THIS WAY, AND I'M PREPARED TO DO IT IF YOU ALL AGREE TO IT. I CAN'T DO IT WITHOUT YOU ALL AGREEING TO IT BECAUSE I'M CHARGING ON THE FACTS, BUT IT COMES DOWN TO, IF YOU BELIEVE THE DEFENDANT WAS A CORPORATION AND NOT THE INDIVIDUAL, THEN THAT'S IT. BUT IF YOU BELIEVE THAT THE DEFENDANT -- THAT THIS WHOLE TRANSACTION WAS WITH MR. EADON, THEN YOU'VE GOT TO FIND -- YOU'VE GOT TO DETERMINE HOW MUCH DAMAGES, BECAUSE THEN IT SIMPLY SHIFTS TO THE ELEMENT OF DAMAGES.

AND NOW WE'RE TALKING ABOUT WHAT'S THE LOSS TO THE PLAINTIFF, BECAUSE IT REALLY AND TRULY COMES DOWN TO THAT SITUATION. IT'S NOT -- REALLY, IT'S THAT SIMPLE, I THINK. MAYBE I'VE OVERSIMPLIFIED IT, BUT I TRULY BELIEVE THAT'S THE CASE. NOW, CLEARLY THE ELEMENTS OF DAMAGE -- NO QUESTION, THERE'S A BREACH OF CONTRACT. NO QUESTION, THERE'S NEGLIGENCE. NO QUESTION, THERE'S EVIDENCE OF RECKLESS DISREGARD FOR THAT, IF THE JURY CHOOSES TO BELIEVE THAT.

SO I WILL START WITH, THERE'S NO QUESTION OF THOSE PARTS AND NO QUESTION ACTUAL AND PUNITIVE DAMAGES, I THINK, HAVE TO GO TO THE JURY FOR THEIR

IS THE CORPORATION, IF -- EXCUSE ME, IF THE CONTRACTING PARTY -- BECAUSE EVERYTHING STARTS FROM THAT. THERE WAS A CONTRACT. MR. RHODES WENT AND SAID, "I WANT" -- IT'S PRETTY STRAIGHTFORWARD, AND I THOUGHT IT WAS GREAT, BECAUSE I'VE BEEN THERE, IN DEALING WITH MY LAST CONSTRUCTION PROJECT I HAD THAT WAS EXACTLY -- I SAID, "DON'T TALK TO ME, JUST TELL ME WHEN YOU CAN FINISH, AND I WANT IT DONE RIGHT", BASICALLY, AND THAT'S WHAT HE ASKED.

AND HE SAID, "GET SOME PLANS", AND THEY WERE PROVIDED. FROM THAT POINT ON, IT STARTS GOING DOWNHILL RAPIDLY. BUT CLEARLY EVERYTHING STARTS WITH, WHO WAS THAT PERSON? WAS THAT PERSON THE CORPORATION OR WAS THAT PERSON THIS GENTLEMAN SITTING AT THE TABLE? IT'S THAT SIMPLE. BUT YOU ALL THINK ABOUT IT, AND LET ME SEE WHAT JUDGE ALFORD WANTS TO DO AND GIVE YOU A CHANCE TO REFLECT ON IT.

MR. BLANTON: THANK YOU.

(OFF-THE-RECORD DISCUSSION)

THE COURT: LET ME JUST STATE, SO IT'S CLEAR, OBVIOUSLY WHAT I'M DOING, AND I REALIZE THAT PART OF THE BURDEN OF PROOF IN ANY CASE IS TO PROVE ALL OF THE ESSENTIAL ELEMENTS. AND ONE OF THE ESSENTIAL ELEMENTS, OBVIOUSLY, TO A CONTRACT IS THE PARTIES. SO THERE'S NO QUESTION THAT THERE'S TECHNICALLY, BECAUSE

THAT, WE FOUND BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT WAS NOT ONLY CARELESS AND NEGLIGENT, BUT WAS RECKLESS, WILLFUL AND WANTON, AND THAT THAT RECKLESSNESS, WILLFULNESS AND WANTONNESS PROXIMATELY CAUSED INJURY OR DAMAGE, AND THAT'S THE CLEAR AND CONVINCING STANDARD. "WE'VE CONSIDERED THOSE FACTORS AND WE DECIDE TO AWARD PUNITIVE DAMAGES IN THAT AMOUNT WHICH WE BELIEVE IS FAIR AND JUST AND REASONABLE UNDER THE CIRCUMSTANCES IN THIS CASE." AGAIN, IF YOU USE THAT, PLEASE WRITE IT FIRST IN WORDS, THEN IN NUMBERS.

THE THIRD CHOICE IS, "WE FIND FOR THE DEFENDANT." NOW, WHAT WILL YOU BE SAYING? ONE OR TWO THINGS, AND ONE REALLY INCORPORATES THE OTHER. OBVIOUSLY THE PLAINTIFF HAS TO PROVE THE FAULT, THE PERSON WHO COMMITTED THE NEGLIGENCE. IF YOU CONCLUDE FROM THE EVIDENCE THAT THE PARTY THAT COMMITTED THE NEGLIGENCE IN THIS CASE WAS THE CORPORATION, IN OTHER WORDS, THE DEFENDANT WAS NOT ACTING INDIVIDUALLY BUT WAS ACTING THROUGH A CORPORATION AND AS A CORPORATION, THEN YOU MUST RETURN A VERDICT FOR THE DEFENDANT. OR YOU MAY RETURN A VERDICT FOR THE DEFENDANT IF YOU FIND THAT THE PLAINTIFF FAILED IN HIS BURDEN OF PROOF ON ANY ONE OF THOSE ELEMENTS WE TALKED ABOUT, THAT IS, NEGLIGENCE, DAMAGES OR PROXIMATE CAUSE.

REMEMBER THAT YOU CAN'T AWARD PUNITIVE DAMAGES

EXHIBIT 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C. A. NO. 01-CP-20-334
COUNTY OF FAIRFIELD	)	
		FIRST AMENDED COMPLAINT
Samuel W. Rhodes, Jr. and	)	**(Breach of Contract)**
Piedmont Promotions, Inc.,	)	**(Breach of Warranty)**
	)	**(Strict Liability)**
Plaintiffs,	)	**(Fraudulent Breach of Contract)**
	)	**(Fraud)**
v.	)	**(Constructive Fraud)**
	)	**(Negligent Misrepresentation)**
Marion L. Eadon, d/b/a C & B	)	**(Negligence)**
Fabrication,	)	**(Bad Faith)**
	)	**(Nuisance)**
Defendant.	)	**(UTPA)**
	)	**(Jury Trial Requested)**

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 was158 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) 635-6884

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

EXHIBIT 5

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF YORK)

C/A No. 02-CP-46-2369

Auto-Owners Insurance Company,

Plaintiff,

v.

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.

COPY

DEPOSITION OF

MARION L. EADON

****

Tuesday, January 17, 2006
10:11 a.m. - 12:09 p.m.

The deposition of MARION L. EADON, taken on behalf of the Plaintiff at the law firm of Ellis, Lawhorne & Sims, 501 Main Street, 5th Floor, Columbia, South Carolina on the 17th day of January 2006 before Diane M. Hendricks, court reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

sure. I think that's maybe where we got the name. Of course, my nickname is Brother, so we might have used it for that. I don't remember all that.

Q: Was the business he was operating, was it a corporation?

A: I don't think so.

Q: Once you decided to get into this business what did you do?

A: I went and rented a facility and, of course, first we formed a -- you know, formed a corporation. Then I went and rented a building and proceeded to get the necessary equipment to do the job with such as cranes and dirt diggers and welding machines and whatever he said we had to have.

Q: Why did you form a corporation?

A: Mainly for protection.

Q: From what?

A: From anything that may happen. You know, I've had pretty good accountants and attorneys over the years. Of course, this is the advice that we always get that, you know, you form a corporation to protect yourself and, you know, that's the main reason for it.

Q: You mean from a liability standpoint?
A: Yeah.
Q: There's also possibly some tax benefits for doing that?
A: Yeah. A lot of different --
Q: What was the name of the corporation?
A: C&B Fabrications.
Q: C&B Fabrications, Inc.?
A: Uh-huh.
Q: I noticed you just told me you thought the name of the corporation was C&B Fabrications, Inc.?
A: (Nods head.)
Q: And I'm gonna show you what the Secretary of State's office -- the corporation showing you as the registered agent of C&B Fabricators, Inc.
A: Or whatever. They one in the same.
Q: Okay. That was my question.
A: It don't make any difference how you spell it.
Q: So when you say C&B Fabrications, Inc. you mean C&B Fabricators, Inc.?
A: Yeah. Whatever it was.
Q: The corporation that you formed?
A: Right.
Q: So if we refer to C&B Fabrications, Inc. or C&B

Fabricators, Inc. somewhere along in this deposition we're talking about the same thing?

A: Same thing.

Q: All right. You were the president of C&B Fabricators, Inc.?

A: I guess you could say that.

Q: You were an executive officer of the corporation?

A: Right. Chief financial officer.

Q: Chief financial officer?

A: Yeah.

Q: Okay. What was your -- I mean, you basically already told me this about basically, Chuck was to run the entire business and you were the money man. What was your role in the corporation? What did you do as the executive officer?

A: Mainly, I came in every morning to see what all needed to be ordered or whatever to fabricate signs with, to see -- sometimes to interview employees or just talk to them. Some of the people he had hired I'd like to talk to them and sometimes I would walk around to make sure that everyone was busy and stuff like that.

Q: Did you know anything about the billboard

signs?
A: No.
Q: Did you know anything about what to order or, you know, what materials were needed?
A: No. They just give you a list of what kind of steel they needed or whatever they needed.
Q: So basically your duty as executive officer or president, one of them, was to go ahead and you actually put in the orders for whatever they told you to order?
A: Well, the girls did. I just got the orders from Chuck and gave them to one of the secretaries to -- they checked around with several different people who -- steel and stuff, trying to get the best prices and that kind of stuff.
Q: Was it part of your duties as the president of the corporation to supervise the work of the employees and make sure they're doing it the right way?
A: No. I wouldn't have any idea whether they were doing it right or not.
Q: That was Chuck Benenhaley's?
A: That was Chuck's job and his brother's.
Q: And I think you alluded to this before. I

guess another one of your functions was to provide money?

A: That seemed like the only function.

Q: I mean, was that generally your only function, was to provide money?

A: Basically.

Q: When you mentioned you might talk to a potential employee, that's just to talk to them before they're hired just to see if they're, you know, not a criminal or whatever?

A: I just tried to see whether I liked them or not.

Q: Any other duties as an executive officer of C&B Fabricators or C&B Fabrications, Inc.?

A: Not really. I assumed they was in good hands.

Q: Was it part of your duties as executive officer to negotiate contracts with people or did Chuck do all that?

A: He did all that.

Q: Was it part of your duties as an executive officer to build the signs yourself?

A: No.

Q: Now, I understand that you went out and -- or an insurance policy was purchased for C&B Fabrications, Inc.?

A: Right.
Q: Is that right?
A: Uh-huh.
Q: How did you go about doing that?
A: Well, I mean, Mike Watson had a lot of my stuff insured anyway and we play poker once a week, so I just let him handle about everything.
Q: So who did you -- did you actually talk to Mike or did you talk to somebody in his office?
A: No. I talked to Mike.
Q: When you went in and talked to Mike about getting the policy, what information did you give him about what you were wanting and that sort of thing?
A: Well, he came down and, of course, you know, he handled the workers' comp and everything, so I just -- he went through the whole program, you know, with the workers' comp and the insuring of everything that we had. Just, you know, I just let him cover everything.
Q: I mean, did you tell him "I want a general liability policy, I want a workers' comp policy, I want this, that the other"?
A: Yeah. I told him I wanted the works whatever it was. I wanted a complete insurance package.

Q: Did you tell him that the business was a corporation?
A: Yeah.
Q: Did you tell him what the corporation did?
A: Yeah. He knew. He came down and looked at everything.
Q: Did you tell him that the name -- what the name of the corporation was?
A: Yeah.
Q: Did you tell him that the name of the corporation was C&B Fabrications, Inc.?
A: I don't remember that now. I mean, that's been -- I mean, I don't remember that conversation at all.
Q: Is it possible you told him it was C&B Fabrications, Inc.?
A: Oh, it's a possibility, yeah.
Q: Okay.
A: But I'm sure he looked at it, you know?
Q: Looked at what?
A: Looked at the paperwork for the corporation. You know, he talked to the secretary a good bit. He got most of the information from them on vehicles and all that kind of stuff that we had. You know, different trucks and equipment

that we had.

Q: If the policy was issued to C&B Fabrications, Inc. --

A: Uh-huh.

Q: -- did you consider that policy to cover C&B Fabricators, Inc., the corporate entity that's formed?

A: I assumed it covered everything that I was affiliated with, myself and all my affiliations with the sign business whatever name it was in.

Q: Well, let me ask you this: Did you tell Mike that you were operating any business that was not a corporation as far as sign building goes?

A: No.

Q: Did you go in there intending to insure any other type of business entity, other than your corporation that built signs?

A: No.

Q: Just so we're clear, when you went in and asked for the insurance policy from Mike, you knew that your business was a corporation?

A: Right.

Q: Right?

A: Uh-huh.

Q: You asked him to insure your corporation?

A: Right.
Q: You didn't tell Mike that you were operating the sign business as a sole proprietor?
A: No.
Q: Now, were you aware that the insurance policy, the -- I guess a general -- a commercial general liability policy was issued in the name of C&B Fabrications, Inc.?
A: Was I aware of it?
Q: Yes.
A: I assumed it had been done, you know? I don't look at all that stuff. I mean, it's tons of papers. I don't look at them really.
Q: Well, I mean, did you ever -- did you ever receive a copy of a commercial general liability policy issued to C&B Fabrications, Inc.?
A: To tell you the truth, I don't know.
Q: Is it possible that you did and you just don't remember?
A: Oh, that's a good possibility.
Q: Okay. Did you ever tell anybody at Creech Roddey or Auto-Owners or Owners Insurance that the name on the policy, C&B Fabrications, Inc., should be C&B Fabricators, Inc.?

Country Signs, Inc. to the policy to get insurance for the business that Sam Smith was already operating as Low Country Signs, Inc.?

A: Right. Uh-huh.

Q: You were aware that Sam Smith had already or there was already a corporation called Low Country Signs, Inc.?

A: Right.

Q: When you got the policy?

A: Uh-huh.

Q: What was your arrangement with Sam Smith? Was it something similar to what you had with Chuck or was it different?

A: Yeah. About the same.

Q: Did you become an officer of Low Country Signs, Inc.?

A: I guess you could say I was chief financial officer in that operation also.

Q: What were your duties as an executive officer of Low Country Signs, Inc.?

A: Just money and insurance.

Q: You just procured the insurance and supplied some money?

A: Right.

Q: You didn't supervise any work or write any

Q: That was after -- or sometime in December of 2000 or January of 2000 somewhere in that range?

A: I don't remember the timetable, but -- I can't remember, you know, when it was.

Q: Did Low Country Signs and Fabrications, Inc. ever do any business for Mr. Rhodes or have any relationship with Mr. Rhodes?

A: I don't recall. I don't really know.

Q: When Sam Smith -- I've got it. Okay. You were just mentioning that Sam had gone out at some point --

MR. COX: Mark that for me. I think I've only got one.

(Plaintiff's Exhibit Number Three was marked for identification purposes.)

Q: Is that what you're talking about, the invoice or proposal there to Mr. Rhodes?

A: (Reading.)

Q: Is that what you are referring to?

A: Yeah.

Q: That was done -- it says "Low Country Signs, Inc. --

A: Right.

Q: -- proposal"?

Q: Well, let me ask you this: Did this proposal from Low Country Signs, Inc., was that done on your behalf?

A: Not that I can recall, you know?

Q: And you as an officer of Low Country Signs, Inc. didn't request this proposal be done or have anything to do with that proposal?

A: No, not that I can remember.

Q: Did you request this proposal be done or have anything to do with this proposal on behalf of -- or as an executive officer of Low Country Signs and Fabrication, Inc.?

A: No. I didn't deal with any of that kind of stuff. Like I said, I just, you know, I let other people.

Q: The lawsuit that Mr. Rhodes filed against you --

A: Uh-huh.

Q: -- in that lawsuit you understand that he sued you personally?

A: Right. Uh-huh.

Q: He did not sue any corporate entity that you were involved with?

A: Right.

Q: And your defense at the trial, of the tort

A: I assumed I was covered irregardless, you know?
Q: Let's assume you were not.
A: Okay.
Q: If you had not been made aware of that, that was an issue, what would you have done differently in relation to the defense of your case?
A: What would I have done differently? Are you talking about when I took the policy out, would I have done anything different or when it was --
Q: No. When you -- in preparing for your defense in the trial --
A: Uh-huh.
Q: -- okay? If you had known, you know, assuming that you were not aware. If you had not known that the policy or that you might -- let me rephrase that. That was terrible. Assuming that you were not aware that there was an issue with the insurance company and whether or not you were personally insured under the policy, okay?
A: (Nods head.)
Q: If you had been made aware of that before the trial, would you have taken any different

Q: That's what you maintained throughout the entire trial was that you were working on behalf of the corporation and shouldn't be individually liable, right?

A: Yeah.

Q: Have you ever considered paying any money to Mr. Rhodes personally to --

MR. SWEENY: I object to that and I'm going to instruct him not to answer that question.

MR. COX: On what basis?

MR. SWEENY: On the basis that that is involved with a strategy, a settlement strategy, that we may or may not have. It would involve attorney-client privilege and I think it's beyond the scope of what you're entitled to ask here in the deposition.

MR. COX: Let me see if I can put it in a different context.

MR. SWEENY: I mean, conversely, if I got the Auto-Owners guy on the stand here and said, "What's your authority?" I mean, you would --

MR. COX: Oh, that's not what I'm asking.

MR. SWEENY: Okay.

MR. COX: I'm sorry. Let me rephrase it.

Q: Before the -- before the trial of the case,

okay? The trial we've already been through, was there any possible way that you were ever going to pay Mr. Rhodes a dime, personally?

MR. SWEENY: I object. That's speculative. But in addition I think that has to do -- that has so much to do with attorney-client discussion and privilege and I just -- I don't thing that's a proper question.

MR. COX: So you're instructing him not to answer that too?

MR. SWEENY: I am instructing him not to answer that.

MR. COX: Okay. Let me ask it a different way.

Q: If you had, assuming that you were not informed, okay? Let's just assume that for the sake of this question. If you had been informed that -- that you would not be an insured under the policy, if it were found that you were not working for the corporation, would you have done anything, paid Mr. Rhodes any money to get the thing settled?

MR. COX: Again, that might be speculative.

MR. SWEENY: Again, I am objecting on the ground of speculation --

MR. COX: Okay.

MR. SWEENY: -- but he -- you can answer the question if you're able to.
A: The answer is no.
Q: I think you -- okay. I think -- you weren't gonna pay Mr. Rhodes a dime under any circumstance?
A: No.
Q: Have you done anything to prepare for today's deposition?
A: Yeah. I got up and got dressed.
Q: All right. Have you ever talked with Mike Watson, your agent, regarding the issues with Auto-Owners in this case?
A: Have I discussed it with him?
Q: Yes, sir.
A: Oh, yeah. But I don't believe you want to hear what I said.
Q: Well, actually, I do want to hear what you said. If you could maybe delete the cuss words.
A: Too many women in here.
Q: What did you and Mike talk about?
A: I just, you know, told him I was very disappointed in how they were handling it.
Q: In how who was handling it?

EXHIBIT 6

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

AND HE WENT UP AND LOOKED AT THE CRANE AND SAID, YOU KNOW, THIS WAS THE ONE WE NEEDED TO DO THE JOB THAT WE HAD TO DO.

Q HOW DID C&B GET BUSINESS?

A WELL, A LOT OF PEOPLE, YOU KNOW, CALL CHUCK ANYWAY FOR REPAIRS AND, YOU KNOW, DIFFERENT THINGS THAT HE HAD DONE. AND I GUESS -- I THINK HE KNEW EVERYBODY IN THE BUSINESS, AND PROBABLY TO THIS DAY HAS AS MUCH KNOWLEDGE ABOUT SIGNS AS I GUESS ANYBODY AROUND, BECAUSE THAT'S ALL HE EVER DID. BUT HE MOSTLY, YOU KNOW, GOT ALL THE CLIENTS BECAUSE I REALLY DIDN'T KNOW HOW TO DISCUSS CERTAIN ASPECTS OF A SIGN THAT HE KNEW ALL -- ALL THE INS AND OUTS OF IT. AND, YOU KNOW, THERE'S PROBABLY 2 OR 300 DIFFERENT VARIATIONS OF SIGNS WHICH -- I MEAN, MOST PEOPLE WOULDN'T HAVE A KNOWLEDGE OF IT.

Q DID YOU ASSIST IN ANY WAY IN SELLING THE SIGNS?

A NO, BECAUSE THEY DID ALL THE COSTING. YOU KNOW, WHEN -- HIS WIFE ALSO WORKED FOR US. AND THAT WAS BY HIS INSISTENCE -- THAT SHE KNEW BASICALLY THE MATERIALS IT TOOK TO BUILD A SIGN. SO WHEN HE WOULD CALL HER AND TELL HER WHAT KIND OF SIGN THEY WERE BUILDING AND EVERYTHING, SHE KNEW THE TERMINOLOGY OF GETTING THE RIGHT STEEL AND THE RIGHT PIPE AND THE RIGHT WHATEVER. AND THEY HAD BEEN DOING IT SO MANY YEARS. AND SO I FIGURED THEY WERE THE BEST TO HANDLE THAT, ALL OF IT.

Q WERE YOU INVOLVED IN ORDERING ANY OF THE MATERIALS FOR

THE SIGNS?

A NO. I -- I LET THEM DO THAT.

Q WERE YOU INVOLVED IN ORDERING ANY BLUE PRINTS?

A NO. LIKE I SAY, THEY ALREADY KNEW ALL THAT STUFF AND I DIDN'T, YOU KNOW.

Q DID YOU HAVE ANY KNOWLEDGE WHERE YOU COULD HAVE ORDERED A SET OF BLUE PRINTS FOR A SIGN?

A NOT REALLY.

Q IN THE BUSINESS OF C&B WERE YOU EVER INVOLVED IN DRAFTING ANY OF THE PROPOSALS?

A NO, MA'AM.

Q WERE YOU INVOLVED IN APPROVING PROPOSALS?

A TO A CERTAIN EXTENT. I WOULD LOOK AT THEM. AND, OF COURSE, I WOULD ALWAYS SAY, WELL, CHUCK, YOU KNOW, IS THE COMPANY -- ARE WE GOING TO MAKE ANY MONEY ON THIS DEAL?

AND HE WOULD SAY, YEAH, WE WOULD.

SINCE I DIDN'T REALLY KNOW WHAT I WAS LOOKING AT, I TAKE HIS WORD FOR IT, THAT HE KNEW WHAT IT COST TO DO THIS.

Q GOING BACK TO THE BUILDING THAT YOU LEASED, WAS THERE A SIGN OR ANY INFORMATION ON THE EXTERIOR OF THE BUILDING SAYING WHAT BUSINESS IT WAS?

A YES, MA'AM, AFTER PROBABLY I'D SAY A MONTH OR TWO, THEY WENT OUT AND PUT C&B FABRICATION ACROSS THE FRONT OF THE BUILDING, WHICH WOULD HAVE BEEN FACING 301.

Q AND WHEN THE PHONE WAS ANSWERED AT C&B, HOW WAS IT

ANSWERED?
A C&B FAB.
Q DID YOU BECOME AWARE THAT SAM RHODES WAS LOOKING AT THE CORPORATION TO FABRICATE SIGNS FOR HIM?
A CHUCK BROUGHT SAM DOWN AND I MET HIM.
Q HOW MANY TIMES DID YOU MEET HIM?
A I DON'T REMEMBER BUT THE ONE TIME. THE ONLY REASON I REMEMBER THAT IS THAT I WAS STANDING OUTSIDE AND HE PULLED UP IN A -- I BELIEVE IT WAS A BLACK MERCEDES, AND I JUST, YOU KNOW -- RUN THROUGH YOUR MIND, MAYBE HE WOULD BE A GOOD CUSTOMER.
Q MR. EADON, CAN YOU SEE THIS IF I HOLD IT HERE?
A YEAH.
Q THIS IS DEFENDANT'S EXHIBIT NO. 14 MARKED FOR IDENTIFICATION.
A RIGHT.
Q WERE YOU INVOLVED WITH MR. RHODES IN THE CREATION OF THIS PROPOSAL?
A NO.
Q DID YOU HAVE ANY INPUT AT ALL INTO THE INFORMATION ON HERE WITH RESPECT TO THE STRUCTURE DESCRIPTION?
A NO.
Q DID YOU HAVE ANY INPUT WITH RESPECT TO THE REBECO (PHONETIC) PANEL, THE LIGHTS, THE INSTALLATION?
A NO, MA'AM.

Q DID YOU HAVE ANY INPUT INTO THE PRICING ON THE PROPOSAL?
A (SHAKES HEAD.)
Q DID YOU SIGN THIS PROPOSAL?
A NO.
Q DID YOU INITIAL THIS PROPOSAL?
A NO.
Q WHO INITIALED THE PROPOSAL?
A CHUCK.
Q AND WHEN YOU SAY CHUCK, YOU'RE REFERRING TO CHUCK BENENHALEY?
A YEAH.
Q AND IS THAT HIS SIGNATURE AT THE BOTTOM OF THE PAGE?
A YES, MA'AM.
Q UP HERE WHERE THERE'S A REDUCTION IN THE PRICE, $153,960, DID YOU APPROVE THE REDUCTION IN THAT PRICE?
A I DON'T RECALL THAT. BUT, YOU KNOW, I MAY HAVE. I DON'T REMEMBER THE INCIDENT.
Q WOULD THAT HAVE BEEN YOUR ONLY INVOLVEMENT IN THIS PROPOSAL?
A YES, MA'AM.
Q ONCE THAT PROPOSAL WAS ACCEPTED BY BOTH PARTIES, WHAT DID THE CORPORATION START DOING TO FULFILL THE PROPOSAL?
A I THINK PROBABLY THE FIRST THING THEY WOULD HAVE DONE WAS, OF COURSE, ORDER THE MATERIAL.

Q WERE YOU INVOLVED IN THAT?
A NO, I DIDN'T DO THAT. AND THEN PROBABLY ORDER THE BLUE PRINTS IF -- IF THEY DIDN'T ALREADY HAVE A COPY OF IT -- OF THAT SAME TYPE SIGN, YOU KNOW.
Q AND ONCE YOU HAD -- THE CORPORATION HAD THE MATERIAL AND THE BLUE PRINT ON SITE, THEN WHAT INVOLVEMENT WOULD YOU HAVE HAD WITH THE FABRICATION OF THESE SIGNS?
A NONE.
Q DID YOU HAVE ANY KNOWLEDGE AT ALL ABOUT HOW TO FABRICATE SIGNS YOURSELF?
A NO, MA'AM.
Q DID YOU HAVE ANY INVOLVEMENT AT ALL IN THE DESIGNING OF THE SIGNS?
A NO, MA'AM.
Q ONCE THE SIGNS WERE CREATED AT THE COMPANY, THEN DO YOU HAVE ANY KNOWLEDGE AS TO HOW THEY WERE INSTALLED AT MR. RHODES' PIECE OF PROPERTY?
A NO, MA'AM.
Q DID YOU EVER GO OUT TO THE SITE TO SEE WHAT WAS HAPPENING IN FAIRFIELD COUNTY?
A NO, MA'AM.
Q DID PIEDMONT PROMOTIONS PAY FOR THESE SIGNS?
A YES, MA'AM.
Q AND WHEN THE SIGNS WERE PAID FOR, CHECKS WERE SENT TO C&B FABRICATION. WHERE WERE THOSE CHECKS DEPOSITED?

Q WAS THAT THE SECOND OR THE THIRD INSTALLMENT FOR THESE SIGNS?
A MUST HAVE BEEN THE SECOND. I DON'T REALLY KNOW.
(PAUSE.)
MR. BLANTON: NO OBJECTION.
THE COURT: DEFENDANT'S EXHIBIT 25 WITHOUT OBJECTION.
(COPY OF 1 CHECK AND 1 DEPOSIT MARKED IN EVIDENCE AS DEFENDANT'S EXHIBIT NO. 25.)
Q MR. EADON, DID YOU EVER DEPOSIT ANY OF THE PIEDMONT PROMOTIONS MONEY TO ANY OF YOUR PERSONAL ACCOUNTS?
A NO, MA'AM.
Q DID C&B FABRICATORS STOP DOING BUSINESS AT SOME POINT?
A YOU SAY IT DID WHAT NOW?
Q DID THE CORPORATION STOP DOING BUSINESS?
A YES, MA'AM.
Q WHEN WAS THAT?
A I DON'T REMEMBER THE EXACT DATE. I CAN'T RECALL THE DATE.
Q AND WHEN YOU WENT OUT OF THE BUSINESS AS C&B FABRICATIONS ---
A YES, MA'AM.
Q --- FABRICATORS, DID YOU FORM ANOTHER COMPANY?
A YES, MA'AM.
Q AND WHAT DID YOU FORM THEN?
A BEG YOUR PARDON?

Q WHAT WAS THE NAME OF THE NEXT COMPANY?
A IT WAS C&B FABRICATIONS INCORPORATED AND LOW COUNTRY SIGN INCORPORATED.
Q AND HOW LONG DID YOU DO BUSINESS AS THAT ENTITY?
A PROBABLY ABOUT SIX MONTHS.
Q NOW, THERE WAS SOME TESTIMONY EARLIER ABOUT RECEIVING PHONE CALLS FROM MR. RHODES IN DECEMBER OF 2000.
A UH-HUH.
Q AT THAT POINT WERE YOU STILL IN THE SIGN BUSINESS?
A WHEN NOW?
Q IN DECEMBER OF 2000?
A NO, I DON'T KNOW WE WERE STILL IN BUSINESS.
Q WHEN YOU RECEIVED THE CALLS FROM MR. RHODES ABOUT THE PROBLEM WITH THE SIGNS, WHAT DID YOU DO?
A YOU MEAN ABOUT THE SIGN FALLING?
Q ABOUT THE SIGN LEANING?
A WELL, I CONTACTED TRACY BENENHALEY. AND TRACY HAD WORKED FOR ME, YOU KNOW, SOME. AND HE DECIDED TO, YOU KNOW, GO OUT ON HIS OWN. AND HE HAD ALREADY DONE SOME OF IT -- HE HAD A LITTLE COMPANY THEY CALLED T&T I BELIEVE IT WAS. AND I ASKED HIM WOULD HE PLEASE GO UP THERE AND SEE IF HE COULD FIX WHATEVER WAS WRONG WITH THE SIGN.
AND HE'S PRETTY ACCOMMODATING. HE SAID HE WOULD TRY TO FIX IT.
AND I SAID, OKAY.

EXHIBIT 7

Marion L. Eadon

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes
Rock Hill, S.C. 297[illegible]

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.

Marion Eadon

PLAINTIFF'S EXHIBIT tabbies 88

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF FAIRFIELD)

SAMUEL W. RHODES, JR. AND PIEDMONT PROMOTIONS, INC.,) DOCKET NO. 02-CP-20-334
Plaintiffs,
-vs-) DEPOSITION OF MARION L. EADON, JR.
MARION L. EADON, D/B/A C&B FABRICIATION,
Defendant.

Given before Vicki Sarvis Proctor, Court Reporter and Notary Public at the law offices of McCutchen, Blanton, Johnson & Barnette, LLP, 1414 Lady Street, Columbia, South Carolina, on, Friday, June 13, 2003, commencing at 9:42 a.m.

29; your letter -- this one there? I had a couple of questions about it. In the first sentence of that letter you say that C&B Fabricators went out of business April 3, 2000, correct?

A. Yeah, uh-huh.

Q. Give me the details of how it quote went out of business. Was it liquidated as a corporation?

A. It ran out of money.

Q. Was it ever liquidated as a corporation? Is it still a corporate entity?

A. I think it may be. I'm not sure. The accountant told me the reason we had to keep the corporation -- for some kind of tax. I don't remember.

Q. Okay.

A. I'll have to find out.

Q. So in summary, you don't know whether it's been liquidated as a corporate entity or not?

A. No, I don't know how they handled all that stuff.

Q. Did you have the same accountant do all your accounting work?

A. Yes, uh-huh.

Q. Who is that?

Q. Did they do any sign erection, Low Country Signs, Inc.?

A. Not that I remember.

MR. BLANTON: I need to make a comment.

(BRIEF BREAK BEGINNING AT 12:52 P.M. AND CONCLUDING AT 12:53. P.M.)

Q. In this, your letter of December 29 that you faxed to Sam Rhodes, what is the significance of the date of April 3, of 2000, as the date that C&B Fabricators went out of business?

A. What is the what now?

Q. What is the significance of the specific date as is -- from the general comment it went out of business. This is a specific date. What is it about that date that identifies it as the time that C&B Fabricators went out of business?

A. I don't really know the answer to that.

Q. Okay.

A. Maybe that was -- I don't know.

Q. So at the time this letter of December 29, 2000, that you sent to Sam Rhodes was sent, C&B Fabricators, Inc. had been out of business over eight months, from April 3 til to January 29. Is that correct?

A. Yeah.

EXHIBIT 9

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-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 1-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 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

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

EXHIBIT 10

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

May 22, 2001

C & B Fabrications, Inc.
Attn: Marion Eadon

RE: Claim No: 36-473-01
Policy No: 36064416
Date Loss: 1-20-01

Dear Mr. Eadon:

I'm writing to follow up with you in reference to a message you left on my voice mail. In that message you stated that you wished for Owners Insurance to pay your costs in having the second billboard sign taken down. I have previously explained to you on the phone and in writing that your policy does not have coverage for this expense.

I understand you took the signs down because of pressure you were receiving from the highway department and the chances that this sign could also fall. If you refer back to the letter that I wrote to you on May 1st and to the reservation of rights letter that I mailed you on February 8th, the exclusions for your work and what is considered property damage would apply to your expense for having this sign taken down.

If you or your attorney still have any further questions, feel free to contact me at 803-354-9022, Extension 220.

Sincerely,

Carl E. Anders, III
Field Claims Representative

CEA/mv

EXHIBIT 11

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

August 2, 2001

Piedmont Promotions, Inc.
Attn: Sam Rhodes

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 12

STATE OF SOUTH CAROLINA)
) IN COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK)
CASE NO.: 2002-CP-46-2369

Auto-Owners Insurance Company,

Plaintiff,

vs.

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

Defendants.

DEPOSITION OF

CARL ANDERS

JUNE 14, 2006

Deposition on oral examination of CARL ANDERS, reported by Patricia G. Bachand, Court Reporter and Notary Public in and for the State of South Carolina; pursuant to Rule 30 of the South Carolina Rules of Civil Procedure; said deposition taken at the law offices of Ellis, Lawhorne & Sims, PA, 1501 Main Street, 5th Floor, Columbia, South Carolina, on Wednesday, the 14th day of June, 2006, scheduled for one o'clock p.m. and commencing at the hour of 1:03 p.m.

the case; correct?

A. It's my understanding, yes.

Q. All right. And how did you infer was the defendant in that case? Who do you always believe was the defendant in the case?

A. Marion Eadon.

Q. Okay. Personally; right?

A. It was pursued against him, personally.

Q. All right.

A. But he stated that he was not personally; that he was a representative of C&B Fabrications, Inc, though.

Q. All right. At any time, did you ever communicate in writing to Mr. Eadon or anyone at his companies that he was not an insured under the policy?

A. Not in the three or four letters that I sent.

Q. Okay. In any other fashion, did you communicate to Mr. Eadon that he was not an insured under the policy prior to the amendment that was made in this lawsuit where that was listed as a new cause of action?

A. I believe he was -- would have been aware of that potential when a Dec Action was filed when Johnston Cox was involved.

Q. All right.

A. And then also at the attempted mediation we were going to have in Winnsboro.

Q. Did you look at the Dec Action before it was filed?

A. I'm sure I did. I just -- I don't recall.

Q. All right. Then you're aware that the original Dec Action did not contain a Cause of Action claiming that Marion Eadon was not an insured under the policy. You're aware of that; correct?

A. I'm not aware of that. I'd have to -- I'm not aware.

Q. All right. Are you aware that, subsequently, an amended complaint was drafted where that allegation was made, that he was not an insured under the policy?

A. I -- that -- a lot of that's been handled by counsel, so.

Q. Okay. Are you aware that the amendment that was made was not made until after the verdict had been rendered in the underlying tort action brought by Mr. Rhodes?

A. I'm not aware of when it was -- exactly when it was brought.

Q. Okay. When the -- let me show you the

does she have the authority to do that alone or --

A. Yes.

Q. Okay. All right. So as far as you know, was there ever any discussion with anyone regarding the fact that the lawsuit was -- and the policy were captioned differently in terms of C&B Fabrications versus C&B Fabricators? Was there ever any discussion about that with Mr. Eadon or anyone in his company?

A. I assume so, yes.

Q. Did you have any conversation like that with anyone?

A. I believe that, really, most of the conversations got going on about that was probably at the time the suit was filed, and then also at the attempted mediation we had out in Winnsboro. And I wouldn't -- it was -- if I recall, it was noted that C&B Fabrications, Inc., was not named in the suit. But then there were also attempts, or it was my understanding, that they were going to have the caption redone.

Q. You mean the lawyers for Mr. Rhodes --

A. Right.

Q. -- were going to redo the caption?

A. Right.

Q. Okay. Do you know if that was ever done?

A. It was not done.

Q. Okay.

A. It's my understanding that they wanted to keep it the way they had originally filed it.

Q. Okay. As you understand it, is there any -- let's say -- let's say that the suit was only against the corporation -- would it make any difference to your knowledge whether the corporation was properly identified as to Fabrications or Fabricators? Would that make any difference --

MR. COX: Object --

Q. -- in terms -- in terms of Auto-Owners providing coverage?

MR. COX: Object to the form; requires legal conclusions. He's not qualified to make that.

A. I guess that's a legal decision.

Q. Okay. Well, I'm asking you, from a personal standpoint as a claims handler. You don't have to -- you're not stuck with the law. Do you have an opinion?

MR. COX: Object to the -- same objection; calls for a legal conclusion.

A. I -- I think it's a legal decision.

MR. SWEENY: You know, I'm not sure about these objections. I think you can object to

by a liability insurer is triggered by the allegations in a complaint?

A. Yes.

Q. Do you agree with that?

MR. COX: Okay. I think that calls for a legal conclusion. I would objection to that on that basis.

A. I -- you've got to -- when I get a suit and I -- I look what the allegations in the complaint are, yes.

Q. In the --

A. But then again, I also look at all the other facts that I had in this Complaint -- information I received from Marion Eadon and C&B Fabrications, Inc. -- and felt like we owed a defense to him.

Q. In the February 8th, 2002 letter, it's Exhibit No. 5, you do not say in that letter anywhere that Auto-Owners does not insure Marion L. Eadon d/b/a C&B Fabrications, do you?

A. No, we don't say that we don't, you know, insure Marion Eadon acting individually and outside the scope of the operations of C&B Fabrications, Inc. And I don't think that was really fully developed or brought to light until the attempted medication in Winnsboro; and especially, the way the judge charged

Q. In the exhibits we've shown here -- your letter of February 8th, 2001, May 1, 2001, August 2, 2001, February 8th, 2002 and Mr. Bedell's letter of September 25, 2002 -- these letters are expressive of Auto-Owners' reservation of rights. But in none of these letters does Auto-Owners say that it does not insure Marion L. Eadon d/b/a C&B Fabrications, does it?

A. It doesn't mention that in there. But I don't -- I don't think that it really -- and I know how the suit was plead -- but again, that -- him being found acting personally, really kind of came to light -- or what your intentions were of pursuing him, personally, and not as an officer of the corporation -- came to light at the mediation, or attempted mediation; and then again at the trial.

Q. In none of these letters addressing reservation of rights did Auto-Owners issue through you and Mr. Bedell, in none of these letters, do you address what you're now telling us, in June of 2006, that you were entering into a defense because Mr. Eadon represented to you that he was being an officer of the corporation and that's how you were defending him. There's nothing in any of these letters that corroborates what you're telling us your reason for

defending him was, is there?

A. I don't see it in these letters. But he -- he knew that. And he understood it also; that he was named in here, individually. And so I -- it wasn't news to him. We had a Dec Action that was going on also. And that was brought up.

Q. My question is: There's nothing in any of these letters -- over a period of a year and a half -- nothing that confirms or corroborates your testimony today as to the reason for your defending him, is there?

A. He knew why.

Q. No, but there's nothing in the letters that corroborates what you're telling us, is there?

A. Well, that's why we just said at the end of the letter, "Our continued handling of this matter does not constitute and 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 your or anyone claiming coverage under the policy."

So just because -- I feel just because it's not listed in these letters, it doesn't mean it can't

be brought up through some course of the litigation that came about.

Q. Mr. Anders, Auto-Owners, through you and Mr. Bedell, obviously considered it significant and important to write Mr. Eadon these letters, several letters, addressing its reservation of rights, because that obviously was important to Auto-Owners; is that correct?

A. That's correct. I'd also like to back up a little bit too. You've got a couple of these letters that were sent out -- probably Exhibit 1 and 2, maybe, and another one to Rhodes -- and that was pre-suit -- and it wasn't, I guess, clear that you were personally going after Marion Eadon.

Q. But from February -- from January 7, 2002 forward when you had the suit papers, there was no ambiguity about it then; is that not correct?

A. I would say -- I would say more clear, you know, trial, really; and then -- and then that day out in Winnsboro.

Q. Mr. Anders, do you acknowledge, correctly so, that Auto-Owners considered it important to write these multiple letters to Mr. Eadon, specifying the policy terms, the policy exclusions, because that was important?

Q. Well, why did you mention her name then?

A. I said that he would be informed, and that he knew --

Q. Informed about what, as to coverage?

A. -- that --

Q. -- as to coverage?

A. Would you let me answer the question?

MR. COX: Let him finish, Mr. Hoover (sic).

Q. You're not answering my question. You're going off and --

A. You're not giving me a chance.

Q. -- and making your own question.

MR. COX: Now, I'm going to object. You are badgering the witness. And you're being argumentative. Let him finish the question.

MR. BLANTON: He's not responding to my question, is my point.

MR. COX: He is responding to the question. Just let him finish. I mean, there's no reason to get all upset.

A. You asked me, was Marion Eadon informed and aware the he might not be covered under our policy, or that he had personal exposure. I believe that he was fully informed of that.

Q. By whom?

A. Well, by myself; whether Johnston Cox's defense counsel had relayed that in some sort of fashion, be it Dec Actions or whatever; I know he's talked with -- had to have talked to his personal counsel about you personally going after him and not going after the corporation; and again, Catherine Griffin, who's defending him, she's got a -- I would assume that she knows and realizes that you're going after him, personally, and not going after the corporation; and that if he's found to be personally liable, there might not be coverage under a CGL policy.

Q. Mr. Anders, did you have any input into the decision on behalf of Auto-Owners to now say that Marion Eadon d/b/a C&B Fabrications is not insured under the Auto-Owners policy for the judgement against Marion L. Eadon d/b/a C&B Fabrications that was obtained by Rhodes and Piedmont?

A. I believe that was done by Counsel.

Q. Your answer is "no"?

A. No.

Q. Okay. Does Auto-Owners have a manual or any established written instructions or procedures for how a reservation of rights letter to an insured is to be framed?

CROSS EXAMINATION:

BY MR. COX:

Q. Did Marion Eadon ever tell you that he was operating some businesses as sole proprietorship?

A. No.

Q. In the prior suit being filed, was there ever any indication from anybody that there was any other entity out there other than C&B Fabrications, Inc.?

A. No.

Q. Was Mr. Eadon informed that day out there in Winnsboro that he may or may not be covered as an individual if he's found personally liable?

A. I believe so. I believe he understood the ramifications that if he was found personally liable, and if the pleadings were not changed to C&B Fabrications, Inc., they would have personal exposure.

Q. Even after the suit was filed, which named Marion Eadon d/b/a C&B Fabrication, were you ever informed by anyone that Marion Eadon was operating a sole proprietorship that's C&B Fabrication?

A. Do it again for me, please.

Q. Well, after the suit was filed and Mr. Blanton was talking about how -- what the defendant was couched as, as Marion d/b/a C&B Fabrication -- did

you have any reason to believe, before that day in Winnsboro, that there was any possible sole proprietorship out there known as Marion Eadon d/b/a C&B Fabrications?

A. No.

Q. And did Mr. Eadon ever tell you there was any sole proprietorship out there, Marion Eadon d/b/a C&B Fabrications?

A. No.

Q. Either before suit or after suit?

A. No.

Q. There was some mention earlier about a liability claim versus, like, a first-party claim.

A. Yes.

Q. And when you were talking about a liability claim, what did you mean by that?

A. A liability claim being made against one of our insureds by somebody.

Q. Okay. Under a liability policy?

A. Under a general liability policy; be it a homeowners policy or a commercial liability policy.

Q. As opposed to your insured making a claim for some type of a loss.

A. First-party loss; if they'd had a fire loss or --

EXHIBIT 13

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY

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

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.

DEFENDANT'S EXHIBIT

021

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

EXHIBIT 14

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
SOUTHERN-OWNERS INSURANCE COMPANY

September 25, 2002

BRANCH CLAIM OFFICE
2000 Center Point Drive, Suite 2200 • P.O. Box 211909
Columbia, SC 29221-8909
803-354-9022 FAX 803-354-9034
Toll Free: 800-437-0519
WWW.AUTO-OWNERS.COM

Marion Eadon
C & B Fabrications, Inc. &
Low Country Signs, Inc.

RE: Insured: C & B Fabrications, Inc. & Low Country Signs, Inc.
Claim No: 36-473-01
Date Loss: 1-23-01

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 right.

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 1 of that form and is as follows:

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

COPIED FOR H. D. LEGAL

(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" is 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:

K. "Property damage" to "your property" 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

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 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 by 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 known or suspected defect, deficiency, inadequacy or dangerous condition in it.

The policy definition of "your product" includes:

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 required; and

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

In addition, "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 or failure to provide warnings or instructions.

The policy definition of "your work" includes:

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.

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,

R. Trevor Bedell
Claims Representative

RTB/mv

COPIED FOR H. O. LEGAL