

Vol. III

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

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

Auto-Owners Insurance Company, ...Petitioner,
v.
Samuel W. Rhodes, Piedmont Promotions, Inc.,
Marion L. Eadon d/b/a C&B Fabrication, C&B
Fabrications, Inc., and Low Country Signs, Inc., ...Respondents.

APPENDIX

Volume 3

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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

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SC Court of Appeals

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

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EXHIBIT 15

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

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.

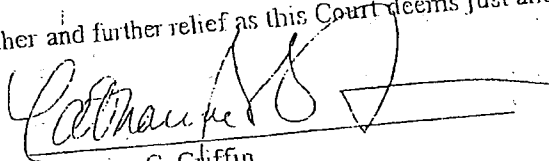
FOR A SEVENTEENTH DEFENSE TO ALL CAUSES OF ACTION

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.



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Attorneys for Defendant

Columbia, South Carolina

July 6, 2003

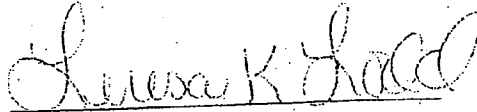
CERTIFICATE OF MAILING

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, of Baker, Ravenel & Bender, LLP, do hereby certify that I have served the following with the foregoing Answer to the First Amended Complaint by depositing same in the United States mail, postage prepaid to the the attorneys at the following addresses:

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Winnsboro, SC 29180

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JUL 17 9 21 AM '03
FEDERAL COURTS
CLERK OF DISTRICT
CITY OF COLUMBIA


Teresa K. Todd

Columbia, South Carolina

July 16, 2003

EXHIBIT 16

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

AUTO OWNERS INSURANCE)
COMPANY,)

PLAINTIFF,)

VERSUS)

TRANSCRIPT OF RECORD

02-CP-46-2369

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

JANUARY 22, 2004
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, MASTER IN EQUITY

APPEARANCES:

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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

1 THE COURT: MR. COX.

2 MR. COX: THANK YOU, JUDGE. YOUR HONOR, THIS IS A DECLARATORY
3 JUDGMENT ACTION. I REPRESENT AUTO OWNERS INSURANCE COMPANY. WE
4 HAVE FILED THIS SUMMARY JUDGMENT ON THE GROUNDS THAT TAKING
5 THE FACTS IN THE LIGHT MOST FAVORABLE TO THE OTHER PARTY, THAT
6 AUTO OWNERS HAS NO ADDITIONAL DUTY TO INDEMNIFY ITS INSURED FOR
7 DAMAGES THAT HAVE ALLEGED IN A LAWSUIT THAT HAS BEEN FILED IN
8 FAIRFIELD COUNTY.

9 AUTO OWNERS ISSUED A GENERAL COMMERCIAL LIABILITY POLICY
10 TO ITS INSURED, WHICH WAS C&B FABRICATIONS, INC. MR. EADON IS AN
11 OFFICER OF THAT CORPORATION. OF COURSE, C&B CONTRACTED WITH
12 PIEDMONT PROMOTIONS, INCORPORATED TO ERECT, TO INSTALL,
13 CONSTRUCT AND ERECT SOME BIG BILLBOARD SIGNS YOU SEE AS YOU GO
14 DOWN THE INTERSTATE, AND THEY CONTRACTED TO ERECT THREE OF
15 THOSE SIGNS WHICH WERE, IN FACT, CONSTRUCTED, INSTALLED AND PUT TO
16 THEIR INTENDED USE BY PIEDMONT PROMOTIONS.

17 AFTER THIS HAPPENED, AFTER THE SIGNS WERE ERECTED ONE OF THE
18 SIGNS FELL ACROSS THE HIGHWAY; ACTUALLY FELL OVER AND FELL
19 ACROSS THE HIGHWAY. THERE WERE SOME DAMAGES BECAUSE OF THAT,
20 MAINLY DEALING WITH DEPARTMENT OF TRANSPORTATION BILLS TO CLEAN
21 UP THE SIGN, TO GET THE SIGN OUT OF THEIR HIGHWAY; YOU KNOW, TO RE-
22 ROUTE ROADS SO THAT PEOPLE COULD THROUGH. AND I BELIEVE THERE
23 WAS DAMAGE TO A FENCE, AS WELL. AND THOSE DAMAGES WERE SENT TO
24 AUTO OWNERS. AND THOSE ARE THE DAMAGES THAT ARE ALLEGED IN

EXHIBIT 17

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	RESPONSES TO THE PLAINTIFF'S
Plaintiff,	)	REQUEST TO ADMIT BY
	)	DEFENDANTS SAMUEL W. RHODES
v.	)	AND PIEDMONT PROMOTIONS, INC.
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L.	)	
Eadon, C&B Fabrications, Inc.,	)	
and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	
	)	

The Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. respond to the Plaintiff's Request to Admit dated March 15, 2004 as follows:

1. C&B Fabrications, Inc. is not a defendant in the action 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 in the Fairfield County Court of Common Pleas.

Response: They admit only that C&B Fabrications, Inc. is not named a defendant in the identified action.

2. Low Country Signs, Inc. is not a defendant in the action 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 in the Fairfield County Court of Common Pleas.

Response: They admit only that Low Country Signs, Inc. is not named a defendant in the identified action.

3. In the action 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 in the

Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. allege that Marion Eadon is liable to them individually, doing business as C&B Fabrication.

Response: Denied. They admit only that in the identified action they allege that Marion Eadon was doing business as C&B Fabrication and is liable to them for the reasons alleged in the Amended Complaint in that Action.

4. In the action 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 in the Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. do not allege that Marion 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.

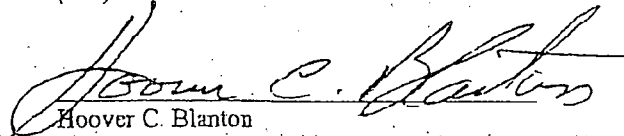
Response: Admitted.

5. In the action 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 in the Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. allege that Marion Eadon was acting as an individual doing business as C&B Fabrication and not as an officer or employee of C&B Fabrications, Inc. or Low Country Signs, Inc.

Response: Denied. They admit only that in the identified action they allege that Marion L. Eadon was doing business as C&B Fabrication.

(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.**

April 13, 2004

EXHIBIT 18

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

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.,)

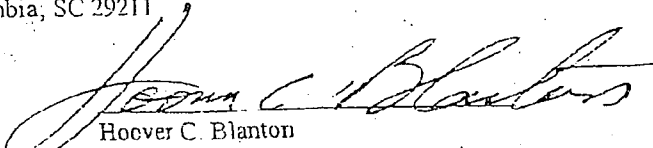
Defendants.)

CERTIFICATE OF SERVICE

I, Hoover C. Blanton, of McCutchen Blanton Johnson & Barnette, L.L.P., do hereby certify that a copy of the **Responses to the Plaintiff's Request to Admit by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc.** 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 13th day of April, 2004 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 SIXTH CIRCUIT
	)	
Auto-Owners Insurance Company,	)	CASE NO. 02-CP-46-2369
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT MARION L. EADON'S
	)	RESPONSE TO PLAINTIFF'S
	)	REQUEST TO ADMIT
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L. Eadon,	)	
C&B Fabrications, Inc. and Low	)	
Country Signs, Inc.,	)	
Defendant.	)	

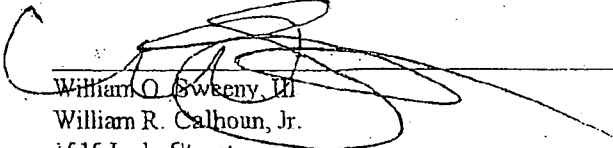
TO: A. JOHNSTON COX, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Marion L. Eadon's response to the Plaintiff's Request to Admit:

RESPONSE: Requests 1, 2, 3, 4 and 5 are not directed to Defendant Marion L. Eadon, and therefore, this Defendant does not require a response. However, if these requests are in any way directed to Defendant Eadon, this Defendant denies the same.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


 William O. Sweeney, III
 William R. Calhoun, Jr.
 1515 Lady Street
 Post Office Box 12129
 Columbia, South Carolina 29211
 (803)256-2233
 Attorneys for Defendant Marion Eadon

Columbia, South Carolina
 March 29, 2004

*Memorandum In Opposition to Auto-Owners
Insurance Company's Motion for Summary Judgment
01-CP-20-334*

CERTIFICATE OF SERVICE

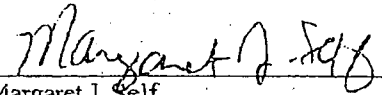
I, the undersigned secretary of the law offices of Sweeny, Wingate & Barrow, P.A., attorneys for Defendant Eadon, do hereby certify that I have served a copy of the foregoing Response to Request to Admit in connection with the above-referenced case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Hoover C. Blanton, Esquire
McCutchen, Blanton, Johnson & Barnette
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

Catharine H. Griffin
Baker, Ravenel & Bender, LLP
Post Office Box 8057
Columbia, South Carolina 29202

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


Margaret J. Self

Columbia, South Carolina
March 28, 2004

30

EXHIBIT 19

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

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.

CIVIL ACTION NO.: 02-CP-46-2369

PLAINTIFF'S RESPONSE TO THE FIRST
REQUEST FOR ADMISSION TO PLAINTIFF
BY DEFENDANTS SAMUEL W. RHODES AND
PIEDMONT PROMOTIONS, INC.

TO: CREIGHTON B. COLMAN, ESQUIRE, AND HOOVER C. BLANTON, ESQUIRE,
ATTORNEYS FOR DEFENDANTS, SAMUEL W. RHODES, JR. AND PIEDMONT
PROMOTIONS, INC.:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff responds to the First Request for Admission to Plaintiff by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. as follows:

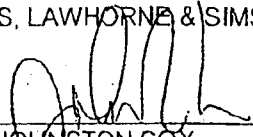
1. In the years 1999, 2000 and 2001 there was no corporate entity chartered in South Carolina named "C&B Fabrications, Inc."

RESPONSE: Admitted. The corporate entity chartered is C&B Fabricators, Inc.

2. 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.

RESPONSE: Denied as stated. The Plaintiff craves reference to its policy as to who is an insured under the terms of the policy.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

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

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

May _____, 2004

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FAIRFIELD	)	CIVIL ACTION NO.: 01-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.	)	
	)	

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff, does hereby certify that service of the attached Plaintiff's Response to the First Request for Admission to Plaintiff by Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. 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 May, 2004, addressed as follows:

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

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

William Sweeney, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, South Carolina 29211

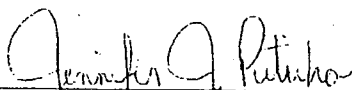

Jennifer J. Putrka

EXHIBIT 20

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

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

Plaintiffs,)

v.)

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

Defendant.)

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

**PLAINTIFFS' RESPONSE TO
DEFENDANT'S POST-TRIAL
MOTIONS**

OCT 1 9 15 AM '04
FAIRFIELD COUNTY
CLERK OF COURT
BETTY JO BECKHAM

The Defendant makes four motions:

1. For Judgment Notwithstanding the Verdict as to the Eighth Cause of Action (Negligence);
 2. Alternatively for a New Trial on the Eighth Cause of Action;
 3. Alternatively for a New Trial Nisi Remittitur on the Eighth Cause of Action;
- and
4. For a Post Trial Review of the Punitive Damages Verdict "to determine if the award is unconstitutional and violative of due process guarantees."

JUDGMENT NOT WITHSTANDING THE VERDICT

The evidence established conclusively a case of negligence, gross negligence and recklessness. But for the Defendant's contention that he personally was not an actor in designing, making, erecting and inspecting the signs, the Court indicated that a directed verdict as to liability in favor of the Plaintiffs would have been granted. The jury resolved

the factual issue in favor of the Plaintiffs that the Defendant was doing business as C&B Fabrication. By reason of the jury's resolution of that factual issue, the Court can now view the Motion for Judgment Notwithstanding the Verdict as of the time the Motion for a Directed Verdict was made free of that now-resolved factual issue. Inasmuch as the Motion for Judgment Notwithstanding the Verdict is merely a renewal of the Motion for Directed Verdict the Motion should be denied.

MOTION FOR NEW TRIAL

1. The Defendant's first three grounds for a new trial pertain to the non-admission of proffered evidence about the Administrative Law Judge order and contentions that the signs were illegal. That proposed evidence was properly excluded. It sought to bar recovery based upon the doctrine of collateral estoppel. Under the facts of this case, collateral estoppel had no proper place. Collateral estoppel was discussed at length, including the facts and authorities in the context of this case, in the Plaintiffs' Trial Brief submitted to the Court before the trial began. That discussion is incorporated by reference to avoid repetition.

Since it [collateral estoppel] is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.... thus, even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded.

State v. Bacote, 331 S.C. 328, 503 S.E.2d 161 (1998).

The Defendant's contention in its ground three that the Plaintiffs had "opened the door" to the issue, by presenting evidence that the Plaintiffs had requested that the sign permits be reissued, is misdirected. It was because of the Defendant's contention that the

Plaintiffs failed to mitigate damages that this evidence was necessary. In the absence of that evidence having been presented by the Plaintiffs, the Defendant would have contended that the Plaintiffs made no effort to have the permits reissued. It was the mitigation defense, invoked by the Defendant, that made this evidence necessary.

2. The Defendant's ground that Duke Durden was not qualified to give an opinion as an expert real estate appraiser, is without merit. Duke Durden did his investigation and prepared a lengthy written report (59 pages) with copies of documents referenced in his report appended thereto. He is a State Certified General Real Estate Appraiser. He has practiced his calling for many years. He lives in Fairfield County. He is familiar with land and land values in Fairfield County. He has served on the Fairfield County Planning Commission, including service as Chairman. He has performed thousands of appraisals.

A copy of Mr. Durden's report was furnished defense counsel. Thereafter defense counsel deposed Mr. Durden at length about all aspects of his report. Defense counsel also cross-examined Mr. Durden at length during the trial, both as to his qualifications and as to his report (a copy of which defense counsel had in hand during much of the cross-examination). During the cross-examination, Plaintiffs' counsel made no objection to any question asked him by defense counsel. Full opportunity and total latitude were allowed on the cross-examination of Mr. Durden. Mr. Durden was not a creature from the swamp snuck in under the cover of darkness through the cellar of the Courthouse the night before the trial as a surprise witness. What his anticipated testimony would be and the basis upon which his opinions rested were well known and published beforehand both in his written report and on his deposition.

South Carolina Evidence Rule 702 says:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Durden qualified in each category "by knowledge, skill, experience, training, [and] education." He was previously qualified and had testified previously as an expert witness in civil litigation in South Carolina.

The qualification of a witness as an expert in a particular field is within the sound discretion of the trial judge. ... In any event, where an expert's testimony is "based upon facts... sufficient to form a basis for an opinion..." it is within the province of the jury to determine its probative value.

Smoak v. Liebherr-America, Inc., 281 S.C. 420, 315 S.E.2d 116, 118 (1984). Recently the Court of Appeals said in the case of Thomas Sand Company v. Colonial Pipeline Company, 349 S.C. 402, 563 S.E.2d 109, 113 (Ct. App. 2002):

"The test for qualification is a relative one that is dependant on the particular witness's reference to the subject" (Cite omitted). "The term 'expert' has many lights and shadows. It can denote a man who is a recognized authority and, perhaps as accurately, a fellow who once went to the city. At what point between these two extremes he will be allowed to express an opinion on the witness stand will be for the trial judge to decide in the first instance."

Because he met the criteria for an expert real estate appraiser, Duke Durden was properly qualified as an expert witness in this case.

3. The Defendant's grounds 5, 6 and 7 assign error in failing to give certain charges requested by the Defendant. No exceptions were taken by the Defendant to the charge as given. (Rule 51 SCRCP.) In any event, the failure to give the requested charges was not prejudicial. The request to charge about criteria in a condemnation proceeding would

have been inappropriate because this is not a condemnation case. The jury was informed, through the evidence presented, that the South Carolina Department of Transportation was condemning a portion of the property. There was no mystery or secret about this. It was in the mix of information and facts the jury had to reach its decision. The requested charge about a non-conforming sign was inappropriate. Under the evidence, but for the sign falling, the signs would have remained, whether or not non-conforming. The request pertaining to the "economic loss rule" was properly denied. The inapplicability of the economic loss rule in this case was discussed at length in the Plaintiffs' Trial Brief and is incorporated herein by reference to avoid repetition.

CLAIMED EXCESSIVE VERDICT

The Defendant's contention that the verdict was excessive because "it included damages for future loss of profits which were not within the required standard of certainty" ignores both the proof and the applicable law. The issue was not whether future profits were lost. That is a given under the facts. The challenge is whether the proof was sufficient. The Plaintiffs submit that it was more than sufficient. The Plaintiffs' economic expert presented three tables of projected potential income, based upon different scenarios. The jury did not adopt the smallest nor the largest in terms of dollar figures that were presented.

The Defendant's contention that the expenses of Piedmont Promotions, Inc. should have off-set future profits, was and is a contention only. That contention was at the heart of Dr. Teel's effort at minimizing, in his view, future profits. However, there were multiple flaws in his presentation. Damage to the real estate and damage to Piedmont because of cessation of revenue from the leases of customers renting space on these three signs were the

Plaintiffs' damages. Merely because the Defendant sought to compromise and confuse the issue by dragging in the overall business operations of Piedmont and to demean Piedmont as a "risky" business [Dr. Teel] could not have the effect of changing the facts. The claim was for revenues lost as a consequence of these three signs being down. This was demonstrated in the cross-examination of Dr. Teel as to whether his opinion of future profits would be the same had the signs been owned by "Widow Jones" and were they her only asset and source of income. In any event, the collateral source rule (which was correctly charged the jury) protects a damaged plaintiff from being denied full recovery from the tortfeasor because the injured plaintiff may realize payment or offset for some of his actual losses from a collateral source (in this instance a claimed tax benefit by reason of having depreciated and/or deducted the value of the signs as a casualty loss on income tax returns).

More telling, however, is the testimony of the Defendant's expert, Dr. Teel. Dr. Teel did his study and analysis and gave his view of what the lost profits should be. In doing so, however, he candidly acknowledged on cross-examination that the methodology employed by him and employed by the Plaintiffs' expert, and others in the economic field, was exactly what they did. That is: they made projections into the future as to what anticipated profits would be, based upon experience and the information available. Dr. Teel acknowledged that this is a routine and common practice in the financing field by lending institutions when determining the merit of loans in proposed profit-making ventures. Simply stated, it is the way things are done. Dr. Teel also candidly acknowledged that there were "other ways" of doing the projections other than the way he did them.

The Plaintiffs' tried. They did their best to present a rational, feasible, realistic projection of lost profits. Dr. Teel did an expert job in attempting to minimize those lost profits. The jury, as the fact finder, made a decision based upon all the evidence presented.

The basic measure of actual damages is the amount needed to compensate the Plaintiff for the losses proximately caused by the Defendant's wrong so that the Plaintiff will be in the same position he would have been in if there had been no wrongful injury. Actual damages include compensation for all injuries which are naturally the proximate result of the alleged wrongful conduct of the Defendant. ... However, proof of amount of loss with absolute or mathematical certainty is not required. Ralph King Anderson, Jr., South Carolina Requests to Charge - Civil, 2002 §13-2.

Two major areas of damage were experienced by the Plaintiffs. Damage to real estate and loss of current and prospective income from rental of the signs.

Under South Carolina law, "[t]he general rule is that in case of an injury of a *permanent* nature to real property ... the proper measure of damages is the diminution of the market value by reason of that injury, or in other words, the difference between the value of the land before the injury and its value after the injury.

Yadkin Brick Company, Inc. v. Materials Recovery Company, 339 S.C. 640, 529 S.E.2d 764 (Ct. App. 2000); Peoples Federal Savings & Loan Association v. Resources Planning Corporation, 358 S.C. 460, 596 S.E.2d 51(2004).

The law does not require absolute certainty of data upon which lost profits are to be *estimated*, but all that is required is such reasonable certainty that damages may not be based wholly on speculation and conjecture, and it is sufficient if there is a certain standard or fixed method by which profits sought to be recovered may be estimated and determined with a fair degree of accuracy.

Petty v. Weverhaeuser Company, 288 S.C. 349, 342 S.E.2d 611 (Ct. App. 1986).

The Court correctly charged the jury on the law applicable to damages and prospective profits. No exception has been taken by the Defendant to the Court's charge on damages to real property and as to prospective profits.

In any event, where the wrongdoer creates a situation that makes proof of the exact amount of damages difficult, juries are allowed to act upon probable and inferential as well as direct and positive proof. Powers v. Calvert Fire Insurance Company, 216 S.C. 309, 57 S.E.2d 638 (1950); Johnston v. Brown, 290 S.C. 141, 348 S.E.2d 391 (Ct. App. 1986).

The Plaintiffs proved both past and future lost income and lost profits as a direct result of the sign falling and the remaining two signs having to be taken down at the mandate of the SCDOT because of legitimate safety concerns for the traveling public.

A verdict will not be set aside for excessiveness unless there is a showing that the verdict is a result of caprice, passion, prejudice or other considerations outside the evidence. Norton v. Ewaskio, 241 S.C. 557, 129 S.E.2d 517 (1963). Where the amount of the verdict bears a reasonable relationship to the character and extent of the injury and damage sustained, it is not excessive. Watson v. Wilkinson Trucking Co., 244 S.C. 217, 136 S.E.2d 286 (1964); Oliver v. Blackney, 244 S.C. 565, 137 S.E.2d 772 (1964); Baughman v. South Carolina Insurance Company, 249 S.C. 106, 152 S.E.2d 733 (1967); Cohen v. Allendale CocaCola Bottling Co., 291 S.C. 35, 351 S.E.2d 897 (Ct. App. 1986).

As to the Defendant's ground that the verdict indicated passion, caprice or prejudice or some other influence outside the evidence, one would have to reject the evidence presented by the Plaintiffs and consider only the evidence presented by the Defendant to

arrive at such a conclusion. The verdict was certainly responsive to the evidence. In fact, a verdict two or three times the amount of actual damages that were awarded by the jury would have been supported by the evidence. Under the evidence presented, the jury's verdict was more than supported. Under the facts it was more than justified.

PUNITIVE DAMAGES

Punitive damages are recoverable when the evidence shows a willful, wanton or malicious invasion of the rights of the Plaintiff and "the test by which a tort is to be characterized as reckless, willful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the Plaintiff's rights." (Emphasis added)

Fennell v. Littlejohn, 240 S.C. 189, 125 S.E.2d 408, 413 (1962) (Verdict for \$2,000.00 actual damages and \$8,000.00 punitive damages [4 to 1 ratio]). The test has been more than met in this case. As required, the test has been met by clear and convincing evidence.

1. The design plans for the signs were not followed;
2. No design plans were followed;
3. Building code requirements were not met;
4. Industry standards were not met;
5. Thinner and weaker (1/2 inch thick instead of 3/4 inch thick) material was used;
6. More sections of pipe were used than the design plans called for which created a hinge effect at the splices;
7. The base section of pipe was too short to sustain the stresses caused by the additional sections and the methodology of splicing and welding;
8. Only two interior rings on each splice were installed instead of the minimum three

rings required;

9. The insertion depth (embedment) at each splice was too shallow and insufficient.
10. The method and style of welding the sections was inadequate and deficient;
11. The cap ring at each splice was not larger than the receiving pipe, which prevented having a more effective weld.
12. Failing to adequately inspect and repair the sign deficiencies when inspections and repairs were done two or three days before a sign fell.

The Defendant implemented all of the defects in the sign towers as constructed. This was not the first sign the Defendant had constructed. The Defendant had obtained drawings for signs he had made before and had used a design engineer in Athens, Tennessee (Thompson Engineering Group) and had "stacks" of drawings prepared by this engineering firm for previous signs constructed by the Defendant. This demonstrates, along with other evidence, that the Defendant was not a novice in building signs. Accordingly, the decision not to follow the Thompson drawings was a **conscious** decision. It was not mere inadvertence or oversight. The decision to use oversized or undersized pipe was a **conscious** decision. The decision to use a shorter section base pipe was a **conscious** decision. The decision to have only two interior rings instead of a minimum of three was a **conscious** decision. The decision to use a cap ring which was not larger than the receiving pipe at the splice (which would have permitted a more effective weld) was a **conscious** decision. The decision to use one-half inch diameter metal instead of the called for three-quarter inch diameter metal was a **conscious** decision. The decision to use a shorter base pipe instead of the longer base pipe was a **conscious** decision. The decision to use more sections and splices

(calling for more rings and stouter welding) was a **conscious** decision.

The question naturally surfaces as to **why** an informed and experienced sign builder would pursue such egregious practices. It is submitted that the evidence furnishes the only inference which explains (but does not excuse) why it was done. The construction and erection of the signs was completed on February 22, 2000. In his December 29, 2000 fax letter to Sam Rhodes, Mr. Eadon said that C&B Fabricators (not C&B Fabrication) went out of business April 3, 2000 (Plaintiffs' Exhibit 8B).¹ That was six weeks after the signs were erected. According to the Defendant's economist, C&B Fabricators, Inc. was not a successful business and that is why it stopped doing business. Mr. Eadon reportedly lost one

It was C&B Fabricators, Inc. which stopped doing business April 3, 2000, not C&B Fabrication. Mr. Eadon has been consistent in what happened to C&B Fabrication, both on his deposition and in his testimony at the trial. He testified in both instances that C&B Fabrication (not a corporate entity but a name in which Mr. Eadon was doing business) merged into Lowcountry Signs & Fabrication. Lowcountry Signs & Fabrication was chartered May 1, 2000 (just four weeks after C&B Fabricators, Inc. ceased doing business). Mr. Eadon testified, both on his deposition and at the trial that C&B Fabrication merged into Lowcountry Signs & Fabrication. Documents introduced into evidence, bank statements and cancelled checks, confirmed "C&B Fabrication d/b/a Lowcountry Sign Fabrication, Inc. ". Mr. Eadon identified checks signed by him in September 2000 as "C&B Fabrication D/B/A Lowcountry Sign Fabrication Inc." (Plaintiffs' Exhibit 47). That was over five months after C&B Fabricators, Inc. stopped doing business on April 3, 2000, according to Mr. Eadon's letter of December 29, 2000. Mr. Eadon confirmed that Lowcountry Signs was later dissolved. C&B Fabricators, Inc. is still in existence as a corporation. It has not been dissolved. The contention of the defense, in the pleadings and other pre-trial documents submitted to the Court has advanced the contention that C&B Fabrication and C&B Fabricators, Inc. are one and the same. However, that has never been the case. The testimony of Mr. Eadon, both on his deposition and at the trial confirm the true circumstance, to wit, that C&B Fabrication (not ever a corporate entity) did business as Lowcountry Signs and Lowcountry Signs thereafter was chartered and later dissolved. The "contention of the defense" that C&B Fabricators, Inc. and C&B Fabrication were one and the same was a misdirection ploy. The jury followed the path of accuracy in this case based upon solid evidence, not upon contentions.

and a half million dollars. Accordingly, C&B Fabricators, Inc. was a failing business at the time the signs were made. The Defendant elected, in that circumstance, to use inventory remnant material to make signs to cut his losses. That is a reasonable inference and the only plausible one under the evidence presented. The Defendant offered no other explanation.

The Defendant knew at the time these signs were being made from inventory remnants that they were going to be erected alongside Interstate 77. The Defendant knew their height would reach the travel lanes of Interstate 77. The Defendant knew, or at least should have known, that such shabby and impermissible construction was a hazard not only to Sam Rhodes but to the motoring public. Yet the Defendant pursued erecting these disasters-waiting-to-happen. As the evidence revealed, as constructed and as erected, those signs were going to fall down. It was only a matter of when. The "when" occurred about eleven months after they were put up. In the face of such an indifferent practice, clear and convincing evidence is almost a slam-dunk. A motorist traveling Interstate 77 in South Carolina should not have troubled thoughts as to whether a billboard sign is going to fall on the Interstate because of junk-yard style construction. The South Carolina Department of Transportation officials should not be burdened with the troubling question of whether billboard signs along Interstate 77 have been constructed and erected by shade-tree fabricators without reference to design considerations, code requirements, or industry standards. The tax-payer should not be burdened with the cost of having additional personnel on the State payroll to minutely inspect each outdoor advertising billboard sign to assure that it complies with the minimum requirements. In private enterprise the State should not be burdened with furnishing the fabricator or the owner-to-be with an architect

EXHIBIT 21

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

INTRODUCTION

This is a Declaratory Judgment (DJ) action in which the Plaintiff Auto-Owners Insurance Company (Auto-Owners) seeks a declaration of no coverage under its liability insurance policy issued to C&B Fabrications, Inc. and Low Country Signs, Inc.¹ The Defendants, Samuel W. Rhodes (Rhodes) and Piedmont Promotions, Inc. (Piedmont) ask for a declaration that the Plaintiff's policy of insurance does afford insurance coverage for the events alleged [and proved at the trial] in the Amended Complaint in the underlying action.

These Defendants instituted a civil action in the Court of Common Pleas for Fairfield County, South Carolina against Marion L. Eadon, d/b/a C&B Fabrication (Eadon or C&B) in which they sought recovery for damages to real estate owned by Rhodes and lost income

¹ There was no corporate entity "C&B Fabrications, Inc.". There was no corporate entity "Low Country Signs, Inc.". This will be discussed in detail in this brief.

by Piedmont as a result of C&B having designed, fabricated and erected three outdoor advertising billboard sign towers (sign or signs) in Fairfield County, SC which were negligently designed, fabricated and erected and which defective condition C&B failed to discover and correct on its inspection after notice was given of one of the signs leaning. One of the signs later fell on Interstate I-77 and because of safety concerns the South Carolina Department of Transportation (SCDOT) mandated that Rhodes take down the remaining two signs which was done. The action was tried the week of August 30, 2004. The Plaintiffs proved damages to the real estate and resulting damage to Piedmont because the property it had leased lost income it would have received had the signs remained. At the end of the four-day trial the jury returned a verdict for the Plaintiffs under the Negligence cause of action for \$3,000,000 actual damages and \$3,500,000 punitive damages. On the Contract cause of action and the Implied Warranty cause of action Plaintiffs' verdicts for \$5,000 actual damages in each were awarded. No other causes of action were submitted to the jury. Rhodes and Piedmont elected to recover on the Negligence cause of action in which the jury rendered the \$6,500,000 verdict. Judgment was entered by the Clerk of Court on the jury's verdict on September 2, 2004. The Defendant's post-trial motions were denied.

In this DJ action the Defendants Rhodes and Piedmont in their Answer ask for a declaration that the policy affords liability insurance coverage to C&B for the event and resulting damage proximately caused by the negligence, recklessness and willfulness of C&B. The issues are before the Court on cross-motions for Summary Judgment.

FACTUAL BACKGROUND

Rhodes is the sole owner and stockholder of Piedmont, a South Carolina S-Corporation. Rhodes and Piedmont own or lease outdoor advertising space in various

locations. Rhodes obtained permits in the name of Piedmont to erect three outdoor advertising signs on real estate owned by Rhodes in Fairfield County adjacent I-77. A proposal dated July 9, 1999 by C&B to design, fabricate, deliver and install the three outdoor signs was submitted to Rhodes by C&B. The proposal was on the letterhead of C&B Fabrication. Nothing on the proposal indicated that C&B is a corporation. The initial proposal by C&B was for \$155,460.00. This was negotiated downward to \$153,960.00. This revised proposal was accepted by Rhodes on August 4, 1999. When the proposal was accepted by Rhodes he paid one-half the agreed price to C&B. On February 8, 2000 a second payment check to C&B was made by Rhodes and on February 22, 2000 the third and final check to C&B was made when the installation of the fabricated signs was completed by C&B. When Rhodes made the final payment to C&B he requested, as a condition of making the final payment, a copy of the engineering drawings for the signs. On February 22, 2000, Tracy Benenhaley, C&B's man on the erection site, furnished Rhodes a copy of the drawings purporting to be the ones from which the signs had been fabricated. These drawings were prepared by Thompson Engineering Group, L.L.P. of Athens, Tennessee for "C&B Fabrication" and were dated July 13, 1999. Nothing on the drawing indicated C&B is a corporate entity. (See Rhodes' Affidavit)

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

so.

Rhodes testified that when he was informed that one of the signs was leaning he went to the location and discovered that the middle sign was leaning. He contacted Eadon to have the leaning sign repaired and inspect the other two signs. Rhodes testified on his deposition:

A: I talked to him and Marion. Somehow or another, I don't know if they were together or what, because I called C&B or Marion and this guy calls me back, and so I don't know if they were.

Q: You don't know if they were together or Marion was shutting his business down?

A: Marion ended up sending people to come fix it.

Q: Did someone come out to fix that sign?

A: Yes, sir.

Q: Do you know what repairs were made on that sign?

A: They came out to fix that sign and they were supposed to inspect all signs and make sure there were no problems with any of them.

Q: Do you remember was it C&B or was it Low Country?

A: C&B

Q: They came out, do you remember what they did as far as repairs, if any, they made?

A: When I left the location they had the middle sign hooked up to a crane and they were supposedly restraightening the sign, and assured me there was no danger and that they would inspect all signs and make sure there was no danger, and everything was fine before they left.

Q: Do you recall approximately when this was?

A: That should have been in January of 2001. (pp. 37-38)

Q: Could you tell me factually – you had told me someone came out from C&B to try, apparently failing to repair, but you thought repairing the sign. Do you know the time frame between when they

did that repair that you saw and when the sign actually fell?

A: Would you have a calendar? If not, I can guess.

Q: I won't hold you to it as a firm date, just what you believe.

A: Two days.

Q: Within two days after they were making the repairs?

A: Yes, sir, two or three. (Rhodes deposition, pp. 44-45)

On the afternoon of January 20, 2001, one of the signs fell on I-77 across both southbound traffic lanes. The sign that fell was the southernmost sign, not the one previously leaning, which was the middle sign. The SCDOT required Rhodes to immediately take down the remaining two signs because of safety concerns. On January 23, 2001 the SCDOT gave written notice of cancellation of all three outdoor advertising billboard permits.

THE UNDERLYING ACTION AND ITS JUDGMENT

The Amended Complaint of Rhodes and Piedmont in the underlying action against C&B alleged (Paragraph 11):

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

The Rhodes and Piedmont Amended Complaint alleged (Paragraph 20 e):

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

Rhodes testified on his deposition that as a result of the sign falling and the other signs having to be removed at the mandate of the SCDOT that his real estate has been damaged because "Well, my real estate is not worth what it was with the signs up." (p. 28) Excerpts from Rhodes' deposition are attached as Exhibit I. Rhodes testified to the same effect at the trial. Also at the trial the Plaintiffs' real estate expert appraiser, C. Duke Durden, testified that as a result of the sign falling and the consequences flowing therefrom that the Fairfield County real estate has been damaged. (See Rhodes' Affidavit). The jury's verdict was based upon evidence of damage to the real estate as a proximate result of the sign falling on I-77 and the consequences therefrom.

In the underlying action, the Court has already faced the issue of the nature of damage which Rhodes and Piedmont sought to recover and, in fact, recovered. The Court refused the Defendant's Motion to change the venue of the action from Fairfield County to Clarendon County (where Eadon resides) because under the allegations of the Complaint, the action was one for "injuries to real property in Fairfield County." When permanently installed on this real estate the three signs became fixtures and a part of the real property. The fixtures made the real property income producing. They were equivalent to a growing crop, a peach orchard or a stand of timber. Damage to growing crops is an injury to real estate. Pierce v. Marion County Lumber Company, 103 S.C. 261, 88 S.E. 135 (1916).

The allegations of the Amended Complaint in the underlying case, reflect that the allegedly defective design, fabrication and erection of the three signs and the subsequent negligent inspection and repair of the three signs, two or three days before one of them fell on I-77, the forced removal by public authority of the remaining two signs, which made the real estate no longer income producing with the fixtures removed and its value reduced,

constitutes "property damage" to real property. The jury's verdict in favor of the Plaintiffs in the underlying action based upon the evidence presented of damage to real property confirms as a matter of fact and as a matter of law for all purposes connected with the instant case that there was in fact "property damage" to real property in Fairfield County as a result of the sign falling on I-77 and the consequences flowing therefrom.

Kershaw County Board of Education v. United States Gypsum Company, 302 S.C. 390, 396 S.E.2d 369 (1990), was an action by the School District against the manufacturer of ceiling plasters containing asbestos which were installed in school buildings. The Supreme Court affirmed the Trial Court's ruling that the economic loss rule did not bar causes of action in negligence and breach of warranty. The District sought "money damages for the costs of inspection, testing, and the removal of the hazardous asbestos material from the school buildings. ... The jury returned a verdict for \$200,000.00 on the negligence cause of action and \$25,000 on the warranty cause of action." The opinion states: [396 S.E.2d 371]

As we noted in *Kennedy*, the economic loss rule is the general rule that there is no tort liability for a product defect if the damage suffered by a plaintiff is only to the product itself. 299 S.C. at 341, 384 S.E.2d at 734. We also noted our difficulty with the economic loss rule generally, and we partially rejected the rule in the residential home building context. *Id.* We have not yet been presented with the question of whether the rule should be so rejected in all contexts, including the commercial arena, and we need not address that issue here, as this case may be disposed of on narrower grounds.

The sole issue which needs to be addressed here is whether the economic loss rule applies when a plaintiff claims and proves "other property damage". We held in *Kennedy* that the rule does not apply where other property damage is proven. 299 S.C. at 341, 384 S.E.2d at 734. In addition, we agree with and adopt the reasoning of the recent District Court decision in *City of Greenville v. W.R. Grace & Co.*, 640 F.Supp. 559 (D.S.C. 1986), *aff'd* 827 F.2d 975 (4th Vir. 1987). In *W.R. Grace*, an asbestos case, the District Court held that the economic loss rule does not preclude an action in tort, for damages sustained where a defendant's product caused damage to other property of the plaintiff. We therefore, need only to follow *Kennedy* and *W.R. Grace* in order to dispose of Gypsum's argument here,

since Kershaw has alleged and offered proof of other property damage.
(Emphasis added.)

The "other property damage" in *Kershaw* was "the costs of inspection, testing and the removal of the hazardous asbestos material." Property damage alleged and proved by Rhodes and Piedmont in the underlying action was damage to the real estate and the costs of removal of the signs. Damage to the real estate included physical damage in that its physical features were altered and changed (permanent fixtures were removed) and it was left with residual buried (twenty-eight feet in poured concrete) metal stumps (twenty-one feet above-ground) and wreckage of the sign remnants which will be costly to remove.

Allegations in the Amended Complaint in the underlying action of defective design and fabrication of the three signs and the subsequent negligent inspection and repair of the three signs, two or three days before one of them fell on I-77, were proved at trial. The forced removal by public authority of the remaining two signs made the real estate no longer income producing with all three permanent fixtures removed, and that fact significantly reduced its value. That constitutes "other property damage" to real property. C&B has been found liable in negligence for that "other property damage."

THE POLICY

The policy obligates Auto-Owners to "pay those sums that the insured becomes legally obligated to pay as damages because of ... 'property damage' to which this insurance applies." [Section I; Coverage A, 1, a (page 1)]. By reason of the verdict in the underlying action, the insured has become legally obligated to pay damages to Rhodes and Piedmont for "property damage".

The policy provides that the insurance applies to property damage only if the "property damage" is caused by an "occurrence" that takes place in the coverage territory.

[Section I; Coverage A, 1, b, (1) (page 1)]. "'Occurrence' means an accident." [Section V 9 (page 13)]. The verdict in the underlying action establishes that there was an occurrence.

"'Property damage' means:

- a. physical injury to tangible property, including all resulting loss of use of that property. ...
- b. Loss of use of tangible property that is not physically injured.[Section V 12, a., b. (pages 13 and 14)].

Physical injury to tangible property and loss of use of tangible property was proven in the underlying action.

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

Helena Chemical Company v. Allianz Underwriters Insurance Company, 357 S.C. 631, 594 S.E.2d 455 (2004). Although it arose under the commercial code, the holding of the Court in Gasque v. Eagle Machine Company Limited, 270 S.C. 499, 243 S.E.2d 831 (1978), is informative:

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

Diminution in value of the subject product and consequential loss of profits occasioned by its defective performance constitute property damage.

Auto-Owners' Amended Complaint alleges (Paragraph 19) that its "policy of insurance provides no coverage... with respect to the described lawsuit....". The prayer of the

Amended Complaint is for an Order that the "policy of insurance provides no coverage ... with respect to any injuries or damages arising out of the events described in the Complaint" in the underlying action.

However, the Affidavit of Carl Anders (Anders) Senior Claims Representative of Auto-Owners, submitted with Auto-Owners' First Motion for Summary Judgment (in December, 2003) states that Auto-Owners has in fact paid several invoices for expenses arising out of the sign falling on I-77. If no coverage exists under the policy, then no payments were called for nor should any have been made.

On February 8, 2001 (just nineteen days after the sign fell) Anders wrote C&B in which he said on page one "at this time we are unsure if an occurrence as defined by your policy has taken place." A copy of that February 8, 2001 letter is attached as Exhibit 2. However, when Auto-Owners' First Summary Judgment Motion was heard (and denied) on January 22, 2004, counsel for Auto-Owners stated to the Court:

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

A copy of page 6 of this transcript is attached as Exhibit 3. Auto-Owners has admitted there was an "occurrence".

In addition, Anders wrote Piedmont on August 2, 2001 (over six months after the sign fell) in which he said "we have coverage for resulting damages that this sign has caused and I have enclosed a draft to you in the amount of \$1800.00.... We will also have coverage for the expenses that the SCDOT has billed you for and I have paid that bill directly to them."

A copy of this letter is attached as Exhibit 4. In addition, in a letter dated February 8, 2002 Anders wrote Eadon informing him that Auto-Owners was entering a defense to the Rhodes

and Piedmont action under a reservation of rights. In that letter Anders said:

We have paid for what we believe is covered property damage thus far under your Commercial General Liability Policy. We will be defending presently due to the claim of damage to real property that is alleged in the suit papers.... Should the claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you. (Emphasis added.)

A copy of that Anders letter dated February 8, 2002 is attached as Exhibit 5. Thus, Auto-Owners has acknowledged that it does have coverage for this event. It has acknowledged that it has coverage for "the claim of damage to real property." By reason of the verdict of the jury, upon which judgment has been entered, it is no longer merely a "claim" of damage to real property. As a matter of fact and as a matter of law it has been proven that there was damage to real property. What Auto-Owners seeks to do in this action is to label and package the damage suffered by Rhodes and Piedmont as being damage only to the signs themselves and not damage to the real estate. This is demonstrated by the various exclusions relied upon by Auto-Owners as set forth in its Amended Complaint. (Paragraph 16).

Four policy exclusions are specifically referenced in Paragraph 16 of Auto-Owners' Amended Complaint: Exclusion k; Exclusion l; Exclusion m; and Exclusion n. Auto-Owners contends that its policy does not apply under these exclusions to

- a. "Property damage" to "your product" "arising out of it or any part of it" (Exclusion k);
- b. "Property damage" to "your work" "arising out of it or any part of it" (Exclusion l);
- c. "Property damage" to "impaired property" or property that has not been physically injured, arising out of (1) a defect deficiency, inadequacy or dangerous condition "your product" or "your work" [but] this exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use. (Exclusion m);

- d. Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of (1) your product; (2) your work; or (3) impaired property; if such product, work or property is withdrawn from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy, or dangerous condition in it. (Exclusion n).

AUTO-OWNERS' PRESENTATION IS FLAWED

The focus of Auto-Owners is on its contention that damage to the fallen sign itself is an excluded area of coverage and because the fallen sign was damaged by its fall, other damage caused by the sign's fall is excluded. Once the signs became fixtures and a part of the real estate, they lost their character as items to be dealt with separately. Auto-Owners fails to recognize the fact that the signs became permanent fixtures and a part of the real estate once erected. As a result of the sign falling and the other two signs having to be taken down the real estate has been robbed of its income-producing status, left with useless embedded concrete stumps to be removed, and thereby damaged. That damage to real property has been proved.

Moreover, if there is no insurance coverage because of property damage to "your product arising out of it or any part of it" (Exclusion k); or "to your work arising out of it or any part of it" (Exclusion l); or for damages for "loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your product, your work, if such work or property is withdrawn from the market because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it" (Exclusion n), then the policy affords no liability insurance under any circumstance.

Liability under the policy, including the products completed operations portion of the policy, is incurred only as a result of (a) "your product, arising out of it or any part of it" or

(b) as a result of "your work arising out of it or any part of it." That is what the insurance was for: to cover liability for damage or injury to other property caused by the product (sign) or "work arising out of it or any part of it." There is nothing else to be insured. If that is not insured, nothing is insured.

The policy specifically has a "products-completed operations" coverage limit of one million dollars. If the product and the work connected with it, including the negligent inspection two or three days before the sign fell, which caused damage to real estate is not covered, then what does the policy cover? The answer is **nothing!** As to the language that the insurance does not apply to property damage to impaired property or property that has not been physically injured arising out of a defect, deficiency, inadequacy or dangerous condition in your product or your work (Exclusion m) this exclusion could not apply in any event. The real estate of Rhodes has been physically injured by the involuntary removal (by one falling and two at the direction of public authority) of the fixtures on it which, before removal, made the real estate income producing and productive. Their removal is a physical injury the same as if growing timber, a peach orchard or growing crop had been destroyed.

Furthermore, the exclusionary language (as to Exclusion m, which has the effect of eliminating Exclusion m from the discussion) that it (Exclusion m) "does not apply to the loss of use of other property arising out of sudden and accidental physical injury to your product or your work after it has been put to its intended use" describes facts which confirm that this exclusion "does not apply." That is so because there was a sudden, accidental, physical injury when the sign fell. Auto-Owners admits that the sign had been put to its intended use. (Auto-Owners' Memorandum p.1). This falling sign started the domino effect which resulted in property damage to the real estate because it was thereby robbed of its income producing status because it no longer had its revenue-producing signs and the real

estate was left with useless twenty-eight feet buried concrete stumps and useless twenty-one feet above-ground metal columns.

Auto-Owners is silent about coverage under its policy applicable to a critical factual circumstance. That circumstance is the fact that Marion L. Eadon d/b/a C&B Fabrication worked on the leaning sign and had it corrected and negligently inspected or failed to inspect the other two signs just two or three days before one of the signs fell. Had the inspection been properly done, it would have detected the about-to-occur sign failure. The failure to inspect and correct a condition in the sign was a separate and independent act of negligence. The correction of the leaning sign and the flawed inspection (or non-inspection) of the sign that fell are not dependent upon the fact that Marion L. Eadon d/b/a C&B Fabrication had also designed, fabricated and installed the signs originally. The negligent inspection (or non-inspection) of the sign that fell was a liability of the negligent inspector whether it was Marion L. Eadon, d/b/a C&B Fabrication or someone else. The negligent inspection (or non-inspection) of the sign was one of the allegations in the Complaint upon which the negligence count rested.

THE LAW

Auto-Owners repeats its contention that there is no liability under the policy because "faulty workmanship, alone, does not constitute 'an accident' and cannot therefore be an 'occurrence.'" (Auto-Owners' Memorandum pp. 14-15). What Auto-Owners ignores, and seeks to avoid addressing, is that the underlying event is not faulty workmanship alone. It was faulty workmanship but it was more than that. The effort by Auto-Owners to limit the application of the facts in this case to its contention that there was damage only to the product itself and which resulted solely from faulty workmanship is contrary to the facts and to the South Carolina law. In the case of Kennedy v. Columbia Lumber and Manufacturing

Company, Inc., 299 S.C. 335, 384 S.E.2d 730 (1989) the Supreme Court made clear the circumstances under which tort liability is incurred:

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

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

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

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

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

In the underlying case Rhodes and Piedmont proved that Marion L. Eadon d/b/a C&B Fabrication (1) violated the applicable building codes; (2) deviated from industry standards; and (3) constructed signs that posed serious risk of physical harm. Proof of only one of these violations qualifies the tort action. Rhodes and Piedmont proved all three. Three times the breach of a legal duty was proven. (Trial testimony of Plaintiffs' expert structural engineer, Alan Campbell: sign was not built according to design; sign did not meet industry standards; sign did not meet code requirements; sign defective and not capable of withstanding code-prescribed wind loads; sign fell because it did not meet building code and industry standard requirements: Trial transcript, pp. 249-250; 9/30/04). The three times

breach of legal duty resulted in damage to real estate.

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

Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Cl. 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 (Cl. App. 1999).

Again, that case has no application to the instant case. There were multiple issues in Laidlaw but for purposes pertinent here only one need be mentioned. The following sentence from the opinion makes that clear:

It is undisputed that this policy specifically excludes products-completed operations hazard coverage.

The Laidlaw opinion is quite specific that the insured in that case "specifically rejected such [products-completed operations] coverage." [524 S.E.2d, p. 849]. In the instant case, "it is undisputed that [Auto-Owners'] policy specifically [includes] products-completed operations hazard coverage." The Declarations page of the Auto-Owners policy has a specific entry "products-completed operations aggregate limit: \$1,000,000."

Auto-Owners relies upon the case of L-J, Inc. v. Bituminous Fire and Marine Insurance Company, 2004 WL 1775571 (Decided August 9, 2004). L-J, Inc. is clearly distinguishable on the facts. [Although this opinion was issued over six months ago a petition for rehearing was pending as of January 31, 2005.] The holding in L-J, Inc. is simply that "we find that no 'occurrence' took place as defined by the CGL contract." The Court held that there was "damage to the roadway system only" under those facts. The Court did not make any new law or change any existing law in that case. The Court affirmed existing law (quoting Dean Henderson), saying:

The risk intended to be insured is the possibility that the goods, products or work of the insured, once relinquished or completed, will cause bodily injury or damage to **property other than to the product** or completed work itself and for which the insured may be found liable. ... (Emphasis in original).

We agree that the CGL policy may provide coverage in cases where faulty workmanship causes bodily injury or property damage to another.

In the instant case there was an occurrence. In the instant case there has been damage to property other than the product itself. The insured has been found liable for that damage. Accordingly, L-J, Inc. supports coverage under Auto-Owners' policy in the instant case.

Exclusions in an insurance policy are always construed most strongly against the insurer. Boggs v. Aetna Casualty & Surety Company, 272 S.C. 460, 252 S.E.2d 565, 568 (1979). If there are any ambiguities or conflicts in documents prepared by a party the provisions of the contract have to be construed favorably to the other party. Mid-Continent Refrigerator Company v. Way, 263 S.C. 101, 208 S.E.2d 31, 33 (1974). "Common sense and good faith are the leading touchstones of construction of the provisions of a contract; where one construction makes the provisions unusual or extraordinary and another construction which is equally consistent with the language employed, would make it reasonable, fair and just, the latter construction must prevail. Parker v. Byrd, 309 S.C. 189,

420 S.E.2d 850, 853 (1992). "When a policy is 'susceptible to more than one reasonable interpretation, one of which would provide coverage, this Court must hold as a matter of law in favor of coverage'". S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).

The traditional approach by a liability insurer in a Declaratory Judgment action as to coverage issues is to focus on individual trees, count the growth rings on the trees, and attempt to ignore that the forest exists. Auto-Owners has followed the traditional approach in this case.

It is suggested that the liability insurer's traditional approach misses and ignores the greater and total picture. One or two trees (claimed exclusions) do not constitute the forest. All the trees collectively make it a forest. One or two claimed exclusions cannot have the effect of eliminating the forest. Claimed exclusions must be viewed in the context of the entire policy (the forest). They must be viewed in the context of the facts (as established by the jury verdict and judgment entered) in the underlying civil action against the insured and, most importantly, in the context of the basic purpose for which the liability policy was obtained.

In that connection the case of Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996) is instructive. In that case Isle of Palms Pest Control was sued for fraud and negligence in connection with its having prepared and issued a termite inspection report which was relied upon by the purchaser of a home. It was "alleged that Isle of Palms conducted its inspection in a negligent manner. The Purchaser also included allegations for fraud, breach of contract, unfair trade practices, conspiracy, negligent misrepresentation, and

breach of warranty". Isle of Palms brought a Declaratory Judgment action against its insurer (Monticello) for a declaration that Monticello was obligated to defend and indemnify it in connection with the action by the Purchaser. Monticello contended that the policy did not provide coverage. The Trial Court and the Court of Appeals held that there was coverage under the policy. Excerpts from that opinion follow:

A general liability policy is intended to provide coverage for tort liability for physical damage to the property of others; it is not intended to provide coverage for the insured's contractual liability which causes economic losses. *C.D. Walters*, 281 S.C. at 596-97, 316 S.E.2d at 712. It is for this reason that **a general liability insurance policy typically does not cover claims of faulty workmanship, but instead covers claims of faulty workmanship that causes an accident.** *Id.* Here, however, the faulty workmanship did cause an accident - the improperly performed inspection resulted in continued termite damage. ...

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

In the underlying action Rhodes and Piedmont have proved that negligence of (the insured) Eadon d/b/a C&B proximately resulted in property damage to them. The underlying action was one for damage to real property as a result of the negligence, recklessness and

willfulness of the Defendant in the manner in which the three signs were designed, fabricated and erected, and in the failure of the Defendant to properly inspect and correct the flawed condition of the signs when it was brought to the attention of the Defendant after one of the signs was discovered leaning toward I-77 and before one of the signs subsequently fell on I-77 two or three days later. Negligent inspection was the tort in Isle of Palms.

In Isle of Palms the Court of Appeals said

because the Purchaser does allege Isle of Palms' negligence resulted in property damage, the policy issued by Monticello does provide coverage for such damage, and Monticello is therefore obligated to defend.

The underlying claim of Rhodes and Piedmont was "for tort liability for physical damage to the property of others." (*Isle of Palms*). That claim was proved by the jury verdict.

Furthermore, the Auto-Owners declarations page of its liability policy has the description of the business which is insured as "sign mfg." On the commercial general liability coverage declarations page it specifically identifies "products-completed operations aggregate limit" and describes the payroll code for "sign erection, installation or repair." The premium is based upon the payroll for this operation. This is the operation (design, fabricate, deliver and install, inspect and repair the three signs) C&B was engaged in which resulted in damage to the real property of Rhodes in Fairfield County as the result of the negligence of C&B. If the exclusions claimed by Auto-Owners are given effect they **"would render the policy virtually meaningless, because it would exclude coverage for all claims arising from [the C&B operation], the very risk contemplated by the parties."** (*Isle of Palms*).

Negligence was alleged by Rhodes and Piedmont. Negligence, recklessness and willfulness was proved! C&B did faulty workmanship (negligent design, fabrication, inspection and repair) which proximately caused an accident (a sign fell) which resulted in

property damage.

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

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

The sign which fell on Interstate 77 was an accident. That accident occurred because of negligent design, faulty workmanship, inspection and repair. That is what the general liability policy of Auto-Owners was designed to cover. That is what Eadon expected to get, a general liability policy to cover his operations as a sign designer, fabricator, installer and repairer. That was the business activity insured. That was the purpose for obtaining the insurance.

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

Kennedy v. Columbia Lumber and Manufacturing Company, Inc., 299 S.C. 335, 384 S.E.2d 730, 733 (1989). As to insurance contracts the Court should seek that "interpretation of the policy [which] best meets the fair expectations of the parties under the language of the policy." Joe Harden Builders, Inc. v. Aetna Casualty & Surety Company, 326 S.C. 321, 486 S.E.2d 89 (1997).

C&B FABRICATION IS INSURED UNDER AUTO-OWNERS POLICY

Auto-Owners asserts that "Marion Eadon is not an insured under the terms of the Auto-Owners' insurance policy." (Plaintiff's Memorandum p. 6). This contention, now made by Auto-Owners, is contradictory of all that Auto-Owners has said and done since the date of the occurrence, January 20, 2001, until January 14, 2005, six days short of four years later. The action by Rhodes and Piedmont was instituted against Marion L. Eadon, d/b/a C&B Fabrication. There was no ambiguity and no uncertainty about who was named as the

defendant in that action. In Anders' letter dated February 8, 2002 "certified mail return receipt requested" to Marion Eadon, he acknowledged having received the suit papers "against Marion L. Eadon d/b/a C&B Fabrications." The letter stated that Auto-Owners would be furnishing a defense under a reservation of rights. The thrust of that letter was that because of the claim of damage to real property the defense was being afforded and if the "claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you." (That letter is appended as Exhibit 5 to this Brief). There was nothing in the Anders letter which raised any question about Marion L. Eadon d/b/a C&B Fabrication not being insured under the Auto-Owners policy. Indeed, "if the facts alleged in the Complaint fail to bring the case within the policy's coverage, the insurer has no obligation to defend." State Farm Fire & Casualty Company v. Barrett, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000). Accordingly, if Marion Eadon d/b/a C&B Fabrication was not insured under the policy, why did Auto-Owners enter a defense at all? Had Marion L. Eadon d/b/a C&B Fabrication not been insured under its policy Auto-Owners would have said so.

Auto-Owners filed the instant DJ action on October 14, 2002. In its Complaint it did not allege or contend that Marion L. Eadon d/b/a C&B Fabrication was not an insured under its policy. Nothing in its Complaint creates an inference as to that. It raised questions only as to whether there had been an occurrence and whether four exceptions apply.

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

Furthermore, on March 6, 2003, Auto-Owners filed a Notice of Motion and Motion

to Intervene in the underlying action against Marion L. Eadon, d/b/a C&B Fabrication to be permitted to submit special interrogatories. That Motion contained the statement

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

Auto-Owners' Motion further stated that Auto-Owners had filed an action in York County "requesting that the Court declare the rights and obligations of Auto-Owners in relation to the claims made by the Plaintiffs in this action against the Defendant." The Motion says without any qualification or limitation that its DJ action in York County is seeking a declaration of the rights and obligations of Auto-Owners "in relation to the claims made by the Plaintiffs in this action [Rhodes and Piedmont] against the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. The Motion further states without qualification or limitation that Auto-Owners had "issued an insurance policy to the Defendant [Marion L. Eadon d/b/a C&B Fabrication] with liability coverage for the period of time relevant to this action." A copy of that Notice of Motion and Motion to Intervene by Auto-Owners is appended hereto as Exhibit 6.

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

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

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

Notice of Motion and Motion to Intervene is appended hereto as Exhibit 7.

At the hearing on the Motion to Intervene in the Fairfield action, Auto-Owners submitted its Memorandum dated July 9, 2003 in which it again stated that Auto-Owners "is the insurance carrier for the Defendant [Marion L. Eadon d/b/a C&B Fabrication]. Auto-Owners also stated in its Memorandum (p.4) that "the Defendants [Marion L. Eadon d/b/a C&B Fabrication] have claimed Auto-Owners is obligated to indemnify them under their commercial general liability policy for any amount for which they are found liable to the Plaintiffs. And, pursuant to the terms of the policy, Auto-Owners' liability for indemnification, if any, will depend upon which claims the jury finds that the Defendants are liable to the Plaintiff." Auto-Owners further stated in its Memorandum of July 9, 2003 (p.5) "The same factual issue being determined by the jury - the amount of monetary loss sustained for each type of damage claimed - is at issue in both the present action between the Plaintiff [Rhodes and Piedmont] and the Defendants [Marion L. Eadon d/b/a C&B Fabrication] and the Declaratory Judgment action between the Defendants and Auto-Owners." A copy of that Memorandum In Support of Motion to Intervene is appended hereto as Exhibit 8.

Thus, the thrust of Auto-Owners' Motion to Intervene and the basis for it was that it needed to determine which causes of action the jury found in favor of the Plaintiffs and the amount and type of damages pertaining to each. The assertion was that it needed to determine whether damages awarded were under any cause of action covered by its policy. It asserted that the same factual issue existed in the DJ action. As a consequence of the trial and the result of the jury verdict and the judgment entered thereon, the only cause of action upon which judgment has been entered is the negligence cause of action. It clearly is one covered by the policy. The reasons Auto-Owners advanced in moving for intervention have all been resolved factually by the jury's verdict and the judgment entered on it. The

Amended Complaint in the underlying action contained eleven alleged causes of action. However, only three of those were submitted to the jury (Breach of Contract, Breach of Warranty and Negligence). The verdict on the Negligence cause of action is the one upon which judgment has been entered. Accordingly, what Auto-Owners stated in its Motion to Intervene Memorandum as the pending issues ["which claims the jury finds that the Defendants are liable to the Plaintiff" and the "amount for which they are found liable to the Plaintiffs"] have now been resolved. Now that those core factual issues have been resolved, Auto-Owners attempts to inject as a new issue its contention that Marion L. Eadon d/b/a C&B Fabrication is not insured under its policy.

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

The Court should not address a matter "either on its own motion, or at the request of counsel which tenders an issue that is not presented by the pleadings." Hendricks v. American Fire & Casualty Company, 247 S.C. 479, 148 S.E.2d 162, 168 (1966). Findings by a Trial Court that "went beyond the issues framed by the pleadings" were set aside.

Furman University v. Glover, 221 S.C. 1, 81 S.E.2d 559, 563 (1954). Moreover, "The allegations, statements or admissions contained in a pleading are conclusive as against the pleader. It follows that a party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are to be taken as true against the pleader for the purpose of the action. Evidence contradicting such pleadings is inadmissible." Elrod v. All, 243 S.C. 425, 134 S.E.2d 410, 416 (1964); Postal v. Mann, 308 S.C. 385, 418 S.E.2d 322, 323 (Ct. App. 1992). An admission contained in a pleading in one action may be admitted in evidence against the pleader on a trial of another action. Young v. Martin, 254 S.C. 50, 173 S.E. 2d 361 (1970). Perforce the statements in its documents filed in Court, Auto-Owners is bound by its statements.

On December 29, 2003 Auto-Owners filed its first Motion for Summary Judgment. Its Motion for Summary Judgment did not raise or address any issue of Marion L. Eadon d/b/a C&B Fabrication not being an insured under its policy. The Motion for Summary Judgment was heard on January 22, 2004. During that argument and presentation no mention or reference was made or contention advanced that Marion L. Eadon, d/b/a C&B Fabrication was not insured under its policy.

Through counsel selected and furnished by Auto-Owners, Marion L. Eadon, d/b/a C&B Fabrication was defended in the underlying action to a jury verdict in favor of Rhodes and Piedmont and judgment has been entered on that jury verdict. Post-trial motions have been denied. Four months after the judgment was entered in the underlying case, Auto-Owners, for the first time, purports to raise the issue that Marion L. Eadon, d/b/a C&B Fabrication is not insured under its policy.

Auto-Owners' Memorandum refers to "C&B Fabrications, Inc." and "Low Country Signs, Inc." and gives these two names as Defendants in this action. Those are the two names

in the Auto-Owners policy as insureds. In fact, there is no corporate entity named "C&B Fabrications, Inc." In fact, there is no corporate entity named "Low Country Signs, Inc." There is a corporate entity named "Lowcountry Signs & Fabrication, Inc." chartered by Marion L. Eadon on May 1, 2000. A copy of the Articles of Incorporation of Lowcountry Signs & Fabrication, Inc. is attached hereto as Exhibit 9. Auto-Owners acknowledges in a footnote in its Memorandum that there is no corporate entity named "C&B Fabrications, Inc." and then states that the corporation chartered by Eadon is named "C&B Fabricators, Inc." It is true that Eadon chartered a corporation in the name of "C&B Fabricators, Inc." but that was only one of approximately ten corporations or partnerships that Eadon chartered with the Secretary of State of South Carolina. Eadon was quite familiar with the process of chartering corporations for his business operations. (Trial testimony of Eadon's accountant; Transcript pp. 178-180; 9-1-04). In Eadon's letter of December 29, 2000 to Rhodes, when they were addressing the matter of the leaning sign, and before a sign fell on January 20, 2001, Eadon stated that "C&B Fabricators went out of business April 3, 2000." A copy of that letter is attached hereto as Exhibit 10. (See Rhodes' Affidavit).

In its Memorandum Auto-Owners states that Eadon's defense in the underlying action was that "he was acting as an employee, officer or director of a corporation" (Auto-Owners' Memorandum, p.2) and "the jury found that C & B Fabrication was a separate entity from C&B Fabrication, Inc." (Auto-Owners' Memorandum p. 7). These are not accurate statements. The contention advanced by counsel retained by Auto-Owners to defend Eadon was that the wrong entity had been sued. The defense was not on the contention that Eadon had no liability because C&B Fabrication was a corporation. The defense contention was that the wrong entity had been sued, to wit, C&B Fabricators, Inc. was the entity which should have been sued. This is further demonstrated by the March 4, 2002 letter of defense

counsel to Plaintiffs' counsel in which it is stated that "the corporate entity with whom your client was doing business was C&B Fabricators, Inc. ... I ask that you please dismiss Marion Eadon as a defendant in this case and substitute C&B Fabricators, Inc." A copy of that letter is appended hereto as Exhibit 11. The Answer to the Amended Complaint in the underlying action alleged "that Eadon individually did not make the proposal to Rhodes, but C&B Fabricators, Inc. submitted a proposal to Rhodes." (Paragraph 6 of Answer to First Amended Complaint.) A copy of the Answer to the First Amended Complaint is attached hereto as Exhibit 12. The contention was that the transaction was between Rhodes and C&B Fabricators, Inc. There never was a contention or an issue as to whether C&B Fabrication was a corporate entity. There never was any evidence or treatment at the trial about "C&B Fabrication, Inc." To be clear beyond any question, there was never an issue raised by anyone, anytime, as to whether C&B Fabrication was or was not a corporate entity until now. No one has contended that C&B Fabrication was or is a corporate entity. It never has been a corporate entity. The trial excerpt included in the Auto-Owners Memorandum about non-liability of Eadon for any corporate liability, pertained only to the question submitted to the jury of whether the transaction was (1) between Rhodes and C&B Fabricators, Inc. or (2) between Rhodes and Marion L. Eadon d/b/a C&B Fabrication. Because the jury found (correctly so under clear facts) that the transaction was not between Rhodes and C&B Fabricators, Inc., the exchange about non-liability of Eadon as a corporate officer is moot. It has no relevance perforce the jury's finding that the transaction was between Rhodes and Marion L. Eadon d/b/a C&B Fabrication. Auto-Owners continues to advance a contention that was articulated by counsel retained by it to defend Eadon in the underlying suit that the transaction between Rhodes and Eadon was one between Rhodes and C&B Fabricators, Inc. That ploy was unsuccessful at the trial. The purpose of the ploy was to seek to shift any

liability to a defunct corporate entity which went out of business six weeks after the signs were installed. Had the verdict been rendered against C&B Fabricators, Inc., Auto-Owners would now be saying (correctly so) that C&B Fabricators, Inc. is not named as an insured under its policy. Auto-Owners' treatment of this item again is another misdirection ploy. The jury did find that Marion L. Eadon d/b/a C&B Fabrication was liable in negligence to Rhodes and Piedmont.

Marion L. Eadon was doing business as C&B Fabrication. A copy of a bank statement reflecting that is attached hereto as Exhibit 13. C&B Fabrication was doing business as Low Country Sign Fabrication Inc two weeks after C&B Fabricators, Inc. was no longer in business. Copies of printed checks of C&B Fabrication d/b/a Low Country Sign Fabrication Inc in April and May 2000 are attached hereto as Exhibit 14. [Note that the "Low Country Sign Fabrication Inc" language does not mirror the corporate name "Lowcountry Signs & Fabrication, Inc."] C&B Fabrication d/b/a Low Country Sign Fabrication Inc was still doing business in that name in September and November 2000. (Cancelled checks reflecting that fact are attached hereto as Exhibit 15. Bank statements of C&B Fabrication d/b/a Low Country Sign Fabrication Inc showing activity from April 17, 2000 to November 30, 2000 are attached hereto as Exhibit 16. Bank deposits were made with deposits slips printed "C&B Fabrication". (Eadon's testimony, Trial Transcript pp. 142, 144; 9/1/04). Eadon confirmed in his trial testimony that as of September 2000 "C&B Fabrication was doing business as Low Country Sign Fabrication Inc" (Trial Transcript p. 152; 9/1/04). Eadon testified at the trial that C&B Fabrication merged into Lowcountry Signs which continued to do basically what C&B Fabrication had been doing. (Trial Transcript pp. 158-159; 9/1/04).

The corrective work to the leaning sign and the inspection of the other two signs in

January 2001, two or three days before the sign fell was not done by C&B Fabricators, Inc. because it had been out of business since April 3, 2000, over nine months earlier. C&B Fabrication d/b/a Low Country Sign Fabrication Inc was still in business.

It is clear from the established record that, at the time the Auto-Owners policy was issued on September 17, 2000, Marion L. Eadon was doing business as C&B Fabrication; C& B Fabrication was doing business as Low Country Sign Fabrication Inc. The policy issued by Auto-Owners was obviously intended to cover the operation of C&B Fabrication, which was not a corporate entity, and Lowcountry Signs & Fabrication, Inc. which was a corporate entity. C&B Fabricators, Inc. had been out of business since April 3, 2000 and Lowcountry Signs & Fabrication, Inc was chartered on May 1, 2000. It clearly was not the design or intent of Eadon to acquire insurance for a defunct (C&B Fabricators, Inc.) corporate entity but to acquire the insurance to cover the operation of C&B Fabrication d/b/a Lowcountry Signs & Fabrication, Inc. The bank statements of C&B Fabrication for April to November 2000 show a cash intake of over \$346,000.00. That was the business in operation when the insurance was obtained for the policy year beginning September 17, 2000. The misnomer of the named insureds in the policy can not change the facts.

The evidence is clear. C&B Fabrication was doing business as Low Country Sign Fabrication Inc. Lowcountry Signs & Fabrication, Inc. is a named insured in the policy (albeit the name is a misnomer). C&B Fabrication is named as an insured in the policy (albeit the name is a misnomer). These two entities, one corporate and one individual, were intended to be insured under this policy. They are insured under this policy. The argument by Auto-Owners that because no verdict was rendered against Eadon as a corporate officer of C&B Fabricators, Inc. (a wholly separate, distinct and defunct entity) is merely a misdirection ploy. It is an impermissible stretch that does not accomplish the intended reach.

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

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

Certainly the "reasonable expectations" of Marion L. Eadon in acquiring the Auto-Owners policy was to insure his operation as C&B Fabrication d/b/a Lowcountry Signs & Fabrication, Inc. These are the entities named in the policy (albeit a misnomer). Auto-Owners has not been misled. It has not been misinformed. It has been fully cognizant of all these factors throughout. To permit Auto-Owners to succeed in what it is attempting to do now would be to allow it to afford no insurance coverage to any entity because both insureds names as they appear in the policy have never existed as legal entities. At the same time, the mere misnomer of the names of the insureds should have no effect on the efficacy of the contract of insurance as to the real and intended insureds. Even were the misnomer of the insureds an ambiguity (and these Defendants do not concede that an ambiguity exists as to this) then the "construction which is most favorable to the insured will be adopted."

Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004). That is because:

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

S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993).

SUMMARY JUDGMENT

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to judgment as a matter of law. However, summary judgment is improper if the parties dispute the inferences to be drawn from the facts even if

the facts themselves are not in dispute. Tupper v. Dorchester County, 326 S.C. 318, 325, 487 S.E.2d 187, 191 (1997). "In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party." Osborne ex rel. Osborne v. Adams, 346 S.C. 4, 7, 550 S.E.2d 319, 321 (2001).

On December 29, 2003 Auto-Owners filed its first Motion for Summary Judgment in this case. The basis for that first Summary Judgment Motion is the same as Auto-Owners' second ground in the instant motion, to wit, that the damages sustained were not caused by an occurrence and also are excluded by the four mentioned policy exclusions. Nothing has changed with respect to that issue and the denial of Summary Judgment as to that issue. It is submitted that the Court need not revisit that issue again on Auto-Owners' Motion for Summary Judgment.

As to the new issue of whether C&B Fabrication is insured under Auto-Owners' policy, it is submitted that the pleadings do not frame the issue. If the issue ever existed it has been waived or Auto-Owners is estopped to assert it. "The scope of risk under an insurance policy can be extended by estoppel if the insurer has misled the insured into believing the particular risk is within the coverage." The Crescent Company of Spartanburg, Inc. v. Insurance Company of North America, 266 S.C. 598, 225 S.E.2d 656, 659 (1976); Standard Fire Insurance Company v. Marine Contracting and Towing Company, 301 S.C. 418, 392 S.E.2d 460 (1990). Even if it were in issue, the contention has no merit under the facts. Auto-Owners' Motion for Summary Judgment should be denied.

"An action to determine coverage under an insurance policy is an action at law." State Farm Fire and Casualty Company v. Barrett, 340 S.C. 1, 530 S.E.2d 132, 134 (Ct. App. 2000). "The construction of the [insurance] contract is a matter of law for the Court."

Winchester v. United Insurance Company, 231 S.C. 438, 99 S.E.2d 34, 36 (1957); The construction of a written instrument is, in the first instance, a question of law for the Court. Campbell v. Bi-Lo, Inc., 301 S.C. 448, 392 S.E.2d 477, 479 (Ct. App. 1990.) Whether a contract's language is ambiguous is a question of law. Southern Atlantic Financial Services, Inc. v. Middleton, 356 S.C. 444, 590 S.E.2d 27 (Ct. App. 2002). "Rules of construction require clauses of exclusion to be narrowly interpreted, and clauses of inclusion to be broadly construed. This rule of constructions inures to the benefit of the insured.." McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993).

Perforce the principle established and applied in Isle of Palms Pest Control Company v. Monticello Insurance Company, 319 S.C. 12, 459 S.E.2d 318 (Ct. App. 1995), affirmed 321 S.C. 310, 468 S.E.2d 304 (1996), at the very least an ambiguity exists in Auto-Owners' policy. Because the ambiguity exists "this court must hold as a matter of law in favor of coverage." S.C. State Budget and Control Board v. Prince, 304 S.C. 241, 403 S.E.2d 643, 647 (1991); McPherson v. Michigan Mutual Insurance Company, 310 S.C. 316, 426 S.E. 2d 770, 771 (1993). This principle of law as to insurance coverage has been consistently applied.

Accordingly, we conclude that the policy provisions at issue are ambiguous. (Cite omitted). Therefore, based on the premise that ambiguous or conflicting terms in an insurance contract should be construed in favor of the insured and strictly against the insurer, we affirm the special referee in finding the commercial auto liability coverage section of the National policies provided coverage for Appellant's claims.

Goldston v. State Farm Mutual Automobile Insurance Company, 358 S.C. 157, 594 S.E.2d 511 (Ct. App. 2004).

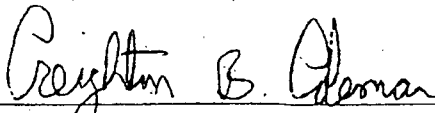
Rhodes and Piedmont's Motion for Summary Judgment should be granted.

CONCLUSION

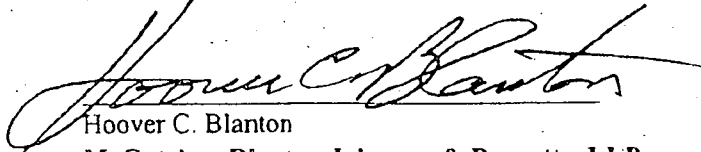
It is submitted that under the proven facts of the underlying action there is coverage under Auto-Owners' policy for the judgment against Marion L. Eadon, d/b/a C&B Fabrication in the underlying action. Auto-Owners' Motion for Summary Judgment should be denied. The Defendants' Motion for Summary Judgment should be granted. The Court should issue its Order ruling that Marion L. Eadon, d/b/a C&B Fabrication is insured under Auto-Owners' policy.

All of which is respectfully submitted.

(signature page attached)



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

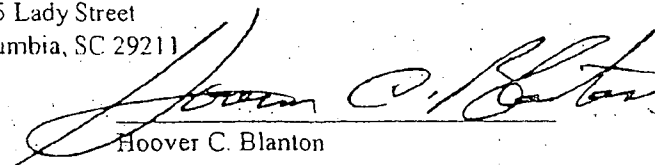
February 15, 2005

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

I, Hoover C. Blanton, of McCutchen Blanton Johnson & Barnette, L.L.P., do hereby certify that a copy of the **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:

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 Ellis, Lawhome & Sims, P.A.
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 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.)

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 are 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

- I. 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 deposited 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 deposited 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 it 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 tortious act.** This concept carries over into the contractual liability as well.

Furthermore, a president of a corporation is not personally liable for torts committed by the corporation because of that person's official capacity, 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 he 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

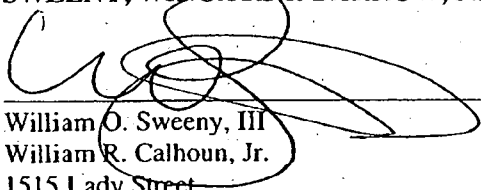
Mr. Eadon was an insured under the terms of Auto-Owners policy in regard to the jury's award in Rhodes v. Marion L. Eadon d/b/a C & B Fabrication. He was an executive officer of the corporations that were named insureds under Auto-Owners' policy. Liability was found

**Blank Pleading*
02-CP-46-2369

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,

SWEENEY, WINGATE & BARROW, P.A.



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July 24, 2006

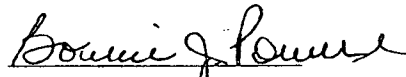
CERTIFICATE OF SERVICE

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):

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Bobbie J. Powell

Columbia, South Carolina
July 24, 2006

RECEIVED

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JUL 25 2006

ELLIS LAWHORNE
& SIMS, PA

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 L. EADON'S
MOTION FOR COSTS AND FEES OF
DEFENDING THIS DECLARATORY
ACTION

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

Defendants.)

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

PLEASE TAKE NOTICE that Defendant Marion L. Eadon will move before the Court immediately, and does hereby so move, for an award of the attorney fees and costs incurred in defending this declaratory action brought by the insurer. This motion is made under the consistent holding of the South Carolina Supreme Court that "[i]t is well settled in South Carolina that when a defendant insured prevails in a declaratory judgment action, the insured is entitled to recover attorney's fees." State Auto Prop. and Cas. Ins. Co. v. Reynolds, 357 S.C. 219, 226, 592 S.E.2d 633, 637 (2004) *citing* Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978). *See also*, First Financial Ins. Co. v. Sea Island Sport Fishing Society, Inc., 327 S.C. 12, 16-17, 490 S.E.2d 257, 259 (1997) (*citing* Hegler to the effect that "when insured prevailed in defense of declaratory judgment action brought by insurer, insured is entitled to recover attorney's fees incurred in defending the action." Declines to overrule Hegler).

*Defendant Marion L. Eadon's Motion for Costs and
Fees of Defending this Declaratory Action
02-CP-46-2369*

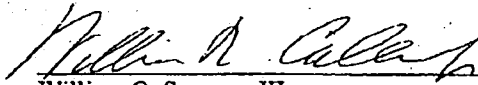
Defendant Eadon, in his Amended Answer and Counterclaim, has alleged entitlement to the costs incurred in collecting the coverage provided by his insurance policy, Paragraph 16, and has prayed for an award for "costs and fees associated with this action." To this point, Defendant Eadon has incurred costs and fees in defending this action that exceed One Hundred Three Thousand Seven Hundred Dollars (\$103,700.00).

CONCLUSION

The Court should award Marion L. Eadon costs and fees in the amount, approximately One Hundred Five Thousand Dollars, reflected in the Affidavit of Costs and Fees to be provided to the Court in the near future.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



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

Attorneys for Marion L. Eadon

Columbia, South Carolina

November 15, 2006

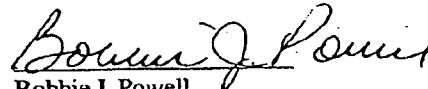
*Defendant Marion L. Eadon's Motion for Costs and
Fees of Defending this Declaratory Action
02-CP-46-2369*

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 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

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
November 15, 2006

STATE OF SOUTH CAROLINA FILED-RECEIVED IN THE COURT OF COMMON PLEAS
COUNTY OF YORK 2006 NOV 22 AM 8: 57

Auto-Owners Insurance Company, C.C.C.P.) & GS
YORK COUNTY, SC

Plaintiff,)
)
)
)
)

**NOTICE OF MOTION AND MOTION TO
ALTER OR AMEND JUDGMENT, OR IN
THE ALTERNATIVE, FOR A NEW
TRIAL**

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

Defendants.)

TO: WILLIAM O. SWEENEY, HOOVER C. BLANTON AND CREIGHTON
COLEMAN, ATTORNEYS FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Auto-Owners Insurance Company will move before Judge Lee S. Alford, the Presiding Judge of the York County Court of Common Pleas, at the York County Courthouse, York, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 59, SCRPC, granting its motion to alter or amend the Order filed November 7, 2006, and received by counsel for Auto-Owners on November 10, 2006, or in the alternative, for a new trial. This motion is based upon the following grounds:

(1) The trial Court erred in failing to rule that Eadon and Rhodes have the burden of proving that Marion L. Eadon d/b/a C&B Fabrication is an insured under the terms of the policy.

(2) The trial court erred in not finding that the verdict in the Rhodes action was awarded against an individual, Marion L. Eadon.

(3) The trial court erred in not finding that an individual can not "d/b/a" a corporation.

(4) The trial court erred in holding that "Eadon was the sign business. The judgment is against the trade name C&B Fabrication. Under the Stipulation the trade name is insured." (p. 43). The verdict is not against the trade name. It is against Marion L. Eadon d/b/a C&B Fabrication – an individual. As stipulated by the parties, the policy was issued to two corporations. Corporations and individuals have separate legal identities. An individual can not "d/b/a" a corporation. The relevant inquiry is whether (1) was there evidence that Eadon did anything personally upon which to based a verdict against him (2) If so, was the verdict rendered against him while acting on behalf of a corporation named in the policy and (2) if so, was he sued as a result of taking actions within his duties as an officer of the corporation?

(5) The trial court erred in ruling that Marion L. Eadon qualifies as an insured under the policy in light of the facts contained in the record in the Rhodes action, Marion Eadon's deposition testimony in which he stated that the allegations of wrongdoing alleged in the Rhodes action were not within his duties as an officer of C&B Fabricators, Inc. or LowCountry Signs and Fabrication, Inc. and the definition of "Insured" contained within the policy of insurance issued by Auto-Owners.

(6) The trial court erred in finding that Eadon is an insured under the policy, because the only evidence in the record is that he was sued for activities outside the scope of his duties as an officer of the corporations named in the policy.

(7) The trial court erred in failing to find that the jury in the Rhodes action determined that Eadon was not acting on behalf of C&B Fabricators, Inc.

(8) The trial court erred in ruling that Marion L. Eadon d/b/a C&B Fabrication is the same entity as C&B Fabricators, Inc. and LowCountry Signs and Fabrication, Inc.

(9) The trial court erred in ignoring Judge Dennis' instruction to the jury in the Rhodes action that if they found that Eadon was working on behalf of a corporation that they must find in favor of Eadon, and that if they found he was not working on behalf of a corporation that they must find for Rhodes.

(10) The trial court erred in ignoring that there was no evidence presented to the jury in the Rhodes action that Eadon personally engaged in any act that would make him individually liable to Rhodes.

(11) The trial court erred in making the factual statement that "whether the name was corporate or individual made no difference. The status of the insured (corporate or individual) was not the relevant factor." (p. 42). The parties stipulated to the correct names of the named insureds and that the named insureds were corporations, resolving what the court determined was an ambiguity in the policy. Although the names of the corporate entities were incorrect, the policy was not ambiguous about the fact that it was intended to cover corporations – the policy stated "corporation" on the declarations page, and Eadon testified that he intended to insure a corporation. Whether a business entity is listed as a corporation or individual is relevant and important – the definition of an insured is different depending on whether the business entity is an individual or a corporation. The parties have stipulated that the insured entities were corporations.

(12) The trial court erred in failing to find that the Defendants were estopped from arguing that (1) Eadon personally participated in any tortuous activity resulting in the Rhodes verdict (2) that Eadon was acting on behalf of a corporation and (3) that Marion L.

Eadon d/b/a C&B Fabrication is the same entity as C&B Fabricators, Inc. or LowCountry Signs & Fabrication, Inc., because those issues were resolved in the Rhodes action.

(13) The trial court erred in failing to find that Rhodes and Piedmont are judicially estopped from arguing that (1) Eadon was acting on behalf of a corporation and (2) Marion L. Eadon d/b/a C&B Fabrication is the same entity as C&B Fabricators, Inc. or LowCountry Signs & Fabrication, Inc., because they successfully argued the opposite position in the Rhodes action.

(14) The trial court erred in basing its decision on the reasonable expectations doctrine, as that doctrine has not been adopted in South Carolina and is contrary to South Carolina law.

(15) The trial court erred in basing its decision on the reasonable expectations doctrine, because there is no ambiguity in the policy – the parties stipulated that corporations were the named insureds on the policy and stipulated to the correct names of the corporations.

(16) The Order contains a recitation of facts unnecessary to the decision rendered by the Court regarding:

- (a) the timing, issuance and content of reservation of rights letters;
- (b) content and timing of motions to intervene;
- (c) the statement that "only after the verdict in the Rhodes action did it first contend that it does not insure Marion L. Eadon d/b/a C&B Fabrication and related comments on page 46 of the Order;
- (d) speculation on the Court's part as to what a jury may have decided if required to determine the names of the corporation intended to be insured by the policy (p.

47). Furthermore, if the court had directed a verdict on the issue being submitted to the jury, it would have only directed a verdict as to the correct names of the corporations intended to be insured. There existed no ambiguity or issue of fact that the intended type of business entity was a corporation.

(17) The Order makes findings of fact that are inconsistent with the decision rendered by the jury in Rhodes v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action number 01-CP-20-334 in the Fairfield County Court of Common Pleas ("Rhodes action"), have no support in the record, were not before this Court or have been improperly stated as fact when in dispute in the trial of the Rhodes action, as follows:

(a) Eadon personally guaranteed quality of signs to Rhodes (p. 2) – this was disputed at trial and the cause of action for negligent misrepresentation dismissed at directed verdict;

(b) SCDOT prevented Rhodes from re-erecting the signs because of safety concerns (p. 17) – This finding of fact is not supported by record in the Rhodes action. The only evidence is that Rhodes was prevented from re-erecting the signs because he was operating a sham business;

(c) The Rhodes jury determined that both physical injury to and loss of use of real estate occurred (p. 23)– There is no support in the record for this statement – It is unclear what the jury determined, because the Defendants opposed Auto-Owners intervention in the Rhodes action to ask special interrogatories;

(d) The jury found that diminution in value of Rhodes' property and the Piedmont loss of income were foreseeable results of the negligence . . . (p. 23)- There is no support in the record for this statement – It is unclear what the jury determined,

because the Defendants opposed Auto-Owners intervention in the Rhodes action to ask special interrogatories;

(e) The negligence verdict did not include the contract price of the signs (p. 25) - There is no support in the record for this statement – It is unclear what the jury determined, because the Defendants opposed Auto-Owners intervention in the Rhodes action to ask special interrogatories;

(f) Eadon had only one sign business (p. 40) – This statement of fact is contrary to the evidence submitted and the jury's determination in the Rhodes action that Eadon was working on behalf of a sole proprietorship and not a corporation;

(g) Eadon was the sole shareholder and conducted all business of behalf of the corporations named in the insurance policy (p. 41) - This statement of fact is contrary to the evidence submitted in the Rhodes action – the only evidence is that Eadon only supplied the money and that employees of the corporations were in charge of fabricating, erecting and repairing signs;

(h) LowCountry Signs & Fabrication, Inc. was in business at the time that the sign fell (p. 41) - This statement of fact is contrary to the evidence submitted in the Rhodes action – the only evidence is that Eadon was out of the sign business at the time the sign fell.

(i) That the Court was provided the Rhodes trial transcript on the day of trial. This factual assertion is incorrect. The entire trial transcript was provided to the Court in support of Auto-Owners' motion for summary judgment on January 14, 2005.

(18) The trial court erred in finding that the falling sign was an occurrence as defined by the policy of insurance and the applicable common law.

(19) The trial court erred in finding that Auto-Owners "admitted" that there was an occurrence, because the summary judgment motion referenced was held before the Supreme Court's decision in L-J, Inc. v. Bituminous Fire and Marine Ins. Co., 621 S.E.2d 33 (2005).

(20) The trial court erred in finding that the costs of removing the sign that did not fall is a covered damage because the sign that fell was an occurrence.

(21) The trial court erred in finding that the removal of the two signs ordered by the SCDOT constitutes an occurrence under the terms of the policy and the applicable common law.

(22) The trial court erred in finding that the removal of the debris of the fallen sign and removal of the two signs that did not fall by order of the SCDOT constitutes "property damage" under the terms of the policy and the applicable common law. The trial court mistakenly relied on Helena Chemical Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

(23) The trial court erred in finding that diminution in value constitutes "property damage" as defined in the policy. Diminution in value does not constitute "property damage" under South Carolina law. Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc., 356 S.C. 156, 588 S.E.2d 112 (2003).

(24) The trial court erred in stating that "C&B Fabrication is entitled to payment from Auto-Owners" for cost of removal of one of the signs that did not fall. (p. 23). That issue is not raised in the pleadings and is not properly before the Court.

(25) The trial court erred in finding that the exclusions contained in the policy do not apply to the damages awarded against Eadon.

(26) The trial court erred in finding that exclusion k does not exclude the damages for the contract price of the signs as well as the loss of income from the signs, because the signs meet the definition of "your product" and the term "property damage" includes loss of use. (p. 24)

(27) The trial court erred in not finding that the signs, including the loss of use of the signs, whether or not they are considered real property, constitute "your work" under the terms of the policy, and therefore any lost income, profits or rents that may have been awarded in the Rhodes action are not covered by the policy. (p. 25-30).

(28) The trial court erred in finding that Exclusion I does not exclude damages for loss of use of the signs in light of its holding that the signs suffered "property damage" that resulted in damages for loss of use of the signs to produce rental income. (p. 31).

(29) The trial court erred in finding that Exclusion I does not apply to exclude the property damages to the signs and the loss of use of the signs in light of its holding that "the two signs that did not fall did sustained property damage because their use was lost." (p. 39).

(30) The trial court erred in finding that Exclusion I is ambiguous, and that "when ambiguity exists, there is coverage as a matter of law." Exclusion I is not ambiguous and there is no precedent for this holding. (p. 29)

(31) The trial court erred in finding that exclusions m and n do not apply to exclude damages awarded against Marion L. Eadon d/b/a C&B Fabrication.

(32) The trial court erred in finding that "the jury verdict in the Rhodes action confirms that there were property damages caused by the work product and not merely damage to the work itself." This finding lacks support in the record – there is no proof as

to what the jury's verdict represents. In addition, Rhodes submitted evidence of damages resulting from the loss of use of the signs (lost profits), which are excluded under the policy.

(33) The trial court erred in failing to rule that the Defendants had the burden of proving that the damages awarded by the jury in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

(34) The trial court erred in failing to find that the Defendants had failed to prove that the verdict in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

(35) The trial court erred in finding that the policy covers the damages awarded in the Rhodes action, because the Defendants failed to prove that the verdict rendered constituted an award of covered damages as opposed to non-covered damages.

(36) The trial court erred in failing to determine if the damages awarded in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

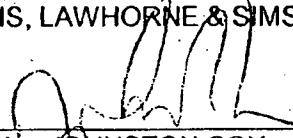
(37) The trial court erred in failing to find that punitive damages are not recoverable, because the Defendants failed to prove that the verdict represents covered damages as opposed to non-covered damages.

(38) If it is determined that the verdict constitutes an award of both covered and non-covered damages, the trial court erred in failing to find that punitive damages should be prorated or allocated between Marion L. Eadon d/b/a C&B Fabrication and Auto-Owners based upon the amount of covered damages in the verdict.

Based upon the foregoing, Auto-Owners respectfully requests that the Court alter or amend its Order dated November 7, 2006 to reflect that Marion L. Eadon d/b/a/ C&B Fabrication is not an insured under the policy issued by Auto-Owners, that Auto-Owners' policy does not provide coverage for the damages awarded in the Rhodes action and the other requested alterations identified above. In the alternative, Auto-Owners requests that the Court grant its motion for a new trial, because the Court's ruling is contrary to the law and evidence.

This Motion is based upon the pleadings filed in this case, rules of Court, 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
JOHN L. MCCANTS
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

11/20, 2006

STATE OF SOUTH CAROLINA FILED - RECEIVED THE COURT OF COMMON PLEAS

COUNTY OF YORK

2006 NOV 22 AM 8:57

CIVIL ACTION NO.: 01-CP-46-2369

Auto-Owners Insurance Company, DAVID HAMILTON

Plaintiff, C.C.P. & GS
YORK COUNTY, SC

CERTIFICATE OF SERVICE

v.

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

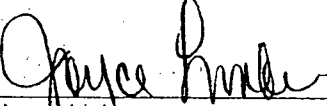
Defendants.

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff, does hereby certify that service of the attached Notice of Motion and Motion to Alter or Amend 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 20th day of November, 2006, addressed as follows:

Hoover C. Blanton, Esquire
MCCUTCHEN, BLANTON, RHODES
& JOHNSON, LLP
1414 Lady Street
Post Office Drawer 11209
Columbia, South Carolina 29211-1209

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

William O. Sweeney, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, South Carolina 29211


Joyce Linker

STATE OF SOUTH CAROLINA

COUNTY OF YORK

AUTO-OWNERS INSURANCE COMPANY

☒ Plaintiff

v.

Samuel W. Rhodes, Piedmont Promotions, Inc., Et
Al.

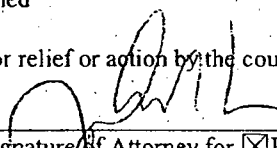
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

02-CP-46-2369

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: A. Johnston Cox, Esq, Bar No. Address: ELLIS LAWHORNE & SIMS, PA Post Office Box 2285 Columbia, South Carolina 29924 phone: 803-254-4190 fax: e-mail: other:		Defendant's Attorney: Hoover Blanton, Bar No. Address: McCutchen, Blanton, Johnson & Barnette Post Office Drawer 11209 Columbia, 29211 phone: 803-799-9791 fax: e-mail: other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: To Alter or Amend Judgment, or in the alternative, For a New Trial Estimated Time Needed: 20 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted: 11/21/06			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ 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, SCRPC) ☐ 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: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____			

SCCA/233 (11-03)

☐ MOTION FEE COLLECTED ID: _____
☐ CONTESTED - AMOUNT DUE: _____

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,	)	AMENDED NOTICE OF MOTION AND
	)	MOTION TO ALTER OR AMEND
v.	)	JUDGMENT, OR IN THE
	)	ALTERNATIVE, FOR A NEW TRIAL
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. Marion L. Eadon d/b/a	)	
C&B Fabrication, C&B Fabrications, Inc.	)	
and LowCountry Signs, Inc.,	)	
	)	
Defendants.	)	

TO: WILLIAM O. SWEENEY, HOOVER C. BLANTON AND CREIGHTON COLEMAN, ATTORNEYS FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Auto-Owners Insurance Company will move before Judge Lee S. Alford, the Presiding Judge of the York County Court of Common Pleas, at the York County Courthouse, York, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 59, SCRPC, granting its motion to alter or amend the Order filed November 7, 2006, and received by counsel for Auto-Owners on November 10, 2006, or in the alternative, for a new trial. This motion is based upon the following grounds:

- (1) The trial Court erred in failing to rule that Eadon and Rhodes have the burden of proving that Marion L. Eadon d/b/a C&B Fabrication is an insured under the terms of the policy.
- (2) The trial court erred in not finding that the verdict in the Rhodes action was awarded against an individual, Marion L. Eadon.

(3) The trial court erred in not finding that an individual can not "d/b/a" a corporation.

(4) The trial court erred in holding that "Eadon was the sign business. The judgment is against the trade name C&B Fabrication. Under the Stipulation the trade name is insured." (p. 43). The verdict is not against the trade name. It is against Marion L. Eadon d/b/a C&B Fabrication – an individual. As stipulated by the parties, the policy was issued to two corporations. Corporations and individuals have separate legal identities. An individual can not "d/b/a" a corporation. The relevant inquiry is whether (1) was there evidence that Eadon did anything personally upon which to based a verdict against him (2) If so, was the verdict rendered against him while acting on behalf of a corporation named in the policy and (2) if so, was he sued as a result of taking actions within his duties as an officer of the corporation?

(5) The trial court erred in ruling that Marion L. Eadon qualifies as an insured under the policy in light of the facts contained in the record in the Rhodes action, Marion Eadon's deposition testimony in which he stated that the allegations of wrongdoing alleged in the Rhodes action were not within his duties as an officer of C&B Fabricators, Inc. or LowCountry Signs and Fabrication, Inc. and the definition of "Insured" contained within the policy of insurance issued by Auto-Owners.

(6) The trial court erred in finding that Eadon is an insured under the policy, because the only evidence in the record is that he was sued for activities outside the scope of his duties as an officer of the corporations named in the policy.

(7) The trial court erred in failing to find that the jury in the Rhodes action determined that Eadon was not acting on behalf of C&B Fabricators, Inc.

(8) The trial court erred in ruling that Marion L. Eadon d/b/a C&B Fabrication is the same entity as C&B Fabricators, Inc. and LowCountry Signs and Fabrication, Inc.

(9) The trial court erred in ignoring Judge Dennis' instruction to the jury in the Rhodes action that if they found that Eadon was working on behalf of a corporation that they must find in favor of Eadon, and that if they found he was not working on behalf of a corporation that they must find for Rhodes.

(10) The trial court erred in ignoring that there was no evidence presented to the jury in the Rhodes action that Eadon personally engaged in any act that would make him individually liable to Rhodes.

(11) The trial court erred in making the factual statement that "whether the name was corporate or individual made no difference. The status of the insured (corporate or individual) was not the relevant factor." (p. 42). The parties stipulated to the correct names of the named insureds and that the named insureds were corporations, resolving what the court determined was an ambiguity in the policy. Although the names of the corporate entities were incorrect, the policy was not ambiguous about the fact that it was intended to cover corporations – the policy stated "corporation" on the declarations page, and Eadon testified that he intended to insure a corporation. Whether a business entity is listed as a corporation or individual is relevant and important – the definition of an insured is different depending on whether the business entity is an individual or a corporation. The parties have stipulated that the insured entities were corporations.

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- (b) content and timing of motions to intervene;
- (c) the statement that "only after the verdict in the Rhodes action did it first contend that it does not insure Marion L. Eadon d/b/a C&B Fabrication and related comments on page 46 of the Order;
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47). Furthermore, if the court had directed a verdict on the issue being submitted to the jury, it would have only directed a verdict as to the correct names of the corporations intended to be insured. There existed no ambiguity or issue of fact that the intended type of business entity was a corporation.

(17) The Order makes findings of fact that are inconsistent with the decision rendered by the jury in Rhodes v. Marion L. Eadon d/b/a C&B Fabrication, Civil Action number 01-CP-20-334 in the Fairfield County Court of Common Pleas ("Rhodes action"), have no support in the record, were not before this Court or have been improperly stated as fact when in dispute in the trial of the Rhodes action, as follows:

(a) Eadon personally guaranteed quality of signs to Rhodes (p. 2) – this was disputed at trial and the cause of action for negligent misrepresentation dismissed at directed verdict;

(b) SCDOT prevented Rhodes from re-erecting the signs because of safety concerns (p. 17) – This finding of fact is not supported by record in the Rhodes action. The only evidence is that Rhodes was prevented from re-erecting the signs because he was operating a sham business;

(c) The Rhodes jury determined that both physical injury to and loss of use of real estate occurred (p. 23)– There is no support in the record for this statement – It is unclear what the jury determined, because the Defendants opposed Auto-Owners intervention in the Rhodes action to ask special interrogatories;

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(f) Eadon had only one sign business (p. 40) – This statement of fact is contrary to the evidence submitted and the jury's determination in the Rhodes action that Eadon was working on behalf of a sole proprietorship and not a corporation;

(g) Eadon was the sole shareholder and conducted all business of behalf of the corporations named in the insurance policy (p. 41) - This statement of fact is contrary to the evidence submitted in the Rhodes action – the only evidence is that Eadon only supplied the money and that employees of the corporations were in charge of fabricating, erecting and repairing signs;

(h) LowCountry Signs & Fabrication, Inc. was in business at the time that the sign fell (p. 41) - This statement of fact is contrary to the evidence submitted in the Rhodes action – the only evidence is that Eadon was out of the sign business at the time the sign fell.

(i) That the Court was provided the Rhodes trial transcript on the day of trial. This factual assertion is incorrect. The entire trial transcript was provided to the Court in support of Auto-Owners' motion for summary judgment on January 14, 2005.

(18) The trial court erred in finding that the falling sign was an occurrence as defined by the policy of insurance and the applicable common law.

(19) The trial court erred in finding that Auto-Owners "admitted" that there was an occurrence, because the summary judgment motion referenced was held before the Supreme Court's decision in L-J, Inc. v. Bituminous Fire and Marine Ins. Co., 621 S.E.2d 33 (2005).

(20) The trial court erred in finding that the costs of removing the sign that did not fall is a covered damage because the sign that fell was an occurrence.

(21) The trial court erred in finding that the removal of the two signs ordered by the SCDOT constitutes an occurrence under the terms of the policy and the applicable common law.

(22) The trial court erred in finding that the removal of the debris of the fallen sign and removal of the two signs that did not fall by order of the SCDOT constitutes "property damage" under the terms of the policy and the applicable common law. The trial court mistakenly relied on Helena Chemical Co. v. Allianz Underwriters Ins. Co., 357 S.C. 631, 594 S.E.2d 455 (2004).

(23) The trial court erred in finding that diminution in value constitutes "property damage" as defined in the policy. Diminution in value does not constitute "property damage" under South Carolina law. Auto-Owners Ins. Co. v. Carl Brazell Builders, Inc., 356 S.C. 156, 588 S.E.2d 112 (2003).

(24) The trial court erred in stating that "C&B Fabrication is entitled to payment from Auto-Owners" for cost of removal of one of the signs that did not fall. (p. 23). That issue is not raised in the pleadings and is not properly before the Court.

(25) The trial court erred in finding that the exclusions contained in the policy do not apply to the damages awarded against Eadon.

(26) The trial court erred in finding that exclusion k does not exclude the damages for the contract price of the signs as well as the loss of income from the signs, because the signs meet the definition of "your product" and the term "property damage" includes loss of use. (p. 24)

(27) The trial court erred in not finding that the signs, including the loss of use of the signs, whether or not they are considered real property, constitute "your work" under the terms of the policy, and therefore any lost income, profits or rents that may have been awarded in the Rhodes action are not covered by the policy. (p. 25-30).

(28) The trial court erred in finding that Exclusion I does not exclude damages for loss of use of the signs in light of its holding that the signs suffered "property damage" that resulted in damages for loss of use of the signs to produce rental income. (p. 31).

(29) The trial court erred in finding that Exclusion I does not apply to exclude the property damages to the signs and the loss of use of the signs in light of its holding that "the two signs that did not fall did sustained property damage because their use was lost." (p. 39).

(30) The trial court erred in finding that Exclusion I is ambiguous, and that "when ambiguity exists, there is coverage as a matter of law." Exclusion I is not ambiguous and there is no precedent for this holding. (p. 29)

(31) The trial court erred in finding that exclusions m and n do not apply to exclude damages awarded against Marion L. Eadon d/b/a C&B Fabrication.

(32) The trial court erred in finding that "the jury verdict in the Rhodes action confirms that there were property damages caused by the work product and not merely damage to the work itself." This finding lacks support in the record – there is no proof as

to what the jury's verdict represents. In addition, Rhodes submitted evidence of damages resulting from the loss of use of the signs (lost profits), which are excluded under the policy.

(33) The trial court erred in failing to rule that the Defendants had the burden of proving that the damages awarded by the jury in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

(34) The trial court erred in failing to find that the Defendants had failed to prove that the verdict in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

(35) The trial court erred in finding that the policy covers the damages awarded in the Rhodes action, because the Defendants failed to prove that the verdict rendered constituted an award of covered damages as opposed to non-covered damages.

(36) The trial court erred in failing to determine if the damages awarded in the Rhodes action constituted an award of covered damages as opposed to non-covered damages.

(37) The trial court erred in failing to find that punitive damages are not recoverable, because the Defendants failed to prove that the verdict represents covered damages as opposed to non-covered damages.

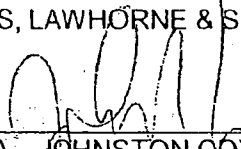
(38) If it is determined that the verdict constitutes an award of both covered and non-covered damages, the trial court erred in failing to find that punitive damages should be prorated or allocated between Marion L. Eadon d/b/a C&B Fabrication and Auto-Owners based upon the amount of covered damages in the verdict.

(39) The interest on the judgment in the Rhodes action was not an issue presented to this Court and was not framed by the pleadings in this case. No evidence was offered by any party regarding this issue. Therefore, the Court erred in referencing interest on the judgment in the Rhodes action in its Order.

Based upon the foregoing, Auto-Owners respectfully requests that the Court alter or amend its Order dated November 7, 2006 to reflect that Marion L. Eadon d/b/a/ C&B Fabrication is not an insured under the policy issued by Auto-Owners, that Auto-Owners' policy does not provide coverage for the damages awarded in the Rhodes action and the other requested alterations identified above. In the alternative, Auto-Owners requests that the Court grant its motion for a new trial, because the Court's ruling is contrary to the law and evidence.

This Motion is based upon the pleadings filed in this case, rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing.

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ATTORNEYS FOR AUTO-OWNERS INSURANCE
COMPANY

Columbia, South Carolina

11/21, 2006

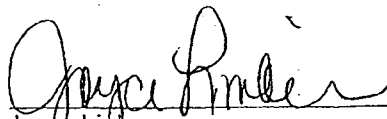
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CIVIL ACTION NO.: 01-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	CERTIFICATE OF SERVICE
	)	
v.	)	
	)	
Samuel W. Rhodes, Piedmont Promotions,	)	
Inc. and Marion L. Eadon, C&B Fabrications,	)	
Inc. and Low Country Signs, Inc.	)	
	)	
Defendants.	)	
	)	

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff, does hereby certify that service of the attached Amended Notice of Motion and Motion to Alter or Amend 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 21st day of November, 2006, addressed as follows:

Hoover C. Blanton, Esquire
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& JOHNSON, LLP
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Creighton B. Coleman, Esquire
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Joyce Linker

STATE OF SOUTH CAROLINA RECEIVED IN THE COURT OF COMMON PLEAS

COUNTY OF YORK 2007 JAN -3 AMNO: 12

CIVIL ACTION NO. 02-CP-46-2369

Auto-Owners Insurance Company, Plaintiff

C.C.P. & S.
YORK COUNTY, SC

**NOTICE OF MOTION AND
SUPPLEMENTAL RULE 59 MOTION
AND/OR IN THE ALTERNATIVE, RULE
60(b)(2), (4) AND (5) MOTION FOR
RELIEF FROM THE ORDER OR
MOTION TO STAY**

v.

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

Defendants.

TO: WILLIAM O. SWEENEY, HOOVER C. BLANTON AND CREIGHTON
COLEMAN, ATTORNEYS FOR DEFENDANTS:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Auto-Owners Insurance Company supplements its previous Motion to Alter or Amend Judgment or in the alternative for a New Trial and, if necessary, moves before Judge Lee S. Alford, the Presiding Judge of the York County Court of Common Pleas, at the York County Courthouse, York, South Carolina, at such time and place as may be set by the Court, for an Order pursuant to Rule 60(2), (4) and (5), SCRCP, granting its motion for relief from the Order based upon the Court of Appeals Order dated December 15, 2006 vacating the judgment in the Rhodes action.

(40) By Order dated December 15, 2006, the South Carolina Court of Appeals reversed the judgment in the Rhodes action. Therefore, the judgment upon which the Court's decision in this declaratory judgment action has been vacated. The Court of Appeals has held that the trial court did not have jurisdiction to try the issues in the case, because the trial court should have granted Defendant Eadon's motion to transfer venue to Clarendon County. Therefore, the testimony and evidence relied upon by the Court in reaching its decision in this case is null and void, as if it was never presented.

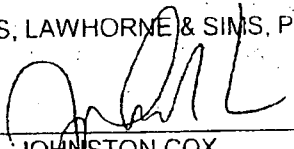
This case is to determine if Auto-Owners has a duty to indemnify Eadon for a judgment rendered against him. There is no judgment against Eadon. There is no trial testimony upon which to base an indemnification determination. Therefore, the Court's Order in this case is also null and void, because it is based upon the evidence and testimony presented at the trial.

In the alternative, Auto-Owners requests that this action be stayed in its current posture pending the outcome of Rhodes' petition for writ of certiorari to the Supreme Court. If the Supreme Court denies certiorari or affirms the Court of Appeals' decision, the underlying case will be retried. To push forward with this case, with a decision based upon a judgment that does not exist, will result in a waste of the Court's time and a continued expenditure of time and money on behalf of the parties to this litigation. If the case is retried, there may be new or different evidence which bears upon the issues before this court. Eadon may prevail in the underlying action, which would render this case unnecessary. A Clarendon County jury may award only damages in the amount of the signs, which the parties have stipulated is a damage that is not covered by the insurance policy.

Due to this development, Auto-Owners believes that a stay of this action promotes judicial economy. The case should be stayed until (1) the Supreme reverses the Court of Appeals or (2) until the case is retried to verdict. Otherwise, the parties will expend court time and money litigating issues based upon a judgment that does not exist.

This Motion is based upon the pleadings filed in this case, rules of Court, and such other matters as may be properly presented to the Court at the time of the hearing. ⁴

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ATTORNEYS FOR AUTO-OWNERS
INSURANCE COMPANY

Columbia, South Carolina

12/28, 2006

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 239(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

v.

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

Appeal From Fairfield County
Paul E. Short, Jr., Circuit Court Judge
R. Markley Dennis, Jr., Circuit Court Judge

Unpublished Opinion No. 2006-UP-413
Heard November 9, 2006 – Filed December 15, 2006

REVERSED AND REMANDED

Catharine Garbee Griffin, Charles E. Carpenter, Jr.,
Carmen V. Ganjehsani, of Columbia, for Appellant.

Creighton B. Coleman, of Winnsboro; Hoover C. Blanton,
of Columbia; for Respondents.

PER CURIAM: Marion L. Eadon appeals the jury award of \$5,000 for breach of contract, \$5,000 for breach of implied warranty, \$3,000,000 for negligence, and \$3,500,000 in punitive damages to Samuel W. Rhodes, Jr. Eadon argues the trial court erred in (1) denying his motion to transfer venue; (2) allowing a verdict against him as an individual; (3) excluding evidence; (4) allowing a punitive damages award; and (5) denying his post-trial motions for a new trial absolute, or, in the alternative, a new trial nisi remittitur. We reverse and remand.

FACTS

In September 1998, Eadon formed C&B Fabricators, Inc., a statutory close corporation. C&B Fabricators' principal business was manufacturing and erecting outdoor signs. Eadon hired Chuck Benenhaley to be manager of the company.

Sometime in 1999, Rhodes, representing Piedmont Promotions, Inc. (Piedmont),^[1] contacted Eadon and Benenhaley about building and erecting three outdoor advertising signs on property in Fairfield County. Rhodes received a proposal from "C&B Fabrication" for the fabrication, building, and installation of the three signs. Rhodes accepted the proposal in August 1999.

The South Carolina Department of Transportation (SCDOT) had issued Piedmont permits to construct and maintain the three outdoor advertising signs upon the property in Fairfield County.^[2] Piedmont represented to SCDOT that the property would be the future sight of a car business, Interstate Auto Sales (Interstate), owned by Rhodes' wife. The property was located within an unzoned commercial or industrial area.^[3]

Subsequently, three signs were built and erected. Rhodes tendered full payment, in three installments, for the signs. Payment was made by check from Piedmont Promotions. The first payment was made to "C&B Fabrication;" the other payments were made to "C&B Fabricators."

In December 2000, Rhodes noticed his middle sign was leaning. Rhodes called Eadon several times about fixing the sign. Rhodes also faxed Eadon about the sign; the faxes were addressed to "Mr. Marion Eadon, C&B Fabricators." Eadon informed Rhodes "C&B Fabrication" went out of business. Nevertheless, Eadon sent a crew to fix the sign. A few days later, a different sign fell onto I-77.

SCDOT deemed all three signs unsafe and ordered Rhodes to remove the signs. Thereafter, SCDOT cancelled Rhodes's billboard permits because the signs were "unsafe and present a hazard to the motoring public." Rhodes submitted an application for new permits which SCDOT denied finding that Interstate was not a qualifying commercial business, but was being operated as a sham.^[4] Rhodes appealed to the Administrative Law Judge. The ALJ affirmed SCDOT's decision holding Rhodes's business was a sham activity,^[5] not a commercial activity, and therefore the refusal to grant permits for re-erection of the outdoor signs was justified.

In December 2001, Rhodes and Piedmont filed an action against Eadon, d/b/a C&B Fabrication, in Fairfield County. The complaint alleged 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 violation of the South Carolina Unfair Trade Practices Act.

Eadon filed a motion to transfer venue to Clarendon County, the county of his residence. The trial court denied the motion pursuant to section 15-7-10 of the South Carolina Code (2005). Specifically, the trial court held the action arises out of "injuries to real property" and "must be tried in the county in which the subject of the action or some part thereof is situated."

A jury trial was held in Fairfield County. At the trial's conclusion, the only causes of action submitted to the jury were for breach of contract, breach of warranty, and negligence. The jury returned a verdict of \$5,000 for breach of contract; \$5,000 in actual damages for breach of an implied warranty; and \$3,000,000 in actual damages for negligence, and \$3,500,000 in punitive damages.

Eadon filed post-trial motions for judgment notwithstanding the verdict (JNOV), a new trial, a new trial *nisi* remittitur, and a post-trial review of the punitive damages award. After hearing arguments, the trial court denied all of Eadon's post-trial motions. This appeal followed.

LAW/ANALYSIS

Eadon argues the trial court erred in denying his motion to transfer venue. We agree.

Motions to change the venue of a trial are addressed to the sound discretion of the trial court. Garrett v. Packet Motor Express Co., 263 S.C. 463, 465, 210 S.E.2d 912, 912 (1975). The trial court's ruling will not be disturbed unless it appears a manifest legal error was committed. Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 94, 282 S.E.2d 858, 859 (1981).

Unless provided for in sections 15-7-10 or 15-7-20 of the South Carolina Code (2005), all actions "shall be tried in the county in which the defendant resides at the time of the commencement of the action." S.C. Code Ann. § 15-7-30 (2005);^[6] see also Jeter v. S.C. Dep't of Transp., 369 S.C. 433, ___, 633 S.E.2d 143, 147 (2006) (interpreting section 15-7-30 to mean all cases not falling within sections 15-7-10 or 15-7-20 must be tried in the county of defendant's residence). Section 15-7-10 provides that actions "[f]or the recovery of real property or of an estate or interest therein or for the determination in any form of such right or interest and for injuries to real property," must be tried in the county in which the "subject of the action" or some part thereof is situated.^[7]

In Coastal Mall, Inc. v. Askins, 265 S.C. 307, 217 S.E.2d 725 (1975), the Supreme Court of South Carolina analyzed the rule fixing venue of actions for injuries to real property. The court noted "the term 'injury' is used in a technical sense and as meaning every wrong which in legal contemplation is an injury to real property, and the rule is not limited to actions for physical injury to realty, or to physical interference therewith . . ." *Id.* at 310, 217 S.E.2d at 726 (citation omitted). The court also noted a statute relating to actions for injuries to real property does not apply "where an action for certain relief is essentially one to enforce a personal obligation." *Id.* at 310, 217 S.E.2d at 727 (citation omitted). The court found the pivotal question at hand was not whether there was any remote or incidental injury to real property, but rather what is "the subject of the action." *Id.* at 311, 217 S.E.2d at 727. The court interpreted "subject of the action" to mean "the plaintiff's

primary right." Id. at 311-12, 217 S.E.2d at 727.

In Coastal Mall, the defendant, Askins, agreed to construct a business mall, including a pre-designed canopy structure, for Coastal Mall. When a portion of the canopy collapsed rendering it useless, Coastal Mall filed an action alleging Askins negligently installed the canopy structure. The court found the "subject of the action" was Coastal Mall's right to have a construction contract properly performed. Id. at 312, 217 S.E.2d at 727. Thus, the court held venue was not proper in the county of Coastal Mall's property and should have been transferred to the county of Askins's residence. Id. at 312, 217 S.E.2d at 727-28.

Similarly, in Friarsgate, Inc. v. Irmo, 281 S.C. 588, 589, 316 S.E.2d 423, 424 (Ct. App. 1984), this court held section 15-7-10 was inapplicable. In Friarsgate, the court found no injury to real property because the suit was not filed to "recover an estate or interest in real property," or "for a determination that it has an estate or interest in real property." Id.

Thus, in order to find venue is proper under section 15-7-30, the court must find the "plaintiff's primary right" arises from an injury to real property; it is not sufficient to find an injury to real property has resulted from the actions of the defendant. In this case, the main impetus behind the lawsuit is the alleged breach of contract and/or negligence in constructing the outdoor signs by Eadon. Indeed, as in Coastal Mall, "if there be any 'injury to real property' involved in this case such was only to that which became realty upon being constructed by the defendant under his contract." 265 S.C. at 311, 217 S.E.2d at 727. Accordingly, we find venue was not proper in Fairfield County and the trial court erred in failing to grant Eadon's motion to transfer venue to Clarendon County. Because the trial court had no jurisdiction to do anything but grant a change in venue, we reverse and remand for entry of an order changing the venue to Clarendon County.[8]

CONCLUSION

Based on the foregoing we hold the trial court erred in denying the motion to transfer venue. In view of our disposition of this case, we need not address Appellant's remaining issues. See Whiteside v. Cherokee County Sch. Dist. No. One, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993) (stating appellate court need not address remaining issues when resolution of prior issue is dispositive). The decision of the circuit court is accordingly

REVERSED and REMANDED.

ANDERSON, HUFF and BEATTY, JJ., concur.

[1] Rhodes is President and sole owner of Piedmont.

[2] Under the Highway Advertising Control Act, the General Assembly granted SCDOT the authority to issue permits for the erection and maintenance of commercial outdoor signs and to promulgate regulations governing the issuance of permits. S.C. Code Ann. §57-25-150(A) (Supp. 2001). The Act generally limits the placement of commercial outdoor advertising signs to zoned industrial areas, zoned commercial areas, unzoned commercial areas, or unzoned industrial areas. S.C. Code Ann. §57-25-140(7) & (8) (Supp. 2001).

[3] According to S.C. Code Ann § 57-25-120(4) (Supp. 2000) an unzoned commercial or industrial area is "the land occupied by the regularly used building, parking lot, and storage and processing area of a commercial business or industrial activity and land within six hundred feet of it on both sides of the highway."

[4] A sham activity is defined as, "any activity that is seemingly a commercial or industrial activity but which was created primarily or exclusively to qualify an area as an unzoned commercial or industrial area and which does not conduct any meaningful business at the activity site." 25A S.C. Code Ann. Regs. 63-342 (U) (Supp. 2000).

[5] The ALJ acknowledged that Piedmont initially qualified for the permits by proposing to conduct a commercial business within six hundred feet of the highway. However, the ALJ found Interstate failed to maintain the standards established to constitute qualifying commercial activity, citing that the water service was cut off, there was no operable restroom, the cars onsite were vandalized and had not been repaired and that two or three cars were inoperable.

[6] The 2005 amendments to 15-7-30 are not applicable to this case. See 15-7-30 (Supp. 2005) (providing amendments are applicable to causes of action arising on or after July 1, 2005).

[7] The 2006 amendments to 15-7-10 are not applicable to this case. See Act No. 354, 2006 S.C. Acts 2779, 2780 (providing amendment does not affect pending actions).

[8] We note the unchallenged ruling by the trial court that the signs were fixtures on Rhodes's property does not affect our decision. The fact the signs were fixtures is irrelevant for determining whether the "subject of the action" involves an injury to real estate.

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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,

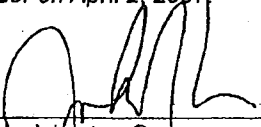
v.

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.

NOTICE OF APPEAL

Auto-Owners Insurance Company appeals the Order of the Honorable Lee S. Alford, dated November 7, 2006, and the Orders of the Honorable Lee S. Alford denying Auto-Owners Insurance Company's post-trial motions, dated March 22, 2007 and March 30, 2007. Appellant received written notice of the entry of the March 22, 2007 Order on March 26, 2007, and the March 30, 2007 Order on April 2, 2007.

April 9, 2007


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SC Court of Appeals

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

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Lee S. Alford, Circuit Court Judge

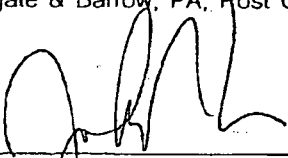
Case No. 02-CP-46-2369

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.

PROOF OF SERVICE

I certify I have served the Notice of Appeal on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, on April 9, 2007, addressed to their attorneys of record: Hoover C. Blanton, Esquire, McCutchen Blanton Johnson & Barnette, LLP, Post Office Box 11209, Columbia, SC 29211, Creighton B. Coleman, Esquire, Coleman & Tolen, LLC, Post Office Box 1006, Winnsboro, SC 29180, and William O. Sweeny, Esquire, Sweeny Wingate & Barrow, PA, Post Office Box 12129, Columbia, SC 29211.

April 9, 2007


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RECEIVED
APR 10 2007
SC Court of Appeals

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2002CP4602369

Auto Owners Insurance Co vs. Samuel W Rhodes

CHECK ONE:

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

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

Order

Dated at York, South Carolina, this 7th day of November, 2006.

Court Reporter:

Lee S. Alford

PRESIDING JUDGE - Lee S. Alford

This judgment was entered on the 7th day of November, 2006, and a copy mailed first class this 7th day of November, 2006, to attorneys of record or to parties (when appearing pro se) as follows:

✓ Alfred Johnston Cox Ellis Lawhorne & Sims,
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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M

SCRCF APP-24/FORM 4

David Hamilton - Clerk of Court

CPFORM4M

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF YORK)

CALENDAR NO. 02-CP-46-2369

Auto-Owners Insurance Company,)

Plaintiff,)

v.)

ORDER

Samuel W. Rhodes, Piedmont)

Promotions, Inc. and Marion L.)

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

C&B Fabrications, Inc. and)

Low Country Signs, Inc.,)

Defendants.)

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DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

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

FACTUAL BACKGROUND

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

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EBB

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

corporate entity. The signs were approximately 500 feet apart.

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

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

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

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

THE UNDERLYING ACTION

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

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

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

THE D J ACTION

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

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

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

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

BOTH ACTIONS

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

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

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

would have produced.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Stipulation

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

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

THE POLICY PROVISIONS

I.

Generally

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

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

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

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

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

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

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

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

II.

Occurrence

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

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

Occurrence, as defined in the policy is an accident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

High Country, 648 A.2d at 477.

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

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

793 (1992) as follows:

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

Id. at 478.

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

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

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

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

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

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

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

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

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

684 N.W.2d at 578.

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

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

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

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

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

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

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

III. Property Damage

Insuring agreement 1a says (page 1):

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.

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

"Property damage" means:

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

#19
20th

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV.

Exclusion k

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

This insurance does not apply to:

* * *

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

Policy, pp. 1, 4.

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

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

V.

Exclusion l

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

"Property damage" to "your work" arising out of it or any part of it and including in the "products - completed operations hazard".
This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. a. "Products-completed operations hazard" includes all ...
"property damage" occurring away from premises you own or
rent and arising out of "your product" or "your work" except:
(1) Products that are still in your physical possession; or
(2) Work that has not yet been completed or abandoned.

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

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

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

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

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

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

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

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

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

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

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

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

Exclusion l does not apply.

VI.

Exclusion m

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

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

- 1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or ...

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

(Policy, page 4):

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

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

Definition 5 defines "impaired property" as follows:

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

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

if such property can be restored to use by:

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

(Policy, p. 11)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII.

Exclusion n

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. At 948-49 (Emphasis added).

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

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

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

Id. at 950 (Emphasis added.)

In Auto-Owners v. Home Pride Companies, Inc., 268 Neb. 528, 684 N.W.2d 571 (2004), The Nebraska Supreme Court there dealt with the Auto-Owners policy exclusions for damages to (2) "your work" or (3) "impaired property". [Identical terms in an apparently identical policy as the one in the instant Auto-Owners' case, exclusion n.] The Court said:

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

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

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

VIII.

Covered Damages

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

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

loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the occurrence that caused it. (Emphasis added.) [Paragraph 12b, page 14 of the policy].

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

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

THE INSURED

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

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

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

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

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

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

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

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

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

A: "Yes."

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

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

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

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

Under the Stipulation the trade name is insured.

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

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

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

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

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

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

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

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

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

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

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

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

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

FINDINGS AND CONCLUSIONS

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

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

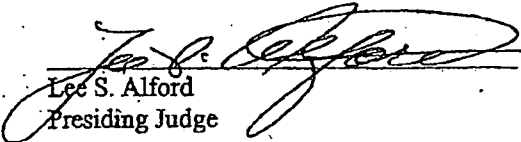
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The Court is informed that the Rhodes action is on Appeal and the result of that Appeal will determine if there is any change or modification in the Judgment or the amount of the Judgment in the Rhodes action.

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

IT IS SO ORDERED.


Lee S. Alford
Presiding Judge

November 7, 2006

#48
COR.

STATE OF SOUTH CAROLINA)
County of York)

Auto-Owners Insurance Company,)
Plaintiff)

v.)

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

In The Court of Common Pleas

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

Supplemental Order

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

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

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

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

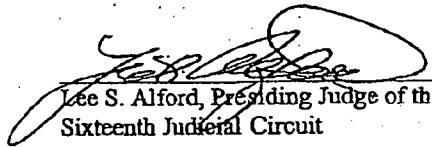
Section 1-A-1-A as follows: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance policy applies."

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

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

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

It Is So Ordered.


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

York, S.C.
March 23, 2007

#2

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

In The Court of Common Pleas

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

Revised Supplemental Order

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

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

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

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

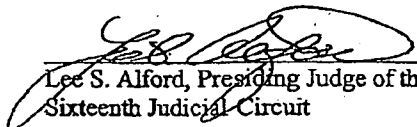
Section 1-A-1-A as follows: "We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance policy applies."

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

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

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

It Is So Ordered.


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

#2
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York, S.C.
March 30, 2007

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF YORK	)	CALENDAR NO. 02-CP-46-2369
	)	
Auto-Owners Insurance Company,	)	
	)	
Plaintiff,	)	RESPONSES TO THE PLAINTIFF'S
	)	REQUEST TO ADMIT BY
v.	)	DEFENDANTS SAMUEL W. RHODES
	)	AND PIEDMONT PROMOTIONS, INC.
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L.	)	
Eadon, C&B Fabrications, Inc.,	)	
and Low Country Signs, Inc.,	)	
	)	
Defendants.	)	

The Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. respond to the Plaintiff's Request to Admit dated March 15, 2004 as follows:

1. C&B Fabrications, Inc. is not a defendant in the action 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 in the Fairfield County Court of Common Pleas.

Response: They admit only that C&B Fabrications, Inc. is not named a defendant in the identified action.

2. Low Country Signs, Inc. is not a defendant in the action 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 in the Fairfield County Court of Common Pleas.

Response: They admit only that Low Country Signs, Inc. is not named a defendant in the identified action.

3. In the action 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 in the

Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. allege that Marion Eadon is liable to them individually, doing business as C&B Fabrication.

Response: Denied. They admit only that in the identified action they allege that Marion Eadon was doing business as C&B Fabrication and is liable to them for the reasons alleged in the Amended Complaint in that Action.

4. In the action 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 in the Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. do not allege that Marion 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.

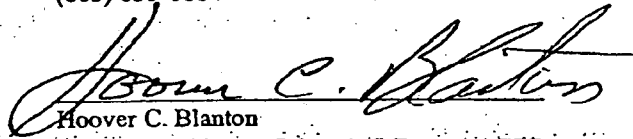
Response: Admitted.

5. In the action 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 in the Fairfield County Court of Common Pleas, Samuel W. Rhodes and Piedmont Promotions, Inc. allege that Marion Eadon was acting as an individual doing business as C&B Fabrication and not as an officer or employee of C&B Fabrications, Inc. or Low Country Signs, Inc.

Response: Denied. They admit only that in the identified action they allege that Marion L. Eadon was doing business as C&B Fabrication.

(signature page attached)

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120 Washington Street
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Winnsboro, South Carolina 29180
(803) 635-6884



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

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

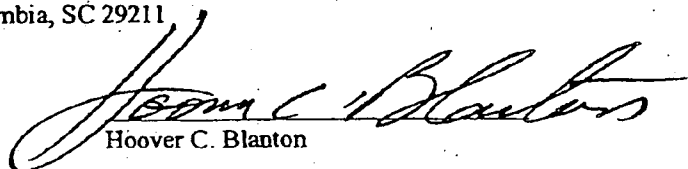
April 13, 2004

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

I, Hoover C. Blanton, of McCutchen Blanton Johnson & Barnette, L.L.P., do hereby certify that a copy of the Responses to the Plaintiff's Request to Admit by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. 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 13th day of April, 2004 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 SIXTH CIRCUIT
	)	
Auto-Owners Insurance Company,	)	CASE NO. 02-CP-46-2369
	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	DEFENDANT MARION L. EADON'S
	)	RESPONSE TO PLAINTIFF'S
	)	REQUEST TO ADMIT
	)	
Samuel W. Rhodes, Piedmont	)	
Promotions, Inc. and Marion L. Eadon,	)	
C&B Fabrications, Inc. and Low	)	
Country Signs, Inc.,	)	
Defendant.	)	

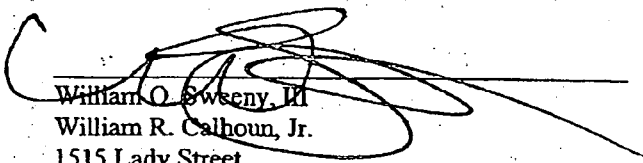
TO: A. JOHNSTON COX, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, the following constitute Defendant Marion L. Eadon's response to the Plaintiff's Request to Admit:

RESPONSE: Requests 1, 2, 3, 4 and 5 are not directed to Defendant Marion L. Eadon, and therefore, this Defendant does not require a response. However, if these requests are in any way directed to Defendant Eadon, this Defendant denies the same.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.


 William O. Sweeney, III
 William R. Calhoun, Jr.
 1515 Lady Street
 Post Office Box 12129
 Columbia, South Carolina 29211
 (803)256-2233
 Attorneys for Defendant Marion Eadon

Columbia, South Carolina
 March 29, 2004

5/5/07

index file

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS

Auto-Owners Insurance Company,
Plaintiff,

CIVIL ACTION NO.: 02-CP-46-2369

v.

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

Defendants.

**PLAINTIFF'S RESPONSE TO THE FIRST
REQUEST FOR ADMISSION TO PLAINTIFF
BY DEFENDANTS SAMUEL W. RHODES AND
PIEDMONT PROMOTIONS, INC.**

TO: CREIGHTON B. COLMAN, ESQUIRE, AND HOOVER C. BLANTON, ESQUIRE,
ATTORNEYS FOR DEFENDANTS, SAMUEL W. RHODES, JR. AND PIEDMONT
PROMOTIONS, INC.:

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Plaintiff responds to the First Request for Admission to Plaintiff by Defendants Samuel W. Rhodes and Piedmont Promotions, Inc. as follows:

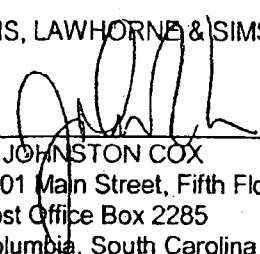
1. In the years 1999, 2000 and 2001 there was no corporate entity chartered in South Carolina named "C&B Fabrications, Inc."

RESPONSE: Admitted. The corporate entity chartered is C&B Fabricators, Inc.

2. 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.

RESPONSE: Denied as stated. The Plaintiff craves reference to its policy as to who is an insured under the terms of the policy.

ELLIS, LAWHORNE & SIMS, P.A.

BY: 

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

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina

May ____, 2004

STATE OF SOUTH CAROLINA)

COUNTY OF FAIRFIELD)

Auto-Owners Insurance Company,)

Plaintiff,)

v.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 01-CP-46-2369

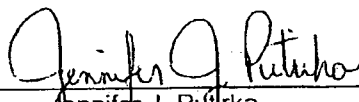
CERTIFICATE OF SERVICE

The undersigned employee of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff, does hereby certify that service of the attached Plaintiff's Response to the First Request for Admission to Plaintiff by Defendants Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. 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 May, 2004, addressed as follows:

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

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

William Sweeney, Esquire
Sweeny, Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, South Carolina 29211


Jennifer J. Putrka

118-5-6407
3852-125
COPY

Page 1

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF FAIRFIELD) IN THE COURT OF COMMON PLEAS
3
4 SAMUEL W. RHODES, JR. AND) DOCKET NO. 02-CP-20-334
5 PIEDMONT PROMOTIONS, INC.,)
6 Plaintiffs,)
7 -vs-) DEPOSITION OF
8 MARION L. EADON, D/B/A C&B) MARION L. EADON, JR.
9 FABRICIATION,)
Defendant.)

10 Given before Vicki Sarvis Proctor, Court Reporter
11 and Notary Public at the law offices of McCutchen,
12 Blanton, Johnson & Barnette, LLP, 1414 Lady Street,
13 Columbia, South Carolina, on, Friday, June 13, 2003,
14 commencing at 9:42 a.m.
15
16
17
18
19
20

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1 29, your letter -- this one there? I had a
2 couple of questions about it. In the first
3 sentence of that letter you say that C&B
4 Fabricators went out of business April 3, 2000,
5 correct?

6 A. Yeah, uh-huh.

7 Q. Give me the details of how it quote went out of
8 business. Was it liquidated as a corporation?

9 A. It ran out of money.

10 Q. Was it ever liquidated as a corporation? Is it
11 still a corporate entity?

12 A. I think it may be. I'm not sure. The
13 accountant told me the reason we had to keep the
14 corporation -- for some kind of tax. I don't
15 remember.

16 Q. Okay.

17 A. I'll have to find out.

18 Q. So in summary, you don't know whether it's been
19 liquidated as a corporate entity or not?

20 A. No, I don't know how they handled all that
21 stuff.

22 Q. Did you have the same accountant do all your
23 accounting work?

24 A. Yes, uh-huh.

25 Q. Who is that?

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

1 Q. Did they do any sign erection, Low Country
2 Signs, Inc.?

3 A. Not that I remember.

4 MR. BLANTON: I need to make a comment.

5 (BRIEF BREAK BEGINNING AT 12:52 P.M.

6 AND CONCLUDING AT 12:53. P.M.)

7 Q. In this, your letter of December 29 that you
8 faxed to Sam Rhodes, what is the significance of
9 the date of April 3, of 2000, as the date that
10 C&B Fabricators went out of business?

11 A. What is the what now?

12 Q. What is the significance of the specific date as
13 is -- from the general comment it went out of
14 business. This is a specific date. What is it
15 about that date that identifies it as the time
16 that C&B Fabricators went out of business?

17 A. I don't really know the answer to that.

18 Q. Okay.

19 A. Maybe that was -- I don't know.

20 Q. So at the time this letter of December 29, 2000,
21 that you sent to Sam Rhodes was sent, C&B
22 Fabricators, Inc. had been out of business over
23 eight months, from April 3 til to January 29.

24 Is that correct?

25 A. Yeah.

RAY SWARTZ & ASSOCIATES OF SOUTH CAROLINA 1-800-822-8711

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD) COURT OF COMMON PLEAS
)
) C/A No. 01-CP-20-334

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

Plaintiffs,

v.

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

Defendant.

COPY

DEPOSITION OF
SAMUEL W. RHODES, JR.

Monday, May 3, 2004
10:05 a.m. - 2:46 p.m.

The deposition of SAMUEL W. RHODES, JR., taken on behalf of the Defendant at the law offices of Baker, Ravenel & Bender, LLP, 1730 Main Street, Columbia, South Carolina, on the 3rd day of May, 2004, before Andrea R. Taylor, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

CREEL COURT REPORTING, INC.
1116 Blanding Street, Suite 1B / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 Q: Would your utilities have been around \$12,000
2 a year in the year 2000?

3 A: Probably would have been more with those signs
4 because those would have been another probably
5 four or \$5,000 a year.

6 Q: Would have been \$4,000 or \$5,000 for the
7 utilities for those three signs?

8 A: Uh-huh (affirmative response).

9 Q: You have to say yes or no.

10 A: Yes.

11 Q: Could it have been more than \$4,000 or \$5,000
12 a year for the utilities for those three signs?

13 A: I'd have to go back and see what Fairfield ...
14 well, I don't know who was ... I'd have to go
15 back and look at the utility bills.

16 Q: Okay. I'm going to show you the profit and
17 loss statement for January through December of
18 2000.

19 MS. GRIFFIN: Can we mark this as the next exhibit.
20 (Defendant's Exhibit Number Four was marked for
21 identification purposes.)

22 Q: If you look at Exhibit Number Four, do you
23 agree that that's a profit and loss statement
24 for January through December of 2000?

25 A: Yeah.

1 Q: And if you flip back to the last page of that
2 document, there is an itemization of utilities
3 for that year.

4 A: Okay.

5 Q: Would that have been the cost of utilities
6 spent for signs operated by Piedmont Promotions
7 during the year 2000?

8 A: The last page?

9 Q: The last page, \$31,294.48; is that how much you
10 spent for signs, for the electricity for the
11 signs for the year 2000?

12 A: That appears the way she did it.

13 Q: Well, is that right or not right?

14 A: Well, I don't know how she did it. I think I
15 do. If she did it the way I told her, that
16 would be right.

17 Q: What did she do?

18 A: Certain checks to Piedmont Promotions would be
19 to draft utilities.

20 Q: Explain that to me.

21 A: All right. That would be so all these power
22 companies get paid. I don't write a check out
23 to each one.

24 Q: So explain to me how that works. You don't
25 write a check to each one. Are they deducting

STATE OF SOUTH CAROLINA)
)
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.

CREEL COURT REPORTING, INC.
1116 Blanding Street, Suite 1B / Columbia, SC 29201
(803) 252-3445 / (800) 822-0896

1 sure. I think that's maybe where we got the
2 name. Of course, my nickname is Brother, so we
3 might have used it for that. I don't remember
4 all that.

5 Q: Was the business he was operating, was it a
6 corporation?

7 A: I don't think so.

8 Q: Once you decided to get into this business what
9 did you do?

10 A: I went and rented a facility and, of course,
11 first we formed a -- you know, formed a
12 corporation. Then I went and rented a building
13 and proceeded to get the necessary equipment to
14 do the job with such as cranes and dirt diggers
15 and welding machines and whatever he said we
16 had to have.

17 Q: Why did you form a corporation?

18 A: Mainly for protection.

19 Q: From what?

20 A: From anything that may happen. You know, I've
21 had pretty good accountants and attorneys over
22 the years. Of course, this is the advice that
23 we always get that, you know, you form a
24 corporation to protect yourself and, you know,
25 that's the main reason for it.

- 1 Q: You mean from a liability standpoint?
- 2 A: Yeah.
- 3 Q: There's also possibly some tax benefits for
- 4 doing that?
- 5 A: Yeah. A lot of different --
- 6 Q: What was the name of the corporation?
- 7 A: C&B Fabrications.
- 8 Q: C&B Fabrications, Inc.?
- 9 A: Uh-huh.
- 10 Q: I noticed you just told me you thought the name
- 11 of the corporation was C&B Fabrications, Inc.?
- 12 A: (Nods head.)
- 13 Q: And I'm gonna show you what the Secretary of
- 14 State's office -- the corporation showing you
- 15 as the registered agent of C&B Fabricators,
- 16 Inc.
- 17 A: Or whatever. They one in the same.
- 18 Q: Okay. That was my question.
- 19 A: It don't make any difference how you spell it.
- 20 Q: So when you say C&B Fabrications, Inc. you mean
- 21 C&B Fabricators, Inc.?
- 22 A: Yeah. Whatever it was.
- 23 Q: The corporation that you formed?
- 24 A: Right.
- 25 Q: So if we refer to C&B Fabrications, Inc. or C&B

1 Fabricators, Inc. somewhere along in this
2 deposition we're talking about the same thing?

3 A: Same thing.

4 Q: All right. You were the president of C&B
5 Fabricators, Inc.?

6 A: I guess you could say that.

7 Q: You were an executive officer of the
8 corporation?

9 A: Right. Chief financial officer.

10 Q: Chief financial officer?

11 A: Yeah.

12 Q: Okay. What was your -- I mean, you basically
13 already told me this about basically, Chuck was
14 to run the entire business and you were the
15 money man. What was your role in the
16 corporation? What did you do as the executive
17 officer?

18 A: Mainly, I came in every morning to see what all
19 needed to be ordered or whatever to fabricate
20 signs with, to see -- sometimes to interview
21 employees or just talk to them. Some of the
22 people he had hired I'd like to talk to them
23 and sometimes I would walk around to make sure
24 that everyone was busy and stuff like that.

25 Q: Did you know anything about the billboard

1 signs?

2 A: No.

3 Q: Did you know anything about what to order or,
4 you know, what materials were needed?

5 A: No. They just give you a list of what kind of
6 steel they needed or whatever they needed.

7 Q: So basically your duty as executive officer or
8 president, one of them, was to go ahead and you
9 actually put in the orders for whatever they
10 told you to order?

11 A: Well, the girls did. I just got the orders
12 from Chuck and gave them to one of the
13 secretaries to -- they checked around with
14 several different people who -- steel and
15 stuff, trying to get the best prices and that
16 kind of stuff.

17 Q: Was it part of your duties as the president of
18 the corporation to supervise the work of the
19 employees and make sure they're doing it the
20 right way?

21 A: No. I wouldn't have any idea whether they were
22 doing it right or not.

23 Q: That was Chuck Benenhaley's?

24 A: That was Chuck's job and his brother's.

25 Q: And I think you alluded to this before. I

1 guess another one of your functions was to
2 provide money?

3 A: That seemed like the only function.

4 Q: I mean, was that generally your only function,
5 was to provide money?

6 A: Basically.

7 Q: When you mentioned you might talk to a
8 potential employee, that's just to talk to them
9 before they're hired just to see if they're,
10 you know, not a criminal or whatever?

11 A: I just tried to see whether I liked them or
12 not.

13 Q: Any other duties as an executive officer of C&B
14 Fabricators or C&B Fabrications, Inc.?

15 A: Not really. I assumed they was in good hands.

16 Q: Was it part of your duties as executive officer
17 to negotiate contracts with people or did Chuck
18 do all that?

19 A: He did all that.

20 Q: Was it part of your duties as an executive
21 officer to build the signs yourself?

22 A: No.

23 Q: Now, I understand that you went out and -- or
24 an insurance policy was purchased for C&B
25 Fabrications, Inc.?

- 1 A: Right.
- 2 Q: Is that right?
- 3 A: Uh-huh.
- 4 Q: How did you go about doing that?
- 5 A: Well, I mean, Mike Watson had a lot of my stuff
6 insured anyway and we play poker once a week,
7 so I just let him handle about everything.
- 8 Q: So who did you -- did you actually talk to Mike
9 or did you talk to somebody in his office?
- 10 A: No. I talked to Mike.
- 11 Q: When you went in and talked to Mike about
12 getting the policy, what information did you
13 give him about what you were wanting and that
14 sort of thing?
- 15 A: Well, he came down and, of course, you know, he
16 handled the workers' comp and everything, so I
17 just -- he went through the whole program, you
18 know, with the workers' comp and the insuring
19 of everything that we had. Just, you know, I
20 just let him cover everything.
- 21 Q: I mean, did you tell him "I want a general
22 liability policy, I want a workers' comp
23 policy, I want this, that the other"?
- 24 A: Yeah. I told him I wanted the works whatever
25 it was. I wanted a complete insurance package.

1 Q: Did you tell him that the business was a
2 corporation?

3 A: Yeah.

4 Q: Did you tell him what the corporation did?

5 A: Yeah. He knew. He came down and looked at
6 everything.

7 Q: Did you tell him that the name -- what the name
8 of the corporation was?

9 A: Yeah.

10 Q: Did you tell him that the name of the
11 corporation was C&B Fabrications, Inc.?

12 A: I don't remember that now. I mean, that's
13 been -- I mean, I don't remember that
14 conversation at all.

15 Q: Is it possible you told him it was C&B
16 Fabrications, Inc.?

17 A: Oh, it's a possibility, yeah.

18 Q: Okay.

19 A: But I'm sure he looked at it, you know?

20 Q: Looked at what?

21 A: Looked at the paperwork for the corporation.
22 You know, he talked to the secretary a good
23 bit. He got most of the information from them
24 on vehicles and all that kind of stuff that we
25 had. You know, different trucks and equipment

1 that we had.

2 Q: If the policy was issued to C&B Fabrications,
3 Inc. --

4 A: Uh-huh.

5 Q: -- did you consider that policy to cover C&B
6 Fabricators, Inc., the corporate entity that's
7 formed?

8 A: I assumed it covered everything that I was
9 affiliated with, myself and all my affiliations
10 with the sign business whatever name it was in.

11 Q: Well, let me ask you this: Did you tell Mike
12 that you were operating any business that was
13 not a corporation as far as sign building goes?

14 A: No.

15 Q: Did you go in there intending to insure any
16 other type of business entity, other than your
17 corporation that built signs?

18 A: No.

19 Q: Just so we're clear, when you went in and asked
20 for the insurance policy from Mike, you knew
21 that your business was a corporation?

22 A: Right.

23 Q: Right?

24 A: Uh-huh.

25 Q: You asked him to insure your corporation?

1 A: Right.

2 Q: You didn't tell Mike that you were operating
3 the sign business as a sole proprietor?

4 A: No.

5 Q: Now, were you aware that the insurance policy,
6 the -- I guess a general -- a commercial
7 general liability policy was issued in the name
8 of C&B Fabrications, Inc.?

9 A: Was I aware of it?

10 Q: Yes.

11 A: I assumed it had been done, you know? I don't
12 look at all that stuff. I mean, it's tons of
13 papers. I don't look at them really.

14 Q: Well, I mean, did you ever -- did you ever
15 receive a copy of a commercial general
16 liability policy issued to C&B Fabrications,
17 Inc.?

18 A: To tell you the truth, I don't know.

19 Q: Is it possible that you did and you just don't
20 remember?

21 A: Oh, that's a good possibility.

22 Q: Okay. Did you ever tell anybody at Creech
23 Roddey or Auto-Owners or Owners Insurance that
24 the name on the policy, C&B Fabrications, Inc.,
25 should be C&B Fabricators, Inc.?

1 Q: Does that appear to be what it is, an
2 application for a policy --

3 A: Yeah. Uh-huh.

4 Q: A policy to C&B Fabrications, Inc.?

5 A: Yeah. That's what it appears.

6 Q: And you signed that application?

7 A: Right.

8 Q: On behalf to C&B Fabrications, Inc.?

9 MR. BLANTON: I object to that. That's leading.
10 That's not what the form says. It says
11 "applicant's signature."

12 MR. COX: What did I say? "Policy?"

13 Q: Did you sign that on behalf of C&B
14 Fabrications, Inc.?

15 MR. BLANTON: I object to the form of the question.
16 It re-states what the application on its face
17 says that the applicant is Marion Eadon.

18 MR. COX: I appreciate your objection and I ask that
19 you not make a speaking objection. You can
20 state the form or your objection, but --

21 Q: Did you sign that application on behalf of C&B
22 Fabrications, Inc.?

23 MR. BLANTON: I make the same objection. Mr. Eadon,
24 even with my objection, it doesn't mean that
25 you can't answer it. You can go ahead and

1 answer it.

2 MR. SWEENEY: That's right.

3 WITNESS: Say what?

4 MR. COX: You need to answer the question.

5 MR. SWEENEY: You can still answer the question.

6 A: Yes.

7 Q: Okay. Did you have any problems or tell
8 anybody that C&B Fabrications, Inc. wasn't the
9 right name of your corporation or did you
10 believe that to be the name of your
11 corporation?

12 A: That's something I just didn't pay any
13 attention to one way or the other, you know?

14 Q: Okay.

15 MR. COX: Mark this as an exhibit please.

16 (Plaintiff's Exhibit Number Two was marked for
17 identification purposes.)

18 Q: I'm going to hand you what's been marked as
19 Number Two and if you can identify that for me,
20 if you can tell me what that is.

21 A: What is that, Number Two? What is it?

22 Q: Yes, sir.

23 A: I guess this is from the workers' comp.

24 Q: Is that a letter signed by you?

25 A: Yeah.

1 signing on behalf of the corporation C&B
2 Fabricators, Inc. that does exist?

3 A: What is -- I don't understand the question. As
4 far as I'm concerned that were both the same
5 thing.

6 Q: Both the same thing. Great. Thank you.

7 A: I don't look at every "I" and "T".

8 Q: So an insurance policy issued to C&B
9 Fabrications, Inc. is, in your mind, the same
10 as an insurance policy to C&B Fabricators,
11 Inc.?

12 A: Right.

13 Q: What you intended when you got a general
14 liability policy was getting a general
15 liability policy for C&B Fabricators, Inc.?

16 A: And to cover myself also, you know? The
17 whole -- the corporation and me included.

18 Q: You as an officer of the corporation?

19 A: Right.

20 Q: When you -- I think you told me earlier that
21 Mike dealt mostly with somebody in your office
22 as opposed to you getting the policy. Is that
23 right?

24 A: Yeah. I mean, I just call him and tell him,
25 you know, what I wanted and he comes down. And

- 1 those girls told him everything we had, which,
2 you know, is a right good bit of stuff.
- 3 Q: Did you ask any -- and when I say "Mike," I'm
4 referring to your agent, okay?
- 5 A: Right. Uh-huh.
- 6 Q: Did you ask Mike any specific questions about
7 what the policies did or did not cover?
- 8 A: He assured me he'd take care of everything and
9 I'm covered for everything just like I do on
10 all my other stuff. I say, "Mike, I need
11 complete coverage of this." He said, "No
12 problem. I'll handle it."
- 13 Q: Did you ever ask him any specific questions
14 about what the policy did or did not cover?
- 15 A: No.
- 16 Q: Did you ask him about what persons may or may
17 not be covered under the policy?
- 18 A: No.
- 19 Q: Did you ask him about any -- any things that
20 may be excluded under the terms of the policy?
- 21 A: He said I was covered for anything no matter
22 what. He said I had \$5 million we had to --
23 you know, should be able to do business for
24 that company. He said, "That covers everything
25 that you can think of."

1 Country Signs, Inc. to the policy to get
2 insurance for the business that Sam Smith was
3 already operating as Low Country Signs, Inc.?

4 A: Right. Uh-huh.

5 Q: You were aware that Sam Smith had already or
6 there was already a corporation called Low
7 Country Signs, Inc.?

8 A: Right.

9 Q: When you got the policy?

10 A: Uh-huh.

11 Q: What was your arrangement with Sam Smith? Was
12 it something similar to what you had with Chuck
13 or was it different?

14 A: Yeah. About the same.

15 Q: Did you become an officer of Low Country Signs,
16 Inc.?

17 A: I guess you could say I was chief financial
18 officer in that operation also.

19 Q: What were your duties as an executive officer
20 of Low Country Signs, Inc.?

21 A: Just money and insurance.

22 Q: You just procured the insurance and supplied
23 some money?

24 A: Right.

25 Q: You didn't supervise any work or write any

1 estimates or --

2 A: I never did even go down there.

3 Q: That relationship didn't last very long?

4 A: No.

5 Q: And I believe in your -- do you know when your
6 relationship with Sam Smith ended?

7 A: Not really.

8 Q: I believe you testified in trial that you were
9 out of the sign business completely by December
10 of 2000. Is that correct?

11 A: As far as I remember. I mean, I don't really
12 remember.

13 Q: There's also a corporation out there that is
14 named Low Country Signs and Fabrications, Inc.
15 What relation does Low Country Signs and
16 Fabrications, Inc. have to Low Country Signs,
17 Inc. or anything else?

18 A: I don't know.

19 Q: You don't know?

20 A: No.

21 Q: Did you ever intend to purchase any insurance
22 for Low Country Signs and Fabrication, Inc.?

23 A: That may be the way it was written. I don't --
24 I just don't remember, you know?

25 Q: I think what you said earlier is when you had

1 the policy amended that was to cover Low
2 Country Signs, Inc., which was Sam's business
3 that was already in operation?

4 A: I'm not sure how we did that thing. It seemed
5 like the lawyer in town, Land, wrote that thing
6 up. I'm not sure how it was written up.

7 Q: You're not sure how the policy was written up
8 or how the -- what are you referring to?

9 A: I'm not sure how the corporation or the policy
10 was written up really. Like I said, I'm not a
11 paper-detail person. I rely mostly on other
12 people.

13 Q: Did you -- did you ever -- did you ever operate
14 a sign business that was not a corporation?

15 A: No.

16 Q: Did you at any time intend to insure any sign
17 business that was not a corporation?

18 A: No.

19 Q: Did Low Country Signs, Inc. ever do any
20 business for Mr. Rhodes?

21 A: Not that I can recall.

22 Q: Did --

23 A: I think Sam went and looked at some of it and
24 gave him a price on fixing it, but I don't
25 think anything was ever done that I know of.

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1 Q: That was after -- or sometime in December of
2 2000 or January of 2000 somewhere in that
3 range?

4 A: I don't remember the timetable, but -- I can't
5 remember, you know, when it was.

6 Q: Did Low Country Signs and Fabrications, Inc.
7 ever do any business for Mr. Rhodes or have any
8 relationship with Mr. Rhodes?

9 A: I don't recall. I don't really know.

10 Q: When Sam Smith -- I've got it. Okay. You were
11 just mentioning that Sam had gone out at some
12 point --

13 MR. COX: Mark that for me. I think I've only got
14 one.

15 (Plaintiff's Exhibit Number Three was marked for
16 identification purposes.)

17 Q: Is that what you're talking about, the invoice
18 or proposal there to Mr. Rhodes?

19 A: (Reading.)

20 Q: Is that what you are referring to?

21 A: Yeah.

22 Q: That was done -- it says "Low Country Signs,
23 Inc. --

24 A: Right.

25 Q: -- proposal"?

- 1 Q: Well, let me ask you this: Did this proposal
2 from Low Country Signs, Inc., was that done on
3 your behalf?
- 4 A: Not that I can recall, you know?
- 5 Q: And you as an officer of Low Country Signs,
6 Inc. didn't request this proposal be done or
7 have anything to do with that proposal?
- 8 A: No, not that I can remember.
- 9 Q: Did you request this proposal be done or have
10 anything to do with this proposal on behalf
11 of -- or as an executive officer of Low Country
12 Signs and Fabrication, Inc.?
- 13 A: No. I didn't deal with any of that kind of
14 stuff. Like I said, I just, you know, I let
15 other people.
- 16 Q: The lawsuit that Mr. Rhodes filed against you.
17 --
- 18 A: Uh-huh.
- 19 Q: -- in that lawsuit you understand that he sued
20 you personally?
- 21 A: Right. Uh-huh.
- 22 Q: He did not sue any corporate entity that you
23 were involved with?
- 24 A: Right.
- 25 Q: And your defense at the trial, of the tort

1 Q: When was that?

2 A: I don't remember.

3 Q: Sometime before the trial?

4 A: I don't -- would it been -- I don't think it
5 would have been before, because at that
6 particular time I wasn't involved, the
7 corporation was involved. I didn't -- I didn't
8 realize at that time that I was going to be
9 personally sued or liable or whatever.

10 Q: I mean, can you explain that to me, that you --

11 A: I can't explain it, because I don't even
12 understand it myself.

13 Q: You were all along saying it was a
14 corporation --

15 A: Right.

16 Q: -- and you didn't think they would ever come
17 against you?

18 A: No. I had no idea they would sue me
19 personally.

20 Q: Did you understand that if you were found
21 personally liable and not working on behalf of
22 C&B Fabricators, Inc. that you would not be
23 covered under the policy?

24 A: I thought the policy covered me and the
25 corporation, you know?

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1 Q: Did you -- have you ever looked at the
2 declaration pages?

3 A: No.

4 Q: Did you ever ask Mike Watson to name you
5 personally as an insured on the policy issued
6 to C&B Fabricators, Inc.?

7 A: An agent --

8 MR. BLANTON: I object to the form of the question.
9 No policy has been issued to C&B Fabricators,
10 Inc.

11 MR. COX: Well, he's already testified it's the same
12 thing and that's what we're referring to.

13 MR. BLANTON: I know he's testified to that, but no
14 policy has been issued and that was your
15 question. That's why --

16 Q: Did you ever ask Mike Watson to name you
17 personally as an insured on any policy issued
18 to C&B Fabrications, Inc. or Low County Signs,
19 Inc.?

20 A: Mike's statements are and were that "we look
21 out for you." I'm talking about when he's
22 dealing on one and one. "I'm looking out for
23 you personally regardless of what you're
24 involved in: Corporations, personal or
25 whatever." I mean, that is that main reason

1 Q: I've probably forgotten it.

2 MR. COX: Can you read it back for me.

3 (The last question was read back.)

4 Q: I think I said, conversely, if you were sued
5 for something outside of your duties as an
6 officer of the corporation, then you wouldn't
7 be covered under the policy?

8 A: Would this be pertaining to the signs --

9 Q: Correct.

10 A: -- or pertaining to anything?

11 Q: Your duties as an officer of C&B Fabrications,
12 Inc. or C&B Fabricators, Inc.

13 A: I feel like the policy would cover me in any
14 aspect of what I did referring to signs or
15 whatever type business that I'm in.

16 Q: But you never read the policy?

17 A: No.

18 Q: Sitting here today do you know one way or the
19 other whether you were informed prior to the
20 trial that there was an issue with the
21 insurance company and whether or not you would
22 be personally covered by the policy, that you
23 personally would be covered by the policy?

24 A: Was I aware?

25 Q: Yes, sir.

- 1 A: I assumed I was covered irregardless, you know?
- 2 Q: Let's assume you were not.
- 3 A: Okay.
- 4 Q: If you had not been made aware of that, that
- 5 was an issue, what would you have done
- 6 differently in relation to the defense of your
- 7 case?
- 8 A: What would I have done differently? Are you
- 9 talking about when I took the policy out, would
- 10 I have done anything different or when it was
- 11 --
- 12 Q: No. When you -- in preparing for your defense
- 13 in the trial --
- 14 A: Uh-huh.
- 15 Q: -- okay? If you had known, you know, assuming
- 16 that you were not aware. If you had not known
- 17 that the policy or that you might -- let me
- 18 rephrase that. That was terrible. Assuming
- 19 that you were not aware that there was an issue
- 20 with the insurance company and whether or not
- 21 you were personally insured under the policy,
- 22 okay?
- 23 A: (Nods head.)
- 24 Q: If you had been made aware of that before the
- 25 trial, would you have taken any different

1 actions in defending the case in defending
2 yourself?

3 A: I probably would have tried to, but I don't
4 know what I would have done. I mean, I -- you
5 know, like I said I had no legal education, so
6 really, you know, I relied more or less on
7 attorneys or whatever for their advice for what
8 to do.

9 Q: Okay.

10 A: I mean, I've never been sued before, so I
11 didn't -- and I never sued anybody, so I don't
12 really understand all of the legal mumbo-jumbo
13 you go through.

14 Q: I understand. Do you know who would know? If
15 you had done anything differently, I mean, who
16 could tell us that?

17 A: I ain't sure. All these legal minds ought to
18 be able to come up with something.

19 Q: Mr. Sweeny?

20 A: They ought to come up with something.

21 Q: Okay.

22 A: They good at billing anyway.

23 Q: Your defense was already that you were working
24 on behalf of the corporation, right?

25 A: Right.

1 Q: That's what you maintained throughout the
2 entire trial was that you were working on
3 behalf of the corporation and shouldn't be
4 individually liable, right?

5 A: Yeah.

6 Q: Have you ever considered paying any money to
7 Mr. Rhodes personally to --

8 MR. SWEENEY: I object to that and I'm going to
9 instruct him not to answer that question.

10 MR. COX: On what basis?

11 MR. SWEENEY: On the basis that that is involved with
12 a strategy, a settlement strategy, that we may
13 or may not have. It would involve
14 attorney-client privilege and I think it's
15 beyond the scope of what you're entitled to ask
16 here in the deposition.

17 MR. COX: Let me see if I can put it in a different
18 context.

19 MR. SWEENEY: I mean, conversely, if I got the
20 Auto-Owners guy on the stand here and said,
21 "What's your authority?" I mean, you would --

22 MR. COX: Oh, that's not what I'm asking.

23 MR. SWEENEY: Okay.

24 MR. COX: I'm sorry. Let me rephrase it.

25 Q: Before the -- before the trial of the case,

MARION L. EADON

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1 okay? The trial we've already been through,
2 was there any possible way that you were ever
3 going to pay Mr. Rhodes a dime, personally?

4 MR. SWEENEY: I object. That's speculative. But in
5 addition I think that has to do -- that has so
6 much to do with attorney-client discussion and
7 privilege and I just -- I don't think that's a
8 proper question.

9 MR. COX: So you're instructing him not to answer
10 that too?

11 MR. SWEENEY: I am instructing him not to answer
12 that.

13 MR. COX: Okay. Let me ask it a different way.

14 Q: If you had, assuming that you were not
15 informed, okay? Let's just assume that for the
16 sake of this question. If you had been
17 informed that -- that you would not be an
18 insured under the policy, if it were found that
19 you were not working for the corporation, would
20 you have done anything, paid Mr. Rhodes any
21 money to get the thing settled?

22 MR. COX: Again, that might be speculative.

23 MR. SWEENEY: Again, I am objecting on the ground of
24 speculation --

25 MR. COX: Okay.

MARION L. EADON

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1 MR. SWEENEY: -- but he -- you can answer the
2 question if you're able to.

3 A: The answer is no.

4 Q: I think you -- okay. I think -- you weren't
5 gonna pay Mr. Rhodes a dime under any
6 circumstance?

7 A: No.

8 Q: Have you done anything to prepare for today's
9 deposition?

10 A: Yeah. I got up and got dressed.

11 Q: All right. Have you ever talked with Mike
12 Watson, your agent, regarding the issues with
13 Auto-Owners in this case?

14 A: Have I discussed it with him?

15 Q: Yes, sir.

16 A: Oh, yeah. But I don't believe you want to hear
17 what I said.

18 Q: Well, actually, I do want to hear what you
19 said. If you could maybe delete the cuss
20 words.

21 A: Too many women in here.

22 Q: What did you and Mike talk about?

23 A: I just, you know, told him I was very
24 disappointed in how they were handling it.

25 Q: In how who was handling it?

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1 A: Auto-Owners.

2 Q: Tell me why, the reasons that you were
3 disappointed with it or what did you tell them?

4 A: Because I assumed that I was covered for
5 everything and I was led to believe that I was
6 covered with everything. And as it turned out,
7 you know, with all the -- whatever you want to
8 call it, small print or not reading policies
9 and stuff like that, it's exclusions in there
10 that was never explained by an agent or anybody
11 else that represents the insurance company.
12 And that does not seem that the average person
13 would be qualified to know every paragraph in
14 an insurance policy, that you rely on the agent
15 to cover and protect you. That's why -- I
16 mean, that's why you do business with them
17 because you trust them to that extent that they
18 gonna cover you in every aspect. And when that
19 turns out not to be true, that's pretty
20 disappointing. And downright -- whatever.

21 Q: What did Mike say in response?

22 A: I think one time Mike said, "Well the policy
23 does not cover faulty workmanship." I said,
24 "Well, you know, you should have ex -- you
25 should have said something about that or should

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1 A: No, sir.

2 Q: During the 23 months that Auto-Owners defending
3 Marion L. Eadon d/b/a C&B Fabrication in the
4 Rhodes and Piedmont action, was it your
5 expectation that Auto-Owners did insure Marion
6 L. Eadon d/b/a C&B Fabrication under its
7 liability policy?

8 A: Yes.

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

14 A: Yes, sir.

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

20 A: Yeah.

21 MR. BLANTON: Thank you, sir.

22 MR. COX: Are you done? I'm sorry.

23 MR. BLANTON: I'm done.

24 MR. COX: I just got a couple of questions.

25 MR. EADON - RE-EXAMINATION BY MR. COX:

COPY

1 State of South Carolina) Court of Common Pleas
2 County of York) 16th Judicial Circuit
3) No.: 02-CP-46-2369
4)

5 Auto-Owners Insurance)
6 Company,)

7 Plaintiff,)

8 vs.)

Deposition of
MICHAEL WATSON

9 Samuel W. Rhodes, Jr.,)
10 Piedmont Promotions,)
11 Inc., Marion L. Eadon,)
12 C&B Fabrications, Inc.,)
13 and Low Country Signs,)
14 Inc.,)

15 Defendant.)

April 4, 2006

16 Deposition on oral examination of Michael
17 Watson, reported by Jeffrey M. Thomas, Registered
18 Professional Reporter and Notary Public in and for
19 the State of South Carolina; said deposition taken
20 pursuant to agreement and in accordance with the
21 South Carolina Rules of Civil Procedure, at the
22 Offices of Sweeny, Wingate & Barrow, P.A., 1515 Lady
23 Street, Columbia, South Carolina, on April 4, 2006,
24 at the hour of 10:00 a.m.
25

GARBER REPORTING SERVICE, INC.
POST OFFICE BOX 12348
COLUMBIA, SOUTH CAROLINA 29211
(803) 256-4500

MICHAEL WATSON

1 different package sent to Mr. Cox than what you
2 brought today? And I repeat, it's not a quarrelsome
3 question. I'm just curious.

4 A. And my reason for that is when I got the
5 subpoena I called Mr. Cox at a later date. And I
6 said, "Do I need to worry about bringing anything?"
7 And he said, "No. They should have copies of
8 everything." And I think he called the other
9 attorneys.

10 I just happened to pick this up yesterday
11 to try to familiarize myself with some of the stuff
12 that happened three or four years ago. I didn't
13 know it was going to be an exhibit or anything else.

14 Q. All right. Well, then we are on the same
15 track then. This copy with the Bates Number 339 is
16 a copy of an item from your file?

17 A. I would think so, yes, sir.

18 Q. But not the particular Exhibit 2 file we
19 have here today?

20 A. It could be in here, but I don't recall
21 seeing it. But this did come from one of my files
22 probably, yes, sir.

23 Q. All right. And this is a copy of a check
24 printed for C&B Fabrications; is it not?

25 A. Yes, it is.

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MICHAEL WATSON

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1 Q. And it is made payable to Auto-Owners?

2 A. Yes, sir, it is.

3 Q. In the amount of \$400?

4 A. Yes, it is.

5 Q. And the date as I discern is 17 August of
6 '99?

7 A. Yes, sir.

8 MR. BLANTON: Okay. May we mark this
9 as an exhibit, too -- also.

10 (Deposition Exhibit #5 marked for
11 identification.)

12 BY MR. BLANTON:

13 Q. Show you another document has Bates Number
14 331 through 335 at the bottom. And is that another
15 document from your file?

16 A. Are you speaking about this file or from
17 my office?

18 Q. Unless there is some challenge to it, I
19 just want to confirm that it is from your file and
20 if it was kept as a part of the business records?

21 A. Yes, sir.

22 Q. Whether as part of Exhibit 2 or not is not
23 the point.

24 A. Yes, sir.

25 Q. Okay. And --

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MICHAEL WATSON

1 Q. And Page 506 on that endorsement what does
2 it have about the -- have on the page as the
3 insured?

4 A. M.L. Eadon d/b/a C&B Fabrications.

5 Q. And on Page 507, Bates Number, what does
6 it have as the name of the insured?

7 A. M.L. Eadon d/b/a C&B Fabrications.

8 Q. All right. The next page with the Bates
9 Number faded, but it would be 508 about the middle
10 of the page, what is entered as the named insured?

11 A. M.L. Eadon d/b/a C&B Fabrications.

12 Q. All right. I hand you another two-page
13 document and ask you if you can identify it as --
14 Bates Numbers 520 and 521 at the bottom, if you can
15 identify that as being from your file?

16 A. Yes, sir.

17 MR. BLANTON: Let's mark that as the
18 next exhibit, please?

19 (Deposition Exhibit #13 marked for
20 identification.)

21 BY MR. BLANTON:

22 Q. And what does this two-page document
23 appear to be?

24 A. Again, it does not come out of my office,
25 but it is evidently something furnished me earlier

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MICHAEL WATSON

1 in our conversation. It's a driver exclusion
2 endorsement.

3 Q. And who is excluded under those two?

4 A. It looks like Horris Wade Bryant and a
5 David Yul.

6 Q. And at the bottom of each of those two
7 pages who is shown as the named insured?

8 A. M. L. Eadon d/b/a C&B Fabrications on
9 both.

10 Q. And on each page where is it has a line
11 for a signature, name of insured, what signature
12 appears there?

13 A. Marion Eadon.

14 Q. Thank you. According to some of these
15 exhibits we just identified the prior insurance with
16 the Goldsmith Agency was issued to M.L. Eadon d/b/a
17 C&B Fabrications or Marion Eadon d/b/a C&B
18 Fabrications.

19 When Marion Eadon came to you to write the
20 coverage in his sign business if he had requested
21 you to write the policy to Marion L. Eadon d/b/a C&B
22 Fabrications would you have written him such a
23 policy?

24 MR. COX: Object to the form of the
25 question. You can answer it.

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MICHAEL WATSON

1 THE WITNESS: Would I have written it
2 in that name?

3 BY MR. BLANTON:

4 Q. If he had asked you to?

5 A. Yes, sir.

6 Q. Would the premium have been any higher or
7 lower than the premium --

8 A. I wouldn't think so.

9 Q. Okay. In determining the premium for this
10 type of liability coverage, is it the nature of the
11 business and/or operation that the business engages
12 in what determines the premium?

13 A. Are you talking about the liability
14 premium?

15 Q. Yes, sir, the liability premium.

16 A. Yes, sir. Well, it could be payrolls and
17 receipts, yes, sir.

18 Q. Does the status of the business as a
19 corporation or not being a corporation impact upon
20 writing a coverage or the premium?

21 A. It shouldn't, no, sir.

22 Q. It's really the risk of the business
23 regardless of whether it's incorporated or not
24 incorporated; is that correct?

25 MR. COX: Object to the form.

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MICHAEL WATSON

1 THE WITNESS: That's correct.

2 BY MR. BLANTON:

3 Q. And there is nothing unusual about that in
4 this instance. That is the way insurance is
5 written. The risk is the business if it is a
6 business being insured?

7 MR. COX: Object to the form.

8 THE WITNESS: Yes, sir.

9 BY MR. BLANTON:

10 Q. That is all I have today, Mr. Watson. I
11 thank you. And I don't want you to take any
12 question or comment I made as being quarrelsome, but
13 if you would please -- if there is any ambiguity
14 about the Alsbrooks' letter of 2000 we asked
15 about -- if there is any ambiguity about it, let us
16 know. Otherwise we assume there is none.

17 A. That would be no problem, yes, sir.

18 EXAMINATION

19 BY MR. COX:

20 Q. I've just got a few for you. When did you
21 first write -- well, let me ask you this. This kind
22 of sets some rules. When Mr. Sweeny was asking you
23 questions about and mentioning C&B Fabrications,
24 were you understanding that to be C&B Fabrications,
25 Inc.?

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

AUTO OWNERS INSURANCE)
COMPANY, :

PLAINTIFF,)

VERSUS)

TRANSCRIPT OF RECORD
02-CP-46-2369

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

JANUARY 22, 2004
YORK, SOUTH CAROLINA

BEFORE:

THE HONORABLE S. JACKSON KIMBALL, MASTER IN EQUITY

APPEARANCES:

A. JOHNSTON COX, ESQ.
ATTORNEY FOR PLAINTIFF

HOOVER C. BLANTON, ESQ.
ATTORNEY FOR DEFENDANT RHODES

WILLIAM O. SWEENEY III, ESQ.
ATTORNEY FOR DEFENDANTS EADON, C&B FABRICATIONS,
INC., AND LOW COUNTRY SIGNS, INC.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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

3 LOOKING AT THIS SITUATION - AND THERE ARE SOME CASES THAT
4 TALK ABOUT THIS - THE ONE SIGN THAT FELL DOWN AND CAUSED DAMAGES
5 TO THE HIGHWAY DEPARTMENT AND WHATNOT, I WOULD CONTEND THAT
6 WOULD BE AN OCCURRENCE BECAUSE IT IS SOMETHING THAT CAUSED
7 PHYSICAL DAMAGE, A DEFECT THAT CAUSED PHYSICAL DAMAGE TO OTHER
8 PROPERTY. BUT THERE HAS BEEN NO OCCURRENCE—

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

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

12 THE COURT: YES.

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

16 THE COURT: YEAH. DID YOU PAY ANY OF THE SAME ELEMENTS THAT
17 THEY CLAIM--

18 MR. COX: ALL OF IT.

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

20 MR. COX: YES SIR.

21 THE COURT: --IN THIS ACTION?

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

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

25 MR. COX: RHODES AND PIEDMONT.

1 PROMOTIONS IS LEASING FROM SAM RHODES, BECAUSE WHEN I
2 BORROWED THE MONEY I HAD TO PERSONALLY GUARANTEE IT.

3 Q AND THAT'S FOR 10 YEARS, IS THAT CORRECT?

4 A THAT'S CORRECT.

5 Q CAN THAT LEASE BE RENEWED?

6 A YES, SIR, IT SHOULD BE.

7 Q AFTER THE PERMITS TO ERECT THE SIGNS WERE OBTAINED, WHAT
8 DID YOU DO NEXT?

9 A AFTER I GOT THE PERMITS, I TRIED TO FIND SOMEONE TO BUILD
10 THE SIGNS AND DO A TURNKEY.

11 Q HOW DID YOU COME IN CONTACT WITH MR. EADON, THE DEFENDANT
12 IN THIS CASE?

13 A I HAD CALLED DIFFERENT BILLBOARD COMPANIES, ASKING WHO THEY
14 USED, AND ONE GUY HAD TOLD ME -- WELL, SEVERAL PEOPLE TOLD
15 ME ABOUT C&B AND ONE GUY RECOMMENDED THEM.

16 Q OKAY. WHAT DID YOU DO AFTER THAT? HOW DID YOU MAKE
17 CONTACT OR DID THEY MAKE CONTACT WITH YOU?

18 A IT'S BEEN AWHILE. I FELT LIKE THE GUY -- ONE GUY THAT
19 RECOMMENDED THEM TOLD THEM THAT I WAS THINKING -- I WAS
20 CONTACTED BY THEM OR MAY HAVE CONTACTED THEM, BUT I WENT
21 AND MET WITH MARION EADON AND CHUCK BENENHALEY IN MANNING
22 TO TOUR THE PLANT AND TO SEE HOW THEY MADE THE STRUCTURES
23 AND TO SEE IF THEY WERE CAPABLE OF DOING THIS.

24 Q AND WHEN YOU WENT DOWN, DID YOU MEET WITH THE DEFENDANT,
25 MR. EADON?

1 A THAT'S CORRECT. I MET IN MR. EADON'S OFFICE, AND WE TALKED
2 AWHILE AND THEN WE WALKED AROUND THROUGH THE PLANT AND
3 LOOKED AT PEOPLE DOING DIFFERENT THINGS. WE WALKED OUTSIDE
4 IN THE YARD AND SAW SOME SIGNS THEY HAD BUILT. THEY
5 ACTUALLY HAD ONE ON THEIR LOCATION THAT WAS UP IN THE AIR.
6 THEN WE LEFT AND WENT AND GOT IN HIS CAR.

7 AFTER WE TALKED SOME MORE, THEN WE WENT AND LOOKED AT
8 SOME SIGNS THEY HAD BUILT NEAR THERE, AND THEN WE WENT TO A
9 PIECE OF PROPERTY THAT HE HAD UNDER CONTRACT OR OWNED. HE
10 WAS WANTING TO KNOW IF I WANTED TO BUILD SIGNS THERE, TOO,
11 BECAUSE HE WAS BUILDING SIGNS FOR OTHER BILLBOARD
12 COMPANIES, AND THEY DIDN'T WANT HIM TO BE BUILDING
13 BILLBOARDS AND SELLING THEM BILLBOARDS THAT HE DIDN'T --

14 MS. GRIFFIN: YOUR HONOR, I'M GOING TO OBJECT TO
15 THIS HEARSAY THAT'S COMING IN AS TO WHAT OTHER
16 BILLBOARDS, I'M TOLD, OF SOMEBODY WHO'S AN
17 UNIDENTIFIED PERSON RIGHT NOW --

18 THE COURT: SUSTAINED.

19 (TO MR. COLEMAN) JUST ADVISE HIM SO I CAN
20 DETERMINE HOW HE'S OBTAINED THE INFORMATION.

21 Q LET'S DON'T SAY WHAT ANYBODY ELSE SAID, SAM, BUT DID MR.
22 EADON TAKE YOU AROUND IN HIS CAR?

23 A THAT'S CORRECT.

24 Q IN TALKING WITH HIM, DID HE SAY ANYTHING ABOUT HIS BUSINESS
25 BEING A CORPORATION?

- 1 A NO, SIR.
- 2 Q DID HE SAY ANYTHING ABOUT HIS BEING AN OFFICER OR A
- 3 REPRESENTATIVE OF A CORPORATION?
- 4 A NO, SIR.
- 5 Q WAS THERE ANY SIGNS OR ANYTHING THAT YOU NOTICED AROUND
- 6 WHERE THE BUSINESS THAT HE WAS DOING WAS A CORPORATION?
- 7 A I SAW NOTHING TO INDICATE THAT.
- 8 Q DID YOU TELL MR. EADON WHAT YOU WERE LOOKING FOR IN A SIGN?
- 9 A I TOLD HIM I WAS LOOKING FOR THREE-STACK, DOUBLE-FACE
- 10 SIGNS. THEY WOULD HAVE TO GO UP A MINIMUM -- I HADN'T
- 11 MEASURED IT YET, BUT I KNEW AT LEAST 100 FEET IN THE AIR,
- 12 AND THAT THAT'S WHAT I WAS LOOKING FOR, AND HE ASSURED ME
- 13 THEY COULD BUILD THE SIGNS, THEY COULD BUILD BETTER SIGNS
- 14 THAN ANYBODY HAD BUILT. AND HE SAID THEY WERE JUST A GREAT
- 15 COMPANY AND THEY COULD BUILD ANYTHING I WANTED THEM TO.
- 16 Q EXPLAIN THE H.A.G.L.
- 17 A A H.A.G.L. -- IF YOU HAVE A 100-FOOT H.A.G.L. OR A 130-FOOT
- 18 H.A.G.L., WHATEVER, H.A.G.L. MEANS HEIGHT ABOVE GROUND
- 19 LEVEL. AND SO IF YOU HAVE A POLE, SAY, WITH A 130-FOOT
- 20 H.A.G.L., THEN YOU NEED TO HAVE A POLE 130 FOOT HIGH, AND
- 21 THEN YOU'D HAVE THE SIGN ON TOP OF THAT. SO IF YOU HAD
- 22 TWO, SAY, A DOUBLE STACK, 10-1/2 X 36 SIGN, THEN YOU'D HAVE
- 23 10-1/2 FOOT, AND THAT'S A SPACE IN BETWEEN, AND THEN
- 24 ANOTHER 10-1/2 FOOT ON TOP OF THAT ORIGINAL TOWER.
- 25 Q AS A RESULT OF YOUR CONVERSATIONS WITH MR. EADON AND SEEING

1 THE SITE, WHY DID YOU MAKE THE DETERMINATION TO GO WITH MR.
2 EADON?

3 A WELL, HE ASSURED ME THEY BUILD GREAT SIGNS, HE COULD
4 PERSONALLY GUARANTEE IT, HE JUST -- HE KNEW HOW TO BUILD A
5 SIGN AND HE'D BUILD ME THE BEST SIGN THAT I COULD EVER GET.
6 I THINK THEY HAD EVEN ASKED ME -- YOU KNOW, I HAD HAD SOME
7 OTHER SIGNS THAT HAD BEEN BUILT FOR OTHER PEOPLE, AND HE
8 SAID HE COULD BUILD THEM BETTER THAN THAT.

9 Q AS A CONSEQUENCE OF TALKING WITH MR. EADON, DID HE SUBMIT A
10 PROPOSAL TO YOU TO BUILD THE SIGNS?

11 A YES, BUT BEFORE THEN, I HAD ASKED THAT HE SEND SOMEONE DOWN
12 THERE. CHUCK BENENHALEY CAME DOWN THERE WITH A CRANE TO GO
13 UP IN THE AIR AND SEE HOW FAR -- HOW HIGH UP IN THE AIR WE
14 NEEDED TO BUILD THE SIGNS SO YOU WOULDN'T HAVE A TREE
15 PROBLEM. AND IT WAS DETERMINED THAT WE NEEDED A 130 FOOT
16 H.A.G.L.

17 SO THEN AFTER THAT, THEY SUBMITTED ME A CONTRACT FOR
18 A 130-FOOT H.A.G.L. SIGN AND TOLD ME HE COULD BUILD THAT.

19 MR. COLEMAN: (SHOWING DOCUMENT TO MS. GRIFFIN).
20 PLAINTIFF'S EXHIBIT #4, YOUR HONOR, WITHOUT
21 OBJECTION.

22 THE COURT: PLAINTIFF'S EXHIBIT #4 IS ADMITTED
23 WITHOUT OBJECTION.

24 (PLAINTIFF'S EXHIBIT #4, MARKED FOR
25 IDENTIFICATION AND ENTERED INTO EVIDENCE, CONTRACT

1 WITH C&B FABRICATION).

2 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #4
3 AND ASK IF YOU CAN IDENTIFY THAT DOCUMENT.

4 A THIS IS THE CONTRACT WITH C&B FABRICATION FOR FABRICATING,
5 DELIVERY AND INSTALLATION SPECIFICATIONS, 10'6" X 36',
6 CENTER MOUNT STACK, 15 FOOT, B, 130 FOOT BOTTOM H.A.G.L.

7 Q AND WHAT WAS THE PRICE?

8 A THE ORIGINAL PRICE IS \$51,820 PER UNIT, AND FOR THREE UNITS
9 THAT WOULD HAVE BEEN \$155,460.

10 Q WHAT WAS THE DATE OF HIS PROPOSAL?

11 A THE DATE OF THIS IS 7/9/99.

12 Q AND I THINK IN MY OPENING I SAID THAT IT WAS --

13 MS. GRIFFIN: YOUR HONOR, I OBJECT TO HIM
14 TESTIFYING.

15 THE COURT: SUSTAINED.

16 Q AT THE TOP OF THE PAGE -- READ THE TOP OF THE PAGE TO THE
17 JURY.

18 A "C&B FABRICATION".

19 Q DO YOU SEE "C&B FABRICATION, INC."?

20 A NO, SIR.

21 Q DO YOU SEE "C&B FABRICATION COMPANY"?

22 A NO, SIR.

23 Q DO YOU SEE "PRESIDENT M. L. EADON"?

24 A I SEE "M. L. EADON, PRESIDENT" AND "MANAGER, CHUCK
25 BENENHALEY".

1 Q IS THERE ANYTHING IN THIS DOCUMENT I GAVE YOU TO LEAD YOU
2 TO BELIEVE THIS COMPANY IS A CORPORATION?

3 A NO, SIR.

4 Q DID YOU ACCEPT THIS PROPOSAL?

5 A YES, SIR. I ACCEPTED THIS PROPOSAL AFTER I MET -- I TALKED
6 TO THEM ON THE PHONE A COUPLE OF TIMES, THEY CAME UP WITH
7 THIS PRICE, AND THEN I MET CHUCK BENENHALEY AT A SITE. I
8 HAD ANOTHER SIGN IN THE PEE DEE AREA THAT NEEDED TO BE
9 ALTERED, AND I MET WITH HIM TO GIVE ME A PRICE ON THAT
10 THERE.

11 Q THE ORIGINAL PRICE?

12 A A PRICE ON ALTERING THAT OTHER SIGN. AND HE BROUGHT THIS
13 (INDICATING) AND --

14 Q THE OTHER SIGN THAT WAS IN FLORENCE?

15 A YES, SIR. AND HE BROUGHT THIS FOR THE SIGNS IN FAIRFIELD,
16 AND HE WANTED ME TO SIGN IT THAT DAY AND I SAID, "WELL,
17 I'LL SIGN IT TODAY. CAN YOU KNOCK OFF \$500 MORE PER SIGN?"
18 AND HE SAID, "WELL, LET ME CALL MR. EADON", AND HE CALLED
19 MR. EADON AND THEN HE CAME BACK AND SAID YES, HE COULD DO
20 THAT IF I'D SIGN IT AND GIVE THEM A CHECK RIGHT THEN FOR
21 HALF OF IT, WHICH THIS CONTRACT CALLS FOR 50 PERCENT. SO
22 HE INITIALED THAT AND I WROTE HIM A CHECK FOR HALF THAT
23 AMOUNT.

24 Q AND WHO WERE YOU TALKING TO ABOUT THIS?

25 A AT THAT TIME I WAS TALKING TO CHUCK BENENHALEY.

1 Q AND HOW DID HE CALL MR. EADON?

2 A ON HIS CELL PHONE.

3 MR. COLEMAN: YOUR HONOR, THIS IS #5-A.

4 THE COURT: WITHOUT OBJECTION, PLAINTIFF'S #5-A
5 IS ADMITTED.

6 (PLAINTIFF'S EXHIBIT #5-A, MARKED FOR
7 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

8 Q SAM, I'M GOING TO ASK YOU IF YOU CAN IDENTIFY #5-A.

9 A YES. THIS IS A CHECK WRITTEN FROM PIEDMONT PROMOTIONS TO
10 C&B FABRICATION. IT'S FOR HALF PAYMENT ON THREE UNIPOLE
11 STRUCTURES. IT'S WRITTEN ON 4 AUGUST 1999.

12 Q AND WHAT WAS YOUR AGREEMENT WITH MR. EADON ABOUT WHAT HE
13 WAS GOING TO DO?

14 A THE AGREEMENT WAS FOR HIM TO FABRICATE, DELIVER AND INSTALL
15 A SIGN. IT INCLUDES THE DESIGN AND BUILD, TO MEET LOCAL
16 BUILDING CODES, 36" OUTSIDE CATWALKS, 24" INSIDE UPPER AND
17 LOWER CATWALKS, PRIMED AND PAINTED AS PER SPECS, ELECTRICAL
18 HOOKUPS, AND THAT WAS A TURNKEY JOB.

19 Q NOTHING OTHER THAN THAT, IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q IS THERE ANYTHING ON THAT PROPOSAL THAT SAYS IT WAS FROM
22 C&B FABRICATION, INC.?

23 A NO, SIR.

24 Q WHEN YOU ACCEPTED THAT PROPOSAL, WHO WERE YOU ACCEPTING
25 THAT PROPOSAL FROM?

1 A I WAS ACCEPTING IT FROM MARION EADON, C&B FABRICATION.

2 Q AND WHAT DOES IT HAVE ON THE LETTERHEAD?

3 A C&B FABRICATION.

4 Q IS THERE ANYTHING ELSE IN THERE THAT INDICATES TO YOU THAT
5 IT'S C&B FABRICATION, INC.?

6 A NO, SIR.

7 (PLAINTIFF'S EXHIBIT #5-B, MARKED FOR
8 IDENTIFICATION, CHECK).

9 Q SAM, I'M GOING TO SHOW YOU WHAT'S MARKED AS #5-B. SEE IF
10 YOU CAN IDENTIFY THAT.

11 A AND THIS IS A CHECK WRITTEN FROM PIEDMONT PROMOTIONS, INC.,
12 ONE-FOURTH BALANCE, AND ONE-FOURTH BALANCE DUE ON
13 COMPLETION.

14 Q AND WHO WAS IT MADE PAYABLE TO?

15 A C&B FABRICATION.

16 MR. COLEMAN: #5-C, YOUR HONOR.

17 THE COURT: OKAY.

18 (PLAINTIFF'S EXHIBIT #5-C, MARKED FOR
19 IDENTIFICATION, CHECK).

20 Q I SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #5-C AND
21 ASK IF YOU CAN IDENTIFY THAT DOCUMENT.

22 A THIS IS A CHECK FROM PIEDMONT PROMOTIONS, INC. ON THE
23 TWENTY-SECOND OF FEBRUARY 2000, C&B FABRICATION, FINAL AND
24 FULL PAYMENT, THREE BILLBOARDS.

25 Q AND WHO IS IT MADE PAYABLE TO?

1 Q I SHOW YOU WHAT'S MARKED AS PLAINTIFF'S #6 AND ASK YOU WHAT
2 THAT DOCUMENT IS AND WHEN YOU RECEIVED IT.

3 A THIS IS A DOCUMENT FROM THOMPSON ENGINEERING GROUP, L.L.C.
4 IN ATHENS, TENNESSEE.

5 Q AND --

6 A I RECEIVED THESE FROM TRACY BENENHALEY WHEN I GAVE HIM HIS
7 FINAL CHECK.

8 Q DO THOSE PLANS REFERENCE WHO THOSE PLANS WERE MADE FOR?

9 A THEY REFERENCE THEY WERE MADE FOR C&B FABRICATIONS, TO BOX
10 825, MANNING, SOUTH CAROLINA.

11 Q AND WHAT'S THE DATE?

12 A THE DATE IS 7/13/99.

13 Q AT THE TIME YOU RECEIVED THOSE PLANS, DID YOU EVEN KNOW
14 THOMPSON ENGINEERING EXISTED?

15 A NO, SIR. I NEVER HAD HEARD OF THEM.

16 Q HAVE YOU EVER BEEN TO ATHENS, TENNESSEE?

17 A NO, SIR.

18 Q DO YOU KNOW MR. THOMPSON?

19 A I DON'T KNOW HIM. I MET HIM AFTER THE SIGN FELL.

20 Q DID YOU REQUEST MR. EADON TO USE HIM TO DRAW THOSE PLANS?

21 A NO, SIR.

22 Q DID YOU EVER TALK TO HIM ABOUT THE DETAILS OF THOSE
23 DRAWINGS?

24 A NO, SIR.

25 Q WHAT DID YOU TELL MR. EADON YOU WANTED? WHAT TYPE OF

1 SIGNS?

2 A I TOLD HIM I WANTED THREE 130-FOOT H.A.G.L. STACK UNIPOLES,
3 A TURNKEY JOB, THAT I WANTED ONE PERSON RESPONSIBLE FOR
4 DOING THE WHOLE JOB, AND THAT INCLUDED ELECTRICAL HOOKUPS
5 AND EVERYTHING. AND HE TOLD ME HE COULD TAKE CARE OF THAT,
6 AND THAT'S -- AND I WANTED HIM TO DO EVERYTHING, DESIGN AND
7 BUILD THEM, INSTALL THEM, AND HAVE IT READY TO WHERE ALL I
8 HAD TO DO WAS PUT THE ADVERTISING ON THEM.

9 Q AND WHEN THE SIGNS WERE COMPLETED, DID YOU INSPECT THE
10 SIGNS?

11 A I DIDN'T INSPECT THEM, I JUST LOOKED AT THEM.

12 Q WHY DIDN'T YOU INSPECT THEM?

13 A WELL, I'M NOT AN ENGINEER, SO I DIDN'T KNOW WHAT TO LOOK
14 FOR, AND THAT'S WHY I WENT TO MR. EADON, BECAUSE THEY PUT
15 THE SIGNS UP AND THEY SUPPOSEDLY KNEW WHAT THEY WERE DOING.
16 I MEAN, THAT'S WHAT HE DID.

17 Q DID HE EVER COMMENT, MR. EADON EVER COMMENT, ABOUT THE
18 QUALITY OF WORK THAT HE WAS DOING?

19 A YES. HE HAD TOLD ME THAT THEY BUILT THE BEST SIGNS, AND HE
20 WOULD PERSONALLY GUARANTEE HE WOULD BUILD ME A GREAT SIGN
21 AND NOBODY COULD BUILD ME A BETTER SIGN THAN HE COULD.

22 Q DID YOU BELIEVE HIM?

23 A I CERTAINLY DID.

24 Q DID YOU RELY ON THAT IN DETERMINING TO USE MR. EADON?

25 A THAT'S WHY I WENT WITH MR. EADON.

1 Q ARE YOU AWARE OF HOW THE SIGNS WERE PUT INTO THE GROUND?

2 A YES. THEY HAD TO DRILL A HOLE 20 SOMETHING FEET, I THINK
3 27 FEET DEEP, AND THEY PUT THIS POLE IN THERE, AND THEN
4 THEY WOULD PUT CONCRETE AROUND IT. SO IF YOU BUILD A 4-
5 FOOT -- IF YOU PUT A 4-FOOT PIPE IN THERE, FROM MY
6 UNDERSTANDING, AND YOU DRILL MAYBE A 5-FOOT HOLE AND PUT
7 CONCRETE AROUND IT, IF YOU GO THAT DEEP, IT SHOULD NEVER GO
8 ANYWHERE.

9 Q ONCE THEY WERE INSTALLED IN THE GROUND, WHAT DID YOU
10 CONSIDER THOSE POLES TO BE?

11 A ONCE THEY WENT IN THE GROUND, THEY GO 27 FEET DEEP. I
12 DEEMED THEM AS A PART OF THE PROPERTY.

13 Q PART OF THE PROPERTY?

14 A A PERMANENT FIXTURE OF THE PROPERTY.

15 Q AT THE TIME THAT THEY WERE INSTALLED, WHO OWNED THE SIGNS?

16 A WELL, ONCE THEY WERE INSTALLED, I OWNED THE SIGNS.

17 Q IS THAT REFLECTED IN YOUR LEASE AGREEMENT?

18 A YES, SIR.

19 Q WHEN THEY WERE ERECTED, WHEN THE SIGNS WERE ERECTED, SAM,
20 HOW MANY ADVERTISING SPOTS DID YOU HAVE, TOTAL?

21 A I ENDED UP WITH EIGHT AND I HAD PROSPECTIVE CUSTOMERS ON
22 THE OTHER FOUR. I JUST HADN'T GOTTEN THEM TO SIGN
23 CONTRACTS YET.

24 MS. GRIFFIN: YOUR HONOR, I OBJECT TO THE
25 SPECULATIVE NATURE OF THAT TESTIMONY.

1 THE COURT: OVERRULED, I'LL ALLOW IT.

2 Q SAM, THE TOTAL NUMBER OF ADVERTISING SPOTS, NOT HOW MANY
3 YOU HAD LEASED, BUT HOW MANY SPOTS WERE THERE?

4 A THERE WERE 12 ADVERTISING SPOTS.. IT'S A DOUBLE STACK. IN
5 OTHER WORDS, IT'S STACKED AND THEY GO IN TWO DIFFERENT
6 DIRECTIONS. THEY'RE LIKE A V-SHAPE. SO THERE'S FOUR
7 ADVERTISING SPOTS ON EACH POLE, AND I HAD THREE POLES, SO
8 THERE WAS 12 ADVERTISING SPOTS.

9 Q DID YOU RENT THE SPACES? IS THAT THE PURPOSE?

10 A YES, I LEASED THE SPACES OUT TO OTHER COMPANIES, FOR
11 INSTANCE, HOTELS AND GAS STATIONS, CONVENIENCE STORES, THAT
12 TYPE BUSINESS. I CATER TO THE PUBLIC GOING UP AND DOWN THE
13 INTERSTATE.

14 MR. COLEMAN: (SHOWING DOCUMENTS TO MS. GRIFFIN).

15 THE COURT: OKAY, #7-A, #7-B, #7-C, #7-D AND
16 #7-F ARE ADMITTED WITHOUT OBJECTION.

17 (PLAINTIFF'S EXHIBIT #7-A, MARKED FOR
18 IDENTIFICATION AND ENTERED INTO EVIDENCE, LEASE
19 AGREEMENT).

20 (PLAINTIFF'S EXHIBIT #7-B, MARKED FOR
21 IDENTIFICATION AND ENTERED INTO EVIDENCE, LEASE
22 AGREEMENT).

23 (PLAINTIFF'S EXHIBIT #7-C, MARKED FOR
24 IDENTIFICATION AND ENTERED INTO EVIDENCE, LEASE
25 AGREEMENT).

1 (PLAINTIFF'S EXHIBIT #7-D, MARKED FOR
2 IDENTIFICATION AND ENTERED INTO EVIDENCE, LEASE
3 AGREEMENT).

4 (PLAINTIFF'S EXHIBIT #7-E, MARKED FOR
5 IDENTIFICATION AND ENTERED INTO EVIDENCE, LEASE
6 AGREEMENT).

7 Q SAM, I WANT TO SHOW YOU WHAT'S MARKED AS #7-A AND SEE IF
8 YOU CAN IDENTIFY THAT DOCUMENT.

9 A #7-A IS A LEASE AGREEMENT TO BLYTHEWOOD OIL, INC. FOR THREE
10 10-1/2 X 36 OUTDOOR ADVERTISING SPACES AT MILE MARKER 32
11 FOR 36 MONTHS.

12 Q AND WHAT WAS THE PURCHASE PRICE?

13 A \$750 NET PLUS PRODUCTION FOR EACH SPACE.

14 Q WHAT DOES THAT MEAN?

15 A THAT MEANS HE BOUGHT THREE FACES. HE WAS ADVERTISING HIS
16 CONVENIENCE STORES, AND FOR EACH ONE HE GOT HE PAID ME \$750
17 A MONTH NET, WHICH, IN OTHER WORDS, THAT'S WHAT WE GOT A
18 CHECK FOR, PLUS HE PAID FOR THE PRODUCTION, WHICH IS THE
19 PAINTING OF THE FACE. IN OTHER WORDS, NOWADAYS YOU PUT
20 VINYL ON IT, SO IF THEY PAY PRODUCTION, THEY PAY THE FEE
21 FOR GETTING THE VINYL PRODUCED AND PUT UP ON THE BILLBOARD.

22 Q AND THAT WAS ON THE LARRY SHARPE ONE, IS THAT CORRECT?

23 A THAT'S CORRECT, LARRY SHARPE OF BLYTHEWOOD OIL.

24 Q WHAT'S THE DATE OF THAT?

25 A THE DATE OF THIS IS 27 MAY 1999.

- 1 Q SO \$750 X 3 IS WHAT YOU GOT FROM THAT PER MONTH?
- 2 A FROM MR. SHARPE.
- 3 Q PLUS HE PAID FOR THE PRODUCTION?
- 4 A PRODUCTION, YES.
- 5 Q NOTHING OUT OF YOUR POCKET?
- 6 A THAT IS CORRECT.
- 7 Q I WANT TO SHOW YOU -- AND THE DATE IS THE TWENTY-SEVENTH OF
- 8 MAY 1999?
- 9 A YES, SIR, AND IT WAS SIGNED BY LARRY SHARPE ON THAT DATE.
- 10 Q AND DID YOU, IN FACT, HAVE HIS ADVERTISEMENTS ON THESE
- 11 SIGNS?
- 12 A I DID.
- 13 Q I SHOW YOU WHAT'S MARKED AS #7-B, PLAINTIFF'S EXHIBIT #7-B,
- 14 IF YOU CAN IDENTIFY THAT.
- 15 A THIS IS AN AGREEMENT WITH UNITED FRIENDS, INC. ADVERTISING
- 16 THE COMFORT INN, ONE 10-1/2 X 36 UNIT AT MILE MARKER 32.
- 17 Q WHO IS IT WITH?
- 18 A IT'S WITH UNITED FRIENDS, INC.
- 19 Q "INC." IS ON THAT CONTRACT?
- 20 A THAT'S CORRECT. AND IT'S \$750 NET PLUS PRODUCTION, AND IT
- 21 WAS SIGNED 10/05/99.
- 22 Q AND DID YOU IN FACT HAVE THAT ADVERTISING SPOT?
- 23 A I HAD THAT SPOT.
- 24 Q YOU HAD THAT ON YOUR SIGN?
- 25 A I HAD THAT ON THE BILLBOARD.

1 A IT WAS IN THE MIDDLE BOTTOM UNIT, GOING TOWARD COLUMBIA.

2 Q OKAY. WHAT WAS THE PRICE OF THAT?

3 A \$595 NET.

4 Q DID ANY EVENT OCCUR LATER ON IN THE YEAR 2000 THAT YOU
5 BECAME AWARE OF?

6 A YES. I WAS CONTACTED THAT MY MIDDLE SIGN WAS LEANING, AND
7 I CALLED MR. EADON AND TOLD HIM THAT IT WAS LEANING AND IT
8 NEEDED TO BE FIXED, AND WE TALKED A FEW TIMES.

9 Q DO YOU REMEMBER THE EXACT DATE THAT YOU RECEIVED
10 NOTIFICATION OF THE LEANING SIGN?

11 A IT WAS SOMETIME IN DECEMBER, I THINK, DECEMBER OF 2000, AND
12 I CONTACTED HIM SEVERAL TIMES, AND I ACTUALLY THOUGHT HE
13 WAS COMING TO FIX IT AND THEN IT NEVER GOT FIXED. THEN I
14 FAXED HIM A LETTER AND HE FAXED ME A LETTER BACK, AND I
15 FAXED HIM ANOTHER LETTER.

16 Q LET'S BACK UP A MINUTE. HOW MANY TIMES DID YOU CALL MR.
17 EADON ON THE TELEPHONE?

18 A SEVERAL TIMES. I'VE CALLED HIM AT WORK, AT HIS HOUSE,
19 LETTING HIM KNOW IT WAS LEANING.

20 Q WHAT DID HE TELL YOU?

21 A MY UNDERSTANDING WAS HE WAS GOING TO FIX IT, AND THEN I WAS
22 TOLD, I THINK BY MR. J. C. BENENHALEY --

23 MS. GRIFFIN: YOUR HONOR, I OBJECT, HEARSAY.

24 THE COURT: SUSTAINED.

25 Q DID YOU CONTACT MR. EADON?

1 IDENTIFICATION AND ENTERED INTO EVIDENCE, LETTER
2 FAX).

3 Q AFTER THE PHONE CALLS, DID YOU THEN START WRITING MR.
4 EADON?

5 A THAT IS CORRECT.

6 Q I WANT TO SHOW YOU -- IF YOU CAN, IDENTIFY #8-A.

7 A YES, SIR. THIS IS A LETTER FROM PIEDMONT PROMOTIONS SIGNED
8 BY ME TO MR. MARION EADON, C&B FABRICATION.

9 MR. COLEMAN: AND, YOUR HONOR, ARE THESE ALREADY
10 ADMITTED, THE THREE? I'D MOVE TO HAVE THEM ADMITTED.

11 THE COURT: YOU HAD MOVED TO ADMIT THAT, AND THAT
12 IS ADMITTED SUBJECT TO OBJECTION OF COUNSEL.

13 Q WHAT'S THE DATE OF THAT, SAM?

14 A DECEMBER 29, 2000.

15 Q AND IF YOU WOULD, PLEASE PUBLISH THAT TO THE JURY.

16 A "DEAR MARION: I SPOKE TO YOU A COUPLE OF TIMES THIS PAST
17 WEEK ABOUT THE FOLLOWING PROBLEM. I THOUGHT THAT YOU WERE
18 TAKING CARE OF THE PROBLEM. I WAS INFORMED THIS MORNING BY
19 TRACY BENENHALEY THAT YOU MAY NOT. THE MIDDLE SIGN OF THE
20 THREE SIGNS THAT YOU RECENTLY BUILT FOR ME HAS BEGUN
21 LEANING AND BECOME DANGEROUS. IT IS IN NEED OF IMMEDIATE
22 REPAIR. PLEASE REPAIR THIS IMMEDIATELY, SINCE IT WAS NOT
23 BUILT CORRECTLY. I NEED TO KNOW YOUR RESPONSE TO THIS
24 MATTER IMMEDIATELY. I MAY BE REACHED AT 803-367-8355, 803-
25 366-7194, 803-326-6600 OR FAXED AT 803-324-5360. MY

1 ADDRESS IS P.O. BOX 4234, ROCK HILL, SOUTH CAROLINA 29732.

2 SINCERELY YOURS, SAMUEL W. RHODES, JR."

3 Q AND WHO WAS THIS ADDRESSED TO?

4 A IT WAS ADDRESSED TO MR. MARION EADON, C&B FABRICATORS,
5 MARION, SOUTH CAROLINA, 803-473-5854.

6 Q OKAY. I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S
7 EXHIBIT #8-B AND ASK IF YOU CAN IDENTIFY THAT DOCUMENT.

8 A THIS IS A LETTER TO PIEDMONT PROMOTIONS DATED FRIDAY,
9 DECEMBER 29, 2000, ON THE LETTER OF MARION L. EADON, P.O.
10 DRAWER 8, MANNING, SOUTH CAROLINA 29102, 803-473-5808.

11 MR. COLEMAN: YOUR HONOR, I'D MOVE THAT THAT BE
12 ADMITTED.

13 THE COURT: #8-B IS ADMITTED SUBJECT TO OBJECTION
14 OF COUNSEL.

15 Q IF YOU WOULD, PUBLISH THAT TO THE JURY.

16 A "DEAR SAM: AS YOU WELL KNOW, C&B FABRICATION WENT OUT OF
17 BUSINESS APRIL 3, 2000. I WAS TRYING TO GET TRACY
18 BENENHALEY TO LOOK AT THE SIGN AND REPAIR IT. CHECKING
19 BACK, ALL YOU FELLOWS IN THE SIGN BUSINESS TOOK ADVANTAGE
20 OF ME NOT KNOWING ENOUGH ABOUT THE BUSINESS. EVERYONE IN
21 THE SIGN BUSINESS SAID THAT AFTER 60 FEET, THAT THE CHARGE
22 SHOULD HAVE BEEN \$100 PER FOOT. WE UNDERBID THIS SIGN BY
23 \$22,000, PLUS I LOST \$35,000 ON THE ENTIRE PROJECT.

24 "I AM WILLING TO DO WHAT IT TAKES TO CORRECT THE
25 REPAIRS ON THE LEANING STRUCTURE IF YOU WILL RENT THE

1 (BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING
2 OF JURY AND COURT REPORTER).

3 Q IN THE LETTER THAT WE JUST DISCUSSED, PLAINTIFF'S #8-C FOR
4 I.D., WHAT WAS THE TEXT OF THE LETTER? WHAT WAS YOUR
5 REPLY? IT'S NOT ADMITTED INTO EVIDENCE, BUT BASICALLY WHAT
6 WAS YOUR REPLY?

7 A I WAS RESPONDING TO HIS FAX AND I WAS TELLING HIM THAT ALL
8 I'D EVER ASKED HIM TO DO WAS BUILD THE SIGN CORRECTLY.
9 THAT'S WHAT HE ASSURED ME WOULD BE DONE AND THAT'S ALL I
10 WANTED DONE, WAS THAT THE SIGN BE BUILT THE WAY IT WAS
11 SUPPOSED TO BE BUILT, THAT HE HAD TO SEND HIS CREWS TO
12 OTHER JOBS INSTEAD OF CONCENTRATING ON MINE LIKE IT WAS
13 SUPPOSED TO BE, AND I JUST WANTED MY SIGN BUILT THE WAY IT
14 WAS SUPPOSED TO BE BUILT, A FIRST-QUALITY JOB, AS HE
15 ASSURED ME IT WOULD BE BUILT. AND I WANTED THE SIGN
16 CORRECTED.

17 Q I WANT TO SHOW YOU WHAT'S MARKED AS #8-D AND ASK YOU IF YOU
18 CAN IDENTIFY THAT DOCUMENT.

19 MR. COLEMAN: AND, YOUR HONOR, I WOULD MOVE THAT
20 THAT BE ADMITTED WITHOUT OBJECTION.

21 THE COURT: #8-D IS ADMITTED BUT SUBJECT TO
22 OBJECTION OF COUNSEL, AS I RECALL.

23 A THIS IS A LETTER FROM PIEDMONT PROMOTIONS DATED JANUARY 16,
24 2001 TO MR. MARION EADON, C&B FABRICATION, P.O. DRAWER H,
25 MANNING, SOUTH CAROLINA 29102, 803-473-5854.

1 CRANE. IF THIS IS NOT SATISFACTORY, LET ME KNOW. A
2 LAWSUIT IS A WASTE OF TIME DUE TO THE FACT THAT C&B
3 FABRICATION WENT OUT OF BUSINESS IN APRIL AND DOES NOT HAVE
4 ANY ASSETS. PLEASE ADVISE, MARION EADON."

5 Q AND HOW DID YOU RECEIVE THAT DOCUMENT?

6 A I RECEIVED THIS ON MY FAX MACHINE, AND IT'S DATED 12/29,
7 2000, 12:59, 803-473-5854, C&B FABRICATION, PAGE ONE.

8 Q THAT'S THE TX UP AT THE TOP, CONFIRMING WHERE IT CAME FROM?

9 A THAT'S CORRECT.

10 Q I WANT TO SHOW YOU WHAT'S MARKED FOR I.D. AS #8-C AND ASK
11 YOU IF YOU CAN IDENTIFY THAT DOCUMENT.

12 A THIS IS A LETTER FROM PIEDMONT PROMOTIONS DATED DECEMBER
13 29, 2000 TO MR. MARION EADON, C&B FABRICATION, P.O. DRAWER
14 H, MANNING, SOUTH CAROLINA 29102, 803-473-5854.

15 Q AND IF YOU WOULD, PUBLISH THAT TO THE JURY.

16 THE COURT: NO, THAT ONE HAS NOT BEEN ADMITTED.

17 THAT'S ONLY FOR IDENTIFICATION.

18 MS. GRIFFIN: OBJECTION, YOUR HONOR.

19 THE COURT: I SUSTAIN THE OBJECTION.

20 Q WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #8-C FOR I.D., WAS
21 THIS IN REPLY TO THE LETTER THAT WAS JUST PUBLISHED TO THE
22 JURY?

23 A YES, THIS IS IN RESPONSE TO THAT LETTER.

24 MR. COLEMAN: JUDGE, MAY WE APPROACH THE BENCH?

25 THE COURT: YES, SIR.

1 Q AND IF YOU WOULD, PUBLISH THAT TO THE JURY.

2 A IT SAYS, "DEAR MARION: I INFORMED YOU IN DECEMBER THAT THE
3 SIGN YOU RECENTLY BUILT FOR ME HAD BEGUN LEANING AND HAD
4 BECOME DANGEROUS AND IN NEED OF IMMEDIATE REPAIR SINCE IT
5 WAS NOT BUILT CORRECTLY. YOU SAID THAT YOU WOULD HAVE IT
6 REPAIRED. THE SIGN HAS NOT BEEN REPAIRED AND HAS BECOME
7 EVEN MORE DANGEROUS.

8 "I RECEIVED A CALL FROM S.C.D.O.T. TODAY INDICATING
9 THAT IT WAS UNSAFE. I NEED TO KNOW IF YOU ARE GOING TO
10 CORRECT THIS IMMEDIATELY BEFORE SOMEONE GETS KILLED. I MAY
11 BE REACHED AT 803-367-0355, 803-366-7194, 803-327-6600 OR
12 FAXED AT 803-324-5360. MY ADDRESS IS P.O. BOX 4234, ROCK
13 HILL, SOUTH CAROLINA 29732. SINCERELY, SAMUEL W. RHODES,
14 JR."

15 Q AND, SAM, I WANT TO TAKE YOU BACK TO WHAT'S MARKED AS #8-B,
16 PLAINTIFF'S EXHIBIT, WHICH WAS THE LETTER FROM MR. EADON.
17 HAD YOU EVER BEEN PUT ON NOTICE THAT HE HAD GONE OUT OF
18 BUSINESS?

19 A NO, SIR. THIS WAS THE FIRST I'D HEARD OF ANYTHING ABOUT
20 HIM BEING OUT OF BUSINESS.

21 Q AT THE TOP OF THE LETTER, WHAT DOES IT SAY?

22 A THE LETTERHEAD OR --

23 Q THE LETTERHEAD.

24 A THE LETTERHEAD SAYS, "MARION L. EADON, P.O. DRAWER H,
25 MANNING, SOUTH CAROLINA 29102, 803-473-5808".

1 ADMITTED, THEY WILL ACCOMPANY YOU TO YOUR JURY ROOM
2 WHEN YOU BEGIN YOUR DELIBERATIONS. SO IT'S NOT
3 NECESSARY THAT YOU HAVE TO REMEMBER WHAT YOU'RE SEEING
4 HERE. YOU'LL HAVE A CHANCE TO STUDY THOSE IN MORE
5 DETAIL ONCE YOU BEGIN YOUR DELIBERATIONS. THANK YOU.

6 Q DID YOU SEE MR. EADON'S CREW THERE, SAM?

7 A YES, SIR, I SAW THEM, MET WITH THEM AND TOLD THEM THAT THEY
8 NEEDED TO GET THAT STRAIGHTENED OUT AND CHECK THE OTHER TWO
9 SIGNS AND MAKE SURE WE HAD NO PROBLEM WITH THEM.

10 Q WHAT HAPPENED NEXT WITH THE SIGNS OUT THERE?

11 A AFTER THAT, TWO DAYS LATER I GET A PHONE CALL. I WAS OUT
12 OF TOWN AND I GOT A PHONE CALL TO CALL SOMEONE WITH THE
13 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION, AND THEY
14 INFORMED ME THAT ONE OF MY SIGNS WAS IN THE INTERSTATE, HAD
15 FALLEN INTO THE INTERSTATE AND HAD BLOCKED TRAFFIC, AND
16 THEY WERE IN THE PROCESS OF TRYING TO GET IT WHERE TRAFFIC
17 COULD FLOW, AND THAT THE MIDDLE SIGN WAS LEANING AGAIN, AND
18 THAT THE TRAFFIC WAS STOPPED AND THAT THEY WERE SCARED THAT
19 THE SIGN WAS GOING TO FALL INTO THE TRAFFIC.

20 MS. GRIFFIN: YOUR HONOR, I'D OBJECT TO HIM
21 CONTINUING TO TESTIFY WHAT WAS SAID.

22 THE COURT: SUSTAINED, HEARSAY.

23 Q WHAT DID YOU DO AS A RESULT OF THE INFORMATION YOU RECEIVED
24 ABOUT THE SIGN IN THE ROADWAY?

25 A I IMMEDIATELY CALLED MR. EADON AND TOLD HIM WHAT THE

1 HIGHWAY DEPARTMENT SAID, AND HE SAID THAT WE NEEDED TO GET
2 SOMEBODY THERE IMMEDIATELY TO GET THE SIGN, DO WHATEVER THE
3 DEPARTMENT OF TRANSPORTATION TOLD US TO DO, AND HE SENT
4 SOMEONE THERE.

5 Q WHAT SIGN FELL, THE NORTHERN SIGN, THE MIDDLE SIGN OR
6 SOUTHERN?

7 A THE SOUTHERNMOST SIGN FELL, NOT THE ONE THAT HAD BEEN
8 LEANING, BUT THE SOUTHERNMOST SIGN.

9 Q AS A RESULT OF YOUR CONVERSATIONS WITH D.O.T. OFFICIALS,
10 WHAT DID YOU DO NEXT?

11 A WELL, MR. EADON -- WHEN I GOT THERE, HE HAD SENT TRACY
12 BENENHALEY, AND THEY WERE TAKING DOWN THE MIDDLE SIGN
13 BECAUSE THE HIGHWAY DEPARTMENT SAID TO TAKE THAT DOWN.
14 THEN THEY TOLD THEM TO TAKE DOWN THE NORTHERNMOST SIGN,
15 TOO, BECAUSE THEY DEEMED IT TO BE UNSAFE, AND THEY WANTED
16 TO KNOW WHAT OTHER SIGNS MR. EADON HAD BUILT FOR ME.

17 MS. GRIFFIN: YOUR HONOR, I'D JUST CONTINUE TO
18 OBJECT BECAUSE HE KEEPS TESTIFYING AS TO WHAT OTHER
19 PEOPLE WERE SAYING.

20 THE COURT: SUSTAINED.

21 Q AS A RESULT OF YOUR CONVERSATION, DID MR. EADON TAKE DOWN
22 THE MIDDLE SIGN?

23 A YES, SIR.

24 MS. GRIFFIN: I'D ALSO OBJECT TO HIM CONTINUING TO
25 REFER TO THIS PERSON WHO WAS THERE AS MR. EADON.

1 OBJECTION TO CERTAIN MATTERS ON WHICH THE COURT HAS
2 ALREADY RENDERED ITS RULING.

3 Q SAM, I'D SHOW YOU EXHIBIT #10-A.

4 A THIS IS A BILL. IT SAYS, "J. A. BRANNON, P.E., RESIDENT
5 MAINTENANCE ENGINEER, S.C.D.O.T., P.O. BOX 261, WINNSBORO,
6 29180, TELEPHONE NUMBER 635-4223, CUTTING SIGN LOOSE ON
7 HIGHWAY I-77, \$300, REMIT BILL TO JAMES THOMAS, 2396 E.
8 BEACH RD., RIDGEWAY, SOUTH CAROLINA 29130, \$300, 803-635-
9 7719, MOBILE 403-0391."

10 Q I WANT TO SHOW YOU WHAT'S MARKED AS #10-B AND ASK YOU IF
11 YOU CAN IDENTIFY THAT.

12 THE COURT: (TO MR. COLEMAN) ONE SECOND, PLEASE.
13 WHAT WAS THE EXHIBIT NUMBER OF WHAT HE JUST
14 PUBLISHED?

15 MR. COLEMAN: THAT'S #10-A, YOUR HONOR.

16 THE COURT: #10-A IS ADMITTED SUBJECT TO
17 OBJECTION OF COUNSEL.

18 (PLAINTIFF'S EXHIBIT #10-A, MARKED FOR
19 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

20 Q I SHOW YOU #10-B.

21 A #10-B IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO JAMES
22 THOMAS FOR \$300 FOR "CUTTING SIGN LOOSE ON I-77".

23 THE COURT: #10-B IS ADMITTED SUBJECT TO THE
24 OBJECTION OF COUNSEL.

25 (PLAINTIFF'S EXHIBIT #10-B, MARKED FOR

1 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

2 Q AND HAVE YOU EVER BEEN REIMBURSED FOR THAT CHECK?

3 A I MAY HAVE.

4 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT

5 #11. IF YOU CAN, IDENTIFY THAT DOCUMENT.

6 A THIS IS A CHECK FROM PIEDMONT PROMOTIONS, INC. TO LAVERNE
7 COOK FOR \$100, 4/1, 2000. IT SAYS "BUSH HOG", SIGNED BY ME.

8 THE COURT: (TO MR. COLEMAN) DO YOU WANT THAT
9 ADMITTED?

10 (TO MS. GRIFFIN) DO YOU OBJECT TO #11, WHICH IS
11 A CHECK FROM PIEDMONT?

12 MS. GRIFFIN: YOUR HONOR, UNDER THE SAME REASONS
13 WE DISCUSSED AT THE SIDE BENCH.

14 THE COURT: VERY WELL.

15 PLAINTIFF'S EXHIBIT #11 IS ADMITTED SUBJECT TO
16 OBJECTION.

17 (PLAINTIFF'S EXHIBIT #11, MARKED FOR
18 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

19 Q I SHOW YOU PLAINTIFF'S EXHIBIT #12-A.

20 A #12-A IS FROM THE CRANE CO., INC., P.O. BOX 12222,
21 COLUMBIA, SOUTH CAROLINA 29211, WORK ORDER/INVOICE:
22 PIEDMONT PROMOTIONS, INC., SEVEN HOURS, FOUR HOURS (SEVEN
23 HOURS THE FIRST DAY, FOUR HOURS THE SECOND DAY), PAID CHECK
24 #2221, AMOUNT \$1835.

25 Q THAT'S \$1,835?

1 A THAT'S CORRECT. THIS IS ON 4/3/01.

2 Q OKAY.

3 A AND "PROVIDE INSURANCE, LABOR AND EQUIPMENT TO AID IN SIGN
4 REMOVAL AS REQUESTED."

5 Q I SHOW YOU WHAT'S MARKED AS #12-B, AND IF YOU CAN, IDENTIFY
6 THAT.

7 A THAT'S A CHECK FROM PIEDMONT PROMOTIONS, INC. TO THE CRANE
8 COMPANY DATED 4/3/08, CHECK NUMBER 2221 IN THE AMOUNT OF
9 \$1835 FOR RIGGING.

10 THE COURT: WAIT A MINUTE, #12-A AND #12-B ARE
11 ADMITTED SUBJECT TO OBJECTION OF COUNSEL.

12 (PLAINTIFF'S EXHIBIT #12-A, MARKED FOR
13 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

14 (PLAINTIFF'S EXHIBIT #12-B, MARKED FOR
15 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

16 Q I ASK YOU IF YOU CAN IDENTIFY WHAT IS EXHIBIT #13-A?

17 A #13-A IS FROM MAXIM CRANE WORKS TO PIEDMONT PROMOTIONS,
18 DATED 4/3/01, SIX HOURS TUESDAY, FOUR HOURS WEDNESDAY, CHECK
19 NUMBER 2222, PAID IN FULL, \$5540, PIEDMONT PROMOTIONS, INC.
20 BY SAMUEL W. RHODES, JR.

21 Q I SHOW YOU #13-B AND ASK YOU IF YOU CAN IDENTIFY THAT
22 DOCUMENT.

23 A THAT'S A CHECK TO MAXIM CRANE WORKS FROM PIEDMONT
24 PROMOTIONS, INC., DATED 4/3/01, \$5590, CRANE TAKE-DOWN.

25 Q AND WHAT WERE THOSE CHECKS FOR?

1 A THOSE WERE TO TAKE THE THIRD SIGN DOWN.

2 MR. COLEMAN: AND, YOUR HONOR, I WOULD MOVE FOR
3 THE ADMISSIBILITY OF, I THINK IT WAS, #13-A AND #13-B.

4 THE COURT: SUBJECT TO OBJECTION OF COUNSEL,
5 THEY ARE ADMITTED.

6 (PLAINTIFF'S EXHIBIT #13-A, MARKED FOR
7 IDENTIFICATION AND ENTERED INTO EVIDENCE, INVOICE).

8 (PLAINTIFF'S EXHIBIT #13-B, MARKED FOR
9 IDENTIFICATION AND ENTERED INTO EVIDENCE, CHECK).

10 Q AND WHAT WERE THOSE BILLS FOR, SAM?

11 A TAKING TE THIRD SIGN DOWN, THE NORTHERNMOST SIGN.

12 Q WHO REQUIRED YOU TO TAKE IT DOWN?

13 A THE DEPARTMENT OF TRANSPORTATION, SOUTH CAROLINA DEPARTMENT
14 OF TRANSPORTATION, DEEMED THAT THEY WERE UNSAFE.

15 Q I WANT TO SHOW YOU WHAT'S MARKED AS PLAINTIFF'S EXHIBIT #14
16 AND ASK YOU IF YOU CAN IDENTIFY THAT DOCUMENT?

17 A THIS IS A DOCUMENT FROM THE SOUTH CAROLINA DEPARTMENT OF
18 TRANSPORTATION DATED JANUARY 23, 2001, CERTIFIED MAIL,
19 RETURN RECEIPT REQUESTED, TO MR. SAMUEL W. RHODES, JR.,
20 PIEDMONT PROMOTIONS, INC., P.O. BOX 4234, ROCK HILL, SOUTH
21 CAROLINA 29731.

22 Q DID YOU RECEIVE THAT LETTER?

23 A YES.

24 Q WHAT'S THE DATE OF THAT LETTER?

25 A THE DATE OF THE LETTER IS JANUARY 23, 2001.

1 Q AS A RESULT OF YOU CONVERSATIONS AND ALSO THAT LETTER, DID
2 THAT PRECIPITATE YOU TAKING DOWN THE THIRD SIGN?

3 A YES, SIR.

4 MR. COLEMAN: YOUR HONOR, I'D MOVE THE
5 ADMISSIBILITY OF THAT LETTER.

6 THE COURT: ANY OBJECTION?

7 MS. GRIFFIN: NO, YOUR HONOR, NO OBJECTION.

8 THE COURT: PLAINTIFF'S EXHIBIT #14 IS ADMITTED
9 INTO EVIDENCE WITHOUT OBJECTION.

10 (PLAINTIFF'S EXHIBIT #14, MARKED FOR
11 IDENTIFICATION AND ENTERED INTO EVIDENCE, LETTER).

12 Q WOULD YOU READ THAT, IF YOU DON'T MIND, SAM?

13 A YES, SIR. THIS IS ADDRESSED TO SAMUEL RHODES, PIEDMONT
14 PROMOTIONS, INC., REGARDING CANCELLATION OF OUTDOOR
15 ADVERTISING BILLBOARD PERMITS 04-20-426994, 04-20-426995,
16 04-20-426996, FAIRFIELD COUNTY. "DEAR MR. RHODES: THE
17 SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION HAS DOCUMENTED
18 THAT THE OUTDOOR ADVERTISING STRUCTURE PERMIT #04-20-
19 426994, LOCATED ON I-77 IN FAIRFIELD COUNTY, HAS BEEN
20 COMPLETELY DESTROYED. THE S.C.D.O.T. HAS INVESTIGATED AND
21 CONCLUDED THAT OUTDOOR ADVERTISING STRUCTURES PERMITTED
22 UNDER PERMITS 04-20-426995 AND 04-20-42996 ON I-77 IN
23 FAIRFIELD COUNTY ARE UNSAFE AND PRESENT A HAZARD TO THE
24 MOTORING PUBLIC. PURSUANT TO § 57-25-130, DECLARATION OF
25 PURPOSE, SOUTH CAROLINA CODE OF LAWS, 1976, AS AMENDED,

1 PLEASE ACCEPT THIS LETTER AS THE FINAL NOTICE OF
2 CANCELLATION AND THE IMMEDIATE REMOVAL OF THE ADVERTISING
3 SIGN STRUCTURES. IF THE SIGNS ARE NOT REMOVED, EMPLOYEES
4 OR AGENTS OF THE DEPARTMENT MAY GO UPON THE PROPERTY UPON
5 WHICH AN ILLEGAL SIGN IS LOCATED FOR THE PURPOSE OF
6 REMOVAL. SINCERELY, KEITH C. MELVIN, DIRECTOR OF OUTDOOR
7 ADVERTISING. CC: JIM M. BIGGERS, OUTDOOR ADVERTISING
8 COORDINATOR."

9 Q I NEXT WANT TO SHOW YOU A SERIES OF PHOTOGRAPHS.

10 MR. COLEMAN: I THINK WE'VE GOT ONE MISLABELED.
11 IT SHOULD BE #15-B INSTEAD OF #15-A, JUDGE, #15-B
12 THROUGH #15-Y, WITHOUT OBJECTION.

13 (OFF-THE-RECORD DISCUSSION)

14 THE COURT: PLAINTIFF'S #15-A THROUGH #15-Y,
15 INCLUSIVE, ARE ADMITTED INTO EVIDENCE WITHOUT
16 OBJECTION, PHOTOGRAPHS.

17 (PLAINTIFF'S EXHIBIT #15-A, MARKED FOR
18 IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPH).

19 (PLAINTIFF'S EXHIBIT #15-B, MARKED FOR
20 IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPH).

21 (PLAINTIFF'S EXHIBIT #15-C, MARKED FOR
22 IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPH).

23 (PLAINTIFF'S EXHIBIT #15-D, MARKED FOR
24 IDENTIFICATION AND ENTERED INTO EVIDENCE, PHOTOGRAPH).

25 (PLAINTIFF'S EXHIBIT #15-E, MARKED FOR

1 IS SHOWING THE POLE LAYING IN THE WOODS. #5-F IS SHOWING
2 THE POLE WHERE THE SIGN HAD FELL. #15-G IS SHOWING THE
3 POLE WHERE THE SIGN HAD FELL. #15-H IS SHOWING A PICTURE
4 OF THE POLE THAT FELL. #15-I IS SHOWING A PICTURE OF THE
5 POLE THAT FELL.

6 #15-J IS SHOWING SOME RINGS AROUND THE POLE. THE
7 RINGS -- WHEN ONE POLE GOES IN ANOTHER, THEY HAVE RINGS
8 AROUND THEM. THEY GO INSIDE THE POLE. #15-K IS SHOWING
9 THE POLE THAT FELL, WHERE SOME OF THE RINGS WERE BENT AND
10 FELL OFF. #15-L IS SHOWING THE RINGS BENT. #15-M IS
11 SHOWING THE RINGS BENT AND THE POLE THAT FELL. #15-N IS
12 SHOWING THE RINGS BENT AND THE POLE THAT FELL. #15-O IS
13 SHOWING THE WELDS ON THE RINGS. #15-P IS SHOWING THE
14 WELDS. #15-Q IS SHOWING THE WELDS. #15-R IS SHOWING THE
15 RINGS AND THE WELDS. #15-S IS SHOWING THE WELDS. #15-T IS
16 SHOWING ONE OF THE RINGS BENT, AND #15-U IS SHOWING WHERE
17 ONE OF THE RINGS CAME OFF AND IS IN THE DIRT. #15-V IS
18 SHOWING THE BASE PIPE AND WHERE IT SPLIT WHEN THE SIGN
19 FELL. #15-W IS SHOWING WHERE THE BASE PIPE IS SPLIT. #15-
20 X IS SHOWING WHERE THE BASE PIPE SPLIT AND #15-Y IS SHOWING
21 WHERE THE BASE PIPE IS SPLIT.

22 Q AFTER THEY FELL, DID YOU GET ANOTHER COMMUNICATION FROM
23 D.O.T.?

24 A YES.

25 Q I SHOW YOU PLAINTIFF'S #16 AND ASK YOU IF YOU CAN IDENTIFY

1 THAT, SAM?

2 A YES. THIS IS A LETTER FROM S.C.D.O.T. DATED FEBRUARY 16,
3 2001, VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, MR.
4 SAMUEL W. RHODES, JR., PIEDMONT PROMOTIONS, P.O. BOX 4234,
5 ROCK HILL, SOUTH CAROLINA 29731, REGARDING BILLBOARD PERMIT
6 #04-20-426994, LOCATED ON I-77 IN FAIRFIELD COUNTY.

7 MR. COLEMAN: YOUR HONOR, I'D MOVE TO HAVE THAT
8 ADMITTED WITHOUT OBJECTION.

9 THE COURT: WITHOUT OBJECTION, PLAINTIFF'S
10 EXHIBIT #16 IS ADMITTED.

11 (PLAINTIFF'S EXHIBIT #16, MARKED FOR
12 IDENTIFICATION AND ENTERED INTO EVIDENCE, LETTER).

13 Q IF YOU WOULD, PUBLISH THAT TO THE JURY.

14 A "DEAR MR. RHODES: SOUTH CAROLINA DEPARTMENT OF
15 TRANSPORTATION HAS DOCUMENTED THAT THE SIGN STRUCTURE WHICH
16 FELL ONTO THE RIGHT-OF-WAY ON I-77 ON SATURDAY, JANUARY 21,
17 2001 HAS NOT BEEN REMOVED. ON JANUARY 23, 2001, S.C.D.O.T.
18 PROVIDED CORRESPONDENCE INDICATING THE CANCELLATION OF
19 OUTDOOR ADVERTISING BILLBOARD PERMITS NUMBERED 04-20-
20 426994, 04-20-426995 AND 04-20-426996, LOCATED ON I-77 IN
21 FAIRFIELD COUNTY.

22 "THIS LETTER ALSO REQUIRED IMMEDIATE REMOVAL OF THESE
23 STRUCTURES DUE TO THEIR BEING UNSAFE AND PRESENTING A
24 HAZARD TO THE MOTORING PUBLIC. AS OF THIS DATE, THE
25 BILLBOARDS PERMITTED UNDER 04-426994 HAVE NOT BEEN REMOVED

1 FROM THE DEPARTMENT'S RIGHT-OF-WAY. BY OUR CONVERSATION ON
2 TODAY, FEBRUARY 15, 2001, THIS LETTER SERVES AS FINAL
3 NOTICE THAT THIS SIGN MUST BE REMOVED FROM S.C.D.O.T.'S
4 RIGHT-OF-WAY NO LATER THAN FEBRUARY 23, 2001.

5 "IN ACCORDANCE WITH § 57-25-160 OF THE HIGHWAY
6 ADVERTISING CONTROL ACT, PERSONS WHO VIOLATE THE PROVISIONS
7 OF THIS CHAPTER MUST BE ASSESSED BY THE DEPARTMENT A CIVIL
8 PENALTY OF \$100 A DAY UNTIL THE VIOLATION ENDS. NO PERMIT
9 MAY BE ISSUED TO A PERSON WHO IS IN VIOLATION OF THE
10 PROVISIONS OF THIS CHAPTER OR WHO HAS NOT PAID AN ASSESSED
11 CIVIL PENALTY.

12 "IF YOU SHOULD HAVE QUESTIONS, PLEASE CONTACT THE
13 OUTDOOR ADVERTISING OFFICE AT 803-737-1339. SINCERELY,
14 KEITH C. MELVIN, DIRECTOR OF OUTDOOR ADVERTISING.
15 ATTACHMENTS. CC: JIM BIGGER, DISTRICT 4 OUTDOOR
16 ADVERTISING COORDINATOR."

17 Q AS A RESULT OF THAT LETTER, DID YOU RECEIVE THIS BILL?

18 A YES, SIR. THIS IS A BILL FROM E. J. PALMER FARMS, 1504
19 VALENCIA ROAD, RIDGEWAY, SOUTH CAROLINA, TO SAM RHODES FOR
20 CLEANUP BILLBOARD AND REBUILD FENCES, \$1500.

21 Q WHAT WAS THE DATE OF THAT?

22 A THAT WAS 2/19/01, FEBRUARY 19.

23 Q FOUR DAYS AFTER THE DATE OF THIS LETTER?

24 A THAT'S CORRECT.

25 Q AS A RESULT OF THAT, DID YOU PAY THAT BILL?

STATE OF SOUTH CAROLINA)
)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND)
PIEDMONT PROMOTIONS, INC.,)

DOCKET NO. 01-CP-20-334

PLAINTIFF,)

V.)

TRANSCRIPT OF RECORD
(JURY TRIAL)
VOLUME II

MARION L. EADON, D/B/A)
C&B FABRICATION,)

DEFENDANT.)

AUGUST 30 - SEPTEMBER 2, 2004
WINNSBORO, SOUTH CAROLINA

BEFORE:

HONORABLE R. MARKLEY DENNIS

APPEARANCES:

FOR THE PLAINTIFF:

HOOVER C. BLANTON, ESQUIRE
CREIGHTON B. COLEMAN, ESQUIRE

FOR THE DEFENDANT:

CATHARINE GARBEE GRIFFIN, ESQUIRE
AMY MILLIGAN, ESQUIRE

2004 JUN 26 AM 8:27
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 Q AND I SHOW YOU WHAT'S MARKED AS #20-A AND #20-B. WHAT DOES
2 THAT SHOW?

3 A #20-A AND #20-B ARE SHOWING THE SIGN ON THE GROUND AND
4 SHOWING THE ADVERTISING OF BRANDY PETROLEUM.

5 Q AND SO THE SAME ADVERTISING SPOT THAT THIS CONTRACT, #7-E
6 FOR I.D. -- THIS IS THE SAME ADVERTISING CONTRACT FOR THAT
7 SIGN?

8 A THAT'S CORRECT.

9 (COUNSEL PUBLISHING PHOTOGRAPHS TO JURY).

10 Q I WANTED TO ASK YOU IF YOU CAN IDENTIFY THAT DOCUMENT.

11 A THIS IS A PROPOSAL FROM WASHINGTON'S TRUCKING AND PAVING
12 COMPANY TO REMOVE THE THREE BILLBOARD SIGN POLES AND CUT
13 AND HAUL THEM OFF.

14 MR. COLEMAN: (SHOWING EXHIBIT TO MS. GRIFFIN).

15 MS. GRIFFIN: YOUR HONOR, I HAVE AN OBJECTION.

16 THE COURT: WHAT'S THE BASIS? JUST STATE IT FOR
17 THE RECORD.

18 MS. GRIFFIN: HEARSAY.

19 (BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING
20 OF COURT REPORTER AND JURY).

21 THE COURT: I SUSTAIN THE OBJECTION.

22 Q SAM, WHEN YOU FIRST GOT THE TELEPHONE CALL THAT THAT SIGN
23 HAD FALLEN IN THE INTERSTATE, WHAT WAS YOUR REACTION?

24 A I WAS SCARED. I GOT A CALL AND I HAD LEFT TOWN, AND WHEN I
25 LEFT THEY HAD THE METAL STRUCTURE TIED UP TO A CRANE AND

1 THEY WERE RE-WELDING AND STRAIGHTENING IT OUT. THEN I GET
2 A CALL SAYING THAT THE SIGN HAD FALLEN IN THE INTERSTATE,
3 WHICH I DIDN'T KNOW COULD HAPPEN. AND NOT ONLY WAS IT NOT
4 THE ONE THAT I HAD A PROBLEM WITH, IT WAS ONE BELOW THAT,
5 AND I WAS INFORMED THAT THE MIDDLE SIGN WAS LEANING AGAIN
6 AND THAT THE TRAFFIC WAS STOPPED IN THE INTERSTATE. THEY
7 COULDN'T MOVE ANYWHERE BECAUSE THE SIGN WAS BLOCKING THE
8 INTERSTATE AND THE SIGN WAS LEANING. ONE HAD ALREADY
9 FALLEN IN THE INTERSTATE, AND I WAS SCARED THAT THE OTHER
10 ONE WAS GOING TO FALL AND KILL SOMEBODY.

11 Q AND YOU LATER RECEIVED NOTIFICATION FROM D.O.T., THE
12 DEPARTMENT OF TRANSPORTATION, TO TAKE THE OTHER TWO SIGNS
13 DOWN. IS THAT CORRECT?

14 A THAT'S CORRECT.

15 Q AND WHAT WAS YOUR REACTION WHEN YOU GOT THAT NOTIFICATION
16 FROM MR. MELVIN OF D.O.T.? I THINK YOU GOT IT ORALLY AND
17 BY WRITING.

18 A WELL, HE INFORMED ME THAT I HAD TO TAKE THE SIGNS DOWN. I
19 KIND OF HAD MIXED FEELINGS. I DIDN'T REALLY WANT TO TAKE
20 THEM DOWN BECAUSE I WASN'T SURE I'D EVER GET THEM BACK UP,
21 BUT YET I DIDN'T WANT THEM STAYING UP IN THE AIR AND
22 KILLING SOMEBODY. I MEAN -- SO I COULDN'T LEAVE THEM UP
23 BECAUSE I DIDN'T WANT TO TAKE THAT RISK. I MEAN, ONE HAD
24 ALREADY FALLEN IN THE INTERSTATE, AND I DON'T KNOW WHY IT
25 DIDN'T KILL SOMEBODY, AND I CERTAINLY DIDN'T WANT ANY SIGNS

1 MS. GRIFFIN: YOUR HONOR, THAT'S HEARSAY ALSO.

2 THE COURT: WELL, IT'S NOT HEARSAY, IT'S
3 IRRELEVANT. SUSTAINED, IT'S NOT RELEVANT.

4 (TO MR. COLEMAN) MOVE ON, PLEASE, SIR.

5 Q DID YOU TRY TO GET THE D.O.T. TO ALLOW YOU TO RE-ERECT THE
6 SIGNS?

7 A YES, SIR. I APPLIED TO HAVE THE SIGNS, NOT THOSE SIGNS,
8 RE-ERECTED AT THAT LOCATION.

9 Q AND WAS THAT ALLOWED?

10 A NO, THAT WAS DENIED.

11 MR. COLEMAN: I BEG THE COURT'S INDULGENCE.

12 THE COURT: YES, SIR.

13 Q NOW, YOU'RE THE PLAINTIFF IN THIS LAWSUIT, IS THAT CORRECT?

14 A YES, SIR.

15 Q AND YOU ARE ASKING THIS JURY -- WHAT ARE YOU ASKING THIS
16 JURY TO DO?

17 A I HAD THESE SIGNS UP; THEY WERE PRODUCING INCOME. IF THEY
18 HAD BEEN BUILT CORRECTLY, THEY WOULD STILL BE UP, PRODUCING
19 INCOME, AND THERE IS NO REASON THESE SIGNS SHOULD EVER FALL
20 DOWN. IF THEY'RE BUILT CORRECTLY, THEY SHOULD LAST 50
21 YEARS OR SO. AND I'M ASKING THAT I GET THE INCOME I SHOULD
22 HAVE GOTTEN OFF THOSE SIGNS IF THEY'D BEEN BUILT CORRECTLY.

23 Q ARE YOU ASKING TO BE REIMBURSED FOR YOUR INVESTMENT, ALSO?

24 A YES, SIR. IF THEY HAD BEEN BUILT CORRECTLY, THESE SIGNS
25 WOULD HAVE PRODUCED INCOME AND PAID FOR THEMSELVES AND THEN

1 PRODUCED INCOME YEAR AFTER YEAR AFTER YEAR. THEY WEREN'T
2 BUILT CORRECTLY. I'VE HAD TO MAKE PAYMENTS WITH NO INCOME.
3 IT PUT FINANCIAL STRESS ON ME.

4 MS. GRIFFIN: YOUR HONOR, I OBJECT TO HIS
5 TESTIMONY.

6 THE COURT: SUSTAINED, THAT'S NOT RELEVANT.

7 MR. COLEMAN: YOUR HONOR, THAT'S ALL WE HAVE.

8 THE COURT: ALL RIGHT.

9 (TO MS. GRIFFIN) YOU MAY CROSS-EXAMINE.

10 MS. GRIFFIN: YOUR HONOR, I HAVE A MATTER THAT
11 NEEDS TO BE TAKEN UP OUTSIDE THE JURY'S PRESENCE.

12 THE COURT: LET'S HAVE A SIDE-BAR TO SEE WHETHER
13 THAT'S NECESSARY.

14 (BENCH CONFERENCE WITH COUNSEL OUTSIDE HEARING
15 OF JURY AND COURT REPORTER).

16 THE COURT: WE'VE HAD A SIDE-BAR CONCERNING AN
17 ISSUE THAT WE'VE HEARD BEFORE IN THIS MATTER, AND
18 WE'LL REVISIT THAT ISSUE AT THE FIRST BREAK. THANK
19 YOU VERY MUCH.

20 (TO MS. GRIFFIN) YOU MAY PROCEED WITH YOUR CROSS-
21 EXAMINATION.

22 MS. GRIFFIN: YES, SIR, YOUR HONOR. THANK YOU.

23 CROSS-EXAMINATION

24 BY MS. GRIFFIN:

25 Q MR. RHODES, YOU ARE A BUSINESSMAN. IS THAT RIGHT?

1 LUGS WERE INSTALLED. WE'LL GET A CLOSER LOOK AT THAT.
2 (ADVANCING PHOTO). THE SAME CONDITION. THIS IS THE MIDDLE
3 ONE. THE BASE SECTION IS STILL INSTALLED. AGAIN, ABOUT 21
4 FEET TALL, FIVE FEET IN DIAMETER, HALF-INCH THICK PIPE.
5 (ADVANCING PHOTO). NOW, THIS IS THE ACTUAL SIGN. THE BASE
6 SECTION HAS FAILED, AND WHAT HAPPENED WAS WHERE IT FAILED,
7 THE -- LET'S LOOK AT THESE TWO JUST SO YOU CAN GET A
8 PERSPECTIVE OF THE SIGNS. THE ONE ON THE LEFT ENGINEERED
9 IS AS IT WAS DESIGNED AND THE ONE ON THE RIGHT AS BUILT IS
10 AS IT WAS CONSTRUCTED. AT THE POINT OF FAILURE, THIS BASE
11 SECTION RIGHT HERE IS ABOUT 21 FEET TALL, SO THAT'S WHAT
12 WE'RE LOOKING AT.

13 WHEN THE TOP SECTION FAILED, THEN IT TORE THE SIDE OF
14 THE PIPE AND FAILED AT THAT LEVEL. ONE OF THE PROBLEMS WE
15 HAVE IS THERE ARE A LOT OF DEVIATIONS IN THE ACTUAL
16 CONSTRUCTION FROM THE DESIGN. THIS (INDICATING) IS A LUG
17 THAT WAS ACTUALLY INSTALLED, WHICH CONTRIBUTED GREATLY TO
18 THE FAILURE.

19 Q WOULD YOU IDENTIFY WHICH PHOTOGRAPH YOU'RE LOOKING AT WHEN
20 YOU'RE --

21 A THAT IS PHOTO EXHIBIT #37-E. AND WE HAVE -- JUST SO THAT
22 EVERYBODY CAN GET A PERSPECTIVE, WE HAVE THAT LUG AS
23 EXHIBIT #38.

24 Q WE HAVEN'T OFFERED IT YET.

25 MR. BLANTON: WITHOUT OBJECTION, THE PLAINTIFF

1 REPORTS, THE WINDS THAT WERE BLOWING WERE ONLY ABOUT 30
2 MILES PER HOUR. THIS SIGN SHOULD HAVE BEEN ABLE TO
3 WITHSTAND WINDS IN THE 80 TO 90 MILE PER HOUR RANGE.

4 SO THAT'S WHERE WE ARE. WE HAVE QUITE A FEW
5 DIFFERENCES IN THE AS-BUILT VERSUS THE AS-DESIGNED.

6 Q WOULD YOU RESUME YOUR SEAT, SIR?

7 A (WITNESS RETURNING TO STAND) . .

8 Q AS A RESULT OF YOUR INVESTIGATION AND STUDY INTO THIS
9 MATTER, MR. CAMPBELL, DID YOU ARRIVE AT ANY PROFESSIONAL
10 CONCLUSION AS TO -- ABOUT THE DESIGN OF THE SIGN AS IT WAS
11 BUILT?

12 A AS IT WAS BUILT, IT WAS NOT EVEN CLOSE TO THE SIGN AS
13 DESIGNED. THE PIPE SIZES WERE REDUCED ON THE UPPER
14 SECTIONS WHERE THE EXTRA STRENGTH WAS NEEDED. THE HEIGHT
15 OF THE SIGN WAS INCREASED, WHICH ADDED ADDITIONAL LOAD.
16 THE THICKNESS OF THE PIPE WAS REDUCED. THE NUMBER OF
17 INTERNAL RINGS WAS REDUCED. THE WELDS WERE OMITTED AND
18 LUGS WERE INSTALLED. IT JUST GOES ON AND ON, THE LIST OF
19 PROBLEMS CREATED BY THE WAY IT WAS BUILT AS OPPOSED TO THE
20 WAY IT WAS DESIGNED. THERE'S NO -- THERE'S VERY LITTLE
21 SIMILARITY FROM ONE TO THE OTHER, FROM AN ENGINEERING
22 STANDPOINT.

23 Q DID THE SIGN AS ERECTED -- DID IT MEET INDUSTRY STANDARDS
24 FOR SIGNS OF THAT TYPE?

25 A NO, SIR, IT DID NOT.

1 Q DID IT MEET CODE REQUIREMENTS FOR SIGNS OF THAT TYPE?

2 A NO, SIR, IT DID NOT.

3 Q BASED UPON YOUR INSPECTION AND YOUR INVESTIGATION AND YOUR
4 CONCLUSIONS, DID YOU ARRIVE AT ANY OPINION AS TO WHETHER OR
5 NOT THIS SIGN WAS DEFECTIVE, THE SIGN THAT WAS ERECTED WAS
6 DEFECTIVE?

7 A IT WAS MOST DEFINITELY DEFECTIVE AND NOT CAPABLE OF
8 WITHSTANDING THE CODE-PRESCRIBED WIND LOADS.

9 Q AND WHAT IS THE BASIS FOR THAT OPINION?

10 A THAT'S BASED ON MY FIELD INVESTIGATION, MY REVIEW OF THE
11 AVAILABLE REPORTS, ENGINEERING CALCULATIONS, REVIEW OF
12 INDUSTRY STANDARDS AND REVIEW OF THE BUILDING CODE.

13 Q DO YOU HAVE A PROFESSIONAL OPINION AS TO WHY THAT SIGN
14 FELL?

15 A BECAUSE IT WAS NOT EVEN CLOSE TO BEING ABLE TO BE -- TO
16 BEING CAPABLE OF WITHSTANDING THE LOADS AS PRESCRIBED BY
17 THE BUILDING CODE AND INDUSTRY STANDARDS.

18 Q IS YOUR OPINION TO A REASONABLE DEGREE OF CERTAINTY AS A
19 PROFESSIONAL STRUCTURAL ENGINEER?

20 A YES, SIR, IT IS.

21 Q AS TO THE REMAINING TWO SIGNS THAT DID NOT FALL, DO YOU
22 HAVE THE SAME OR A DIFFERENT OPINION AS TO THE QUALITY OF
23 THEIR DESIGN AND CONSTRUCTION?

24 A WELL, THE OTHERS WERE ESSENTIALLY A MIRROR IMAGE OF THE ONE
25 THAT FELL. WE'RE FORTUNATE THEY DID NOT FALL COMPLETELY,

1 BEFORE TODAY?

2 A YES, SIR.

3 Q HAVE YOU BEEN QUALIFIED AS AN EXPERT IN ECONOMICS?

4 A YES, SIR, I HAVE.

5 Q HAVE YOU EVER BEEN TENDERED OR OFFERED AS AN EXPERT IN
6 ECONOMICS IN ANY FEDERAL COURT OR STATE COURT IN SOUTH
7 CAROLINA WHEN YOUR TENDER WAS NOT ADMITTED?

8 A NO, SIR.

9 MR. BLANTON: WE OFFER DR. THOMPSON AS AN EXPERT
10 IN ECONOMICS.

11 THE COURT: (TO MS. GRIFFIN) WOULD YOU CARE TO
12 EXAMINE HIM AS TO HIS QUALIFICATIONS?

13 MS. GRIFFIN: NO, YOUR HONOR.

14 THE COURT: THEREFORE, HE WILL BE PERMITTED TO
15 RENDER OPINIONS IN THAT AREA.

16 (TO MR. BLANTON) YOU MAY PROCEED.

17 Q DR. THOMPSON, AS YOU HAVE TOLD US IN QUESTIONING, YOU ARE
18 HERE AT MY REQUEST, AND WHAT WERE YOU ASKED TO DO WHEN YOU
19 WERE ENGAGED BY US?

20 A BASICALLY I WAS ASKED TO MAKE SOME PROJECTIONS ON THE
21 REVENUE THAT MR. RHODES WOULD BE RECEIVING FROM THE SIGNS
22 HAD THEY NOT FALLEN, HAD THEY STAYED IN PLACE, AND I WAS
23 ASKED TO MAKE SOME PREDICTIONS GOING UP TO 10 YEARS, 20
24 YEARS AND 30 YEARS, FOR COMPARATIVE PURPOSES.

25 Q ALL RIGHT. AND WHAT MATERIAL OR INFORMATION DID YOU USE IN

1 COMPILING THOSE ESTIMATES?

2 A WELL, BASICALLY I HAD THE CONTRACTS THAT HE HAD THAT WERE
3 IN EXISTENCE AT THE TIME THE SIGNS FELL. I BELIEVE OF THE
4 12 FACES THAT WERE AVAILABLE TO BE RENTED, THERE WERE EIGHT
5 RENTED. I HAD THE RENTAL RATES ON THOSE. BASICALLY THE
6 OTHER DATA THAT I GOT WAS THINGS LIKE GROWTH RATES AND
7 INFLATION AND THAT SORT OF THING, WHICH COMES FROM FEDERAL
8 PUBLICATIONS.

9 Q AND TELL US WHAT METHODOLOGY YOU USED TO ARRIVE AT
10 PREPARING THE TABLES YOU PREPARED.

11 A BASICALLY I MADE THREE DIFFERENT SETS OF CALCULATIONS. IN
12 ONE I ASSUMED THAT -- IN THE FIRST SET OF CALCULATIONS I
13 USED THE RENTAL RATE THAT WAS IN PLACE AND THE VACANCY
14 RATE, WHICH WAS APPROXIMATELY ONE-THIRD OF THE SIGNS, OR
15 EIGHT OUT OF 12 SIGNS WERE RENTED, FOUR WERE NOT. I USED
16 THAT RENTAL RATE. I USED THE VACANCY RATE THAT WAS IN
17 EXISTENCE, ASSUMED THAT IT WOULD STAY, THAT HE WOULD NOT
18 RENT THE SIGNS, THE VACANT SIGNS. I THEN PROJECTED THAT
19 OVER THE LIFE OF EACH CONTRACT.

20 WHERE THE CONTRACT -- THERE WERE SOME CONTRACTS HE
21 HAD, JUST A COUPLE, AS I RECALL, WHERE THERE WAS NO
22 INCREASE EACH YEAR. A STANDARD CONTRACT CALLED FOR A 10
23 PERCENT INCREASE EACH YEAR. I THEN, AT THE POINT WHERE
24 THAT CONTRACT RAN OUT, I ASSUMED IT WAS RENEWED AND IT
25 WOULD CONTINUE AT HIS CONTRACT RATE OF 10 PERCENT A YEAR.

1 I SIMPLY PROJECTED AMONG THE REVENUES, THEN, OVER A 10 YEAR
2 PERIOD OF TIME, A 20 YEAR PERIOD OF TIME, A 30 YEAR PERIOD
3 OF TIME, SUBTRACTING OUT HIS ESTIMATES OF WHAT THE YEARLY
4 COST WAS OF MAINTAINING THOSE SIGNS.

5 AND THAT POINT, THAT WOULD GIVE ME A STREAM OF INCOME
6 GOING OVER 10, 20 OR 30 YEARS IN THIS PARTICULAR SCENARIO,
7 AND I WOULD THEN REDUCE IT BACK TO PRESENT VALUE. NOW,
8 WHEN WE REDUCE SOMETHING TO PRESENT VALUE, WE SIMPLY SAY
9 YOU HAVE THIS STREAM OF EARNINGS THAT HE WAS GOING TO BE
10 GETTING FROM THE SIGN EACH YEAR, A STREAM OF REVENUES. HOW
11 MUCH WOULD YOU HAVE TO HAVE TODAY IN ORDER TO INVEST IT AT
12 A REASONABLE RATE THAT YOU COULD WITHDRAW AMOUNTS EACH YEAR
13 EQUAL TO THE AMOUNTS THAT HE WOULD HAVE GOTTEN.

14 Q AND DID YOU PREPARE A TABLE REFLECTING YOUR CALCULATIONS?

15 A YES, SIR, I DID.

16 Q I HAND YOU A DOCUMENT AND ASK YOU IS THAT A TABLE YOU
17 PREPARED?

18 A YES, SIR, THAT IS A TABLE, WHICH I HAVE LABELED TABLE I,
19 THAT GOES WITH THE FIRST SET OF CALCULATIONS I HAVE MADE,
20 ASSUMING THE ACTUAL RENTAL RATE AND THE CONTRACT RATE.

21 MR. BLANTON: (SHOWING DOCUMENTS TO MS. GRIFFIN).

22 MS. GRIFFIN: I DON'T HAVE ANY OBJECTION.

23 MR. BLANTON: WITHOUT OBJECTION, YOUR HONOR, WE'D
24 OFFER PLAINTIFF'S EXHIBITS #41, #42 AND #43.

25 THE COURT: VERY WELL, PLAINTIFF'S EXHIBITS #41,

1 #42 AND #43 ARE ADMITTED WITHOUT OBJECTION.

2 (PLAINTIFF'S EXHIBIT #41, MARKED FOR
3 IDENTIFICATION AND ENTERED INTO EVIDENCE, TABLE 1).

4 (PLAINTIFF'S EXHIBIT #42, MARKED FOR
5 IDENTIFICATION AND ENTERED INTO EVIDENCE, TABLE 2).

6 (PLAINTIFF'S EXHIBIT #43, MARKED FOR
7 IDENTIFICATION AND ENTERED INTO EVIDENCE, TABLE 3).

8 MR. BLANTON: WITHOUT OBJECTION, YOUR HONOR, WE
9 OFFER AS DEMONSTRATION EXHIBITS, ENLARGEMENTS OF #41,
10 WHICH WILL BE MARKED #41-A --

11 THE COURT: ALL RIGHT, SIR.

12 MR. BLANTON: -- AN ENLARGEMENT OF #42, WHICH
13 WILL BE MARKED #42-A, AND AN ENLARGEMENT OF #43,
14 WHICH WILL BE MARKED AS #43-A.

15 THE COURT: VERY WELL, THEY WILL BE SO
16 IDENTIFIED, AS STATED, FOR IDENTIFICATION PURPOSES
17 ONLY.

18 (PLAINTIFF'S EXHIBIT #41-A, MARKED FOR
19 IDENTIFICATION, ENLARGEMENT OF EXHIBIT #41).

20 (PLAINTIFF'S EXHIBIT #42-A, MARKED FOR
21 IDENTIFICATION, ENLARGEMENT OF EXHIBIT #42).

22 (PLAINTIFF'S EXHIBIT #43-A, MARKED FOR
23 IDENTIFICATION, ENLARGEMENT OF EXHIBIT #43).

24 Q DR. THOMPSON, I'M GOING TO LAY THIS EXHIBIT #41 IN FRONT
25 OF YOU, AND HERE ON THE EASEL IS AN ENLARGEMENT OF THAT

1 TABLE 1, AND I'LL ASK YOU, PLEASE, FOR PURPOSES OF
2 ORIENTATION OF THE JURY -- YOU HAVE MULTIPLE ENTRIES IN
3 EACH OF THE THREE COLUMNS, AND READING HORIZONTALLY THE
4 FIRST ONE SAYS "10 YEARS" UNDER THE "EXPECTED LIFE" COLUMN.
5 TELL US HOW YOU GOT TO THE PRESENT VALUE FIGURE IN THAT
6 COLUMN AND IN THE EXTREME ONE TO THE RIGHT WHERE THE FUTURE
7 VALUE COLUMN IS A HIGHER FIGURE.

8 Q YES, SIR. BASICALLY WHAT I'VE DONE HERE, AS I TRIED TO
9 EXPLAIN A FEW MOMENTS AGO, I TOOK THE ACTUAL RENTAL RATE AT
10 THE TIME THE SIGNS FELL, I PROJECTED THEM OUT. THAT FIRST
11 LINE GOES FOR A PROJECTION OF 10 YEARS, AND I PROJECTED
12 THEM OUT USING EITHER THE ACTUAL CONTRACT INCREASE RATE,
13 WHICH IN SOME CASES WAS ZERO AND IN OTHER CASES WAS 10
14 PERCENT, AND SIMPLY PROJECTED THEM OUT FOR 10 YEARS, THE
15 REVENUES OUT FOR 10 YEARS. AS I RECALL, THAT WOULD BE A
16 YEARLY FIGURE OF ABOUT \$77,350 BEFORE YOU TAKE OUT COSTS,
17 AND I TOOK OUT THE COST OF MAINTAINING THE SIGNS.

18 PROJECTING THEM OUT, AND IF YOU SIMPLY ADD UP THOSE
19 10-YEAR PERIODS OF TIME, GIVEN THE INCREASES IN THE RENTAL
20 RATE EACH YEAR, IT COMES TO A TOTAL OF \$1,115,020. GETTING
21 THE NEXT STEP TO PRESENT VALUE, BASICALLY THAT SAYS THAT IF
22 THE SIGNS HAD ONLY LASTED 10 YEARS AND HAD HE MAINTAINED A
23 ONE-THIRD VACANCY RATE AND HE SIMPLY HAD HIS CONTRACTUAL
24 INCREASES EACH YEAR, HE WOULD HAVE RECEIVED \$1.1 MILLION
25 OVER 10 YEARS.

1 THE NEXT QUESTION WE HAVE TO ASK IS, GIVEN THAT WE
2 NEED TO HAVE THE DOLLARS IN TODAY'S DOLLARS, HOW MUCH MONEY
3 WOULD WE HAVE TO HAVE TODAY TO INVEST IT AT A SAFE INTEREST
4 RATE SO THAT IT WOULD COME OUT TO THE \$1.15 MILLION DOLLARS
5 OVER 10 YEARS. AND THAT IS THE PRESENT VALUE COLUMN OF
6 \$946,100. IN OTHER WORDS, IF WE TOOK THE \$946,100 AND
7 INVESTED IT, AND I USED THE SHORT-TERM TREASURY SECURITY
8 RATE, WHICH I BELIEVE FOR THAT PERIOD OF TIME WAS ABOUT
9 4.33 -- YES, THAT'S CORRECT, 4.33 PERCENT, WHICH IS QUITE A
10 BIT HIGHER THAN IT IS TODAY -- YOU COULD TAKE THE \$946,000
11 AND INVEST IT AND WITHDRAW EACH YEAR IN AN AMOUNT EQUAL TO
12 WHAT HE HAD RECEIVED IN RENT, LESS HIS COSTS.

13 Q MOVING TO THE SECOND 20 YEARS, DID YOU DO THE SAME THING,
14 MERELY EXTENDING AT 20 YEARS VERSUS 10?

15 A YES, SIR. THE NEXT TWO ENTRIES ARE SIMPLY EXTENDING THE
16 EXPECTED LIFE OF THE SIGN, ONE GOING TO 20 YEARS AND, OF
17 COURSE, THE THIRD ONE GOING TO 30 YEARS. AGAIN, THE SECOND
18 COLUMN OF THE \$4,196,647 WOULD BE THE AMOUNT THAT HE WOULD
19 RECEIVE, LESS HIS COSTS, OVER THAT 20 YEAR PERIOD OF TIME,
20 HAD THE SIGNS LIVED FOR 20 YEARS. THE PRESENT VALUE OF
21 THAT IS \$2,470,502, WHICH WOULD BE THE PRESENT VALUE IN
22 TODAY'S DOLLARS.

23 Q AND WITH RESPECT TO THE THIRD ENTRY, HORIZONTALLY, 30 YEARS
24 IS A REPEAT. IT'S JUST SENDING IT OVER 30 YEARS INSTEAD OF
25 A SHORTER PERIOD?

1 A YES, SIR. THE ONLY DIFFERENCE IS THAT I AM EXTENDING IT
2 ANOTHER, ADDITIONAL 10 YEARS, WHICH WOULD GIVE US A TOTAL
3 GROSS OF \$12,189,594 AT A PRESENT VALUE OF \$4,212,386.

4 Q DR. THOMPSON, BEAR WITH ME ON THIS. YOU'RE NOT INTENDING
5 THAT THE SIGNS ARE GOING TO LAST ANY NUMBER OF YEARS. YOU
6 JUST HAVE TO LABEL A COLUMN UP HERE, ISN'T THAT CORRECT?

7 A THAT'S CORRECT. I AM NOT AN EXPERT ON SIGNS. I SIMPLY
8 READ THEM AS I DRIVE DOWN THE HIGHWAY.

9 Q SO WE HAVE TO ASSUME 10 YEARS TO GET TO THESE FIGURES, WE
10 HAVE TO ASSUME 20 YEARS TO GET TO THESE, AND WE HAVE TO
11 ASSUME 30 YEARS UNDER THIS FORMULA YOU APPLIED TO THEM TO
12 GET TO THESE FIGURES?

13 A YES, SIR, THAT'S CORRECT.

14 Q AND YOU DON'T PURPORT TO PREDICT THAT ANY OF THESE WILL
15 COME TRUE?

16 A NO, SIR. IN THE TESTIMONY I HEARD, IT COULD HAVE GONE FOR
17 50 YEARS.

18 Q I HAD ASKED YOU, PLEASE, TO LOOK AT PLAINTIFF'S EXHIBIT
19 #42-A, WHICH IS LABELED TABLE 2, AND ASK DOES THIS DEPICT
20 ONE OF THE TABLES YOU PREPARED?

21 A YES, SIR. THIS SCENARIO IS A LITTLE BIT DIFFERENT.
22 BASICALLY WHAT I DID HERE, I USED THE SAME RENTAL RATE THAT
23 EXISTED AT THE TIME THE SIGNS FELL, WHICH GIVES AN AVERAGE
24 OF \$805.72 PER MONTH PER BILLBOARD. I CHANGED THE
25 ASSUMPTIONS A LITTLE BIT FOR COMPARATIVE PURPOSES. I SAID

1 LET'S ASSUME THAT YOU'D HAVE A VACANCY RATE OF 20 PERCENT,
2 RATHER THAN A THIRD, A VACANCY RATE OF 20 PERCENT. I ALSO
3 ASSUMED THAT IT WOULDN'T INCREASE AT THE 10 PERCENT RATE
4 THAT'S STATED IN HIS CONTRACT BUT WOULD SIMPLY INCREASE AT
5 THE RATE OF INFLATION THAT EXISTED FOR THE SAME NUMBER OF
6 YEARS PRIOR TO THAT.

7 Q LIKE A SOCIAL SECURITY ANNUAL INCREASE OR COST OF LIVING?

8 A YES, SIR, EXACTLY. AND BASICALLY THAT'S WHAT I DID IN THIS
9 CASE, AND I GIVE AGAIN THE SAME 10, 20 AND 30 YEAR
10 SCENARIOS WITH THE FUTURE VALUES BEING WHAT HIS ACTUAL RENT
11 WOULD HAVE BEEN HAD IT INCREASED SIMPLY AT THE RATE OF
12 INFLATION. AND FOR CLARIFICATION PURPOSES, THE RATE OF
13 INFLATION FOR 10 YEARS IS 2.53 PERCENT, FOR 20 YEARS IS
14 3.17 PERCENT, AND FOR 30 YEARS IT WAS 5.03 PERCENT.

15 Q ALL RIGHT. I'D ASK YOU, PLEASE, TO LOOK AT PLAINTIFF'S
16 EXHIBIT #43-A AND ASK YOU IF THAT'S THE THIRD TABLE YOU
17 PREPARED.

18 A YES, SIR, THAT'S THE THIRD ALTERNATIVE SCENARIO, AGAIN WITH
19 THE 10, 20 AND 30 YEARS, ONLY THIS TIME I ASSUMED THAT
20 RATHER THAN THE AVERAGE RENTAL RATE THAT EXISTED, I ASSUMED
21 THAT IT WOULD BE THE RENTAL RATE OF \$950 PER SIGN, WHICH I
22 WAS INFORMED BY MR. RHODES THAT WAS WHAT HE INTENDED TO
23 RENT THEM ALL AT. AND AGAIN I ASSUMED A 20 PERCENT VACANCY
24 RATE AND A \$950 RENTAL RATE PER SIGN. THERE WAS ONE SIGN
25 THAT WAS ACTUALLY MORE THAN THAT, IT WAS \$1,100, BUT I

1 INCLUDED THEM ONLY AT THE \$950, PROJECTED THEM OUT AGAIN
2 10, 20 AND 30 YEARS AT THE RATE OF INFLATION, RATHER THAN
3 THE 10 PERCENT, AND THEN DISCOUNTED THEM BACK TO PRESENT
4 VALUE, AND THAT GIVES US THESE THREE COLUMNS OF NUMBERS.

5 Q WOULD IT BE CORRECT TO SAY THAT THE CHIEF DIFFERENCE
6 BETWEEN TABLE 2 AND TABLE 3 IS THAT YOU USED A HIGHER
7 ASSUMED ANNUAL -- OR MONTHLY RENTAL RATE OF AROUND \$950
8 INSTEAD OF THE ACTUAL RATE THAT'S SHOWN UP EARLIER?

9 A THAT'S CORRECT. I USED THE RATE THAT HE WAS EXPECTED TO
10 RENT THEM ALL FOR, AS OPPOSED TO THE RATE THEY ACTUALLY
11 INITIALLY WERE RENTED FOR.

12 Q PLEASE ANSWER ANY QUESTIONS COUNSEL HAS FOR YOU, DR.
13 THOMPSON.

14 A YES, SIR.

15 THE COURT: YOU MAY CROSS-EXAMINE, MS. GRIFFIN.

16 CROSS-EXAMINATION

17 BY MS. GRIFFIN:

18 Q MR. THOMPSON, IN GIVING THOSE OPINIONS TO THE JURY, YOU HAD
19 TO MAKE A NUMBER OF ASSUMPTIONS IN THIS CASE, ISN'T THAT
20 CORRECT?

21 A I THINK THE ASSUMPTION WAS WHAT THE TIME PERIOD -- I DID
22 ASSUME THE TIME PERIOD. I WAS ASKED TO DO THAT, OF COURSE,
23 BY MR. BLANTON.

24 Q YOU ASSUMED THE TIME PERIOD, YOU ASSUMED VACANCY RATES,
25 ISN'T THAT CORRECT?

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

1 FROM THIS WITNESS?

2 MR. COLEMAN: AS TO THE VALUE OF THE LAND WITH THE
3 BILLBOARDS UP AND THE INCOME STREAM THAT WAS GENERATED FROM
4 THE LEASES -- ONLY THE LEASES; THAT'S THE ONLY INFORMATION
5 THAT HE USED.

6 THE COURT: AS LONG AS -- AT THIS POINT, AS LONG AS
7 IT'S CONNECTED IN SOME WAY WITH -- THAT HE DEMONSTRATES A
8 BASIS FOR IT AND IT'S CONNECTED TO THE VALUE OF THE LAND,
9 I'LL ALLOW IT. IF HE'S VALUING OR SEEKING TO RENDER AN
10 OPINION AS TO THE BILLBOARD REMOVED FROM THE LAND, THEN
11 YOU'LL HAVE TO MAKE FURTHER QUALIFICATION OR LAY FURTHER
12 FOUNDATION FOR THAT OPINION.

13 MR. COLEMAN: YES, SIR.

14 THE COURT: IT HAS TO BE TIED TO THE REAL ESTATE.

15 MR. COLEMAN: YBS, SIR.

16 THE COURT: OKAY.

17 DIRECT EXAMINATION CONTINUED BY MR. COLEMAN:

18 Q MR. DURDEN, IN GETTING THIS ASSIGNMENT, WHAT DATA DID
19 YOU USE IN DETERMINING YOUR OPINION?

20 A WELL, THE LEASES THAT I WAS GIVEN OF THE BOARDS
21 THEMSELVES AND SALES OF SIMILAR PROPERTIES, VACANT --
22 UNIMPROVED PROPERTIES, TO COME UP WITH THE VALUE OF THE
23 LAND AS IF VACANT AND AVAILABLE FOR DEVELOPMENT.

24 Q OKAY. AND AS A RESULT OF THAT INFORMATION, LET'S SORT
25 OF BACK UP A LITTLE. WHO ENGAGED YOUR SERVICES?

RHODES VS. EADON

1 FOR THE SIMILARITIES BETWEEN THE THREE.

2 AND IN THE INCOME APPROACH, A PIECE OF PROPERTY IS HOW
3 MUCH CAN THAT PROPERTY GENERATE IN INCOME; THAT IS THE
4 VALUE OF THE PROPERTY.

5 Q AND IF A PIECE OF PROPERTY GENERATES INCOME, THAT'S
6 GENERALLY WHAT YOU'D USE; IS THAT CORRECT?

7 A IF THAT IS THE MOST APPLICABLE APPROACH, YEAH, THE
8 INCOME APPROACH.

9 Q AND IN THIS PARTICULAR CASE WHAT APPROACH DID YOU USE?

10 A THE INCOME APPROACH.

11 Q AND WHY DID YOU USE THE INCOME APPROACH?

12 A THIS IS INCOME-PRODUCING PROPERTY. IT IS AN
13 INVESTMENT, SIMILAR TO SOMEONE BOUGHT A DUPLEX APARTMENT,
14 YOU WOULD USE THE INCOME APPROACH AS WELL BECAUSE IT IS
15 INCOME-PRODUCING PROPERTY.

16 Q IN THE INCOME USING PROPERTY, THE INCOME THAT WAS
17 COMING IN WERE GIVEN TO YOU WITH THE LEASES; IS THAT
18 CORRECT?

19 A YES, SIR.

20 Q AND IN YOUR APPRAISAL, IS IT NORMAL FOR YOU TO
21 APPRAISE INCOME-PRODUCING PROPERTY -- AND YOU'VE DONE THAT
22 BEFORE; IS THAT CORRECT?

23 A YES, SIR.

24 Q AND GIVE THE JURY AN EXAMPLE OF AN INCOME-PRODUCING
25 PROPERTY THAT IS NORMAL?

RHODES VS. EADON

1 MS. GRIFFIN: I WOULD OBJECT TO THE VALUE WITH RESPECT
2 TO THE FUTURE INCOME, BECAUSE I DON'T BELIEVE A SUFFICIENT
3 FOUNDATION HAS BEEN LAID.

4 THE COURT: HE'S TESTIFYING, HE WILL TESTIFY. YOU CAN
5 CROSS EXAMINE HIM ON IT. HE'S BEEN QUALIFIED. HE'S GOING
6 TO RENDER HIS EXPERT OPINION IN THAT AREA. OVERRULED.
7 THANK YOU.

8 Q IF YOU WOULD, MR. DURDEN, PLEASE TELL US THE THREE
9 VALUES AND HOW YOU CAME UP WITH THOSE THREE VALUES?

10 A MY OPINION OF VALUE AS OF JANUARY 20, 2001 ---

11 Q THAT WAS THE DATE THE SIGN WAS STILL UP?

12 A THEY WERE STILL UP.

13 Q THAT MORNING.

14 A \$1.8 MILLION. AND MY OPINION OF THE VALUE OF THE
15 PROPERTY AS OF JUNE THE 1ST ---

16 Q LET'S BACK UP. LET'S BACK UP ONE SECOND. I DON'T
17 MEAN TO INTERRUPT YOU. THAT FIGURE YOU USED, YOU USED THE
18 INCOME APPROACH; IS THAT CORRECT?

19 A YES, SIR, I DID A CASH FLOW ANALYSIS, CONVERTED HIS
20 FUTURE BENEFITS THAT HE WOULD RECEIVE INTO A PRESENT DAY
21 VALUE.

22 Q AND THAT'S BASED ON THE LAND AND THE LEASES THAT HE
23 HAD AT THE TIME?

24 A YES, SIR.

25 Q OKAY. GO AHEAD. WHAT WAS THE SECOND VALUE?

RHODES VS. RADON

1 A TO RENDER AN OPINION ON THE VALUE OF THE PROPERTY AS
2 OF JUNE THE 1ST, 2001, WHICH WOULD HAVE BEEN WHEN THE
3 BILLBOARDS ARE DOWN. IT WOULD HAVE BEEN JUST ON THE LAND
4 ONLY. AND THAT OPINION OF VALUE WAS \$65,500.

5 Q AND HOW DID YOU ARRIVE AT THAT FIGURE?

6 A BY USING THE SALES COMPARISON APPROACH, FINDING THREE
7 SALES OF VACANT UNIMPROVED INDUSTRIAL PROPERTIES, COMPARING
8 SUCH PROPERTY WITH THOSE.

9 Q SIMILAR PROPERTY?

10 A YES, SIR.

11 Q AND THE THIRD -- THE THIRD VALUE?

12 A THAT WAS TO RENDER AN OPINION OF VALUE ON THE PROPERTY
13 AS OF MAY 1, 2004.

14 Q OKAY.

15 A AND THAT VALUE WAS \$64,200.

16 Q NOW, THERE IS A CONDEMNATION PROCEEDING GOING ON WITH
17 REGARD TO THIS LAND. YOU'RE AWARE OF THAT?

18 A YES, SIR.

19 Q AND DID YOU TAKE THAT INTO CONSIDERATION?

20 A IN THE OPINION OF THE VALUE AS OF MAY 1, 2004.

21 Q AND YOU USED THAT ---

22 A YES, SIR.

23 Q --- AND TOOK THAT INTO CONSIDERATION.

24 MR. COLEMAN: BEG THE COURT'S INDULGENCE, SIR.

25 THE COURT: SURE.

RHODES VS. EADON

1 (PAUSE.)

2 Q DO YOU HAVE AN OPINION TO A REASONABLE DEGREE OF REAL
3 ESTATE CERTAINTY AS TO THE ECONOMIC LOSS THAT MR. RHODES
4 SUFFERED FROM JANUARY 20TH OF 2001?

5 A \$1.8 MILLION.

6 MR. COLEMAN: THAT'S ALL I HAVE, YOUR HONOR. LET ME
7 BACK UP A MINUTE.

8 THE COURT: OKAY.

9 Q IN DETERMINING ALL OF THESE FACTORS THAT YOU USED AND
10 THE INFORMATION THAT WE GAVE TO YOU -- I WANT TO SHOW YOU
11 WHAT'S MARKED PLAINTIFF'S EXHIBIT NO. 21 AND ASK YOU IF YOU
12 CAN IDENTIFY THAT?

13 A THAT IS A BILL FROM ---

14 Q IS THAT A DOCUMENT THAT WE GAVE YOU THAT YOU USED IN
15 DETERMINING ---

16 A AS OF 2004, YES.

17 Q OKAY, SIR.

18 (PAUSE.)

19 MR. COLEMAN: JUDGE, COULD WE HAVE A SIDE BAR?

20 THE COURT: YES.

21 (A SIDE BAR CONFERENCE WAS HELD OFF THE RECORD, OUT OF
22 THE HEARING OF THE JURY.)

23 Q MR. DURDEN, I WANT TO SHOW YOU WHAT'S MARKED AS
24 PLAINTIFF'S EXHIBIT NO. 21 FOR I.D. AND ASK YOU IF YOU CAN
25 IDENTIFY THAT?

RHODES VS. EADON

1 I'VE THOUGHT ABOUT THAT, MR. BLANTON, ABOUT THE DEPARTURE
2 FROM THE PLANS. IN FACT, I THOUGHT ABOUT THAT THIS
3 MORNING.

4 IF I HAD SOME TESTIMONY, MAYBE, THAT THIS WOULD AT
5 LEAST TO TRYING TO WORK IT THROUGH MY MIND THIS MORNING.
6 IF THERE WAS SOME TESTIMONY, I COULDN'T REMEMBER ANY.
7 MAYBE YOU CAN HELP ME -- THAT SAID THAT YOUR CLIENT, MR.
8 RHODES, WENT AND SAID, WAIT A MINUTE, THAT DOESN'T LOOK
9 LIKE THE PLANS AND HE SAID, OH, YES, IT IS. THEN -- THEN
10 -- THEN WE'RE IN A DIFFERENT SITUATION, BECAUSE NOW I HAVE
11 A POLE THAT'S EXISTING AND HE'S MAKING A REPRESENTATION
12 THAT IT IS PRECISELY.

13 HE WAS GIVEN PLANS AND TOLD TO BUILD A -- BUILD A
14 BILLBOARD THAT WOULD STAY THERE. AND, FRANKLY, MR. RHODES
15 DIDN'T HAVE ANY SPECIFIC OTHER THAN HE WANTED A BILLBOARD
16 TO BE PUT THERE. HE GOT SOME PLANS, AND HE MODIFIED THEM;
17 THAT WAS CLEARLY NEGLIGENT AND COULD BE RECKLESS, BUT
18 CLEARLY NEGLIGENT. NO QUESTION BREACH OF THE CONTRACT.
19 ABSOLUTELY, UNEQUIVOCALLY, I MEAN, I DON'T KNOW. YOU
20 HAVEN'T MADE A MOTION YET BUT I HAVEN'T HEARD THE OTHER
21 SIDE, BUT THAT'S GOING TO BE TOUGH.

22 BUT, CLEARLY, THE NEGLIGENCE ISSUE IS THERE. BUT,
23 CLEARLY, IT'S NOT FRAUDULENT BREACH OF CONTRACT.

24 SO I WOULD GRANT THE MOTION FOR DIRECTED VERDICT ON
25 FRAUDULENT BREACH OF CONTRACT. MIGHT AS WELL JUST SAY THE

RHODES VS. EADON

1 SAME WOULD HOLD TRUE FOR FRAUD BECAUSE YOU'VE GOT TO PROVE
2 ALL NINE ELEMENTS BY CLEAR, CONVINCING, AND COGENT
3 EVIDENCE, AND I DON'T HAVE THAT BEFORE ME, SO THAT TAKES
4 CARE OF THAT, THOSE TWO.

5 WHAT ELSE? MISREPRESENTATION, I THINK.

6 MS. GRIFFIN: ALL RIGHT. NEGLIGENT MISREPRESENTATION,
7 YOUR HONOR, WE ALSO MOVE FOR A DIRECTED VERDICT ON THAT
8 CAUSE OF ACTION FOR THE SAME REASON THAT ANY STATEMENT MADE
9 BY MR. EADON IN THE LIGHT MOST FAVORABLE TO THE PLAINTIFF
10 WOULD BE JUST SALES TALK OR ACCOMMODATION OF THE PRODUCT
11 ITSELF, AND SO THAT WOULD NOT BE ACTIONABLE UNDER A
12 NEGLIGENT MISREPRESENTATION.

13 THE COURT: YOUR ARGUMENT WOULD BE THE SAME OR
14 SIMILAR, I THINK, MR. BLANTON, ON THAT. AND I REALLY THINK
15 THIS IS A CASE OF BREACH OF CONTRACT IN NEGLIGENCE, AND I
16 DON'T THINK THOSE CAUSES OF ACTION GIVE YOU ANY DAMAGE THAT
17 YOU CAN'T SEEK IN THE FIRST TWO, SO. GIVES YOU A CHANCE --
18 I MEAN, I REALLY DON'T THINK THERE'S ANY PREJUDICE AT ALL
19 TO THE PLAINTIFF AT ALL, BUT I DON'T REALLY THINK THAT
20 THERE'S ANY NEGLIGENT MISREPRESENTATION OF MATERIAL FACT
21 HERE.

22 ALL RIGHT. WHAT ELSE?

23 MS. GRIFFIN: YOUR HONOR, THE DEFENDANT ALSO MOVES FOR
24 A DIRECTED VERDICT ON THE UNFAIR TRADE PRACTICE CAUSE OF
25 ACTION ON THE BASIS THAT FIRST IS INDUSTRY, THE MAKING OF

RHODES VS. EADON

1 IT IS THEN FORWARDED BACK TO MY OFFICE FOR FINAL
2 REVIEW. AND I WOULD EITHER APPROVE THE APPLICATION OR DENY
3 IT.

4 AT THAT POINT IN TIME MY OFFICE WOULD THEN FORWARD THE
5 SIGN OWNER A APPROVAL LETTER OR DENIAL LETTER. IF IT'S A
6 APPROVAL LETTER, THEY'LL ALSO RECEIVE A HARD PERMIT MADE OF
7 METAL TO ATTACH TO THE STRUCTURE.

8 ONCE THEY RECEIVE THAT, THEY'VE GOT 180 DAYS TO
9 ACTUALLY ERECT THE SIGN.

10 AND THAT BASICALLY COMPLETES THE ACTUAL PROCESS OF THE
11 REVIEW.

12 Q ONCE THE PERMIT IS ISSUED AND THE BILLBOARDS HAVE BEEN
13 ERECTED, WHAT ONGOING OBLIGATIONS DOES THE PERMITTEE OR THE
14 OWNER OF THE BILLBOARDS HAVE TO KEEP HIS OUTDOOR
15 ADVERTISING LICENSE IN GOOD STANDING WITH ---

16 A ONCE WE ---

17 Q --- YOUR DEPARTMENT?

18 A ONCE THE APPLICATION HAS BEEN SIGNED BY MYSELF, IT'S
19 FORWARDED TO THE APPLICANT. AFTER I SIGNED IT, THE
20 APPLICANT HAS 180 DAYS TO ACTUALLY ERECT THE STRUCTURE.
21 AFTER THE STRUCTURE IS ERECTED, WE CONTINUE TO REVIEW THE
22 LOCATION FOR 12 MONTHS. IF THE APPLICANT QUALIFYING
23 ACTIVITY THAT HE LISTS ON HIS APPLICATION FAIL TO MAINTAIN
24 BUSINESS IN TERMS OF BEING A QUALIFYING ACTIVITY, THAT
25 WOULD CANCEL THE PERMIT.

RHODES VS. BADON

1 IF THE BUSINESS STAYS IN PLACE FOR 12 MONTHS AND THEN
2 CLOSES A YEAR -- EXCUSE ME, A DAY AFTERWARD, THE SIGN WOULD
3 BE CONSIDERED NON-CONFORMING, BUT IT WOULD BE ALLOWED TO
4 STAY IN PLACE.

5 Q CAN YOU EXPLAIN TO THE JURY WHAT IT MEANS IF A SIGN IS
6 BEING NON-CONFORMING?

7 A A SIGN IS BEING NON-CONFORMING IF IT AT THIS
8 PARTICULAR TIME THAT YOU'RE ADDRESSING THE SIGN DOES NOT
9 MEET OUR STATE LAW, OUR FEDERAL LAW, OR OUR REGULATIONS.

10 Q AND JUST GOING BACK AND STUFF, WHAT DOES IT MEAN TO
11 HAVE A QUALIFYING BUSINESS?

12 A OUR REGULATIONS STATE THAT -- ACTUALLY, GOING ALL THE
13 WAY BACK TO THE HIGHWAY BEAUTIFICATION ACT, DURING THE TIME
14 THAT THE HIGHWAY BEAUTIFICATION ACT CAME ABOUT, IT SAID
15 THAT SIGNS SHOULD BE PLACED IN COMMERCIAL LOCATIONS. AND
16 ONE OF THE IDEALS OF BEING IN A COMMERCIAL LOCATION IS THAT
17 THERE IS A BUSINESS IN THE VICINITY OF THE SIGN.

18 THE COMMERCIAL ACTIVITY FOR THE SIGN LOCATION THAT IS
19 BEING APPLIED FOR HAS TO BE WITHIN 600 FEET OF THE PROPOSED
20 SIGN SIGHT. THAT QUALIFYING ACTIVITY OR COMMERCIAL
21 BUSINESS MUST BE OPEN TO THE PUBLIC AT LEAST 36 HOURS A
22 WEEK. THE QUALIFYING ACTIVITY MUST HAVE A TELEPHONE. IT
23 MUST HAVE RUNNING WATER. IT MUST ALSO BE ACCESSIBLE BY THE
24 PUBLIC. AND IT HAS TO MEET THAT CRITERIA FOR THE FIRST 12
25 MONTHS OF ITS PERMIT PERIOD.

RHODES VS. BADON

1 Q AND WHAT TYPE OF INSPECTION DOES THE DEPARTMENT OF
2 TRANSPORTATION DO WITH RESPECT TO QUALIFYING BUSINESSES
3 AFTER THE PERMITS ARE ISSUED?

4 A AFTER THE PERMITS ARE ISSUED, THE COORDINATOR WOULD --
5 WHILE HE'S ON HIS REGULAR ROUTES OR HIS REGULAR INVENTORY,
6 HE'LL SWING BY OCCASIONALLY TO TAKE A LOOK AT THE BUSINESS,
7 TO ENSURE THEY'RE STILL IN OPERATION.

8 Q AND DOES THE DEPARTMENT OF TRANSPORTATION CONTINUE
9 THIS PROCESS FOR YEARS AFTER THE PERMITS ARE ISSUED?

10 A NO, WE DO NOT. ONCE THE 12 MONTH PERIOD GOES BY, WE
11 NO LONGER REVIEW THE BUSINESS. THE ONLY TIME WE MAY
12 ADDRESS THE BUSINESS IS DURING THE ANNUAL BILLING, WHEN WE
13 MAKE SURE THAT THE SIGN IS STILL IN PLACE BEFORE WE ISSUE A
14 BILL TO THE OCCUPANT OR THE OWNER. WE'LL ALSO OCCASIONALLY
15 LOOK AT THE SIGN TO MAKE SURE IT'S IN A STATE OF REPAIR.

16 Q AND DURING THOSE ANNUAL BILLINGS OR WHEN YOU
17 POTENTIALLY WOULD OCCASIONALLY GO LOOK AT A SIGN, IF YOU
18 FOUND THAT THE BUSINESS WAS NO LONGER IN OPERATION, WHAT
19 WOULD HAPPEN WITH THE STATE OF THE SIGNS?

20 A IF IT'S AFTER THE 12 MONTH PERIOD, IT WOULD BE A NON-
21 CONFORMING SIGN. BUT IF WE DETERMINE THAT THE SIGN WAS
22 UNSAFE, THEN WE WOULD ADDRESS THAT ISSUE WITH THE SIGN
23 OWNER.

24 Q AND YOU EXPLAINED WHAT A NON-CONFORMING SIGN IS. CAN
25 YOU TELL THE JURY WHAT THE REQUIREMENTS ARE FOR THE OWNER

1 THE COURT: IF YOU WILL PLEASE, SIR, RETURN TO THE
2 STAND. THANK YOU VERY MUCH. AND I WOULD REMIND YOU THAT
3 YOU ARE STILL UNDER OATH. THERE ARE SOME QUESTIONS THAT WE
4 NEED TO ASK OF YOU OUTSIDE OF THE PRESENCE OF THE JURY.

5 (THE WITNESS RETURNS TO THE WITNESS STAND.)

6 THE COURT: MS. GRIFFIN, YOU MAY PROCEED WITH YOUR
7 PROFFER. AND AS I UNDERSTAND, MS. GRIFFIN, FROM THE SIDE
8 BAR, WE TALKED ABOUT THIS PROFFER IS RELATIVE TO MATTERS
9 THAT ARE, I GUESS, BEST SUMMARIZED AND PERTAIN TO COURT'S
10 EXHIBIT NO. 1.

11 MS. GRIFFIN: YES, YOUR HONOR.

12 THE COURT: AND THE CIRCUMSTANCES BEFORE AND AFTER
13 THAT ORDER AS I UNDERSTAND IT.

14 MS. GRIFFIN: YES, YOUR HONOR.

15 THE COURT: VERY WELL. YOU MAY PROCEED.

16 DIRECT EXAMINATION CONTINUED BY MS. GRIFFIN:

17 Q MR. MELVIN, WHEN DID YOU FIRST GO ONTO THE PROPERTY OF
18 MR. RHODES?

19 A WE FIRST WENT ON THE PROPERTY OF MR. RHODES THE
20 WEDNESDAY BEFORE THE SIGNS FELL. AND I THINK THAT MAY HAVE
21 BEEN SOMEWHERE AROUND MAYBE DECEMBER 15 TIME FRAME,
22 THEREABOUTS. WE RECEIVED A CALL THAT A SIGN WAS LEANING ON
23 THE PROPERTY. WE WENT OUT THERE, AS WE WOULD ALWAYS DO, TO
24 INVESTIGATE THE LOCATION.

25 UPON INVESTIGATING THE LOCATION, WE DETERMINED THAT

RHODES VS. EADON

1 THERE WAS IN FACT A SIGN THAT WAS LEANING, THE MIDDLE OF
2 THE THREE SIGNS.

3 WE CONTACTED MR. RHODES AND INDICATED THAT HE NEEDED
4 TO GET OUT AND MAKE IMMEDIATE REPAIRS ON THE SIGN. WE
5 CONTACTED MR. RHODES AND DISCOVERED THAT HE WAS ALREADY
6 AWARE OF THE SITUATION.

7 HE SAID THAT HE WAS GOING TO GET SOMEONE ON IT AND
8 TAKE CARE OF IT. HE ASKED HOW MUCH TIME HE HAD, DUE TO THE
9 IDEA THAT WE THOUGHT IT WAS A SAFETY ISSUE, WE SAID IT
10 NEEDED TO BE CORRECTED IMMEDIATELY. AND HE SAID HE WOULD
11 DO THAT.

12 ON SATURDAY THE SIGN ACTUALLY FELL. THE SIGN THAT WE
13 WERE ADDRESSING WERE STILL IN PLACE. THE SOUTHERN MOST
14 SIGN FELL ONTO THE RIGHT OF WAY, ACROSS THE FIRST LANE AND
15 INTO THE MEDIAN LANE. THAT SIGN WAS DETERMINED TO BE
16 UNSAFE AND BASICALLY A DESTROYED SIGN. SO WE CANCELLED
17 THAT PERMIT.

18 AFTER REVIEWING THE TWO REMAINING SIGNS, WE DETERMINED
19 THAT THOSE SIGNS WERE BASICALLY UNSAFE ALSO. SO WE
20 CONTACTED MR. RHODES -- ACTUALLY, I TOLD HIM BY TELEPHONE
21 FIRST, AND I FOLLOWED UP WITH A LETTER INDICATING THAT WE
22 WOULD BE CANCELLING THE PERMITS AS BEING UNSAFE.

23 Q WHEN YOU WERE ON THE PREMISES THAT THE BILLBOARDS WERE
24 LOCATED, DID YOU DO AN INVESTIGATION REGARDING THE
25 QUALIFYING BUSINESS?

RHODES VS. EADON

1 NOT HAVE REMOVED THAT PERMIT. UNLESS YOU CAN TELL ME THERE
2 WAS A PROBABILITY, IF YOU CAN ESTABLISH SOMETHING ALONG
3 THOSE LINES, THAT'S FINE. BUT WHAT YOU GLEANED IN THE
4 HEARING WAS ALL PRECIPITATED BY THE FALLING OF THE SIGN.

5 WITNESS: RIGHT.

6 THE COURT: AND, REALLY, IT WAS MORE THAN THAT. AS I
7 UNDERSTAND IT, IT WAS DEEMED A REAPPLICATION AND NOT A
8 RENEWAL OR WHATEVER THE TERMINOLOGY WAS. THAT IF IT HAD
9 BEEN DONE AT A CERTAIN PERIOD OF TIME, POSSIBLY IT COULD
10 HAVE BEEN AND YOU WOULDN'T HAVE HAD TO -- HE WOULDN'T HAVE
11 HAD TO RE-QUALIFY SO TO SPEAK.

12 WITNESS: THAT'S CORRECT.

13 THE COURT: OKAY.

14 CROSS EXAMINATION BY MR. COLEMAN:

15 Q MR. MELVIN, LET'S GO OVER A LITTLE BIT ABOUT WHAT THE
16 JUDGE SAID. NOW, YOU FOUND OUT THE SIGN WAS LEANING, AND
17 YOU WENT TO THAT LOCATION?

18 A THAT'S CORRECT.

19 Q HAD YOU NOT RECEIVED NOTIFICATION THAT THE SIGN WAS
20 LEANING, YOU WOULDN'T HAVE GONE THERE; IS THAT CORRECT?

21 A THAT'S CORRECT.

22 Q OKAY. YOU LATER FOUND OUT THREE DAYS LATER THAT THE
23 SIGN FELL; IS THAT CORRECT?

24 A THAT'S CORRECT.

25 Q AND YOU THEN WENT TO THAT LOCATION AGAIN; IS THAT

1 CORRECT?

2 A YES.

3 Q AND IF THAT SIGN HAD NOT FALLEN, YOU WOULD NOT HAVE
4 GONE TO THAT PIECE OF PROPERTY; IS THAT CORRECT?

5 A CORRECTION. THE SIGN THAT WE ORIGINALLY LOOKED AT WAS
6 NOT THE SIGN THAT FELL.

7 Q I UNDERSTAND. I UNDERSTAND. BUT THE SIGN THAT FELL,
8 WHICH IS DIFFERENT THAN THE ONE THAT WAS LEANING, IF THAT
9 SIGN DID NOT FALL, YOU WOULD NOT HAVE GONE TO THAT
10 LOCATION; IS THAT CORRECT?

11 A INCORRECT. WE WOULD HAVE GONE TO THE LOCATION BECAUSE
12 THE ---

13 Q BECAUSE IT WAS LEANING?

14 A THAT'S CORRECT.

15 Q OKAY. AND UNDER THE NON-CONFORMING USE THAT YOU HAD
16 DESIGNATED, EVEN IF THE SIGN STILL REMAINED STANDING IF
17 THEY WERE NON-CONFORMING, THEY WOULD STILL BE THERE; IS
18 THAT CORRECT? THEY WOULD STILL BE ABLE TO RENT ADVERTISING
19 SPACE; IS THAT CORRECT?

20 A THAT'S CORRECT.

21 Q OKAY. NOW, THE LICENSE THAT WAS ISSUED -- I WANT TO
22 SHOW YOU WHAT'S MARKED AS ---

23 MR. COLEMAN: I GUESS THIS WOULD BE, YOUR HONOR,
24 PLAINTIFF'S EXHIBIT 32 FOR I.D.

25 THE COURT: VERY WELL.

RHODES VS. EADON

- 1 MR. COLEMAN: AND ALSO PLAINTIFF'S EXHIBIT 33 FOR
2 I.D., WHICH IS ---
3 Q CAN YOU IDENTIFY THAT DOCUMENT?
4 A THIS IS A DOCUMENT NOT ISSUED BY THE DEPARTMENT.
5 Q OKAY. WHO IS IT ISSUED BY?
6 A DEPARTMENT OF PUBLIC SAFETY.
7 Q AND WHAT IS IT?
8 A IT APPEARS TO BE A LICENSE TO SELL VEHICLES.
9 Q AND WHO WAS IT ISSUED TO? INTERSTATE AUTO?
10 A THAT'S CORRECT.
11 Q AND THE DATE THAT IT WAS ISSUED?
12 A FEBRUARY 1999.
13 Q OKAY. AND THE LOCATION -- DOES IT GIVE YOU A
14 LOCATION?
15 A IT DOES.
16 Q AND WHAT IS THAT LOCATION?
17 A ROUTE 4, BOX 510 RIDGEWAY.
18 Q OKAY. WHAT COUNTY?
19 A FAIRWAY (SIC).
20 Q FAIRFIELD. I WANT TO SHOW YOU WHAT'S MARKED AS
21 PLAINTIFF'S EXHIBIT 33 FOR I.D. AND ASK YOU IF YOU CAN
22 IDENTIFY THAT DOCUMENT?
23 A IT'S A LICENSE TO SELL VEHICLES.
24 Q ISSUED TO WHO?
25 A INTERSTATE AUTO SALES.

- 1 Q AND THE ADDRESS?
- 2 A ROUTE 4, BOX 510 RIDGEWAY.
- 3 Q AND THE COUNTY?
- 4 A FAIRFIELD.
- 5 Q FAIRFIELD. AND THE DATE THAT IT WAS ISSUED?
- 6 A FEBRUARY 12, 2001.
- 7 Q OKAY. AND THE DESIGNATED YEAR, IF YOU COULD JUST READ
- 8 THAT DOCUMENT?
- 9 A NON-FRANCHISE VEHICLE MAKE, USED.
- 10 Q OKAY. TYPE OF LICENSE, RETAIL DEALER; IS THAT
- 11 CORRECT?
- 12 A THAT'S WHAT THAT INDICATES.
- 13 Q OKAY. AND DOES IT SAY UP THERE AT THE TOP -- READ
- 14 THOSE TWO LINES FOR ME?
- 15 A LICENSE TO SELL VEHICLES IN ACCORDANCE WITH SOUTH
- 16 CAROLINA CODE OF LAWS.
- 17 Q AND DOES IT SAY THAT ON BOTH OF THOSE?
- 18 A IT DOES.
- 19 Q OKAY. YOU TESTIFIED THAT HIS LICENSE HAD BEEN
- 20 REVOKED, HIS LICENSE -- HIS AUTOMOBILE LICENSE, DEALERSHIP
- 21 LICENSE?
- 22 A THAT'S CORRECT, THE DEPARTMENT OF PUBLIC SAFETY
- 23 INDICATES THE LICENSE HAD BEEN REVOKED.
- 24 Q WHEN?
- 25 A I AM NOT -- I CAN'T SAY I RECALL THE EXACT DATE THEY

1 INDICATED. BUT DURING THE REVIEW PERIOD THEY SAID THAT THE
2 LICENSE WAS NOT UP TO DATE.

3 (PAUSE.)

4 Q DO YOU KNOW IF IT WAS AFTER FEBRUARY 2001? ARE YOU
5 AWARE OF THAT?

6 A I AM NOT SURE.

7 Q OKAY. IF WE REMOVE FROM THE FACTUAL EQUATION THAT THE
8 SIGNS WERE LEANING OR THAT THE SIGN FELL, WOULD MR. RHODES
9 STILL HAVE THE PERMIT?

10 A YES.

11 Q WOULD HE STILL BE ABLE TO HAVE THE SIGNS UP THERE OR
12 NOT?

13 A HE WOULD.

14 MR. COLEMAN: THAT'S ALL I HAVE.

15 THE COURT: DID YOU SAY HE WOULD?

16 WITNESS: HE WOULD.

17 THE COURT: OKAY. REDIRECT?

18 REDIRECT EXAMINATION BY MS. GRIFFIN:

19 Q MR. MELVIN, IF THE DEPARTMENT OF TRANSPORTATION HAD
20 GOTTEN TO THIS LOCATION DURING A PERIODIC INSPECTION DURING
21 THE FIRST YEAR AND A HALF FROM MAY OF '99 THROUGH JANUARY
22 OF 2001, IS IT POSSIBLE THAT THEY WOULD HAVE DISCOVERED
23 THAT THE BUSINESS WAS NOT QUALIFIED?

24 A IS THAT BEFORE THE ONE YEAR PERIOD?

25 Q DURING THE ONE YEAR PERIOD, AND THEN I INCLUDED THE

RHODES VS. EADON

1 AND HE WENT UP AND LOOKED AT THE CRANE AND SAID, YOU KNOW,
2 THIS WAS THE ONE WE NEEDED TO DO THE JOB THAT WE HAD TO DO.

3 Q HOW DID C&B GET BUSINESS?

4 A WELL, A LOT OF PEOPLE, YOU KNOW, CALL CHUCK ANYWAY FOR
5 REPAIRS AND, YOU KNOW, DIFFERENT THINGS THAT HE HAD DONE.
6 AND I GUESS -- I THINK HE KNEW EVERYBODY IN THE BUSINESS,
7 AND PROBABLY TO THIS DAY HAS AS MUCH KNOWLEDGE ABOUT SIGNS
8 AS I GUESS ANYBODY AROUND, BECAUSE THAT'S ALL HE EVER DID.
9 BUT HE MOSTLY, YOU KNOW, GOT ALL THE CLIENTS BECAUSE I
10 REALLY DIDN'T KNOW HOW TO DISCUSS CERTAIN ASPECTS OF A SIGN
11 THAT HE KNEW ALL -- ALL THE INS AND OUTS OF IT. AND, YOU
12 KNOW, THERE'S PROBABLY 2 OR 300 DIFFERENT VARIATIONS OF
13 SIGNS WHICH -- I MEAN, MOST PEOPLE WOULDN'T HAVE A
14 KNOWLEDGE OF IT.

15 Q DID YOU ASSIST IN ANY WAY IN SELLING THE SIGNS?

16 A NO, BECAUSE THEY DID ALL THE COSTING. YOU KNOW, WHEN
17 -- HIS WIFE ALSO WORKED FOR US. AND THAT WAS BY HIS
18 INSISTENCE -- THAT SHE KNEW BASICALLY THE MATERIALS IT TOOK
19 TO BUILD A SIGN. SO WHEN HE WOULD CALL HER AND TELL HER
20 WHAT KIND OF SIGN THEY WERE BUILDING AND EVERYTHING, SHE
21 KNEW THE TERMINOLOGY OF GETTING THE RIGHT STEEL AND THE
22 RIGHT PIPE AND THE RIGHT WHATEVER. AND THEY HAD BEEN DOING
23 IT SO MANY YEARS. AND SO I FIGURED THEY WERE THE BEST TO
24 HANDLE THAT, ALL OF IT.

25 Q WERE YOU INVOLVED IN ORDERING ANY OF THE MATERIALS FOR

1 THE SIGNS?

2 A NO. I -- I LET THEM DO THAT.

3 Q WERE YOU INVOLVED IN ORDERING ANY BLUE PRINTS?

4 A NO. LIKE I SAY, THEY ALREADY KNEW ALL THAT STUFF AND
5 I DIDN'T, YOU KNOW.

6 Q DID YOU HAVE ANY KNOWLEDGE WHERE YOU COULD HAVE
7 ORDERED A SET OF BLUE PRINTS FOR A SIGN?

8 A NOT REALLY.

9 Q IN THE BUSINESS OF C&B WERE YOU EVER INVOLVED IN
10 DRAFTING ANY OF THE PROPOSALS?

11 A NO, MA'AM.

12 Q WERE YOU INVOLVED IN APPROVING PROPOSALS?

13 A TO A CERTAIN EXTENT. I WOULD LOOK AT THEM. AND, OF
14 COURSE, I WOULD ALWAYS SAY, WELL, CHUCK, YOU KNOW, IS THE
15 COMPANY -- ARE WE GOING TO MAKE ANY MONEY ON THIS DEAL?

16 AND HE WOULD SAY, YEAH, WE WOULD.

17 SINCE I DIDN'T REALLY KNOW WHAT I WAS LOOKING AT, I
18 TAKE HIS WORD FOR IT, THAT HE KNEW WHAT IT COST TO DO THIS.

19 Q GOING BACK TO THE BUILDING THAT YOU LEASED, WAS THERE
20 A SIGN OR ANY INFORMATION ON THE EXTERIOR OF THE BUILDING
21 SAYING WHAT BUSINESS IT WAS?

22 A YES, MA'AM, AFTER PROBABLY I'D SAY A MONTH OR TWO,
23 THEY WENT OUT AND PUT C&B FABRICATION ACROSS THE FRONT OF
24 THE BUILDING, WHICH WOULD HAVE BEEN FACING 301.

25 Q AND WHEN THE PHONE WAS ANSWERED AT C&B, HOW WAS IT

RHODES VS. EADON

1 ANSWERED?

2 A C&B FAB.

3 Q DID YOU BECOME AWARE THAT SAM RHODES WAS LOOKING AT
4 THE CORPORATION TO FABRICATE SIGNS FOR HIM?

5 A CHUCK BROUGHT SAM DOWN AND I MET HIM.

6 Q HOW MANY TIMES DID YOU MEET HIM?

7 A I DON'T REMEMBER BUT THE ONE TIME. THE ONLY REASON I
8 REMEMBER THAT IS THAT I WAS STANDING OUTSIDE AND HE PULLED
9 UP IN A -- I BELIEVE IT WAS A BLACK MERCEDES, AND I JUST,
10 YOU KNOW -- RUN THROUGH YOUR MIND, MAYBE HE WOULD BE A GOOD
11 CUSTOMER.

12 Q MR. EADON, CAN YOU SEE THIS IF I HOLD IT HERE?

13 A YEAH.

14 Q THIS IS DEFENDANT'S EXHIBIT NO. 14 MARKED FOR
15 IDENTIFICATION.

16 A RIGHT.

17 Q WERE YOU INVOLVED WITH MR. RHODES IN THE CREATION OF
18 THIS PROPOSAL?

19 A NO.

20 Q DID YOU HAVE ANY INPUT AT ALL INTO THE INFORMATION ON
21 HERE WITH RESPECT TO THE STRUCTURE DESCRIPTION?

22 A NO.

23 Q DID YOU HAVE ANY INPUT WITH RESPECT TO THE REBECCO
24 (PHONETIC) PANEL, THE LIGHTS, THE INSTALLATION?

25 A NO, MA'AM.

RHODES VS. EADON

1 Q DID YOU HAVE ANY INPUT INTO THE PRICING ON THE
2 PROPOSAL?

3 A (SHAKES HEAD.)

4 Q DID YOU SIGN THIS PROPOSAL?

5 A NO.

6 Q DID YOU INITIAL THIS PROPOSAL?

7 A NO.

8 Q WHO INITIALED THE PROPOSAL?

9 A CHUCK.

10 Q AND WHEN YOU SAY CHUCK, YOU'RE REFERRING TO CHUCK
11 BENENHALEY?

12 A YEAH.

13 Q AND IS THAT HIS SIGNATURE AT THE BOTTOM OF THE PAGE?

14 A YES, MA'AM.

15 Q UP HERE WHERE THERE'S A REDUCTION IN THE PRICE,
16 \$153,960, DID YOU APPROVE THE REDUCTION IN THAT PRICE?

17 A I DON'T RECALL THAT. BUT, YOU KNOW, I MAY HAVE. I
18 DON'T REMEMBER THE INCIDENT.

19 Q WOULD THAT HAVE BEEN YOUR ONLY INVOLVEMENT IN THIS
20 PROPOSAL?

21 A YES, MA'AM.

22 Q ONCE THAT PROPOSAL WAS ACCEPTED BY BOTH PARTIES, WHAT
23 DID THE CORPORATION START DOING TO FULFILL THE PROPOSAL?

24 A I THINK PROBABLY THE FIRST THING THEY WOULD HAVE DONE
25 WAS, OF COURSE, ORDER THE MATERIAL.

RHODES VS. EADON

1 Q WERE YOU INVOLVED IN THAT?

2 A NO, I DIDN'T DO THAT. AND THEN PROBABLY ORDER THE
3 BLUE PRINTS IF -- IF THEY DIDN'T ALREADY HAVE A COPY OF IT
4 -- OF THAT SAME TYPE SIGN, YOU KNOW.

5 Q AND ONCE YOU HAD -- THE CORPORATION HAD THE MATERIAL
6 AND THE BLUE PRINT ON SITE, THEN WHAT INVOLVEMENT WOULD YOU
7 HAVE HAD WITH THE FABRICATION OF THESE SIGNS?

8 A NONE.

9 Q DID YOU HAVE ANY KNOWLEDGE AT ALL ABOUT HOW TO
10 FABRICATE SIGNS YOURSELF?

11 A NO, MA'AM.

12 Q DID YOU HAVE ANY INVOLVEMENT AT ALL IN THE DESIGNING
13 OF THE SIGNS?

14 A NO, MA'AM.

15 Q ONCE THE SIGNS WERE CREATED AT THE COMPANY, THEN DO
16 YOU HAVE ANY KNOWLEDGE AS TO HOW THEY WERE INSTALLED AT MR.
17 RHODES' PIECE OF PROPERTY?

18 A NO, MA'AM.

19 Q DID YOU EVER GO OUT TO THE SITE TO SEE WHAT WAS
20 HAPPENING IN FAIRFIELD COUNTY?

21 A NO, MA'AM.

22 Q DID PIEDMONT PROMOTIONS PAY FOR THESE SIGNS?

23 A YES, MA'AM.

24 Q AND WHEN THE SIGNS WERE PAID FOR, CHECKS WERE SENT TO
25 C&B FABRICATION. WHERE WERE THOSE CHECKS DEPOSITED?

RHODES VS. EADON

1 Q WAS THAT THE SECOND OR THE THIRD INSTALLMENT FOR THESE
2 SIGNS?

3 A MUST HAVE BEEN THE SECOND. I DON'T REALLY KNOW.

4 (PAUSE.)

5 MR. BLANTON: NO OBJECTION.

6 THE COURT: DEFENDANT'S EXHIBIT 25 WITHOUT OBJECTION.

7 (COPY OF 1 CHECK AND 1 DEPOSIT MARKED IN EVIDENCE AS
8 DEFENDANT'S EXHIBIT NO. 25.)

9 Q MR. EADON, DID YOU EVER DEPOSIT ANY OF THE PIEDMONT
10 PROMOTIONS MONEY TO ANY OF YOUR PERSONAL ACCOUNTS?

11 A NO, MA'AM.

12 Q DID C&B FABRICATORS STOP DOING BUSINESS AT SOME POINT?

13 A YOU SAY IT DID WHAT NOW?

14 Q DID THE CORPORATION STOP DOING BUSINESS?

15 A YES, MA'AM.

16 Q WHEN WAS THAT?

17 A I DON'T REMEMBER THE EXACT DATE. I CAN'T RECALL THE
18 DATE.

19 Q AND WHEN YOU WENT OUT OF THE BUSINESS AS C&B
20 FABRICATIONS ---

21 A YES, MA'AM.

22 Q --- FABRICATORS, DID YOU FORM ANOTHER COMPANY?

23 A YES, MA'AM.

24 Q AND WHAT DID YOU FORM THEN?

25 A BEG YOUR PARDON?

RHODES VS. EADON

1 Q WHAT WAS THE NAME OF THE NEXT COMPANY?

2 A IT WAS C&B FABRICATIONS INCORPORATED AND LOW COUNTRY
3 SIGN INCORPORATED.

4 Q AND HOW LONG DID YOU DO BUSINESS AS THAT ENTITY?

5 A PROBABLY ABOUT SIX MONTHS.

6 Q NOW, THERE WAS SOME TESTIMONY EARLIER ABOUT RECEIVING
7 PHONE CALLS FROM MR. RHODES IN DECEMBER OF 2000.

8 A UH-HUH.

9 Q AT THAT POINT WERE YOU STILL IN THE SIGN BUSINESS?

10 A WHEN NOW?

11 Q IN DECEMBER OF 2000?

12 A NO, I DON'T KNOW WE WERE STILL IN BUSINESS.

13 Q WHEN YOU RECEIVED THE CALLS FROM MR. RHODES ABOUT THE
14 PROBLEM WITH THE SIGNS, WHAT DID YOU DO?

15 A YOU MEAN ABOUT THE SIGN FALLING?

16 Q ABOUT THE SIGN LEANING?

17 A WELL, I CONTACTED TRACY BENBNHALEY. AND TRACY HAD
18 WORKED FOR ME, YOU KNOW, SOME. AND HE DECIDED TO, YOU
19 KNOW, GO OUT ON HIS OWN. AND HE HAD ALREADY DONE SOME OF
20 IT -- HE HAD A LITTLE COMPANY THEY CALLED T&T I BELIEVE IT
21 WAS. AND I ASKED HIM WOULD HE PLEASE GO UP THERE AND SEE
22 IF HE COULD FIX WHATEVER WAS WRONG WITH THE SIGN.

23 AND HE'S PRETTY ACCOMMODATING. HE SAID HE WOULD TRY
24 TO FIX IT.

25 AND I SAID, OKAY.

RHODES VS. EADON

1 A OH, MARION L. EADON, JR.

2 Q ALL RIGHT. NOW, MR. EADON, ARE YOU KNOWN AS MARION L.

3 RADON AND ALSO AS MARION L. EADON, JR., AND AS M.L. EADON?

4 A YEAH, A LOT OF DIFFERENT NAME.

5 Q BUT THOSE ---

6 A THEY ALL MEAN THE SAME THING.

7 Q --- MEAN THE SAME THING?

8 A YEAH.

9 Q THANK YOU. THAT'S WHAT I WAS ASKING.

10 A OKAY.

11 Q NOW, WAS ANYONE ELSE OTHER THAN MARION L. EADON, JR.,

12 YOU, SIR, ISSUED STOCK IN C&B FABRICATORS, INC.?

13 A NO, SIR.

14 Q SO YOU PUT UP ALL THE MONEY FOR THE CORPORATION?

15 A RIGHT.

16 Q YOU'RE THE ONLY STOCKHOLDER?

17 A RIGHT.

18 Q AND IT ENDED UP AS AN S CORPORATION, DID IT NOT?

19 A RIGHT.

20 Q AND WHAT IS YOUR CONCEPT OF THE BENEFIT OF AN S

21 CORPORATION?

22 A LIKE I SAY, I STRICTLY LEAVE THAT TO ATTORNEYS AND

23 ACCOUNTANTS. I NEVER WAS SMART ENOUGH TO DO ALL THAT OR I

24 WOULD HAVE BEEN AN ACCOUNTANT OR A ATTORNEY.

25 Q ALL RIGHT. BUT YOU ARE AWARE THAT IT WAS SET UP AND

1 CORPORATE ENTITY THAT YOU CHARTERED IN 1998 AS C&B
2 FABRICATORS, INC., IS STILL AN EXISTING, VIABLE, REGISTERED
3 SOUTH CAROLINA CORPORATION?

4 A CORRECT.

5 Q SO IF YOU SAY C&B FABRICATORS WENT OUT OF BUSINESS,
6 YOU'RE SAYING THAT IT JUST STOPPED MAKING SINGS?

7 A WE NO LONGER DO ANY BUSINESS, NO ACTIVITY.

8 Q NOW, WHEN THE CHECKS WERE DEPOSITED ---

9 MR. BLANTON: AND I APOLOGIZE, MADAM COURT REPORTER
10 FOR WALKING OFF WITH YOUR EXHIBIT.

11 Q THESE DEFENDANT EXHIBITS 24 AND 25 SHOW THE DEPOSITS
12 FOR PAYMENT CHECKS. WOULD YOU READ WHAT THE PRINT ON THE
13 BANK DEPOSIT SLIP SAYS AS TO ---

14 A C&B FABRICATION.

15 Q IS THAT ON BOTH OF THEM?

16 A YES, SIR.

17 Q IS THERE ANYWHERE ON EITHER OF THOSE DEPOSIT SLIPS
18 THAT IT SAYS C&B FABRICATORS, INC.?

19 A NO, SIR.

20 Q WHEN YOU WENT INTO THE MAKING OF THE SIGN BUSINESS AND
21 PROPOSALS WERE SENT OUT -- AND I'M DISPLAYING HERE THE
22 DEFENDANT'S EXHIBIT 14, WHICH IS AN ENLARGEMENT OF A LARGER
23 ONE -- PLAINTIFF'S. WERE YOUR PROPOSALS SENT OUT ON A
24 PREPARED FORM LIKE THIS OR DID YOU CUSTOMIZE EACH PROPOSAL
25 WITH EACH WORD IN IT?

1 A NO. I THINK THAT'S HOW ALL OF THEM WERE, AS FAR AS I
2 KNOW.

3 Q START OUT WITH A PRINTED SIGN AND THEN FILLED IN THE
4 INFORMATION. I MEAN, IT'S NOT A SIGN. STARTED OUT WITH A
5 STARTED PRINTED FORM, AND THEN THE DETAILED INFORMATION IS
6 FILLED IN?

7 A I -- I THINK THEY WERE ALL DONE LIKE THAT.

8 Q SO IF WE WANT TO LOOK AT THE CUSTOMIZED INFORMATION,
9 WHAT'S PERTAINING TO THE PARTICULAR SIGN THAT THE FORM WAS
10 BEING USED TO MAKE THE PROPOSAL ON, WE LOOK FOR THE TYPED
11 INFORMATION IN THERE, DON'T WE?

12 A YEAH. YEAH.

13 Q THE REMAINDER OF IT IS BASICALLY A PRINTED, STANDARD
14 SIZE FORM THAT WAS USED?

15 A RIGHT, UH-HUH.

16 Q AND THE FORM THAT WAS PRINTED HAD AS THE LETTERHEAD AT
17 THE TOP C AMPERSAND B FABRICATION, DOES IT NOT?

18 A RIGHT.

19 Q CAN YOU SHOW ANYWHERE ON THIS FORM THAT IT REFERS TO
20 C&B FABRICATORS, INC.?

21 A NO.

22 Q CAN YOU REFERENCE ANY ENTRY ON THIS FORM THAT SAYS
23 THAT C&B FABRICATION IS A CORPORATION?

24 A NO, HUH-UH.

25 Q AND THE DEPOSIT SLIPS -- EXHIBITS WE JUST MENTIONED --

- 1 ARE ON A PRINTED DEPOSIT SLIP FOR C&B FABRICATION, ARE THEY
2 NOT?
- 3 A RIGHT.
- 4 Q WHEN THE BANK ACCOUNT WAS ESTABLISHED, WHO HAD CHECK
5 WRITING AUTHORITY ON THE ACCOUNT?
- 6 A MOSTLY HOLLY, MY SECRETARY.
- 7 Q HOLLY MILES?
- 8 A UH-HUH.
- 9 Q WHO BESIDES SHE?
- 10 A ME.
- 11 Q WHO BESIDES SHE AND ME?
- 12 A I DON'T THINK ANYBODY ELSE HAD THE AUTHORITY TO WRITE
13 ANY CHECKS.
- 14 Q ALL RIGHT.
- 15 A IT COULD HAVE BEEN ONE MORE PERSON, WHICH WAS JOANNE
16 ERICSON (PHONETIC), BUT I DON'T REMEMBER HER WRITING
17 CHECKS.
- 18 Q WHEN YOU WENT INTO THIS SIGN MAKING BUSINESS, DID YOU
19 HAVE A DESIGN ENGINEER ON YOUR STAFF OR PREMISES?
- 20 A NO.
- 21 Q HOW DID YOU GET YOUR DESIGNS, YOUR DRAWINGS
22 ACCOMPLISHED?
- 23 A WELL, I MEAN, CHUCK AND THEM HAD ALWAYS DONE IT. SO
24 WHEN THEY WANTED A BLUE PRINT OR SOMETHING, THEY WOULD CALL
25 THAT THOMPSON ENGINEERING.

RHODES VS. EADON

- 1 Q IN ATHENS, TENNESSEE?
- 2 A I BELIEVE THAT'S WHERE -- YEAH, I THINK IT WAS.
- 3 Q DID C&B USE ANYONE OTHER THAN THOMPSON ENGINEERING IN
- 4 ATHENS, TENNESSEE TO DO ITS BLUE PRINTS AND DRAWINGS FOR
- 5 THE SIGNS IT BUILT?
- 6 A NOT THAT I RECALL.
- 7 Q AS A MATTER OF FACT, I BELIEVE YOU INFORMED US ON YOUR
- 8 DEPOSITION THAT MR. THOMPSON DID A GOOD NUMBER OF THOSE
- 9 SIGNS, DID HE NOT? I MEAN, THOSE DRAWINGS?
- 10 A A BUNCH OF -- YEAH, A BUNCH OF THEM.
- 11 Q IN FACT, YOU DESCRIBED HIM AS HAVING A STACK OF THEM
- 12 AROUND.
- 13 A PROBABLY 2 OR 300.
- 14 Q OKAY. AND GETTING THOSE DRAWINGS DONE BY A
- 15 PROFESSIONAL ENGINEER WAS NOT CHEAP, WAS IT?
- 16 A I THINK HE CHARGED LIKE \$300 A SET. 3 OR 5, SOMEWHERE
- 17 ALONG IN THERE.
- 18 Q I WANT TO MOVE ON TO A RELATED MATTER IF I MAY PLEASE,
- 19 SIR.
- 20 A ALL RIGHT.
- 21 Q IN -- I HAND YOU TWO SHEETS OF DOCUMENTS HERE AND ASK
- 22 YOU TO LOOK AT THEM. AND PARTICULARLY LOOK AT THE
- 23 SIGNATURE, THEN ANSWER ME IF YOU CAN IDENTIFY THOSE,
- 24 PLEASE?
- 25 (PAUSE.)

RHODES VS. EADON

1 YOU ---

2 A THAT'S NOT MY WRITING.

3 Q --- DREW THE DISTINCTION BETWEEN THESE TWO ENTITIES,
4 ONE BEING A CORPORATE ENTITY AND THE OTHER ONE NOT BEING A
5 CORPORATE ENTITY. DID NOT THAT WRITER DO THAT?

6 A WELL, IT WOULD APPEAR THAT WAY, YEAH.

7 Q MR. RADON, I SHOW YOU ANOTHER DOCUMENT AND ASK YOU IF
8 YOU CAN TELL ME WHAT THAT IS?

9 A THIS IS A LIST OF DIFFERENT COMPANIES.

10 Q PARDON ME, SIR. WHAT DOES IT PURPORT TO BE AT THE
11 TOP? WHAT KIND OF LABEL OR LOGO DOES IT HAVE?

12 A C&B FABRICATIONS.

13 Q AN ITEM FROM C&B FABRICATION'S FILE?

14 A YEAH.

15 Q OKAY. AND WHAT IS IT LABELED, PLEASE, OTHER THAN C&B
16 FABRICATION?

17 A DEPOSITS TAX YEAR 2000.

18 Q OKAY.

19 (PAUSE.)

20 MR. BLANTON: PLAINTIFF'S EXHIBIT 46 WITHOUT
21 OBJECTION, YOUR HONOR.

22 THE COURT: PLAINTIFF'S EXHIBIT 46 IS ADMITTED WITHOUT
23 OBJECTION.

24 (C&B FABRICATION TAX YEAR 2000, 1 PAGE, MARKED IN
25 EVIDENCE AS PLAINTIFF'S EXHIBIT NO. 46.)

RHODES VS. RADON

1 Q MR. BADON, PLAINTIFF'S EXHIBIT 46 IS THE YEAR 2000
2 DEPOSITS RECORD FOR C&B FABRICATION, FOR THAT TIME FRAME,
3 IS IT NOT?

4 A BEG YOUR PARDON?

5 Q THAT EXHIBIT BEFORE YOU NOW IS THE YEAR 2000 DEPOSITS
6 RECORD FOR C&B FABRICATION, IS IT NOT?

7 A RIGHT.

8 Q WOULD YOU PUBLISH FROM THAT WHAT THE TOTAL DEPOSITS
9 REFLECT ARE -- THAT ARE REFLECTED ON THAT SHEET?

10 A LOOKS LIKE A MILLION SEVENTY-EIGHT THOUSAND DOLLARS.

11 Q MR. BADON, I LAY IN FRONT OF YOU ANOTHER -- GIVE ME
12 THE EXHIBIT BACK PLEASE, SIR -- AND ASK YOU IF YOU CAN
13 IDENTIFY THE SIGNATURE ON TWO OF THOSE ITEMS ON THAT SHEET
14 I'VE LAID IN FRONT OF YOU?

15 A BOTH OF THEM ARE MINE.

16 Q ALL RIGHT.

17 (PAUSE.)

18 MR. BLANTON: PLAINTIFF'S NO. 47 IN EVIDENCE WITHOUT
19 OBJECTION.

20 THE COURT: PLAINTIFF'S 47 IS ADMITTED WITHOUT
21 OBJECTION.

22 (COPY OF 3 CHECKS MARKED IN EVIDENCE AS PLAINTIFF'S
23 EXHIBIT NO. 47.)

24 Q MR. BADON, WOULD YOU LOOK AT THE PLAINTIFF'S EXHIBIT
25 47. AND THIS ENTIRE SHEET SHOWS A PICTURE OF THREE ISSUED

RHODES VS. EADON

- 1 CHECKS, DOES IT NOT?
- 2 A YES, SIR.
- 3 Q AND THE TOP TWO CHECKS ARE THE TWO THAT YOU SAY YOUR
- 4 SIGNATURE IS ON, CORRECT?
- 5 A RIGHT.
- 6 Q NOW, DOES NOT THE PRINTED CHECK, THE TWO THAT YOU
- 7 SIGNED, IS IT NOT PRINTED IN THE UPPER-LEFT CORNER OF THE
- 8 CHECK C AMPERSAND B FABRICATION D/B/A -- AND THE NEXT LINE
- 9 LOW COUNTRY SIGN FABRICATION, INC.?
- 10 A YOU TALKING ABOUT ON THE FIRST CHECK?
- 11 Q YES, SIR, UP AT THE UPPER LEFT-HAND CORNER?
- 12 A YES, SIR.
- 13 Q AND THE SAME THING IS ON THE SECOND CHECK, IS IT NOT?
- 14 A YES, SIR.
- 15 Q AND THESE CHECKS WERE ISSUED IN SEPTEMBER OF 2000,
- 16 WERE THEY NOT?
- 17 A YES, SIR.
- 18 Q AND SO AS OF SEPTEMBER OF 2000 C&B FABRICATION WAS
- 19 DOING BUSINESS AS LOW COUNTRY SIGN FABRICATION, INC., WAS
- 20 IT NOT?
- 21 A YES, SIR.
- 22 Q AND ON EITHER OF THESE TWO CHECKS THAT YOU SIGNED, IS
- 23 THERE ANYTHING ON THERE THAT SAYS C&B FABRICATORS, INC., IS
- 24 THERE?
- 25 A NO, SIR.

RHODES VS. EADON

1 Q MR. EADON, I LAY IN FRONT OF YOU A SERIES OF BANK
2 STATEMENTS BEGINNING IN APRIL OF 2000 AND ENDING UP IN
3 OCTOBER 2000, AND ASK YOU IF YOU CAN IDENTIFY THEM PLEASE,
4 SIR?

5 A WHAT DID YOU WANT ME TO IDENTIFY THEM?

6 Q CAN YOU IDENTIFY THEM?

7 A OH, YEAH.

8 Q WHAT ARE THEY?

9 A THEY'RE BANK STATEMENTS.

10 Q ALL RIGHT.

11 MR. BLANTON: I WANT TO OFFER THESE COLLECTIVELY AS AN
12 EXHIBIT.

13 (PAUSE.)

14 MS. GRIFFIN: NO OBJECTION, YOUR HONOR.

15 THE COURT: VERY WELL. PLAINTIFF'S EXHIBIT 48 ---

16 MR. BLANTON: 49.

17 THE COURT: 49?

18 MR. BLANTON: YES, SIR.

19 MR. COLEMAN: 48 WAS THE TWO CHECKS.

20 THE COURT: I'M SORRY. TWO CHECKS.

21 (PAUSE.)

22 THE COURT: I DON'T THINK THERE'S A 48.

23 MR. COLEMAN: I'M SORRY.

24 THE COURT: 48 IS THE NUMBER. YOU'RE WELCOME. 48.

25 (NBSC ACCOUNT STATEMENT MARKED IN EVIDENCE AS

RHODES VS. EADON

1 PLAINTIFF'S EXHIBIT NO. 48.)

2 THE COURT: EXCUSE ME. JUST ONE SECOND. PLAINTIFF'S
3 48 ARE COLLECTIVELY ADMITTED INTO EVIDENCE WITHOUT
4 OBJECTION.

5 Q MR. EADON, WILL YOU LOOK PLEASE AT THIS EXHIBIT 48.
6 AND IS IT NOT A COPY OF MONTHLY BANK STATEMENTS BEGINNING
7 IN APRIL THROUGH ABOUT OCTOBER OF THE YEAR 2000?

8 A YES, SIR.

9 Q AND TO WHOM ARE THOSE STATEMENTS ADDRESSED AND WHO ARE
10 THEY FOR?

11 A C&B FABRICATIONS, D/B/A LOW COUNTRY SIGN FABRICATION,
12 INCORPORATED.

13 Q I HAND YOU ANOTHER SINGLE SHEET AND ASK YOU IF YOU CAN
14 IDENTIFY IT?

15 A I GUESS THIS MUST HAVE COME FROM THE LOAN DEPARTMENT
16 AT THE NATIONAL BANK.

17 Q AND TO WHOM IS IT ADDRESSED?

18 A M.L. EADON, JR., DOING BUSINESS AS C&B FABRICATION.
19 (PAUSE.)

20 THE COURT: VERY WELL. PLAINTIFF'S EXHIBIT NO. 49.
21 WITHOUT OBJECTION PLAINTIFF'S EXHIBIT 49 IS ADMITTED.

22 MS. GRIFFIN: YOUR HONOR, MAY I APPROACH FOR A SECOND?

23 THE COURT: SURE.

24 MS. GRIFFIN: IF MR. EADON NEEDS HIS GLASSES.

25 THE COURT: SURE, THAT WILL BE FINE IF YOU WANT TO

RHODES VS. EADON

1 HAND THEM TO HIM. I KNOW HOW THAT CAN BE.

2 (PAUSE.)

3 THE COURT: THAT MAY HELP YOU.

4 WITNESS: I'LL TRY IT.

5 THE COURT: THANK YOU, MS. GRIFFIN.

6 (LOAN NOTICE, 1 PAGE, MARKED IN EVIDENCE AS
7 PLAINTIFF'S EXHIBIT NO. 49.)

8 Q MR. EADON, I SHOW YOU THIS FOR ORIENTATION. DID NOT
9 YOU RECEIVE BILLS AND INVOICES FROM SUPPLIERS ADDRESSED TO
10 C&B FABRICATION AT YOUR BUSINESS?

11 A YEAH.

12 Q AND THE ONE I'M JUST SHOWING YOU, IS THAT TYPICAL OF
13 THE ONES YOU RECEIVED ADDRESSED TO C&B FABRICATION?

14 A YEAH.

15 Q AND THIS ONE IS NOT AN ISOLATED ONE, BUT YOU RECEIVED
16 MANY WHILE YOU WERE IN THE BUSINESS?

17 A I PROMISE YOU.

18 (PAUSE.)

19 MR. BLANTON: WITHOUT OBJECTION, PLAINTIFF'S 50.

20 THE COURT: 50. PLAINTIFF'S 50 IS ADMITTED WITHOUT
21 OBJECTION.

22 (COPY OF 2 STATEMENTS MARKED IN EVIDENCE AS
23 PLAINTIFF'S EXHIBIT NO. 50.)

24 MR. BLANTON: BEAR WITH ME A MINUTE, YOUR HONOR.

25 THE COURT: TAKE YOUR TIME, MR. BLANTON.

RHODES VS. EADON

1 (PAUSE.)

2 Q MR. RADON, I WANT TO CHANGE THE FOCUS FOR A COUPLE
3 MINUTES PLEASE, SIR.

4 A OKAY.

5 Q ON YOUR DEPOSITION -- I'M DOING THIS FOR ORIENTATION.
6 ON YOUR DEPOSITION I ASKED YOU SOME QUESTIONS ABOUT THE C&B
7 FABRICATION, LOW COUNTRY SIGNS -- IN THAT CONTEXT, I WANT
8 TO ASK YOU THIS: AT WHAT POINT DID YOU MOVE IN TO LOW
9 COUNTRY SIGNS FROM C&B FABRICATION?

10 A AT WHAT POINT?

11 Q YES, SIR.

12 A WHEN I HAD LOST ALL I COULD AFFORD TO LOSE, I DECIDED
13 I WOULD TRY SOMEONE ELSE IN CHARGE, TO SEE IF I COULD
14 RECOVER WHAT I HAD ALREADY LOST -- RECOVER SOME OF IT.

15 Q AND I BELIEVE YOU TOLD US ON THE DEPOSITION -- JUST TO
16 ORIENT YOU -- THAT IT WAS AFTER CHUCK AND ---

17 A AFTER THEY HAD LEFT.

18 Q --- AND YOUR ARRANGEMENT ---

19 A YEAH.

20 Q --- THAT YOU MOVED INTO LOW COUNTRY SIGNS?

21 A RIGHT.

22 Q AND I BELIEVE YOU TOLD US THAT -- IT'S ON PAGE 19 OF
23 YOUR DEPOSITION -- THAT LOW COUNTRY SIGNS BASICALLY WAS
24 DOING THE SAME THING THAT YOU HAD BEEN DOING IN C&B
25 FABRICATION?

RHODES VS. RADON

- 1 A RIGHT.
- 2 Q AND IT WAS A CHANGE OF PEOPLE THAT YOU WERE DEALING
- 3 WITH ---
- 4 A RIGHT.
- 5 Q --- FROM BENENHALEY TO THE OTHER?
- 6 A RIGHT.
- 7 Q AND SO SOME OF THESE CHECKS THAT WE HAVE INTRODUCED
- 8 HERE REFLECT THAT C&B FABRICATION, D/B/A LOW COUNTRY SIGNS,
- 9 THAT WAS THE TIME YOU WERE MOVING IN TO THAT?
- 10 A RIGHT.
- 11 Q SO ULTIMATELY LOW COUNTRY SIGNS WAS CHARTERED AS A
- 12 CORPORATION, WAS IT NOT?
- 13 A YES, I BELIEVE -- YEAH, I THINK IT WAS.
- 14 Q AND THAT OCCURRED SOME TIME AROUND AFTER MAY THE 1ST
- 15 OF 2000?
- 16 A WHATEVER IS ON THE DOCUMENTS. I DON'T REMEMBER, YOU
- 17 KNOW. HAVEN'T LOOKED AT THEM.
- 18 Q LOW COUNTRY SIGNS WAS IN FACT CHARTERED AS A SOUTH
- 19 CAROLINA CORPORATION. IS THAT TRUE?
- 20 A YES, SIR.
- 21 Q AND SUBSEQUENTLY LOW COUNTRY SIGNS HAS BEEN DISSOLVED
- 22 AS A CORPORATION; IS THAT NOT TRUE?
- 23 A YES, SIR.
- 24 Q SO I'M NOT SAYING ANYTHING -- CONFIRMATION OF THIS, I
- 25 BELIEVE, WOULD BE THE FACTUAL REVELATION. C&B FABRICATION

RHODES VS. EADON

1 WAS DOING BUSINESS AS LOW COUNTRY SIGNS FOR A WHILE?

2 A WELL, IT WAS KIND OF LIKE A JOINT VENTURE. SAM WAS --
3 SAM SMITH WAS -- WHATEVER HIS NAME WAS -- WAS ALREADY IN
4 THE BUSINESS. I MEAN, HE HAD ALREADY HAD A COMPANY CALLED
5 LOW COUNTRY SIGNS, I THINK IT WAS. AND THEN WHEN WE GOT
6 TOGETHER WE WENT AND KIND OF MERGED IT, AND IT WAS
7 BASICALLY THE SAME STRUCTURE. HE HAD THE EXPERTISE AND I
8 WAS SUPPOSED TO HAVE FINANCING.

9 Q AND AS A MATTER OF FACT, YOU NOT ONLY HELPED, YOU DID
10 FINANCE IT, DIDN'T YOU?

11 A WELL, THAT'S -- IT WASN'T INTENDED THAT WAY, IT'S THE
12 WAY IT HAPPENED.

13 Q BUT BACK TO MY EFFORTS HERE PLEASE. THERE WAS A
14 PERIOD THERE -- AND THIS IS PART OF THE REASON THAT YOU
15 WOULD CONFIRM IT WITH THESE CHECKS HERE -- THAT C&B
16 FABRICATION WAS DOING BUSINESS AS LOW COUNTRY SIGNS?

17 A I GUESS YOU COULD PUT IT THAT WAY.

18 Q WELL, DON'T THE CHECKS -- THE STATEMENTS FROM THE BANK
19 FOR THOSE SEVERAL MONTHS WE JUST INTRODUCED -- AND DON'T
20 THE CHECKS THAT WE JUST IDENTIFIED REFLECT THAT?

21 A WHATEVER THEY SAY, THEY SAY.

22 Q AND YOU TOLD US THAT LOW COUNTRY SIGNS ONCE IT WAS IN
23 FACT INCORPORATED -- WHILE IT WAS INCORPORATED, CONTINUED
24 TO BASICALLY DO WHAT C&B FABRICATION HAD BEEN DOING?

25 A TRUE.

RHODES VS. EADON

1 Q OKAY. AND THEN LOW COUNTRY SIGNS HAS BEEN DISSOLVED
2 AS A CORPORATION?

3 A I -- I -- I THINK -- I ASSUME IT HAS. I MEAN, I GUESS
4 IT HAS, I MEAN, I DON'T REALLY KNOW.

5 Q SO WHAT WAS ONCE C&B FABRICATION MERGED INTO LOW
6 COUNTRY SIGNS, AND LOW COUNTRY SIGNS HAS BEEN DISSOLVED?

7 A RIGHT.

8 Q OKAY. BUT C&B ERECTOR IS STILL A CORPORATION?

9 A THAT'S THE ADVICE OF MY ACCOUNTANT. I DON'T KNOW THE
10 REASON WHY.

11 Q I ACCEPT THAT.

12 A I DON'T KNOW ALL THAT KIND OF STUFF.

13 Q I ACCEPT THAT.

14 A OKAY.

15 Q BUT IF C&B FABRICATION, DOING BUSINESS AS LOW COUNTRY
16 SIGNS, THEN WAS MERGED INTO LOW COUNTRY SIGNS AND LOW
17 COUNTRY SIGNS HAS BEEN DISSOLVED, C&B FABRICATION NEVER WAS
18 C&B ERECTORS, WAS IT?

19 A I CAN'T -- I DON'T KNOW HOW TO INTERPRET THAT. I
20 CAN'T.

21 Q THANK YOU, SIR. IT ANSWERS ITSELF.

22 A OKAY.

23 Q MR. EADON, BEAR WITH ME. AND I'M ---

24 A I'M NOT GOING ANYWHERE.

25 Q I WANT TO GO TO THE POINT IN TIME WHEN YOU GOT THE

RHODES VS. EADON

1 CALL FROM SAM RHODES ABOUT ONE OF THE SIGNS THAT WAS
2 LEANING.

3 A YES, SIR.

4 Q AND WHAT IS YOUR RECOLLECTION OF HOW YOU FIRST HEARD
5 ABOUT THAT?

6 A I'M ASSUMING ONE OF THE GIRLS ANSWERED THE PHONE AND
7 DISCUSSED IT WITH SAM. AND, YOU KNOW, EVIDENTLY SHE TOLD
8 ME AND I CONVEYED IT TO CHUCK OR WHOEVER.

9 Q EXCUSE ME.

10 A I MEAN, SAM WOULD CALL 10 TIMES A DAY. I WOULDN'T
11 ANSWER IT HALF THE TIME.

12 Q WAS HE CALLING ABOUT ANYTHING OTHER THAN ---

13 A NO. IT WAS ALWAYS SOMETHING.

14 Q WAS HE CALLING ---

15 A HE'D CALL IT WASN'T RIGHT -- SOMETHING WASN'T RIGHT
16 ALL THE TIME.

17 Q AND THIS WAS ABOUT IN -- IN DECEMBER OF 2000, WASN'T
18 IT?

19 A I DON'T REMEMBER DATES. IT WAS WHATEVER YOU'VE GOT
20 WRITTEN DOWN SOUNDS GOOD TO ME.

21 Q MR. EADON, I PROMISE YOU, I'M NOT TRYING TO GET IN
22 YOUR FACE. I JUST HAVE TO COME HERE TO GET THIS THING.

23 A NO PROBLEM.

24 Q I LAY BEFORE YOU THE PLAINTIFF EXHIBITS 8-A, B, C FOR
25 IDENTIFICATION, AND D. PLEASE LOOK AT THOSE AND I HAVE

RHODES VS. EADON

1 SOME QUESTIONS FOR YOU.

2 A I LOOKED AT THEM.

3 Q ALL RIGHT. THAT 8-A IS A FAXED LETTER FROM SAM RHODES
4 TO YOU, IS IT NOT? 8-A?

5 A 8-A. OKAY. WHAT'S THE QUESTION?

6 Q THAT 8-A, THAT'S A FAXED LETTER FROM SAM RHODES TO
7 YOU?

8 A YES, SIR.

9 Q AND B IS -- IS THAT A FAX LETTER IN RESPONSE BY YOU?
10 DO YOU WANT TO SEE?

11 A (PAUSE.) YEAH.

12 Q AND THEN 8-C, IS THAT HIS RESPONSE TO YOUR LETTER?

13 A IS THAT MY RESPONSE?

14 Q NO, SIR. THAT'S HIS RESPONSE TO YOU, 8-C?

15 A YEAH.

16 Q AND 8-D, IS THAT FURTHER RESPONSE?

17 A UH-HUH.

18 Q SO THE 8-A AND B AND C ARE ALL ON THE SAME DATE,
19 DECEMBER 29, 2000, AND THEY ALL PERTAIN TO MR. RHODES
20 REPORTING THAT THE SIGN IS LEANING AND HE'S COMMUNICATED
21 ABOUT IT AND HE WANTS SOMETHING DONE. ISN'T THAT BASICALLY
22 WHAT THE EXCHANGE IS ABOUT?

23 A YES, SIR.

24 Q THEY'RE ALREADY IN EVIDENCE AND HAVE BEEN PUBLISHED
25 EXCEPT FOR 8-C. NOW, 8-D IS THE ONE THAT HE WROTE IN

RHODES VS. EADON

1 JANUARY, IS IT NOT? JANUARY THE 16TH?

2 A IF YOU SAY -- YES.

3 Q AND IT WAS AFTER THE JANUARY 16 LETTER THAT YOU GOT
4 TRACY BENENHALEY TO GO OUT AND DO SOMETHING. NOW, GOING
5 BACK TO BEFORE DECEMBER THE 29TH WHEN THOSE THREE LETTER
6 EXCHANGE OCCURRED THERE, THERE HAD BEEN -- TO YOUR
7 KNOWLEDGE, TELEPHONE CALLS BY SAM RHODES ABOUT THAT LEANING
8 SIGN, HAD IT NOT?

9 A YEAH. YES, SIR.

10 Q AND HAD YOU SENT ANYONE OUT BEFORE JANUARY THE 16TH TO
11 LOOK AT THE SIGN THAT HE SAID WAS LEANING?

12 A CHUCK BENENHALEY WENT UP THERE ON SEVERAL OCCASIONS.
13 SAM SAID IT WAS LEANING ONE WAY OR ANOTHER. YOU GO DOWN
14 THE INTERSTATE, HE SAID, AND IT LOOKED LIKE IT WAS LEANING
15 THAT WAY. YOU GO THE OTHER WAY, THEY SAID IT LOOKED -- YOU
16 COULDN'T TELL IT WAS LEANING. THEY PUT A LEVEL ON IT, SAID
17 IT WAS ABOUT THREE-SIXTEENTHS OF AN INCH OFF OR SOMETHING
18 LIKE THAT.

19 AND I SAID, WELL, CAN YOU FIX IT?

20 HE SAID, YEAH.

21 SO FIX IT. YOU KNOW. AND SO THEY WENT BACK AND I
22 THINK CUT THE WELL ON ONE SIDE WHICH MADE IT EASE OVER.
23 AND I ASSUMED THAT FIXED IT; THAT'S WHAT WAS TOLD BY ME.

24 AND THEN A FEW DAYS LATER SAM CALLED BACK AGAIN. IT
25 WAS LEANING THE OTHER WAY. HE SAID, WELL -- AND THE GUY

RHODES VS. EADON

1 SAID, IT AIN'T LEANING. BUT APPARENTLY -- EVENTUALLY IT
2 MUST HAVE.

3 BUT, I MEAN, THEY WENT TO FIX IT ON SEVERAL OCCASIONS.
4 IN FACT, AT ONE TIME I THINK I RECALL THEY HAD TO RENT LIKE
5 A HUNDRED TON CRANE ON THE WEEKEND TO TRY TO FIX THAT SIGN,
6 WHICH COST LIKE \$10,000 TO HAVE THAT CRANE FOR THE WEEKEND,
7 BECAUSE YOU COULDN'T GET DOWN TO THE SITE BECAUSE IT WAS SO
8 MUDDY THEY SAID THE CRANE SLIPPED DOWN THE EMBANKMENT. AND
9 ALL KIND OF STUFF LIKE THAT SEEMED TO HAPPEN ON THIS
10 PARTICULAR JOB. AND CONSEQUENTLY, THEY WERE MAKING 25 MORE
11 SIGNS BESIDES SAM'S, YOU KNOW, AT THE TIME.

12 Q MR. EADON, WOULD YOU OPEN YOUR DEPOSITION TO PAGE 72?

13 THE COURT: ONE SECOND. DO YOU HAVE THE ORIGINAL?
14 LET ME HAVE THAT PLEASE.

15 (PAUSE.)

16 THE COURT: THANK YOU, SIR. COURT'S EXHIBIT 2 WILL BE
17 THE DEPOSITION, ORIGINAL TRANSCRIPT OF THE DEPOSITION OF
18 MARION EADON. THE DEPOSITION WAS TAKEN JUNE THE 13TH OF
19 2003. PORTIONS TO NOW BE PUBLISHED PURSUANT TO THE RULES.

20 LADIES AND GENTLEMEN OF THE JURY, A DEPOSITION IS
21 SIMPLY A TERM THAT WE USE TO DESCRIBE TESTIMONY THAT WAS
22 TAKEN IN A PROCEEDING SUCH AS THIS OUTSIDE OF THIS
23 COURTROOM.

24 GENERALLY, AT A DEPOSITION THE ATTORNEYS ARE PRESENT,
25 THE WITNESS IS PRESENT, A COURT REPORTER IS PRESENT, AND

RHODES VS. EADON

1 YOU, SIR.

2 CROSS EXAMINATION CONTINUED BY MR. BLANTON:

3 Q MR. EADON, WE'RE STILL AT THE SAME POINT I WAS GROPING
4 WITH WHEN WE RECESSED. IF YOU WILL LOOK ON YOUR DEPOSITION
5 PAGE 72. DO YOU HAVE THE RIGHT PAGE, 72?

6 A YES, SIR.

7 Q AND LOOK AT THE LEFT COLUMN THERE THE COURT REPORTER
8 HAS NUMBERED THE LINES 1 THROUGH 25.

9 A YES, SIR.

10 Q THERE IS A SERIES OF LINES. IF YOU WILL LOOK DOWN,
11 AND AT LINE 18 THROUGH LINE 21 I ASKED YOU THIS QUESTION:
12 HOW ON YOUR DEPOSITION DID YOU DESCRIBE YOUR REACTION TO
13 THE TELEPHONE CALLS THAT MR. RHODES WAS SENDING TO YOU
14 ABOUT THE LEANING SIGN?

15 A WHAT YOU WANT ME TO DO, READ 18 THROUGH 21?

16 Q IF THAT ANSWERS MY QUESTION.

17 A AND WHAT IS THE QUESTION?

18 Q WHAT WAS YOUR REACTION TO MR. RHODES' NUMEROUS
19 TELEPHONE CALLS ABOUT THE LEANING SIGN?

20 A IT SAYS HERE, I MEAN, I DON'T RECALL THE REASONING.
21 I'M NOT SURE. BUT I THINK THAT I FINALLY DECIDED THAT HE
22 WAS A PAIN IN THE BUTT, YOU KNOW. YOU CAN'T SATISFY HIM.

23 Q IS THAT STILL YOUR OPINION TODAY?

24 A NEVER CHANGED ONE OUNCE.

25 MR. BLANTON: ALL RIGHT. THAT'S ALL I HAVE. THANK

RHODES VS. EADON

- 1 SINGLE OWNER OF AN S CORPORATION?
- 2 A NO MORE SO THAN A MULTI OWNER.
- 3 Q DOES THAT -- DOES THAT INCLUDE THAT THERE ARE BENEFITS
- 4 FOR A SINGLE OWNER OF AN S CORPORATION?
- 5 A FOR ALL OWNERS OF S CORPORATIONS.
- 6 Q WITH RESPECT TO CORPORATIONS, ARE YOU FAMILIAR WITH
- 7 MR. EADON'S OTHER CORPORATE ENTERPRISES?
- 8 A YES.
- 9 Q DO YOU DO THE TAX RETURNS FOR THEM?
- 10 A FOR ALL, I THINK, YES.
- 11 Q DO YOU DO HIS PERSONAL TAX RETURN?
- 12 A YES, I DO.
- 13 Q HAVE YOU DONE THE TAX RETURN FOR HIS CORPORATE ENTITY
- 14 NAMED MILLWOOD CONSTRUCTION CO.?
- 15 A NO, I'M NOT -- I'M NOT FAMILIAR WITH THAT CORPORATION.
- 16 Q OKAY. HAVE YOU DONE THE ONE FOR HIS CORPORATE ENTITY
- 17 NAMED KIT AND KELL (PHONETIC) HOG FARM?
- 18 A YES.
- 19 Q HAVE YOU DONE THE ONE FOR HIS H&E CLARENDON, INC.?
- 20 A I'M NOT FAMILIAR -- MAY HAVE DONE THAT ONE YEARS AGO.
- 21 I'M NOT EVEN SURE IF THAT ONE EXISTS. THAT ONE DOES NOT
- 22 RING A CURRENT BELL.
- 23 Q OKAY. HAVE YOU DONE THOSE FOR EMPLOYMENT SOLUTIONS,
- 24 INC., WHICH NAME WAS CHANGED TO EADON SOLUTIONS, INC.?
- 25 A YES.

RHODES VS. EADON

1 Q HAVE YOU DONE IT FOR K&S PREFAB, INC., ONE OF HIS
2 COMPANIES?

3 A YES. I THINK THAT ONE HAD A NAME CHANGE WHEN I WAS
4 DOING IT.

5 Q HAVE YOU DONE IT FOR LOW COUNTRY SIGNS AND
6 FABRICATION, INC.?

7 A YES.

8 Q HAVE YOU DONE IT FOR SNYDER TIRE COMPANY?

9 A YES.

10 Q THAT'S ONE THAT IS IN MRS. EADON'S NAME, IS IT NOT?

11 A I BELIEVE IT IS.

12 Q HAVE YOU DONE ONE FOR HIM FOR BLACK RIVER
13 CONSTRUCTION, LLC?

14 A YES.

15 Q HAVE YOU DONE ONE OF HIS FOR EAST COAST EQUIPMENT
16 RENTAL, LLC?

17 A YES.

18 Q WOULD IT BE ACCURATE TO SAY, MR. BENNIGER, THAT MR.
19 EADON AS A BUSINESSMAN AND ENTREPRENEUR IS MORE THAN
20 FAMILIAR WITH THE PROCESS OF CHARTERING AND MAINTAINING AND
21 PRACTICING HIS BUSINESS AS A CORPORATE ENTITY?

22 A I THINK HE NEEDS, YOU KNOW, TO HEAR FROM HIS ATTORNEY
23 FROM TIME TO TIME. BUT HE'S BEEN INVOLVED IN A NUMBER OF
24 ENTERPRISES.

25 Q SO C&B ERECTORS, INC., IS NOT THE FIRST TIME OR THE

RHODES VS. EADON

1 ONLY TIME MR. EADON HAS BEEN INVOLVED IN THE CORPORATE
2 ACTIVITY, IS IT?

3 A NO.

4 Q ARE ALL THE ACTIVITIES FOR WHICH YOU HAVE DONE WORK --
5 STRIKE THAT. ARE ALL OF THE TAX RETURNS FOR WHICH YOU HAVE
6 FILED -- PREPARED AND -- PREPARED FOR MR. EADON -- ARE ALL
7 OF THEM INVOLVING CORPORATE ENTITIES OR DO SOME OF THEM
8 INVOLVE BUSINESS ACTIVITIES OR ENTERPRISES THAT ARE NOT
9 INCORPORATED?

10 A WELL, THERE'S ONE LIMITED PARTNERSHIP, AT LEAST ONE
11 LLC WHICH JUST ACTS AS A PARTNERSHIP.

12 MR. BLANTON: MR. BENNIGER, I THANK YOU FOR INDULGING
13 MY QUESTIONS.

14 THE COURT: RE-DIRECT?

15 MS. GRIFFIN: NOTHING, YOUR HONOR.

16 THE COURT: YOU MAY COME DOWN, MR. BENNIGER.

17 DO YOU WISH THE WITNESS TO BE EXCUSED?

18 MS. GRIFFIN: YES, YOUR HONOR.

19 THE COURT: ANY OBJECTION, MR. BLANTON?

20 MR. BLANTON: NO, YOUR HONOR.

21 THE COURT: YOU ARE FREE TO LEAVE, MR. BENNIGER.

22 THANK YOU, SIR.

23 (THE WITNESS LEAVES THE WITNESS STAND.)

24 THE COURT: YOU MAY CALL YOUR NEXT WITNESS.

25 MS. GRIFFIN: YOUR HONOR, THE DEFENDANT INTRODUCES THE

RHODES VS. EADON

STATE OF SOUTH CAROLINA)
COUNTY OF FAIRFIELD)

IN THE COURT OF COMMON PLEAS

SAMUEL W. RHODES AND)
PIEDMONT PROMOTIONS, INC.,)

DOCKET NO. 01-CP-20-334

PLAINTIFF,)

V.)

TRANSCRIPT OF RECORD
(JURY TRIAL)
VOLUME IV

MARION L. EADON, D/B/A C&B)
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

2006 JUL 26 AM 8:27
DAVID HAMILTON
C.R.C.H. & GS
YORK COUNTY, S.C.

NANCY M. MONTEITH, CERTIFIED VERBATIM REPORTER
RESIDENT COURT REPORTER, SIXTH JUDICIAL CIRCUIT

1 BUILT IN ACCORDANCE WITH THE CONTRACT. SO THAT'S A
2 DONE DEAL.

3 THE QUESTION COMES, DO YOU FIND IT WAS A
4 CORPORATION? IT'S REALLY SIMPLY CHARGED THIS WAY,
5 AND I'M PREPARED TO DO IT IF YOU ALL AGREE TO IT. I
6 CAN'T DO IT WITHOUT YOU ALL AGREEING TO IT BECAUSE
7 I'M CHARGING ON THE FACTS, BUT IT COMES DOWN TO, IF
8 YOU BELIEVE THE DEFENDANT WAS A CORPORATION AND NOT
9 THE INDIVIDUAL, THEN THAT'S IT. BUT IF YOU BELIEVE
10 THAT THE DEFENDANT -- THAT THIS WHOLE TRANSACTION WAS
11 WITH MR. EADON, THEN YOU'VE GOT TO FIND -- YOU'VE GOT
12 TO DETERMINE HOW MUCH DAMAGES, BECAUSE THEN IT SIMPLY
13 SHIFTS TO THE ELEMENT OF DAMAGES.

14 AND NOW WE'RE TALKING ABOUT WHAT'S THE LOSS TO
15 THE PLAINTIFF, BECAUSE IT REALLY AND TRULY COMES DOWN
16 TO THAT SITUATION. IT'S NOT -- REALLY, IT'S THAT
17 SIMPLE, I THINK. MAYBE I'VE OVERSIMPLIFIED IT, BUT
18 I TRULY BELIEVE THAT'S THE CASE. NOW, CLEARLY THE
19 ELEMENTS OF DAMAGE -- NO QUESTION, THERE'S A BREACH OF
20 CONTRACT. NO QUESTION, THERE'S NEGLIGENCE. NO
21 QUESTION, THERE'S EVIDENCE OF RECKLESS DISREGARD FOR
22 THAT, IF THE JURY CHOOSES TO BELIEVE THAT.

23 SO I WILL START WITH, THERE'S NO QUESTION OF
24 THOSE PARTS AND NO QUESTION ACTUAL AND PUNITIVE
25 DAMAGES, I THINK, HAVE TO GO TO THE JURY FOR THEIR

1 IS THE CORPORATION, IF -- EXCUSE ME, IF THE
2 CONTRACTING PARTY -- BECAUSE EVERYTHING STARTS FROM
3 THAT. THERE WAS A CONTRACT. MR. RHODES WENT AND
4 SAID, "I WANT" -- IT'S PRETTY STRAIGHTFORWARD, AND I
5 THOUGHT IT WAS GREAT, BECAUSE I'VE BEEN THERE, IN
6 DEALING WITH MY LAST CONSTRUCTION PROJECT I HAD THAT
7 WAS EXACTLY -- I SAID, "DON'T TALK TO ME, JUST TELL ME
8 WHEN YOU CAN FINISH, AND I WANT IT DONE RIGHT",
9 BASICALLY, AND THAT'S WHAT HE ASKED.

10 AND HE SAID, "GET SOME PLANS", AND THEY WERE
11 PROVIDED. FROM THAT POINT ON, IT STARTS GOING
12 DOWNHILL RAPIDLY. BUT CLEARLY EVERYTHING STARTS WITH,
13 WHO WAS THAT PERSON? WAS THAT PERSON THE CORPORATION
14 OR WAS THAT PERSON THIS GENTLEMAN SITTING AT THE
15 TABLE? IT'S THAT SIMPLE. BUT YOU ALL THINK ABOUT
16 IT, AND LET ME SEE WHAT JUDGE ALFORD WANTS TO DO AND
17 GIVE YOU A CHANCE TO REFLECT ON IT.

18 MR. BLANTON: THANK YOU.

19 (OFF-THE-RECORD DISCUSSION)

20 THE COURT: LET ME JUST STATE, SO IT'S CLEAR,
21 OBVIOUSLY WHAT I'M DOING, AND I REALIZE THAT PART OF
22 THE BURDEN OF PROOF IN ANY CASE IS TO PROVE ALL OF THE
23 ESSENTIAL ELEMENTS. AND ONE OF THE ESSENTIAL
24 ELEMENTS, OBVIOUSLY, TO A CONTRACT IS THE PARTIES. SO
25 THERE'S NO QUESTION THAT THERE'S TECHNICALLY, BECAUSE

1 MISCOMMUNICATED.

2 THE COURT: NO, YOU HAVEN'T. YOU SAID, "WE'RE
3 NOT ASKING YOU TO DIRECT A VERDICT." THAT WAS THE
4 KEY. DIDN'T YOU SAY THAT?

5 MR. BLANTON: IF I DID, I MISSPOKE.

6 THE COURT: OKAY. WELL, THEN, I'M SORRY. I
7 ASKED YOU, I SAID, "ARE YOU ASKING ME TO DIRECT A
8 VERDICT AS TO BREACH OF CONTRACT AND NEGLIGENCE?".

9 MR. BLANTON: OUR MOTION IS TO DIRECTED VERDICT
10 AS TO LIABILITY, AND THAT WOULD INCLUDE ALL THE
11 COUNTS THAT REMAIN EXCEPT THE U.T.P.A.

12 THE COURT: WELL, I CAN'T DO THAT BECAUSE
13 OBVIOUSLY, THE QUESTION THAT YOU'RE ASKING ME IN THE
14 WAY YOU'VE PHRASED IT -- I'VE GOT TO DIRECT A VERDICT
15 AS TO THAT PARTY, AND I CAN'T DO THAT. SO THAT
16 MOTION IS NOTED, PROTECTED, AND I HAVE TO DENY THAT.

17 MR. BLANTON: MAY I SPEAK BRIEFLY ON THAT?

18 THE COURT: SURE, YOU CAN.

19 MR. BLANTON: AS TO THE NEGLIGENCE COUNT, YOUR
20 HONOR, IF MR. EADON WAS AN ACTOR IN THE EVENTS, HE IS
21 LIABLE WHETHER OR NOT HE'S LIABLE ON THE CONTRACT OR
22 NOT.

23 THE COURT: BASED ON WHAT THEORY IF HE'S A
24 CORPORATION? IF HE WAS AN AGENT DOING WORK, MAYBE
25 THERE WAS A POSSIBILITY, READING SOME OF THE CASES,

1 A POSSIBILITY THAT THAT WOULD CONNECT HIM
2 INDIVIDUALLY, BUT IF HE'S A CORPORATION, I DON'T CARE
3 WHAT HE'S INVOLVED IN. IT'S A CORPORATE LIABILITY.

4 MR. BLANTON: YOUR HONOR, WE CITE THE MOST RECENT
5 CASE ON THAT IN OUR TRIAL BRIEF --

6 THE COURT: YES.

7 MR. BLANTON: -- WHERE THE COURT OF APPEALS
8 REVERSED THE FAILURE OF LETTING THE TORT ISSUE GO TO
9 THE EMPLOYEE-AGENT AND SO FORTH.

10 THE COURT: I UNDERSTAND THAT, AND IF WHAT YOU'RE
11 ASKING ME TO DO IS TO DIRECT -- YOU'RE SAYING THE
12 EMPLOYEE TORT AGENT, WHICH IS FOR WHAT REASON? AND I
13 DIDN'T READ THE ENTIRE CASE. I JUST READ THAT NOTE.

14 MR. BLANTON: BECAUSE THE ACTOR IN TORT -- IT
15 DOESN'T MATTER WHETHER HE'S AN AGENT OR NOT. HE OR
16 SHE IS LIABLE FOR WHAT HE OR SHE DOES.

17 THE COURT: WELL, WHAT PROOF DO I HAVE THAT HE
18 DID ANYTHING OTHER THAN TALK ON THE PHONE?

19 MR. BLANTON: HE'S THE FELLOW THAT MADE THE DEAL
20 AND PROMISED TO DO IT ACROSS THE BOARD.

21 THE COURT: NO, SIR. THE DEAL IS NOT THE TORT.
22 THE TORT WAS BUILDING THE SIGN IMPROPERLY. THAT
23 WASN'T THE DEAL. THERE'S NO EVIDENCE THAT HE DID ANY
24 CONSTRUCTION, NONE, ZERO.

25 MR. BLANTON: IF C&B FABRICATION --

1 THE COURT: YES, WHY DON'T YOU COME FORWARD, MR.
2 COX. WHY ARE YOU HERE?

3 MR. COX: YOUR HONOR, I'M REPRESENTING THE INSURER
4 FOR --

5 THE COURT: THAT IS NAMED AS PARTY DEFENDANT
6 "D/B/A"? IS THAT WHO THAT IS OR DOES THE "C" STAND
7 FOR COX?

8 MR. COX: IT COULD, JUDGE.

9 THE COURT: OKAY.

10 MR. COX: WE ARE AN INTERESTED PARTY IN THE
11 OUTCOME OF THIS CASE. WE ARE HERE TO PROTECT THE
12 INSURER, AND UNDER RULE 49 I'D JUST REQUEST THAT THE
13 COURT ISSUE, WITH THE VERDICT FORMS, INSTRUCTIONS ON
14 HOW THEY ARRIVE AT THE DAMAGES. AND I THINK THIS
15 COULD BE ACCOMPLISHED BY GETTING THE GENERAL VERDICT
16 AND THEN SUBMITTING QUESTIONS TO THEM, INTERROGATORIES
17 TO THEM, ABOUT THE SPECIFIC FIGURES THAT THEY CAME UP
18 WITH FOR EACH DAMAGE.

19 IT SEEMS TO ME, I GUESS, THERE ARE REALLY THREE
20 DIFFERENT DAMAGES, THE SIGN, THE COST OF THE SIGN,
21 THE DAMAGE TO THE VALUE OF THE PROPERTY, AND THEN THE
22 LOST REVENUE ISSUES. I DON'T KNOW HOW THEY CAN
23 OVERLAP THOSE. I DON'T KNOW THAT THEY CAN AWARD ALL
24 THOSE SAME DAMAGES. I THINK IF YOU GET ONE, THEN
25 YOU CAN'T GET THE OTHER. THAT'S ANOTHER CONCERN.

1 THE COURT: I'M NOT FOLLOWING YOU.

2 MR. COX: I DON'T KNOW THAT THEY'D BE ENTITLED TO
3 GET THE CONTRACT PRICE OF THE SIGN.

4 THE COURT: I AGREE WITH YOU.

5 MR. COX: THAT WOULD BE ANOTHER CONCERN FOR ME.
6 SO IT SEEMS LIKE IT WOULD BE A GOOD IDEA, ANYWAY, TO
7 DO THAT, BUT THANK YOU FOR ALLOWING ME TO MAKE THIS
8 REQUEST ON BEHALF OF AN INTERESTED PARTY, AND WE
9 WOULD JUST REQUEST THAT THE COURT DO THAT.

10 THE COURT: AGAIN, I GO BACK TO MY INITIAL
11 QUESTION, ANY OBJECTION TO THE VERDICT FORM, FROM THE
12 PLAINTIFF?

13 MR. BLANTON: I'M SORRY, YOUR HONOR?

14 THE COURT: I APPRECIATE IT. THERE'S AN
15 INTERESTING QUESTION HERE, AND I'M VERY FAMILIAR WITH
16 49, BUT AS TO MR. COX'S POSITION, HE DOESN'T HAVE ANY
17 POSITION IN THIS CASE, SO I'M ASKING YOU -- THE
18 VERDICT FORMS ARE WHAT I HAVE PREPARED. ANY
19 CORRECTIONS OR WISHES FROM THE PLAINTIFF?

20 MR. BLANTON: NO, YOUR HONOR.

21 THE COURT: FROM THE DEFENDANT?

22 MS. GRIFFIN: NO, YOUR HONOR.

23 THE COURT: THANK YOU VERY MUCH.

24 THANK YOU, MR. COX. I APPRECIATE IT.

25 MR. COX: THANK YOU, JUDGE.

1 THAT, WE FOUND BY CLEAR AND CONVINCING EVIDENCE THAT
2 THE DEFENDANT WAS NOT ONLY CARELESS AND NEGLIGENT, BUT
3 WAS RECKLESS, WILLFUL AND WANTON, AND THAT THAT
4 RECKLESSNESS, WILLFULNESS AND WANTONNESS PROXIMATELY
5 CAUSED INJURY OR DAMAGE, AND THAT'S THE CLEAR AND
6 CONVINCING STANDARD. "WE'VE CONSIDERED THOSE FACTORS
7 AND WE DECIDE TO AWARD PUNITIVE DAMAGES IN THAT AMOUNT
8 WHICH WE BELIEVE IS FAIR AND JUST AND REASONABLE UNDER
9 THE CIRCUMSTANCES IN THIS CASE." AGAIN, IF YOU USE
10 THAT, PLEASE WRITE IT FIRST IN WORDS, THEN IN NUMBERS.

11 THE THIRD CHOICE IS, "WE FIND FOR THE DEFENDANT."
12 NOW, WHAT WILL YOU BE SAYING? ONE OR TWO THINGS, AND
13 ONE REALLY INCORPORATES THE OTHER. OBVIOUSLY THE
14 PLAINTIFF HAS TO PROVE THE FAULT, THE PERSON WHO
15 COMMITTED THE NEGLIGENCE. IF YOU CONCLUDE FROM THE
16 EVIDENCE THAT THE PARTY THAT COMMITTED THE NEGLIGENCE
17 IN THIS CASE WAS THE CORPORATION, IN OTHER WORDS, THE
18 DEFENDANT WAS NOT ACTING INDIVIDUALLY BUT WAS ACTING
19 THROUGH A CORPORATION AND AS A CORPORATION, THEN YOU
20 MUST RETURN A VERDICT FOR THE DEFENDANT. OR YOU MAY
21 RETURN A VERDICT FOR THE DEFENDANT IF YOU FIND THAT
22 THE PLAINTIFF FAILED IN HIS BURDEN OF PROOF ON ANY
23 ONE OF THOSE ELEMENTS WE TALKED ABOUT, THAT IS,
24 NEGLIGENCE, DAMAGES OR PROXIMATE CAUSE.

25 REMEMBER THAT YOU CAN'T AWARD PUNITIVE DAMAGES

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE
) COURT OF COMMON PLEAS
) CASE NO.: 02-CP-46-2369

AUTO-OWNERS INSURANCE COMPANY,)
)
) PLAINTIFF,)
)

-VS-

) TRANSCRIPT OF RECORD
)

SAMUEL W. RHODES and PIEDMONT)
)
) PROMOTIONS, INC.,)
)

) DEFENDANTS,)
)

-VS-

MARION L. EADON d/b/a C&B)
)
) FABRICATION, C&B FABRICATIONS,)
)
) INC., and LOW COUNTRY SIGNS,)
)
) INC.,)
)
) THIRD-PARTY DEFENDANTS.)
)

June 27, 2006
YORK, SOUTH CAROLINA

B E F O R E:

Honorable Lee S. Alford, Judge.

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

Mr. Alfred Johnston Cox
Mr. John L. McCants
Ellis Lawhorne
Attorneys for the Plaintiff
Columbia, South Carolina

Mr. Hoover C. Blanton
McCutchen, Blanton, Johnson & Barnette, LLP
Attorney for Samuel Rhodes and Piedmont Promotions
Columbia, South Carolina

Mr. Creighton B. Coleman
Attorney at Law
Attorney for Samuel Rhodes and Piedmont Promotions
Winnsboro, South Carolina

Mr. William O. Sweeny, III
Sweeny, Wingate & Barrow, P.A.
Attorney for Marion Eadon d/b/a
Columbia, South Carolina

1 THE COURT: Counsel.

2 MR. MCCANTS: May it please the Court.

3 THE COURT: Yes, sir.

4 MR. MCCANTS: Your Honor, the parties have agreed in
5 accordance with the issue that was to be tried before the
6 jury today to a stipulation that will obviate the necessity
7 of that trial and the stipulation is as follows: For
8 purposes of this Declaratory Action only, named insureds on
9 Auto-Owners policies are reformed to C&B Fabricators, Inc.,
10 and Lowcountry Signs & Fabrications, Inc., both d/b/a C&B
11 Fabrication, trade name of these corporations. And I'd
12 point out I'm going to hand this up to Your Honor as an
13 exhibit and I point out only because my handwriting's so
14 poor, that Lowcountry is one word. The funny mark that's on
15 there is my version of ampersand and other than that, I
16 think it's fairly complete.

17 MR. COX: And, actually, Judge, that's one little --
18 you said Lowcountry Sign ampersand and it should be
19 Fabrication, Inc., I believe, but we'll check and make sure.

20 THE COURT: Okay. Let me check.

21 MR. COX: Let's get it absolutely correct.

22 MR. MCCANTS: All right. If I misstated, Your Honor,
23 then Lowcountry Signs & Fabrication, singular, Inc. is --
24 instead of the plural of Fabrication and I've placed an X
25 through what looks like an S.

President
M.L. Eadon

C&B FABRICATION

Manager
Chuck Benenhaley

BOX 825

102

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, union 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.



[Signature]

Date 8-4-99

PIEDMONT PROMOTIONS, INC.

1791

67-160/532

DATE 9/29/99

PAY
TO THE
ORDER OF

For Deposit

C & B Education

\$ 75,830.00

Seventy five thousand eight hundred thirty dollars

DOLLARS

25801
BB&T
BRANCH BANKING AND TRUST COMPANY OF SOUTH CAROLINA
245 SOUTH HERLONG AVENUE
ROCK HILL, SC 29732

FOR

Expenditure for 3 months

Samuel W. Miller

⑆0091688000⑆

For Deposit Only

DO NOT WRITE STAMP OR SIGN BELOW THIS LINE
RESERVED FOR FINANCIAL INSTITUTION USE *

0209 72181

053 106564
AT 1730
SUN 8:10
D 9:00-10:4

AUG 99

19990809



NATIONAL BANK OF SOUTH CAROLINA

#3637
PK7001
88101999

is listed below, as well as those
industry guidelines.

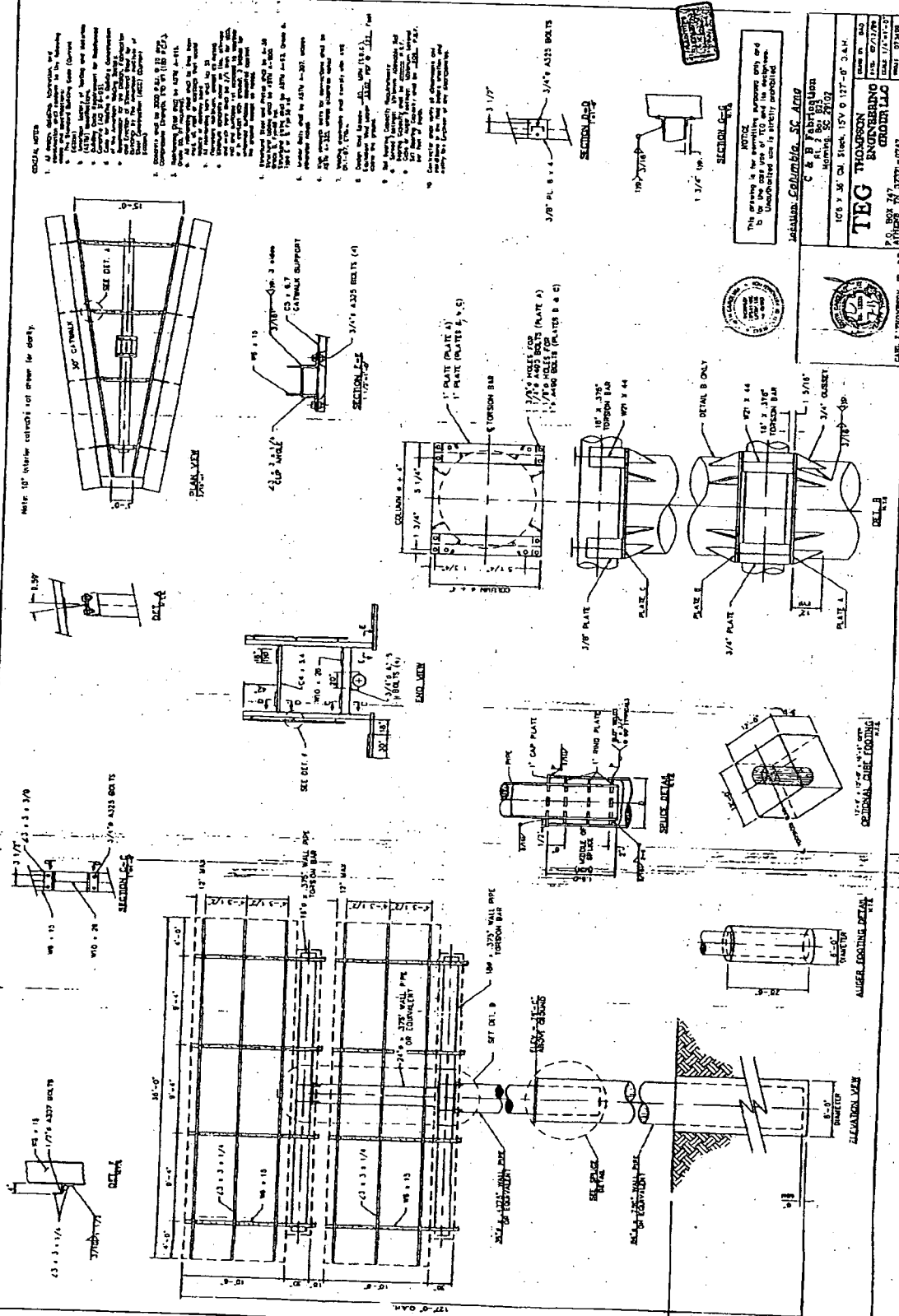
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chemical alteration

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verifying on back of check

* FEDERAL RESERVE BOARD OF GOVERNORS REG. CC



Piedmont Promotions

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

December 29, 2000

Mr. Marion Eaton
C & B Fabricators

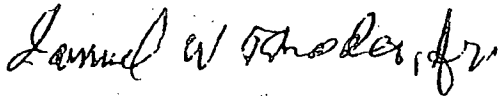
Dear Marion,

I spoke to you a couple of times this past week about the following problem and thought that you were taking care of the problem. I was informed this morning by Tracy Bennenhaley that you may not.

The middle sign of the three signs that you recently built for me has begun leaning and 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)366-7194, (803)327-6600, or faxed at (803)324-5360. My address is P.O. Box 4234, Rock Hill, S.C. 29732

Sincerely,



Samuel W. Rhodes, Jr.



Marion L. Eadon

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes

Dear Sam:

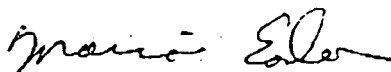
As you well know, C & B Fabricators went out of business April 03, 2000. I was trying to get Tracy Benenhaley to look at the sign and repair it.

Checking back, all of you fellows in the sign business took advantage of me not knowing enough about the business. Everyone in the sign business said that after 60 feet that the charge should have been one hundred dollars (\$100.00) per foot. We underbid this sign by \$22,000.00, plus I lost \$35,000.00 on the entire project.

I am willing to do what it takes to correct the repairs on the leaning structure, if you will rent the crane.

If this is not satisfactory, let me know. A law suit is a waste of time due to the fact that C & B Fabricators went out of business in April and does not have any assets.

Please advise.



Marion Eadon





South Carolina
Department of Transportation

January 23, 2001

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

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

Re: Cancellation of Outdoor Advertising Billboard Permits: 04-20-426994, 04-20-426995,
04-20-426996 – Fairfield County

Dear Mr. Rhodes:

The South Carolina Department of Transportation's ("SCDOT") has documented that the outdoor advertising structure (permit number 04-20-426994) located on I-77 in Fairfield County has been completely destroyed.

The SCDOT has investigated and concluded that outdoor advertising structures permitted under permits 04-20-426995 and 04-20-42996 on I-77 in Fairfield County are unsafe and present a hazard to the motoring public.

Pursuant to Section 57-25-130 (Declaration of Purpose), South Carolina Code of Laws, 1976 as amended, please accept this letter as the final notice of cancellation and the immediate removal of the advertising sign structures. If the signs are not removed, employees or agents of the Department may go upon the property upon which an illegal sign(s) is located for the purpose of removal.

Sincerely,

Keith C. Melvin
Director of Outdoor Advertising

cc: Jim M. Bigger, District 4 Outdoor Advertising Coordinator

File: ODA/KCM





South Carolina
Department of Transportation

February 15, 2001

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Samuel W. Rhodes, Jr.
Piedmont Promotions

RE: Billboard Permit Number 04-20-426994 Located on I-77 in Fairfield County.

Dear Mr. Rhodes:

The South Carolina Department of Transportation (SCDOT) has documented that the sign structure, which fell onto the right-of-way of I-77 on Saturday, January 21, 2001, has not been removed.

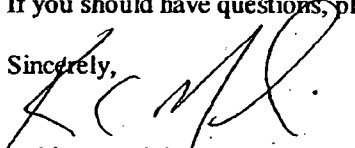
On January 23, 2001, SCDOT provided correspondence indicating the cancellation of outdoor advertising billboard permits numbered 04-20-426994, 04-20-426995 and 04-20-426996 located on I-77 in Fairfield County. This letter also required the immediate removal of these structures due to their being unsafe and presenting a hazard to the motoring public.

As of this date, billboard permitted under number 04-20-426994 has not been removed from the Department's right of way.

Per our conversation on today (February 15, 2001), this letter serves as final notice that this sign must be removed from the SCDOT's right-of-way no later than February 23, 2001. In accordance with Section 57-25-160 of the Highway Advertising Control Act "a person who violates the provisions of this chapter must be assessed by the Department a civil penalty of one hundred dollars (\$100.00) a day until the violation ends. No permit may be issued to a person who is in violation of the provisions of this chapter or who has not paid an assessed civil penalty."

If you should have questions, please contact the Outdoor Advertising office at (803) 737-1339.

Sincerely,


Keith C. Melvin
Director of Outdoor Advertising

Attachments

cc: Jim Bigger, District 4 Outdoor Advertising Coordinator



HIGHWAY ADVERTISING CONTROL ACT REGULATIONS

63-341. Preface.

The regulations promulgated herein have been formulated pursuant to Section 57-3-610 and the Highway Advertising Control Act of S.C. Code of Laws which is intended to regulate outdoor advertising along Interstate and Federal-aid primary highways.

HISTORY: Amended by State Register Volume 13, Issue No. 6, eff June 23, 1989.

Effect of Amendment—

The 1989 amendment revised this regulation

63-342. Definition of Terms.

A. Abandoned Sign, means a sign which is not being maintained as required by the regulations, or which is overgrown by trees or other vegetation not on the highway right-of-way, or which has had obsolete advertising messages or no advertising messages for a period of six months, or for which a permit has not been obtained or is not current, or for which the fee has not been paid more than thirty (30) days after demand by the Department.

B. Act, means Highway Advertising Control Act or its successors.

C. Back-to-Back Sign, means any sign constructed on a single set of supports with two sign facings in opposite directions each of which may have up to two sign faces visible.

D. Control Area, means that area within 660 feet of the nearest edge of the right-of-way of Interstate or Federal-aid primary highways and visible from the main-traveled way of the Interstate or Federal-aid primary highways. The distance is measured from the outer edge of the right-of way on a line which is perpendicular to the edge of the pavement at the point in questions.

E. Cutouts and Extensions shall mean any addition to a sign in excess of the permitted sign face area which aids in the display of a particular message. These cutouts and extensions should be apparent from the sign face and cannot increase the permitted sign face area by more than 150 square feet.

F. Department, means South Carolina Department of Transportation.

G. Destroyed Sign, means a sign no longer in existence due to factors other than vandalism or other criminal tortious act.

H. Doublefaced Sign, means any sign with only one set of supports, one sign facing and no more than two sign faces visible.

I. Erect, means to construct, build, raise, assemble, place, affix, attach, create, paint, draw, or in any other way bring into being or establish. It does not mean changing or repainting an existing sign face.

J. Highway, means all roads, streets and other ways open, or intended to be opened and for which the alignment has been approved by the Department, to the use of the public for travel by motor vehicles.

K. Illegal Sign, means any sign which was erected or maintained in violation of any of the provisions of the Act or these regulations, including an abandoned sign.

L. Interchange, means an intersection or junction of highways, either open or intended to be opened and for which the location has been approved by the Department, whether at grade or involving one or more grade separations, together with that additional area used or needed for connecting roadways from one highway to another.

M. Lease, means any writing by which possession or use of land or interest therein is given by the owner to another person for a specified period of time.

N. Legible, means capable of being read or understood without visual aid by a person of normal visual acuity while traveling in an ordinary passenger car on the main-traveled way at the speed limit.

O. Main-Traveled Way, means the traveled way of a highway on which through traffic is carried.

P. Nonconforming Sign, is one which was lawfully erected but which does not comply with the provisions of the Act or these regulations passed at a later date or which fails to comply with the Act or these regulations because of changed conditions at the site, such as the inclusion of a new highway in those roads governed by the Act, construction of a new interchange, etc.

Q. On-Premise Sign, means any sign which is designed, intended or used to advertise or inform of the principal activity taking place, or the product being sold on the property where the sign is located.

R. Removed, when used in reference to a sign or sign structure, means the dismantling and complete removal from the view of the motoring public of all parts and materials of a sign or sign structure to include by not limited to faces, and beams, poles, braces, stringers, guys, and struts which are used or intended to be used to support or display a sign.

S. Residence, a building or mobile home used as a permanent dwelling place whose occupancy is primarily unrelated to any commercial activity conducted on or adjacent to the premises.

T. Rest Area, means an area or site established and maintained within or adjacent to the right-of-way for the convenience of the traveling public.

U. Sham activity, means any activity which is seemingly a commercial or industrial activity but which was created primarily or exclusively to qualify an area as an unzoned commercial or industrial area and which does not conduct any meaningful business at the activity site. Failure of an activity to maintain the standards set forth under the definition of transient and temporary within one year after a sign permit was issued based on the activity qualifying the sign site as an unzoned commercial or industrial area shall be prima facie evidence that the activity was a sham.

V. Sign or "outdoor advertising sign", means any sign structure or combination of sign structure and message in the form of outdoor sign, display, device, figure, painting, drawing, message, plaque, poster, billboard, advertising structure, advertisement, logo, symbol or other form which is designed, intended or used to advertise or inform, any part of the message or informative contents of which is visible from the main-traveled way. The term does not include official traffic control signs, official markers, nor specific information panels erected, caused to be erected, or approved by the Department.

W. Sign Direction, means the direction from which the message or informative contents are most visible to oncoming traffic on the main-traveled way.

Effect of Amendment—
The 1993 amendment changed "Department of Highways and Public Transportation" to "Department of Transportation"

SECTION 57-25-160. Erection and maintenance of illegal advertising device.

A person who erects or maintains an advertising device in violation of Section 57-25-140 is guilty of a misdemeanor and, upon conviction, must be fined not more than two hundred dollars or imprisoned for not more than thirty days for each violation.

In addition, a person who violates the provisions of this chapter must be assessed by the department a civil penalty of one hundred dollars a day until the violation ends. A civil penalty must be paid to the department and allocated to the administrative costs of the outdoor advertising program. All monies in excess of the administrative costs must be used in the acquisition of nonconforming signs and may be carried over from year to year. No permit may be issued to a person who is in violation of the provisions of this chapter or who has not paid an assessed civil penalty.

HISTORY: 1962 Code Section 33-591.7; 1971 (57) 2061; 1990 Act No. 519, Section 1; 1993 Act No. 181, Section 1530, eff July 1, 1993.

Effect of Amendment—
The 1993 amendment reprinted this section with no apparent changes

Cross References—
Effect of unavailability of federal compensation for nonconforming sign upon sign's removal, see Section 57-25-180

ALR and L Ed Annotations—
Validity and construction of state or local regulation prohibiting off-premises advertising structures. 81 ALR3d 486
Validity and construction of state or local regulation prohibiting the erection or maintenance of advertising structures within a specified distance of street or highway. 81 ALR3d 564

SECTION 57-25-170. Information signs on highway right-of-way.

The commission may provide within the right-of-way for areas at appropriate distances from interchanges on the interstate system and controlled access roads on the federal-aid primary system on which signs, displays, and devices giving specific information in the interest of the traveling public may be erected and maintained under standards and regulations authorized to be adopted and promulgated by the commission. The standards and regulations may provide for cooperative agreements between the Department of Transportation and private interests for the use and display of names for FOOD, LODGING, and GAS information signs on the highway right-of-way.

HISTORY: 1962 Code Section 33-591.4; 1971 (57) 2061; 1990 Act No. 519, Section 1; 1993 Act No. 181, Section 1530, eff July 1, 1993.

Effect of Amendment—
The 1993 amendment substituted "commission" for "Highways and Public Transportation Commission"; and changed "Department of Highways and Public Transportation" to "Department of Transportation"

SECTION 57-25-180. Advertising devices violating article declared illegal; removal; just compensation for existing devices; right of entry for purpose of removal.

(A) An outdoor advertising sign which violates the provisions of this article is illegal and the Department of Transportation shall give thirty days' notice by certified or registered mail to the owner of the advertising sign and to the owner of the property on which the sign is located for its removal. However, a sign lawfully in existence along the interstate system or the federal-aid



South Carolina
Department of Transportation

January 23, 2001

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Mr. Samuel W. Rhodes, Jr.
P. Promotions, Inc.

Re: Cancellation of Outdoor Advertising Billboard Permits: 04-20-426994, 04-20-426995,
04-20-426996 - Fairfield County

Dear Mr. Rhodes:

The South Carolina Department of Transportation's ("SCDOT") has documented that the outdoor advertising structure (permit number 04-20-426994) located on I-77 in Fairfield County has been completely destroyed.

The SCDOT has investigated and concluded that outdoor advertising structures permitted under permits 04-20-426995 and 04-20-42996 on I-77 in Fairfield County are unsafe and present a hazard to the motoring public.

Pursuant to Section 57-25-130 (Declaration of Purpose), South Carolina Code of Laws, 1976 as amended, please accept this letter as the final notice of cancellation and the immediate removal of the advertising sign structures. If the signs are not removed, employees or agents of the Department may go upon the property upon which an illegal sign(s) is located for the purpose of removal.

Sincerely,

Keith C. Melvin
Director of Outdoor Advertising

cc: Jim M. Bigger, District 4 Outdoor Advertising Coordinator

File: ODA/KCM

usage, certified mail
to the right of the
article at a post office
united states to the right
copy, and mail the article
ad and your name and
it of the article by mail
article. Endorsement
to an authorized agent
of the article.
the spaces on the front
blocks in item 1 of Form
1-2500-37



1-2500-37

AN EQUAL OPPORTUNITY

President
M.L. Eadon

C&B FABRICATION

Manager
Chuck Benenhaley

Ph.

DEPOSITS

TAX YEAR: 2000

ACCOUNTS RECEIVABLE		\$470,360.27
SALE OF VEHICLES, EQUIPMENT & MATERIALS		\$27,961.60
PARTIAL LOAN RE-PAY BY LOW COUNTRY SIGNS		\$25,083.28
LOANS: EADON ENTERPRISES	\$7,910.00	\$554,596.98
LOANS: EMPLOYMENT SOLUTIONS	\$124,500	
LOANS: BROTHER'S AUTO	\$10,000.00	
LOANS: KIT & KEL HOG FARM	\$1,500.00	
LOANS: MARION EADON ??	\$146,500.00	
LOANS: ?????????????????? MLE	\$72,000.00	
LOANS: SPECIAL ACCOUNT	\$67,900.00	
LOANS: PERSONAL ACCOUNT	\$72,000.00	
LOANS: SAVINGS ACCOUNT	\$31,000.00	
LOANS: NBSC	\$21,286.98	
TOTAL		\$1,078,002.13



140

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

0551
3 09-12-00 0994-043 16 67-66/532
DATE

PAY TO THE ORDER OF Berkeley Electric Corp. \$66.00
Sixty-six dollars

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

FOR Electric

0551 0000006600

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

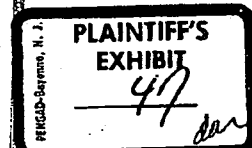
0552
9-4-00
DATE

PAY TO THE ORDER OF Berkeley County Water + Sanitation \$40.88
forty dollars + 88/100

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

FOR Water

0552 0000004088



LOW COUNTRY SIGN FABRICATION, INC

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

(803) 473-5053

9/17/2000

PAY TO THE ORDER OF Marion Creel \$599.50

Five Hundred Ninety-Nine and 50/100 DOLLARS

Marion Creel
1731 N. Main St. Suite H
Summerville, SC 29483

MEMO Office Rent Sam

0551 00000059950

00163


Statement of Account
 Last statement: April 11, 2000
 This statement: April 30, 2000

Page 1 of 2

Direct inquiries to:

 NBSC Manning
 P O Box 310
 Manning SC 29102

 C & B FABRICATION
 ORA LOW COUNTRY SIGN FABRICATION INC

58

GETTING THE MONEY FOR THE HOME OF
 YOUR DREAMS SHOULDN'T TURN OUT TO BE
 A NIGHTMARE. LET AN NBSC MORTGAGE
 LOAN REPRESENTATIVE SHOW YOU HOW TO
 SELECT THE FINANCING THAT IS RIGHT
 FOR YOU.

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$6,725.43

Small Business Checking

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

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
0	04-17	512.89	012064624	100	04-18	155.13	012033297
0	04-17	140.01	012064621	502	04-28	314.23	011026704
0	04-17	31.79	012064622	503	04-20	636.81	011022124
0	04-17	24.45	012064625	504	04-25	102.82	012058409
0	04-17	1,846.00	012064907	505	04-20	1,000.00	011042018
0	04-17	750.00	012064909	507	04-25	480.02	012058408
0	04-17	500.00	012064908	508	04-20	135.00	011017539
0	04-17	500.00	012068010	509	04-21	747.20	012023306
0	04-17	306.17	012033029	510	04-26	175.00	011028075
0	04-17	247.76	012064904	511	04-21	500.00	012042433
0	04-17	99.49	012064905	512	04-25	254.52	012029531
0	04-17	58.25	012064906	513	04-24	588.77	011053063
0	04-18	419.85	012014535	514	04-26	306.17	011034275
0	04-18	349.78	012020004	515	04-26	413.31	011028076
0	04-18	295.17	012019548	516	04-25	484.22	012015889
0	04-18	287.48	012019566	517	04-21	358.53	012042432
0	04-18	254.52	012019535	518	04-21	490.20	012042431
0	04-18	20.00	012020003	519	04-24	380.12	011053064
0	04-20	365.52	011032402	520	04-25	461.56	012034322
0	04-24	435.50	011034245	526	04-28	4,981.98	011002091
0	04-24	175.00	011034244	529	04-28	3,396.59	011007725
92	04-17	202.74	012064582	532	04-27	1,550.00	012034511
93	04-17	127.17	012033040	535	04-28	500.00	011042382
94	04-13	150.00	012046451	537	04-28	358.53	011042386
95	04-17	95.57	012064583	539	04-28	588.77	011042385
96	04-13	534.00	012046452	542	04-28	461.56	011047248
97	04-21	1,313.89	012025106	543	04-28	441.87	011042383
98	04-19	545.00	011020232	547	04-28	195.81	011042384
99	04-17	177.90	012118937	* Skip in check sequence			

 Other
 Debits

Date	Description	Reference Number	Description	Amount
04-20	#Preauthorized Wd	102186023	Harland Checks Chk Orders	49.95 ✓
			000420 003 00108009280	



00004



April 30, 2000

C.F. Fabrication

Page 2 of 2

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
04-12	#Deposit	012054950		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

1 Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

102

YOU'RE PUT A LOT OF MONEY INTO YOUR
HOUSE. ISN'T IT ABOUT TIME YOU GOT
SOME OUT? ASK US ABOUT NBSC'S
ENHANCED 100% ADVANCED BLANK CHECK
HOME EQUITY LINE OF CREDIT.

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$3,749.59

Small Business Checking

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

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
501	05-01	40.00	011099461	12516	05-09	13.07	012010162
521	05-02	433.65	011049134	12517	05-09	343.07	012010815
522	05-05	54.00	012023314	12518	05-08	420.00	012060128
523	05-02	248.34	011045839	12519	05-09	2,569.24	012067485
524	05-01	2,067.00	011001037	12520	05-09	143.50	012067484
525	05-01	50.20	011034591	12521	05-17	58.15	012002040
527	05-01	112.50	011020661	12522	05-17	484.22	012002042
528	05-03	69.45	011030791	12523	05-12	461.56	011039737
530	05-05	545.00	012023313	12524	05-16	306.17	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	012079890
544	05-02	162.47	011027472	12536	05-19	1,322.73	012025059
545	05-02	256.65	011073706	12537	05-18	64.03	011027033
546	05-03	40.88	011002592	12538	05-17	18.17	011016731
548	05-02	120.00	011073705	12539	05-16	79.38	012069087
549	05-08	730.00	012075310	12540	05-17	46.49	011016636
550	05-03	180.00	011024633	12541	05-17	605.79	011027699
12500	05-10	349.32	011031025	12542	05-19	76.60	012027055
12501	05-08	424.80	012069500	12543	05-16	1,595.55	012050166
12502	05-05	43.00	012091790	12544	05-16	1,032.06	012012813
12503	05-09	484.22	012018290	12545	05-18	22.51	011041662
12504	05-09	461.56	012013366	12546	05-16	471.77	012023501
12505	05-09	306.17	012050329	12547	05-19	1,166.00	012006303
12506	05-10	588.31	011027324	12548	05-18	1,297.84	011001123
12507	05-05	479.67	012091791	12549	05-16	530.63	012015718
12508	05-05	258.53	012091792	12550	05-17	1,313.89	012003804
12510	05-05	588.79	012091793	12551	05-15	177.91	012017088
12512	05-05	419.85	012091795	12552	05-17	48.00	012002041
12514	05-05	448.47	012091794	12553	05-19	79.00	012020438
12515	05-09	403.90	012050328	12554	05-16	33.00	012003877

00025

NBSC

The South Carolina Bank Corporation

May 31, 2000

C & B F-ication

Page 2 of 2

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12555	05-16	600.00	012050003	12576	05-22	2,000.00	012022130
12556	05-23	38.25	012018373	12577	05-23	523.91	012071433
12557	05-22	838.50	011027565	12578	05-25	254.28	012002626
12558	05-16	751.67	012079220	12579	05-23	490.20	012074770
12560	05-18	600.00	011040566	12580	05-31	111.24	012040552
12561	05-23	484.22	012018372	12582	05-31	144.09	012001504
12562	05-19	523.91	012062141	12583	05-31	129.47	012040577
12563	05-22	306.17	011031560	12584	05-31	484.22	012001503
12564	05-30	588.31	011037092	12585	05-31	306.17	012058753
12566	05-26	588.78	011026830	12588	05-26	588.77	011068540
12568	05-19	490.20	012062142	12592	05-31	448.47	012059351
12570	05-26	448.47	011068583	12593	05-26	308.98	011068541
12572	05-19	254.28	012062143	12594	05-26	2,000.00	011068456
12573	05-25	111.24	012002966	17591	05-26	448.47	011068584
12574	05-22	31.00	012022131	* Skip in check sequence			
12575	05-19	475.00	012062144				

**Other
Debits**

Date	Description	Reference Number	Description	Amount
05-08	Debit Memo	012060129		3.00
05-31	#Maintenance Fee	000000000		7.80

**Deposits/
Credits**

Date	Description	Reference Number	Description	Amount
05-05	Credit Memo	012051604		10,000.00
05-11	#Deposit	012003647		1,267.32
05-11	#Deposit	012009113		200.00
05-12	#Deposit	011039633		15,000.00
05-15	#Deposit	011083287		6,002.35
05-22	#Deposit	011052495		2,500.00
05-24	#Deposit	011047502		1,379.63
05-24	#Deposit	011047500		225.00
05-26	#Deposit	011038991		5,000.00
05-30	#Deposit	011064349		1,171.51

**Balance
Summary**

Date	Amount	Date	Amount	Date	Amount	Date	Amount
04-30	8,725.43	05-09	3,192.05	05-17	11,526.56	05-25	4,181.32
05-01	6,455.73	05-10	2,254.42	05-18	9,542.18	05-26	4,797.85
05-02	3,516.70	05-11	3,721.74	05-19	5,154.46	05-30	5,381.05
05-03	2,638.06	05-12	18,260.18	05-22	4,478.79	05-31	3,749.59
05-05	9,494.58	05-15	24,084.62	05-23	2,942.21		
05-08	7,910.78	05-16	15,439.32	05-24	4,546.84		

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

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C & B FABRICATION
 DBA LOW COUNTRY SIGN FABRICATION INC

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

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**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		\$3,264.44

Small Business Checking

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

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12571	06-05	448.47	011053206	12630	06-12	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	011015782
12596	06-07	588.31	012030773	12634	06-09	174.30	012025928
12598	06-06	588.78	011095194	12635	06-12	485.52	011004983
12601	06-05	448.47	011053175	12636	06-09	14.84	012019696
12602	06-05	380.12	011053207	12637	06-13	1,166.00	012012030
12603	06-02	1,350.56	012075541	12638	06-15	306.17	011026448
12604	06-07	909.97	012034816	12639	06-14	588.31	011038474
12605	06-06	132.13	011029526	12641	06-12	588.77	011080891
12606	06-12	125.59	011028305	12644	06-09	448.47	012068487
12607	06-09	64.03	012021796	12645	06-15	414.79	011021260
12608	06-09	744.77	012010202	12646	06-09	1,350.56	012068458
12609	06-12	80.36	011041368	12647	06-13	174.42	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	1,528.79	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	011048536
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	012024183
12628	06-13	583.35	012018747	12667	06-15	530.63	011015499
12629	06-09	575.00	012043815	12668	06-16	1,313.89	011030601

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June 30, 2000

C & B Fabrication

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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	012007690
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		8,500.00 ✓
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
06-08	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		

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NBSC

The South Carolina Bank

Statement of Account

Last statement: June 30, 2000

This statement: July 31, 2000

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Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC

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Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$5,385.31

Small Business Checking

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

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

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July 31, 2000

Fabrication

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NBSC

The South Carolina Corporation

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	450.00	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				
12814	07-21	395.33	011046969				

* Skip in check sequence

Other
Debits

Date	Description	Reference Number	Description	Amount
07-31	#Maintenance Fee	000000000		6.30

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
07-06	#Deposit	012074139		8,000.00
07-06	#Deposit	012039918		2,343.02
07-06	#Deposit	012039920		2,127.58
07-07	#Deposit	011042555		5,192.26
07-11	#Deposit	011069244		1,000.00
07-13	#Deposit	012030879		8,200.00
07-18	#Deposit	012094658		19,139.00
07-19	#Deposit	011077077		5,000.00
07-26	#Deposit	012050498		7,575.00

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		

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NBSC**Statement of Account**

Last statement: July 31, 2000

This statement: August 31, 2000

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Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102C & B FABRICATION
HRA LOW COUNTRY SIGN FABRICATION INC

78

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$1,517.09

Small Business Checking

Account number

Beginning balance
Withdrawals/debits
Deposits/credits
Ending balance5,385.31
35,715.23
31,847.01
1,517.09

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12821	08-02	73.57	012018636	12870	08-14	38.00	011004695
12825	08-09	31.38	011029437	12871	08-15	125.00	011003802
12826	08-02	238.89	012018126	12872	08-15	481.34	011019609
12828	08-02	588.31	012021138	12873	08-21	31.90	011059275
12832	08-01	348.58	011036569	12874	08-15	276.51	011066127
12833	08-01	514.62	011050373	12875	08-16	43.77	012050943
12836	08-01	525.51	011025703	12876	08-21	33.00	011013202
12837	08-01	56.00	011025704	12877	08-21	227.23	011039296
12838	08-04	757.85	011066195	12878	08-21	470.18	011028945
12839	08-09	545.00	011010989	12879	08-23	588.31	011024619
12840	08-30	500.00	011015718	12881	08-18	1,248.90	012057836
12841	08-08	227.23	011053292	12882	08-18	662.60	012066766
12842	08-14	378.31	011080827	12884	08-21	395.20	011028946
12843	08-11	588.31	012022030	12885	08-18	441.66	012066767
12845	08-04	415.54	011044247	12886	08-18	363.32	012066768
12847	08-18	96.85	012019454	12887	08-29	215.57	012047099
12848	08-08	360.88	011015465	12888	08-29	325.06	012038666
12849	08-08	229.69	011015466	12889	08-30	588.31	011028127
12850	08-04	1,350.56	011096019	12891	08-28	615.18	011051285
12851	08-07	280.93	012001534	12893	08-29	452.90	012043669
12852	08-09	905.98	011038302	12894	08-28	357.05	011051287
12853	08-09	765.43	011022021	12895	08-25	1,248.92	011077496
12854	08-08	344.00	011053293	12896	08-29	221.74	012038667
12855	08-04	5,500.00	011039969	12897	08-29	35.00	012047100
12856	08-10	60.95	011004486	12899	08-25	42.19	011077497
12857	08-10	200.00	011004646	12900	08-29	22.47	012034502
12858	08-10	211.99	011021733	12902	08-28	40.88	011018308
12860	08-14	219.00	011043355	12903	08-30	81.00	011029839
12861	08-14	548.06	011004644	12904	08-29	64.03	012043223
12862	08-16	588.31	012026630	12905	08-28	26.00	011029686
12864	08-14	653.80	011053985	12906	08-30	75.33	011033108
12866	08-15	372.08	011003801	12908	08-28	404.05	011064391
12867	08-11	375.81	012052032	12909	08-30	15.34	011023877
12868	08-11	1,248.92	012088562	12910	08-29	431.87	012013875
12869	08-14	479.62	011004645	12911	08-30	26.26	011022615

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NBSC

August 31, 2000

C & B Fabrication

0214618501

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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	012037198
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				

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	0.90
08-31	#Maintenance Fee	000000000		

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	011083598		200.00
08-21	#Deposit	011052552		14,175.00

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

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NBSC**Statement of Account**

Last statement: July 31, 2000

This statement: August 31, 2000

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Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102C & B FABRICATION
DBA LOW COUNTRY SIGN FABRICATION INC
PO BOX 825

78

Summary of Account Balance

Account	Number	Ending Balance
Small Business Checking		\$1,517.09

Small Business CheckingAccount number
0214618501Beginning balance
Withdrawals/debits
Deposits/credits
Ending balance5,385.31
35,715.23
31,847.01
1,517.09

Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12821	08-02	73.57	012018636	12870	08-14	38.00	011004695
12825	08-09	31.38	011029437	12871	08-15	125.00	011003802
12826	08-02	238.89	012018126	12872	08-15	481.34	011019609
12828	08-02	588.31	012021138	12873	08-21	31.90	011059275
12832	08-01	348.58	011036569	12874	08-15	276.51	011066127
12833	08-01	514.62	011050373	12875	08-16	43.77	012050943
12836	08-01	525.51	011025703	12876	08-21	33.00	011013202
12837	08-01	56.00	011025704	12877	08-21	227.23	011039296
12838	08-04	757.85	011066195	12878	08-21	470.18	011028945
12839	08-09	545.00	011010989	12879	08-23	588.31	011024619
12840	08-30	500.00	011015718	12881	08-18	1,248.90	012057836
12841	08-08	227.23	011053292	12882	08-18	662.60	012066766
12842	08-14	378.31	011080827	12884	08-21	395.20	011028946
12843	08-11	588.31	012022030	12885	08-18	441.66	012066767
12845	08-04	415.54	011044247	12886	08-18	363.32	012068768
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

August 31, 2000

Fabrication

Page 2 of 2

NBSC

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				

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

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

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



Statement of Account

Last statement: August 31, 2000

-This statement: September 30, 2000

Page 1 of 2

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

75

**BANKING SO EASY, IT JUST CLICKS.
COMING SOON..... ONLINE ACCESS,
NBSC'S INTERNET BANKING.**

Summary of Account Balance

Account	Name	Ending Balance
Small Business Checking		\$2,787.25

Small Business Checking

Beginning balance	1,517.09	✓
Withdrawals/debits	✓ 48,180.15	
Deposits/credits	✓ 49,450.31	
Ending balance	2,787.25	✓

Check#	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	012031966	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

September 30, 2000

C & B Fabrication

Page 2 of 2



Checks

Number	Date	Amount	Reference Number	Number	Date	Amount	Reference Number
12996 *	09-22	451.00	011071496	13000 *	09-26	2,982.00	011034112
12997	09-22	400.50	011068762	13004 *	09-29	380.38	011006976
12998	09-26	620.00	011044920	* Skip in check sequence			

Deposits/
Credits

Date	Description	Reference Number	Description	Amount
09-05	#Deposit	012081293		33,122.30 ✓
09-07	#Deposit	012091170		11,120.00
09-15	#Deposit	011038403		973.01 ✓
09-21	#Deposit	011071511		4,235.00 ✓

Balance
Summary

Date	Amount	Date	Amount	Date	Amount	Date	Amount
08-31	1,517.09	09-08	35,969.84	09-15	11,224.74	09-25	6,969.63
09-01	670.11	09-11	25,229.03	09-18	7,138.45	09-26	3,167.63
09-05	31,493.09	09-12	22,675.35	09-19	5,553.07	09-29	2,787.25
09-06	28,358.80	09-13	19,669.37	09-21	9,756.27		
09-07	39,394.79	09-14	16,139.94	09-22	7,569.63		

00162



Statement of Account

Last statement: September 30, 2000

File statement: October 31, 2000

Page 1 of 1

Direct inquiries to:

NBSC Manning
P O Box 310
Manning SC 29102

C & B FABRICATION
DRA 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

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			

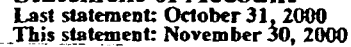
**Deposits/
Credits**

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



**NBSC Manning
P O Box 310
Manning SC 29102**

4

THE NATIONAL BANK OF SOUTH CAROLINA
LOAN DEPARTMENT
P O BOX 319
MANNING SC 29102

MARION L. EASON JR D/B/A
C & B FABRICATIONS

LOAN NOTICE

Mail A Copy Of This Notice and Payment To:

NBSC
P.O. Box 319
Manning, SC 29102

BR 0000002 Officer: GWD BWB S5

Account No.	Note No.	Rate	Original Amount	Maturity Date
	00003C	8.00%	\$48,000.00	Aug 15, 2002

BILL DATE
12-29-00

CURRENT BALANCE
\$28,301.83

PRINCIPAL PAYMENT
INTEREST TO 01-15-01
TOTAL DUE ON 01-15-01

\$1,309.48
\$219.34
\$1,528.79

28542.40

13074

Mr. Joe,

When I see Brother today I will ask about
this '79 International. \$60,000.00 was the selling
price, but the actual loan amount at NBSC
was \$48,000.00.



C & B FABRICATION
710 OR 573-473-6666

7-26-00

NBSC

THE NATIONAL BANK OF SOUTH CAROLINA
NORTH CHARLOTTE, NC 28211

Piedmont 38,440.00
Promotions

38440.00

600 100038440000

1932

PIEDMONT PROMOTIONS, INC.

DATE 8 Feb 80

PAY
TO THE
ORDER OF

C & B Fabrication

\$ 38,440.00

Thirty eight thousand four hundred forty four and 00/100 DOLLARS

NR&T

ROCK HILL, SC 29732

FOR balance to be paid on account of

0000

0003844000

DEFENDANT'S
EXHIBIT

24

C & B FABRICATION

03 25-00

NBSO

THE STATE OF SOUTH CAROLINA
COUNTY OF YORK

Paid 38440.00

Form 100-1

38440.00

500 0003844000

PIEDMONT PROMOTIONS, INC.

1955

DATE 25 Feb 200

PAY TO THE ORDER OF

C & B Fabrication

\$ 38,440.00

Three and four hundred forty 00/100

DOLLARS

BB&T

243 SOUTH HEPBURN AVENUE
ROCK HILL, SC 29733

FOR FULL PAYMENT OF DEBT

29274249

0003844000

DEFENDANT'S
EXHIBIT
25

STATE OF SOUTH CAROLINA) IN COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2002-CP-46-2369

COPY

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.

Garber Reporting Service

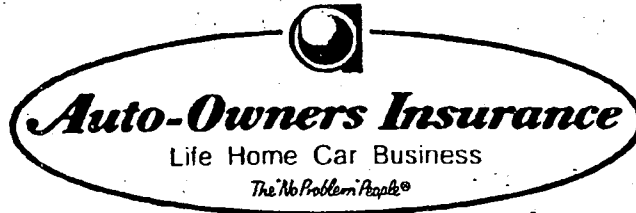
Certified Court Reporters

Post Office Box 12345

Columbia, South Carolina 29211

(803) 256-4500

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:

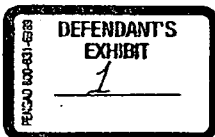
This letter is in regards to the above captioned claim. In order that the company may continue to handle this matter, we want you to know that we are proceeding under a reservation of rights.

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.



014

~ Serving Our Policyholders and Agents for 85 Years ~

AO- 004

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

AO-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

- 016

AO- 006

Page Four

Claim No: 36-0473-01

use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. "Your product"
2. "Your work"; or
3. "Impaired property"

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

Our continued handling of this matter does not constitute an admission of any kind on the part of the company. No act of any company representative while investigating this matter shall be construed as waiving any company rights. The company reserves the right under the policy to deny coverage to you or anyone claiming coverage under the policy.

I would be pleased to answer any questions you might have concerning our position as outlined in this letter. I look forward to hearing from you soon.

Very truly yours,



Carl Anders
Claims Representative

CA/es

- 017

AO- 007

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 1, 2001

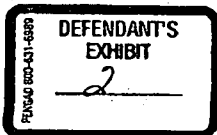
C & B Fabrications, Inc. &
Low Country Signs, Inc.
Attn: Marion Eadon

RE: Claim No: 36-473-01
Date Loss: 1-23-01
Policy No: 36064416

Dear Mr. Eadon:

I'm writing to follow up with you in reference to the claim from when the billboard that you built fell across I-77. I have received and enclosed a copy of the engineer's report from when we had Luis Mariaca do an on sight inspection and evaluation of the sign that fell and the other two signs. His findings are on Page 4 and they should be self explanatory. I have talked with a gentleman from the Department of Transportation named Keith Melvin and he has requested a copy of our engineer report. In order for us to release a copy to them I need to get the attached letter back with your signature stating that it is okay for us to release a copy to them. They would like a copy of this report so they can see what went wrong to work on prevention of any problems in the future. If you give me permission to release this report please sign and return the attached letter.

I have also had a chance to review the bills that you have sent me from Maximum Crane Works. You informed me that you had paid this \$26,240.00 bill along with the other attached bills. I have talked with Maximum Cranes and they informed me that they do not use their crane to get the billboard off of Interstate I-77. I have since been contacted by Barn Doors Garage and Towing and learned that they were called out by the highway department to do the sign removal. Their total bill came to \$7,100.00. We will have coverage under your policy to pay for the removal of the billboard from the states highway



— Serving Our Policyholders and Agents for More Than 80 Years —

018

AO-008

Page Two
Claim No: 36-473-01

so it could be cleared and get the traffic flowing again. At this time I have paid Barn Doors \$7,100.00 and they are to be mailing me a release.

I had previously sent you a reservation of rights letter and explained to you what we would and would not have coverage for in this particular loss. Since your company manufactured and installed these billboards we would not have coverage for Maximum Crane coming out to take down the rest of the sign that fell and also take down the other two signs. We would not have coverage to pay any sums of money to replace these billboards since this is your work. The exclusions that would apply to this claim are found on Page 3 of your policy and are as follows:

- 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 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"

019

AO-009

Page Three
Claim No: 36-473-01

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.

If you are presented with any other bills or have questions about your coverage in this claim, feel free to contact me at 1-800-437-0519, Extension 220.

Sincerely,

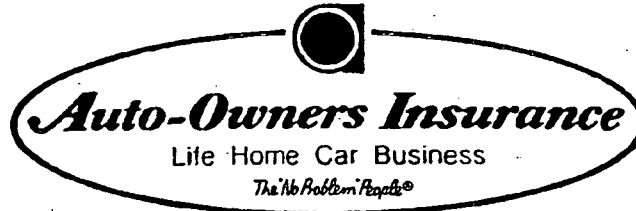
Carl E. Anders, III
Sr. Claims Representative

CEA/mv

020

AO-0010

AUTO-OWNERS INSURANCE COMPANY
AUTO-OWNERS LIFE INSURANCE COMPANY
HOME-OWNERS INSURANCE COMPANY
OWNERS INSURANCE COMPANY
PROPERTY-OWNERS INSURANCE COMPANY
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Life Home Car Business

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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.

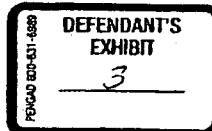
I understand you took the signs down because of pressure you were receiving from the highway department and the chances that this sign could also fall. If you refer back to the letter that I wrote to you on May 1st and to the reservation of rights letter that I mailed you on February 8th, the exclusions 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



035

AO-0025

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



BRANCH CLAIM OFFICE

2000 Center Point Drive, Suite 2200 • P.O. Box 211909

Columbia, SC 29221-6909

803-354-9022 FAX 803-354-9034

Toll Free: 800-437-0519

WWW.AUTO-OWNERS.COM

February 8, 2002

C & B Fabrications, Inc. & Low Country Signs, Inc.

% Marion Eadon

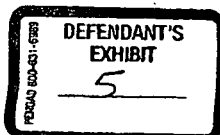
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

RE: Insured: C & B Fabrications, Inc. & Low Country Signs, Inc.
Claim No: 36-473-01
Date Loss: 1-23-01
Plaintiffs: Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc.

Dear Mr. Eadon:

Owners Insurance Company has recently been in receipt of suit papers that were filed against Marion L. Eadon dba C & B Fabrications. The plaintiff in this matter is Samuel W. Rhodes, Jr. and Piedmont Promotions, Inc. This letter is to let you know that we will be providing a defense to you in this suit and we will be doing so under a reservation of rights. I have referred this file to Attorney Catharine Griffin in Columbia for her to answer and defend. Catharine will be getting in touch with you.

This letter is to also be a supplemental to the past reservation of rights letter that we have sent to you. We have paid for what we believe is covered property damage thus far under your Commercial General Liability Policy. We will be defending presently due to the claim of damage to real property that is alleged in the suit papers. If it is determined that the plaintiffs are entitled to money for the rest of the damages that have not already been paid, we believe those damages would not be covered under your policy. I had previously outlined the exclusions that we would not cover the actual damage to the signs in my past reservation of rights letter to you.



021

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AO- 0011

Auto-Owners Insurance

Page Two

Claim No: 36-473-01

Should the claim of damage to real property be dismissed, there is a strong likelihood that we will no longer be providing a defense to you. I have talked with your personal attorney, Lena Younts, and have given her a status as to where things are at on this claim.

If you have any further questions about this claim or your policy, feel free to contact me at the telephone number above.

All rights, terms, conditions and exclusions in your policy are in full force and effect and are completely reserved.

Sincerely,

Carl E. Anders, III
Sr. Claims Representative

CEA/mv

- 022

AO-0012

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

Marion Eadon
C & B Fabrications, Inc. &
Low Inc.

BRANCH CLAIM OFFICE
2000 Center Point Drive, Suite 2200 • P.O. Box 211808
Columbia, SC 29221-6808
803-364-8022 FAX 803-364-8034
Toll Free: 800-437-0519
WWW.AUTO-OWNERS.COM

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 1 - COVERAGES

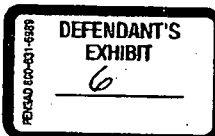
COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

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

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023

11/20/02 WED 14:20 ITX/

AO-0013

- (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

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024

11/20/02 WED 14:20 ITI/R

AO-0014

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

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025

11/20/02 WED 14:20 ITX/

AO-0015

- 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

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026

11/20/02 WED 14:20 [TX/E]

AO- 0016

ACORD GENERAL LIABILITY NOTICE OF OCCURRENCE/CLAIM

PRODUCER: **Greach Roddey Watson Insurance** PHONE (A/C, No, Ext): **803-775-1168** DATE (M, D, Y): **01/23/01**

NOTICE OF OCCURRENCE: ☒ DATE OF OCCURRENCE AND TIME: **01/23/01** PREVIOUSLY REPORTED: ☒ YES ☐ NO

EFFECTIVE DATE: **09/17/00** EXPIRATION DATE: **09/17/01** POLICY TYPE: ☒ OCCURRENCE ☐ CLAIMS MADE RETROACTIVE DATE: _____

COMPANY: **Owners Insurance Company** NAIC CODE: _____ MISCELLANEOUS INFO (Site & location code): _____

CODE: **16070** SUB CODE: _____ POLICY NUMBER: **36064416** REFERENCE NUMBER: _____

AGENCY/CUSTOMER ID: **C&BFA-1**

INSURED

NAME AND ADDRESS: **C&B Fabrications Inc & Country Signs, Inc.** 800 SEC: **473-4723** CONTACT: **Marion Eadon** (803) **473-5808** WHERE TO CONTACT: **Business phone**

RESIDENCE PHONE (A/C, No): _____ BUSINESS PHONE (A/C, No, Ext): **803 473-5808** RESIDENCE PHONE (A/C, No): **473-0835** BUSINESS PHONE (A/C, No, Ext): **803 473-5808** WHEN TO CONTACT: **During the day**

OCCURRENCE

LOCATION OF OCCURRENCE (Include city & state): _____ AUTHORITY CONTACTED: _____

DESCRIPTION OF OCCURRENCE (Use separate sheet, if necessary): **Highway Dept demands a billboard be taken down due to inferior construction-this is a result of the sign that fell on I-77 at Exit 34 on 1/19/01.**

POLICY INFORMATION

COVERAGE PART OR FORMS (Insert form #s and edition dates)

GENERAL AGGREGATE	PROD/COMP/OP AGG	PERS & ADV INJ	EACH OCCURRENCE	FIRE DAMAGE	MEDICAL EXPENSE	DEDUCTIBLE	PD
1,000,000	1,000,000	1,000,000	1,000,000	100,000	10,000		

UMBRELLA/EXCESS: ☒ UMBRELLA ☐ EXCESS CARRIER: **Auto-Owners Insurance** LIMITS: **\$4,000,000** PER CLAIM: **\$4,000,000** PER OCC: **\$10,000** SH: **DED**

TYPE OF LIABILITY

PREMISES: INSURED IS: ☒ OWNER ☐ TENANT ☐ OTHER: _____ TYPE OF PREMISES: **Highway Right-of-Way**

OWNER'S NAME & ADDRESS (If not insured): _____ OWNERS PHONE (A/C, No, Ext): _____

PRODUCTS: INSURED IS: ☐ MANUFACTURER ☐ VENDOR ☐ OTHER: _____ TYPE OF PRODUCT: **Billboards**

MANUFACTURER'S NAME & ADDRESS (If not insured): _____ MANUFACTURER PHONE (A/C, No, Ext): _____

WHERE CAN PRODUCT BE SEEN? _____

OTHER LIABILITY INCLUDING COMPLETED OPERATIONS (Explain): _____

INJURED/PROPERTY DAMAGED

NAME & ADDRESS (Injured/Owner): _____ PHONE (A/C, No, Ext): _____

AGE: _____ SEX: _____ OCCUPATION: _____ EMPLOYER'S NAME & ADDRESS: _____ PHONE (A/C, No, Ext): _____

DESCRIBE INJURY: _____ WHERE TAKEN: _____ WHAT WAS INJURED DOING? _____

FATALITY: ☐ ESTIMATE AMOUNT: _____ WHERE CAN PROPERTY BE SEEN? _____ WHEN CAN PROPERTY BE SEEN? _____

DESCRIBE PROPERTY (Type, model, etc): _____

WITNESSES

NAME & ADDRESS	BUSINESS PHONE (A/C, No, Ext)	RESIDENCE PHONE (A/C, No)
_____	_____	_____
_____	_____	_____

REMARKS: **Carl - this is the one we discussed by phone. Thanks for being for prompt.**

REPORTED BY: **Marion L. Eadon** REPORTED TO: **Michael C. Watson** SIGNATURE OF INSURED: _____ SIGNATURE OF PRODUCER: _____

ACORD 3 (1/97) NOTE: IMPORTANT STATE INFORMATION ON REVERSE SIDE ©ACORD CORPORATION 1995

Marion I. Eadon**H**

Friday, December 29, 2000

Piedmont Promotions
Attn: Mr. Samuel Rhodes

Dear Sam:

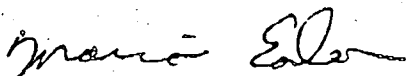
As you well know, C & B Fabricators went out of business April 03, 2000. I was trying to get Tracy Benenhaley to look at the sign and repair it.

Checking back, all of you fellows in the sign business took advantage of me not knowing enough about the business. Everyone in the sign business said that after 80 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

Owners

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

Issued 08-17-2000
TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0070-00 UNIT 81
INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

Renewal Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

ADDRESS

25

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.

FOR COMPANY USE ONLY

The following attachments were issued with this policy transaction.

F13271 199503A E55167 199511

1000000000006693

Billing Type: Company Bill - Monthly
0750 0750

Account 003766777

07-12-2000

ESM6040

Owners

Page 1

55039 (11-87)

Issued 08-17-2000

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

TAILORED PROTECTION POLICY DECLARATIONS

AGENCY CREECH RODDEY WATSON INSURANCE
16-0000-00 UNIT 81

Renewal Effective 09-17-2000

INSURED C S INC &
LDI INC

POLICY NUMBER 984616-36064416-00

ADDRESS

CB

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

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

COMMON POLICY INFORMATION

COINSURANCE CLAUSE

BUSINESS DESCRIPTION: Sign Mfg.

ENTITY: Corporation

PROGRAM: Industrial/Processing

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

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

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

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

Date

7-2-02

Owners

Page 1

54104 (07-87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

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

POLICY NUMBER 984616-36064416-00

INSURED C B B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS R

CB

POLICY TERM
12:01 a.m. 12:01 a.m.
to
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

Basic Group I

Basic Group II

Special

Special Including Theft

COINSURANCE

DEDUCTIBLE

RATE

PREMIUM

80%

\$250

0.206

\$62.00

80%

250

0.084

25.00

80%

250

0.043

13.00

80%

250

0.239

72.00

OPTIONAL COVERAGE:

Replacement Cost

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

SECURED INTERESTED PARTIES: None

RATING INFORMATION

Territory: 140

Program: Industrial/Processing

Class Code: 6810

County: Clarendon

Construction: Non-Comb

Specific Rate - Contents: 0.229

Protection Class: 06

LOCATION 001 PREMIUM

\$172.00

Owners

Page 1

55040 (11/87)

Issued 08-17-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Renewal Effective 09-17-2000

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

POLICY NUMBER 984616-36064416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS R

CB

POLICY TERM

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

09-17-2000 to 09-17-2001

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

COMMERCIAL GENERAL LIABILITY COVERAGE

LIMITS OF INSURANCE

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

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

AUDIT TYPE: Annual Audit

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

LOCATION OF PREMISES YOU OWN, RENT OR OCCUPY

LOC 001 BLDG 001 Rr 2 Box 825
Manning, SC 29102

TERRITORY: 001 COUNTY: Clarendon

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

LOCATION 001 PREMIUM

\$6,521.00

QUICK REFERENCE COMMERCIAL GENERAL LIABILITY COVERAGE PART

READ YOUR POLICY CAREFULLY

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

DECLARATIONS

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

COVERAGE FORM (CG 00 01 or CG 00 02)

SECTION I - COVERAGES

- Coverage A - Bodily Injury and Property Damage Liability

- Insuring Agreement

- Exclusions

- Coverage B - Personal and Advertising Injury Liability

- Insuring Agreement

- Exclusions

- Coverage C - Medical Payments

- Insuring Agreement

- Exclusions

- Supplementary Payments

SECTION II - WHO IS AN INSURED

SECTION III - LIMITS OF INSURANCE

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

- Bankruptcy

- Duties in the Event of Occurrence, Claim or Suit

- Legal Action Against Us

- Other Insurance

- Premium Audit

- Representations

- Separation of Insureds

- Transfer of Rights of Recovery Against Others to Us

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

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

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

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

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

Agency Code 16-0070-00

Policy Number 984616-36064416

COMMON POLICY CONDITIONS (IL 00 17)

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

ENDORSEMENTS (If Any)

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

55167 (11-95)
COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

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

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

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

COMMUNICABLE DISEASE EXCLUSION
Commercial General Liability Coverage Form

55137 (6-92)

It is agreed:

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

2. **EXCLUSION**

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

All other policy terms and conditions apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT - RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

a. "Bodily injury" arising out of any:

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

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share

damages with or to repay someone else who must pay damages because of the injury.

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

c. "Personal injury" arising out of any:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55146 (7-96)

UPSET AND OVERSPRAY COVERAGE

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

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

1. COVERAGE

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

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

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

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

2. EXCLUSIONS

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

- f. Any loss, cost or expense arising out of any:

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

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

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

All other policy exclusions apply.

3. DEDUCTIBLE

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

4. DEFINITIONS

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

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

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

All other policy terms and conditions apply.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

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

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

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement.

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

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

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payments of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

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

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

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

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

2. Exclusions.

This insurance does not apply to:

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

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

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

(1) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or

(2) That the insured would have in the absence of the contract or agreement.

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

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

e. "Bodily injury" to:

(1) An employee of the insured arising out of and in the course of employment by the insured; or

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

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

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

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

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

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

- (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

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

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

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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

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

This exclusion does not apply to:

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

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

- (a) Less than 26 feet long; and

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

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

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

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

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

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

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

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

- j. "Property damage" to:

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

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

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

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

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

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

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

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

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

(1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

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

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

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

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

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement.

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate

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

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

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

b. This insurance applies to:

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

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

2. Exclusions.

This insurance does not apply to:

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

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

b. "Advertising injury" arising out of:

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

COVERAGE C. MEDICAL PAYMENTS

1. Insuring Agreement.

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

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

provided that:

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

our choice as often as we reasonably require.

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

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

2. Exclusions.

We will not pay expenses for "bodily injury":

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

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

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

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

These payments will not reduce the limits of insurance.

SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and

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

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

2. Each of the following is also an insured:

- a. Your employees, other than your executive officers, but only for acts within the scope of their employment by you. However, no employee is an insured for:

(1) "Bodily injury" or "personal injury" to you or to a co-employee while in the course of his or her employment, or the spouse, child, parent, brother or sister of that co-employee as a consequence of such "bodily injury" or "personal injury" or for any obligation to share damages with or repay someone else who must pay damages because of the injury; or

(2) "Bodily injury" or "personal injury" arising out of his or her providing or failing to provide professional health care services; or

(3) "Property damage" to property owned or occupied by or rented or loaned to that employee, any of your other employees, or any of your partners or members (if you are a partnership or joint venture).

- b. Any person (other than your employee), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

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

a. "Bodily injury" to a co-employee of the person driving the equipment; or

b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III - LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds,
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products completed operations hazard"; and
- c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal injury" and all "advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises rented to you arising out of any one fire.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy.

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

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

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

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

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

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

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

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit"

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

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

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

3. Legal Action Against Us.

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

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial;

but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance.

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

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

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

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

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

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

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

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

c. Method of Sharing

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

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

5. Premium Audit.

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater

than the earned premium, we will return the excess to the first Named Insured.

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

6. Representations.

By accepting this policy, you agree:

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

7. Separation of Insureds.

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

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

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

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

9. When We Do Not Renew

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

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

SECTION V - DEFINITIONS

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

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

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

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

4. "Coverage territory" means:

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

(1) The injury or damage arises out of:

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

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

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

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

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

if such property can be restored to use by:

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

6. "Insured contract" means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of

another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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

a. That indemnifies any person or organization for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(1) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

c. Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in b. above and supervisory, inspection or engineering services; or

d. That indemnifies any person or organization for damage by fire to premises rented or loaned to you.

7. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

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

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

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

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise and lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing;

(c) Street cleaning;

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

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

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

10. "Personal injury" means, other than "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

11. a. "Products-completed operations hazard" includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned.

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

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

(2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

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

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

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

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials;

(3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

12. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the "occurrence" that caused it.
13. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or
 - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.
14. "Your product" means:
- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
- (1) You;
 - (2) Others trading under your name; or

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

"Your product" includes:

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

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

15. "Your work" means:

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

"Your work" includes:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55118 (8-91)

**POLLUTION EXCLUSION ENDORSEMENT
PERSONAL INJURY LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

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

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

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

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

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

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

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

(2) Any loss, cost or expense arising out of any:

(a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing from, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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

All other policy terms and conditions apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55029 (7-87)

ABSOLUTE ASBESTOS EXCLUSION ENDORSEMENT

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55050 (7-87)

REINSTATEMENT OF THE GENERAL AGGREGATE LIMIT

It is agreed:

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

55064 (7-87)

MOTOR VEHICLE LAWS

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

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

We will provide coverage:

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

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

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CONTRACTUAL COVERAGE AMENDATORY
ENDORSEMENT**

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

It is agreed:

Under Section I - COVERAGE A, Item 2 Exclusions:

Exclusion b. is deleted and replaced by the following:

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

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMERCIAL GENERAL LIABILITY PLUS ENDORSEMENT

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

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

1. **EXTENDED WATERCRAFT COVERAGE**

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

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

- (a) Less than 50 feet long; and
- (b) Not being used to carry persons or property for a charge;

2. **NONOWNERSHIP/HIRED AUTO COVERAGE**

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

Coverage

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

Exclusions

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

The coverage does not apply to:

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

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

This exclusion applies:

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

This exclusion does not apply to:

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

Who Is An Insured

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

WHO IS AN INSURED

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

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

None of the following is an insured:

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

Additional Definitions

The following definition applies to this coverage:

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

Limits of Insurance

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

LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. insureds;
 - b. claims made or "suits" brought; or
 - c. persons or organizations making claims or bringing "suits".
2. If the Limits of Insurance shown in the Declarations:
 - a. are shown only as an Each Occurrence Limit, the Each Occurrence Limit:
 - (1) is the most we will pay for; and
 - (2) applies to:
the sum of damages under Coverage A for "bodily injury" and "property damage" arising out of any one "occurrence"; or
 - b. are shown in the Declarations as an Each Person Limit and an Each Occurrence Limit:
 - (1) the Each Person Limit is the most we will pay under Coverage A for "bodily injury" sustained by any one person; and
 - (2) the Each Occurrence Limit:
 - (a) is the most we will pay for, and
 - (b) applies separately to:
 - 1) damages covered under Coverage A for "bodily injury"; and
 - 2) damages covered under Coverage A for "property damage"; arising out of any one "occurrence".

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

3. BROADENED SUPPLEMENTARY PAYMENTS COVERAGE

Under SUPPLEMENTARY PAYMENTS - COVERAGES A. and B.:

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

4. PRODUCTS-COMPLETED OPERATIONS AGGREGATE REINSTATEMENT

The following is added to the section LIMITS OF INSURANCE:

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

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

5. PERSONAL INJURY EXTENSION COVERAGE

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

All other terms and conditions of the policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

IL 00 21 11 85

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
(Broad Form)**

This endorsement modifies insurance provided under the following:

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

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage:"

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

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United 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.

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Policy Number 984616-36064416

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

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

Owners

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

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

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

Issued 11-09-2000
TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 09-17-2000

POLICY NUMBER 984616-36064416-00

Company
Bill

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

FOR COMPANY USE ONLY

The following attachments were issued with this policy transaction.

F13271 199503A

1000000000000079

08-17-2000

ETL7192

Owners

Page 1

(IL 1201 11-85)

Issued 11-09-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 09-17-2000

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

POLICY NUMBER 98461-044416-00

INSURED C & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

ADDRESS

Company
Bill

POLICY TERM

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

09-17-2000 to 09-17-2001

DESCRIPTION OF CHANGE

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

TRANSACTION NUMBER: 002

ENDORSEMENT PREMIUM: ADDITIONAL

\$79.00

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

Date

7/2/01

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

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

INSURED

ADDRESS

TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 11-02-2000

POLICY NUMBER 984616-36064416-00

Company
Bill

POLICY TERM

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

09-17-2000^{to} 09-17-2001

The following attachments were issued with this policy transaction.

F13271 199503A

1000000000000000000069

11-09-2000

EAL8955

Owners

Page 1

(IL 1201 11-85)

Issued 12-05-2000

INSURANCE COMPANY

6101 ANACAPRI BLVD., LANSING, MI 48917-3999

TAILORED PROTECTION POLICY DECLARATIONS

Change Endorsement Effective 11-02-2000

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

POLICY NUMBER 984616-36064416-00

INSURED JC & B FABRICATIONS INC &
LOW COUNTRY SIGNS INC

Company
Bill

POLICY TERM

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

DESCRIPTION OF CHANGE

THE POLICY HAS BEEN AMENDED TO DELETE THE FOLLOWING LOCATION:

LOC #2- 1731 NORTH MAIN ST #6, SUMMERVILLE SC

TRANSACTION NUMBER: 003

ENDORSEMENT PREMIUM: RETURNED

\$69.00

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

Date



Tailored Protection Insurance Policy

Owners Insurance Company

13271 (3-95)

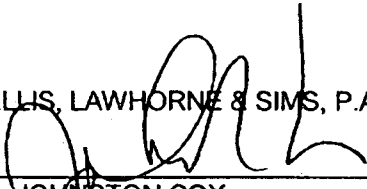
BOX 30660, LANSING, MICHIGAN 48909-8160 • 517/323-1200

၁၂၃၄၅၆၇၈၉၁၀၁၁၁၂၁၃၁၄၁၅၁၆၁၇၁၈၁၉၂၀၂၁၂၂၂၃၂၄၂၅၂၆၂၇၂၈၂၉၃၀၃၁၃၂၃၃၃၄၃၅၃၆၃၇၃၈၃၉၄၀
 ၁၂၃၄၅၆၇၈၉၁၀၁၁၁၂၁၃၁၄၁၅၁၆၁၇၁၈၁၉၂၀၂၁၂၂၂၃၂၄၂၅၂၆၂၇၂၈၂၉၃၀၃၁၃၂၃၃၃၄၃၅၃၆၃၇၃၈၃၉၄၀
 ၁၂၃၄၅၆၇၈၉၁၀၁၁၁၂၁၃၁၄၁၅၁၆၁၇၁၈၁၉၂၀၂၁၂၂၂၃၂၄၂၅၂၆၂၇၂၈၂၉၃၀၃၁၃၂၃၃၃၄၃၅၃၆၃၇၃၈၃၉၄၀
 ၁၂၃၄၅၆၇၈၉၁၀၁၁၁၂၁၃၁၄၁၅၁၆၁၇၁၈၁၉၂၀၂၁၂၂၂၃၂၄၂၅၂၆၂၇၂၈၂၉၃၀၃၁၃၂၃၃၃၄၃၅၃၆၃၇၃၈၃၉၄၀

ROA-Page 1339

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.


ELLIS, LAWHORNE & SIMS, P.A.

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TEL: (803) 254-4190

ATTORNEYS FOR APPELLANT
AUTO-OWNERS INSURANCE COMPANY

November 12, 2008

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.

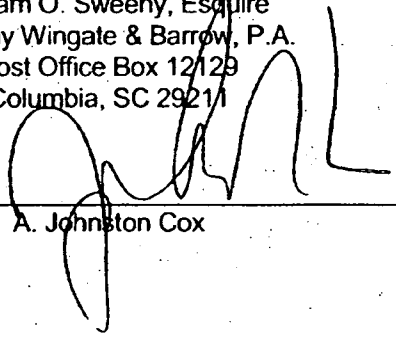
Samuel W. Rhodes, Piedmont Promotions, Inc.,
Marion L. Eadon d/b/a C&B Fabrication, C&B
Fabrications, Inc., and Low Country Signs, Inc., ... Respondents,

The undersigned of Ellis, Lawhorne & Sims, P.A., attorneys for the Plaintiff Auto-Owners Insurance Company, does hereby certify that service of the attached RECORD ON APPEAL in the above-referenced action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 12th day of November 2008, addressed as follows:

Hoover C. Blanton, Esquire
McCutchen Blanton Johnson & Barnette, LLC
Post Office Drawer 11209
Columbia, SC 29211

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

William O. Sweeny, Esquire
Sweeny Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211



A. Johnston Cox