

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

B. Alex Hyman, Circuit Court Judge

Lower Court Case No. 2020-CP-26-00808

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SC Court of Appeals

A. Tebele & Sons, a South Carolina General Partnership, Appellant-Respondent,

v.

Certain Underwriters at Lloyd's, HDI Global Specialty SE, General Security Indemnity
Company of Arizona, and Crescent Coast Insurance, LLC, Respondents,

Of which Crescent Coast Insurance, LLC is the Respondent-Appellant.

Appellate Case No. 2024-000705

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TIME ELEMENT COVERAGE**A. Coverage**

This policy includes the following coverage. The coverage will not increase the Limit of Liability of this policy and is subject to the applicable sub-limit and the policy provisions, including applicable exclusions and deductibles.

1. Business Income

- a. We will pay for your actual loss sustained of "business income" due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to Covered Property at an "insured location". The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, "insured location" includes the area within 250 feet of the "insured location".
- b. With respect to the requirements set forth in the preceding paragraph, if you occupy only a part of a site an "insured location" means:
 - (1) The portion of the building which you rent, lease or occupy; and
 - (2) Any area within the building or on the site, if that area services, or is used to gain access to, the "insured location".

2. Extra Expense

- a. We will pay "extra expense" (other than the expense to repair or replace property) to:
 - (1) Avoid or minimize the "suspension" of business and to continue operations at an "insured location" or at replacement premises or temporary "locations", including relocation expenses and costs to equip and operate the replacement "location" or temporary "location";
 - (2) Minimize the "suspension" of business if you cannot continue "operations" following direct, physical loss or damage to Covered Property at an "insured location" that is caused by or results from a Covered Cause of Loss.
- b. We will also pay "extra expense" to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this policy.

3. Leasehold Interest

- a. This policy covers the following expenses if directly caused by insured direct physical loss or damage to covered buildings from a Covered Cause of Loss if the building is leased by you and located at an "insured location":
 - (1) The actual rent which remains payable for the unexpired term of the "lease" if such property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent payment; or
 - (2) The proportion of the actual rent which remains payable for the unexpired term of the "lease" if such property becomes partially untenable or unusable and the lease agreement requires continuation of the rent payment; or
 - (3) The "leasehold interest" for the first three (3) months following loss or damage and the "net leasehold interest" for the remaining unexpired term of the lease if the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law.
- b. This coverage does not insure against any loss or expense resulting from:
 - (1) The suspension, lapse, or cancellation of any license; or
 - (2) Your exercising an option to cancel the "lease"; or
 - (3) Any act or omission by you which constitutes a default under the "lease".
- c. It is a condition of this coverage that you shall use any suitable property or service owned or controlled by you or obtainable from another source to reduce the amount of loss hereunder.

- d. This policy does not provide this coverage for more than the number of consecutive days shown in the Sub-Limits of Liability section of the PROPERTY DAMAGE COVERAGE SCHEDULE, nor more than the dollar limit of liability shown in the same section.

4. Rental Value

We will pay for the actual loss of "rental value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration" caused by direct physical loss of or damage to Covered Property at an "insured location". The loss or damage must be caused by or result from Covered Cause of Loss.

B. Time Element Extensions of Coverage

This policy includes the following extensions of coverage. These extensions of coverage will not increase the Limit of Liability of this policy and are subject to the applicable sub-limit and policy provisions, including applicable exclusions and deductibles.

1. Civil Authority

This policy is extended to cover, for up to the greater of fourteen (14) days or the number of days stated in the Sub-Limit of Liability section of the PROPERTY DAMAGE COVERAGE SCHEDULE, the actual loss of "business income" you sustain and necessary "extra expense" caused by action of civil authority that prohibits access to an "insured location" due to direct physical loss of or damage to property of the type covered, within one statute mile of that "insured location", caused by or resulting from any Covered Cause of Loss.

2. Contingent Business Income

This policy is extended to cover the actual loss of "business income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to "contingent property" located within the Policy Territory caused by or resulting from a Covered Cause of Loss.

3. Extended Period of Indemnity

If the necessary "suspension" of your "operations" produces a loss payable under Business Income or Rental Value coverage, this policy is extended to pay for the actual loss of "business income" or "rental value" you incur during the period that:

- a. Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- b. Ends on the earlier of:
 - (1) The date you could restore your "operations" or tenant occupancy, with reasonable speed, to the level which would generate the "business income" or "rental value" amount that would have existed if no direct physical loss or damage had occurred; or
 - (2) 30 consecutive days after the date determined in a. above.

This extension does not apply to loss of "business income" or "rental value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area of the "insured location".

Loss of "business income" or "rental value" must be caused by direct physical loss or damage at an "insured location" caused by or resulting from any Covered Cause of Loss.

4. Ingress or Egress

This policy is extended to cover, for up to the greater of fourteen (14) days or the number of days stated in the Sub-Limit of Liability section of the PROPERTY DAMAGE COVERAGE SCHEDULE, the actual loss of "business income" you sustain due to the necessary "suspension" of your "operations" during the period of time when, as a direct result of direct physical damage caused by a Covered Cause of Loss to property of the type covered at an "insured location" or within one statute mile of an "insured location", ingress to or egress from an "insured location" is thereby physically prevented.

5. Newly Acquired Property

- a. Your Business Income and Extra Expense Coverages are extended to apply to property at any "location" within the Policy Territory that you acquire other than fairs or exhibitions.
- b. Insurance under this Extension for each newly acquired "location" will end when any of the following first occurs:
 - (1) This policy expires;
 - (2) 30 days expire after you acquire or begin to construct the property; or
 - (3) You report values to us.

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

6. Service Interruption

- a. Your Business Income and Extra Expense coverage are extended to apply to a "suspension" of "operations" at an "insured location" caused by an interruption in utility service to that "insured location". The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss to "utility services" located off the "insured location" but within 1,500 feet of that "insured location".
- b. Coverage under this extension for loss or damage to Covered Property does not apply to loss or damage to "electronic data" or "electronic computer programs", including destruction or corruption of "electronic data" or "electronic computer programs".

C. Time Element Conditions

The following conditions apply to any "time element" coverage that may be included in this policy.

1. Identity of Interests

If you are comprised of more than one legal entity, liability shall not exceed the amount of loss had all interests comprised a single legal entity.

2. Resumption of Operations

It is a condition of this insurance that if you could reduce "time element" loss:

- a. by complete or partial resumption of operation of business, whether at the damaged premises or elsewhere; or
- b. by making use of any "stock" at your "location(s)", or elsewhere; or
- c. by making use of any other available source of materials or services; or
- d. by making use of any other available outlet for product(s) or service(s);

such reduction shall be taken into account in arriving at the amount of loss.

If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

If Extra Expense coverage is provided, you shall resume "normal" operation of the business and disperse with "extra expense" as soon as practicable.

3. Property in the Course of Construction

The amount of "time element" loss resulting from physical damage to Covered Property in the course of construction which delays your commencement of "operations" shall be calculated by applying the length of time, determined as otherwise provided herein, to the level of "operations" or production that would have been reasonably achieved after construction and start-up would have been completed had no physical damage occurred.

4. Experience of the Business

The amount of "time element" loss as insured against by this policy shall be determined based on:

- a. experience of the business before the loss;
- b. the probable experience thereafter had no loss occurred; Such probable experience shall not include any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- c. The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- d. Other relevant sources of information, including:
 - (1) Your financial records and accounting procedures;
 - (2) Bills, invoices and other vouchers; and
 - (3) Deeds, liens or contracts.

If Extra Expense coverage is provided by this policy, such loss shall be determined based on:

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

5. Time Element Exclusions

Except as provided in the Time Element Extension of Coverage, we will not pay for "time element" coverage for:

- a. Any loss caused directly or indirectly by the failure of power or other utility service supplied to an "insured location", however caused, if the failure occurs outside of a covered building. Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss resulting from that Covered Cause of Loss.
- b. Any loss caused by or resulting from:
 - (1) Damage or destruction of "finished stock"; or
 - (2) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense coverage.
- c. Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- d. Any increase of loss caused by or resulting from:
 - (1) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - (2) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your "business income" during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Period of Indemnity extension of coverage.

- e. Any "extra expense" caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- f. Loss for any period during which business would not or could not have been conducted for any reason other than direct physical damage of the type insured against.
- g. Any other consequential loss.

COVERED CAUSES OF LOSS AND EXCLUSIONS

A. Covered Causes of Loss

Risks Of Direct Physical Loss unless the loss is:

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

B. Exclusions

- 1. **Except as may be provided as an extension of coverage**, we will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) all earth movement (whether occurring naturally or not) including, but not limited to, earthquake, landslide, subsidence and volcanic eruption.
- (2) collapse, cracking, shrinking, bulging, expansion, shifting, rising, settling, sinking, lateral or other movement, or other kinds of loss or damage to property which would not have occurred but for an event as described in (1) above.

If fire is Covered Cause of Loss, this exclusion shall not apply to loss or damage from fire resulting from (1) through (3), above.

If explosion is Covered Cause of Loss, this exclusion shall not apply to loss or damage from explosion resulting from (1) through (3) above.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Policy.

d. Nuclear, Chemical and Biological

- (1) Nuclear detonation, reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this policy, however such nuclear detonation, reaction, nuclear radiation or radioactive contamination may have been caused. This exclusion replaces any other nuclear detonation, nuclear reaction, nuclear radiation or radioactive contamination exclusions found elsewhere in this policy.
- (2) The dispersal, application or release of, or exposure to, chemical or biological materials or agents that are harmful to property or human health, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by, any physical loss or damage insured against by this policy, however such dispersal, application, release or exposure may have been caused.

e. Utility Services

The failure of power or other utility service supplied to an "insured location", however caused, if the failure occurs away from the "insured location". Failure includes lack of sufficient capacity and reduction in supply.

But if the failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

f. War and Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Flood

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

- (2) Mudslide or mudflow;

- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

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

- a. Foundations, walls, floors or paved surfaces;
- b. Basements, whether paved or not; or
- c. Doors, windows or other openings; or

- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph 1., 3. or 4., or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs 1. through 5., is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs 1. through 5., results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

2. "Fungus", Wet Rot, Dry Rot And "Bacteria"

This policy does not cover:

- a. "Fungus", wet or dry rot, or "bacteria";
- b. Loss or damage caused directly or indirectly by "fungus", wet or dry rot, or "bacteria";
- c. The costs associated with the enforcement of any ordinance or law which requires you or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "fungus", wet or dry rot, or "bacteria".

This exclusion applies whether or not the loss event results in widespread damage or affects a substantial area.

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

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

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
(3) Smog;
(4) Settling, cracking, shrinking or expansion;
(5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
(6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision;
(7) The following causes of loss to personal property:
(a) Dampness or dryness of atmosphere;
(b) Changes in or extremes of temperature; or
(c) Marring or scratching.

But if an excluded cause of loss that is listed in 3.d.(1) through (7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the supply if the heat is not maintained.
 - h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
 - (1) Acting alone or in collusion with others; or
 - (2) Whether or not occurring during the hours of employment.
- This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property, if induced to do so by any fraudulent scheme, trick, device or false pretense.
 - j. Rain, snow, ice or sleet to personal property in the open.
 - k. Collapse. But if collapse results in a Covered Cause of Loss at an "insured location", we will pay for the loss or damage caused by that Covered Cause of Loss.
 - l. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.
4. We will not pay for loss or damage caused by or resulting from any of the following, 4.a. through 4.c. But if an excluded cause of loss that is listed in 4.a. through 4.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.
- a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. or 2. above to produce the loss or damage.
 - b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 - c. Faulty, inadequate or defective:
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;
- of part or all of any property on or off an "insured location".

5. Electronic Exclusion

This policy does not insure against loss or damage to, or any cost, claim or expense directly or indirectly arising out of or relating to, any of the following, regardless of any other cause or event contributing concurrently or in any other sequence to the loss, damage, claim or expense:

- a. "data", "electronic data", "programs", or "electronic computer programs",
- b. failure of, interruption of, loss of use of, loss of access to, or reduction or alteration in the accuracy, functionality, availability, or operation of "data", "electronic data", "programs", or "electronic computer programs",
- c. any instruction, including but not limited to any "computer virus", introduced into, or caused to act upon "computer operations",
- d. errors in configuring "computer operations",
- e. failure of, interruption of, loss of use of, loss of access to, or reduction or alteration in the accuracy, functionality, availability, or operation of "computer operations".

Notwithstanding anything in the above to the contrary, and subject to the other terms and conditions of this policy not in conflict herewith, this policy insures against direct physical loss or damage caused by a Covered Cause of Loss to insured computer hardware and "electronic data processing media".

6. Pollution Exclusion

This policy does not cover any of the following:

- a. Loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of "pollutants", however caused;
- b. The expense or cost to extract or remove "pollutants" from debris;
- c. The expense or cost to extract or remove "pollutants" from land or water;
- d. The expense or cost to extract or remove, restore or replace contaminated or polluted land or water;
- e. The costs associated with the enforcement of any ordinance or law which requires you or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants";
- f. Any cost to transport any property or debris to a site for storage or decontamination required because the property is infected by "pollutants", whether or not such removal, transport or decontamination is required by law, regulation or any authority governing such matters;
- g. Any cost to store or otherwise dispose of any property because "pollutants" infect the property; or
- h. Any expense for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

7. Materials Exclusion

This policy does not cover loss or damage caused directly or indirectly by any of the following:

- a. Removal of asbestos, dioxin, and polychlorinated biphenols from any goods, products, structures or debris;
- b. Demolition, increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such asbestos, dioxin, and polychlorinated biphenols;
- c. Any governmental direction or request declaring that such asbestos, dioxin, and polychlorinated biphenols present in or part of or utilized in any undamaged portion of your property can no longer be used for the purpose for which it was intended or installed and must be removed or modified; or
- d. Any expense for the investigation or defense of any loss, damage or any cost, loss of use expense, fine or penalty or for any expense or claim or suit related to any of the above.

8. Fines or Penalties

This policy will not pay any costs, expenses, fines or penalties incurred or sustained by or imposed on you at the order of any government agency, court or other authority arising from any cause whatsoever.

9. Mysterious Disappearance

Loss disclosed in taking inventory, unless the loss results from physical loss or damage not excluded in this policy

C. Limitations

The following limitations apply to the policy and all endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

- b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
 - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under a Builders Risk Coverage Form; or
 - (2) Business Income coverage or Extra Expense coverage.
 - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
 - f. Property that has been transferred to a person or to a place outside the "insured location" on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
- a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

 - (1) If the property is located on or within 250 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income coverage or to Extra Expense coverage.
3. The special limit shown for each category, a. through d., is the total limit for loss of or damage to all property in that category. The special limit applies to any one "occurrence" of theft, regardless of the types or number of articles that are lost or damaged in that "occurrence". The special limits are:
- a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:
 - a. Results in discharge of any substance from an automatic fire protection system; or
 - b. Is directly caused by freezing.

GENERAL CONDITIONS

A. Cancellation Common Policy Condition

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. 90 days before the effective date of cancellation for any reason; or
 - b. 10 days before the effective date of cancellation for nonpayment of premium.
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 canceled, 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. Other Common Policy Conditions

1. 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.

2. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

3. Inspections and Surveys

a. We have the right to:

- (1) Make inspections and surveys at any time;
- (2) Give you reports on the conditions we find; and
- (3) Recommend changes.

b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake 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.

c. Paragraphs a. and b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Premiums

The first Named Insured shown in the DECLARATIONS:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

5. 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.

C. Loss Conditions

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

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

3. Duties In The Event Of Loss or Damage

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

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request.
- (8) Cooperate with us in the investigation or settlement of the claim.

- (9) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.
- 4. Insurance under Two or More Coverages**
- If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.
- 5. Loss Payment**
- a. In the event of loss or damage covered by this policy, at our option, we will either:
- (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to b. below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to b. below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this policy or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this policy and:
- (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.
- 6. Other Insurance**
- a. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this policy. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable limit or sub-limit under this policy bears to the limits of insurance of all insurance covering on the same basis.
- b. If there is other insurance covering the same loss or damage, other than that described in a. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable limit or sub-limit.

7. Underlying Insurance

Permission is granted to you to purchase insurance on all or any part of the deductibles of this policy and the existence of such underlying insurance shall not prejudice any recovery otherwise payable under this policy.

8. Excess Insurance

Excess insurance is insurance over the limit of liability set forth in this Policy. The existence of such excess insurance shall not prejudice the coverage provided under this Policy nor will it reduce any liability hereunder.

9. Salvage and Recovery

When, in connection with any loss hereunder, any salvage or recovery is received subsequent to the payment of such loss, the loss shall be figured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amount thus found to be due either party from the other shall be paid promptly.

The expense of all proceedings necessary to such recoveries shall be apportioned between the interests concerned in the ratio of their respective recoveries as finally settled. If there should be no recovery and proceedings are conducted solely by us, we will pay the expense of the proceeding.

10. Recovered Property

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

11. Vacancy

a. Description of Terms

(1) As used in this Vacancy Condition, the term building has the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is "vacant" or "unoccupied" when 70% or more of its total square footage is "vacant" or "unoccupied".

(2) Buildings under construction or renovation are not considered "vacant" or "unoccupied".

b. Vacancy Provisions

We will not pay for any loss or damage if the building where loss or damage occurs has been "vacant" or "unoccupied" for more than:

(1) 30 consecutive days before that loss or damage if caused by Vandalism (if it is a Covered Cause of Loss); or

(2) 60 consecutive days before that loss or damage if caused by any other Covered Cause of Loss; whether or not such vacancy or unoccupancy begins before the inception of this policy.

But we will pay if the building is "unoccupied" due to circumstances that are usual or incidental to the described occupancy.

12. Valuation

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

a. At the "repair or replacement cost" as of the time of loss or damage, except as provided in b., c., d. and e. below.

- b. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
 - c. Glass at the cost of replacement with safety glazing material if required by law.
 - d. Tenant's Improvements and Betterments at:
 - (1) Actual cash value of the lost or damaged property if you make repairs promptly.
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

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

 - (3) Nothing if others pay for repairs or replacement.
- e. "Electronic data processing media": the cost of the blank "electronic data processing media" plus the cost of copying the "electronic data" or "electronic computer programs" from back-up or from originals of the previous generation, even though "electronic data" and "electronic computer programs" are not covered by this policy. These costs will not include research and engineering or any costs of restoring, gathering, assembling or recreating such "electronic data" or "electronic computer programs". Nor does this policy insure any amount pertaining to the value of such "electronic data" or "electronic computer programs" to you or any other party, even if such "electronic data" or "electronic computer programs" cannot be restored, recreated, gathered or assembled.
- In no event shall the value include any additional cost directly or indirectly associated with the enforcement of any law or ordinance regulating the storage, processing, collection, transmission, recording, management, privacy or protection of "media", "electronic data processing media", "data", "electronic data", "programs" or "electronic computer programs".
- If the "electronic data processing media" is not repaired, replaced or restored, the basis of valuation shall be the cost of the blank "electronic data processing media".
- f. "fine arts" the least of the following amounts:
 - (1) The actual cash value of that property;
 - (2) The cost of reasonably restoring that property to its condition immediately before loss or damage; or
 - (3) The cost of replacing that property with substantially identical property.

In the event of loss or damage, the value of property will be determined as of the time of loss or damage.
- g. Property in transit: the amount of invoice, including prepaid or advanced freight, if any, your profit or commission as selling agent, and such other costs and charges as may have accrued and become legally due thereon since shipment. In the absence of an invoice, the property shall be valued at its actual cash value at point of shipment.

D. Additional Conditions

1. Coinsurance

If a Coinsurance percentage is shown for Building, Personal Property, Business Income or Rental Value coverage in the PROPERTY DAMAGE COVERAGE SCHEDULE, the following condition applies to that particular property or coverage.

We will not pay the full amount of any loss if the value at the time of loss times the Coinsurance percentage shown in the PROPERTY DAMAGE COVERAGE SCHEDULE for the applicable property or coverage is greater than the last reported value prior to the loss to that property or for that particular coverage.

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

- (1) Multiply the value for the particular property or coverage at the time of loss by the Coinsurance percentage;
- (2) Divide the last reported value prior to the loss for that coverage or property by the figure determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3).

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

For the purposes of the application of this provision, value shall mean:

For Building, Personal Property or Property Damage: the value of Covered Property.

For Business Income: the "business income" that would have been earned or incurred (had no loss occurred) by your "operations" at the "insured location" and all other "locations" where "business income" loss ensues for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

For Rental Value: "rental value" that would have been earned or incurred (had no loss occurred) by your "operations" at the "insured location" for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

2. Concealment, Misrepresentation or Fraud

This policy is void in any case of fraud by you as it relates to coverage provided by this policy at any time. It is also void if you or any other insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- a. This policy;
- b. The Covered Property;
- c. Your interest in the Covered Property; or
- d. A claim under this policy.

3. Control of Property

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

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

4. Knowledge or Control

We will not pay for loss or damage while the chance of loss or damage is increased by any means within your knowledge or control.

5. Legal Action against Us

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

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

6. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each Mortgageholder shown in the Schedule in their order of precedence, as interests may appear.
- c. The Mortgageholder has the right to receive loss payment even if the Mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this policy, the Mortgageholder will still have the right to receive loss payment if the Mortgageholder:
 - (1) Pays any premium due under this policy at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Mortgageholder.All of the terms of this policy will then apply directly to the Mortgageholder.
- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this policy:
 - (1) The Mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The Mortgage holder's right to recover the full amount of the Mortgage holder's claim will not be impaired.At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.
- f. If we cancel this policy, we will give written notice to the Mortgageholder at least 10 days before the effective date of cancellation.
- g. If we elect not to renew this policy, we will give written notice to the Mortgageholder at least 10 days before the expiration date of this policy.

7. No Benefit to Bailee

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

8. Policy Period, Coverage Territory

Under this policy:

- a. We cover loss or damage commencing:
 - (1) During the policy period shown in the DECLARATIONS; and
 - (2) Within the coverage territory.

9. Transfer of Rights of Recovery against Others to Us

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

- a. Prior to a loss to your Covered Property.
- b. After a loss to your Covered Property only if, at time of loss, that party is one of the following:
 - (1) Someone insured by this insurance;

- (2) A business firm:
 - (a) Owned or controlled by you; or
 - (b) That owns or controls you; or
- (3) Your tenant.

This will not restrict your insurance.

10. Conformity with Statute

Terms of this policy, which are in conflict with the statutes of the state wherein this policy is issued, are hereby amended to conform to such statutes.

E. Definitions

- 1. "100% Value of the Property Insured" means 100% of the property insured at the time of loss or damage at the "locations" where the physical damage occurred.
- 2. "Bacteria" means any type or form of bacterium; or any byproduct that is produced or released by such bacterium.
- 3. "Business income" means the:
 - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
 - b. Continuing "normal" operating expenses incurred, including payroll.For manufacturing risks, Net Income includes the net sales value of production.
- 4. "Computer operations" means "computer systems" or "electronic data communications system".
- 5. "Computer systems" means computer hardware of any kind; "electronic computer programs"; "electronic data processing media"; "electronic data"; operating system; "media" microchip; microprocessors (computer chips); integrated circuit or similar device; computer network and networking equipment; firmware; servers; web sites; "extranet"; and all input, output, processing, storage, and off-line "media" libraries.
- 6. "Computer virus" means any corrupting, harmful or otherwise unauthorized instructions or code including, but not limited to, any maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. "Computer virus" includes, but is not limited to, 'Trojan Horses', 'worms' and time or logic bombs.
- 7. "Contingent property" means property operated by others who are:
 - a. Direct suppliers of materials or services to you and from whom you are contractually obligated to purchase materials or services. But any property which delivers any of the following services is not considered to be a "contingent property" with respect to such services:
 - 1. Water supply services;
 - 2. Power supply services; or
 - 3. Communication supply services, including services relating to internet access or access to any electronic network;
 - b. Your direct customers who are contractually obligated to accept product(s) produced or service(s) provided by you;
- 8. "Data" means information or knowledge.
- 9. "Electronic computer programs" means computer software, applications software, and other recorded instructions for the processing, sequencing, collecting, transmitting, recording, retrieval, or storage of "electronic data".
- 10. "Electronic data" means "data" recorded or transmitted in a form usable in "computer systems", microchips, integrated circuits or similar devices in non-computer equipment, and which can be stored on "electronic data processing media" for use by "electronic computer programs".

11. "Electronic data communications system" means any communication system, including "computer systems" and the "internet", which provides the Insured with access to other "computer systems", microchips, integrated circuits or similar devices in non-computer equipment, or which provides any party access to your "computer systems", microchips, integrated circuits or similar devices in non-computer equipment.
12. "Electronic data processing media" means punch cards, paper tapes, floppy disks, CD-ROM, hard drives, magnetic tapes, magnetic discs or any other tangible personal property on which "electronic data" or "electronic computer programs" are recorded or transmitted, but not the "electronic data" or "electronic computer programs" themselves. "Money" or "securities" are not "electronic data processing media".
13. "Extranet" means an internal computer network that has been selectively opened to suppliers, customers, or other third parties via the "internet" or otherwise.
14. "Extra expense" means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.
15. "Fine arts" means paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; antique furniture; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, precious metals, watercraft, aircraft, "money" and "securities".
16. "Finished stock" means stock you have manufactured.
"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this policy.
17. "Full 12 Months Time Element Values" means full 12 months Time Element values that would have been earned in the 12-month period following the "occurrence" by use of the facilities at the "location" where the physical damage occurred and all other "locations" where Time Element loss ensues.
18. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
19. "High Hazard Flood Zone" means areas which at the time of loss or damage have been designated by the Federal Emergency Management Agency to be in a Special Flood Hazard Area (SFHA).
20. "Internet" means the worldwide publicly accessible network of computers, which is commonly referred to as "The Internet" or "World Wide Web", or any other similar publicly accessible network hereafter to be developed.
21. "Lease" means the lease or rental agreement, whether written or oral, in effect as of the time of loss.
22. "Leasehold interest" means the excess rent paid for either the same or similar replacement property over the amount of rent and other charges which would have been payable under the unexpired "lease" plus bonuses or advance rent paid (including any maintenance, operating charges or taxes) for each month during the unexpired term of the Insured's "lease".
23. "Location(s)" means locations as listed on the Schedule of Locations attached to this policy or as listed on the latest schedule on file with us. If not so specified or if the Miscellaneous Unnamed Location provision is applicable, a building, yard, dock, wharf, pier or bulkhead (or any group of the foregoing) bounded on all sides by public streets, clear land space or open waterways, each not less than fifty feet wide. Any bridge or tunnel crossing such street, space or waterway will render such separation inoperative.
24. "Media" means any item of tangible personal property on which "data" or "programs" can be recorded, but not the "data" or "programs" themselves. "Money" or "securities" are not "media".
25. "Merchandise" means goods kept for sale by you, which are not the product of your manufacturing operations.
26. "Money" means currency, coins, bank notes and bullion; and travelers checks, register checks and money orders held for sale to the public.
27. "Net leasehold interest" means the present value of the amount which placed at four percent (4%) annual interest would equal the "leasehold interest" (less any amounts otherwise payable hereunder).

28. "Named Storm" means including, but not be limited to, storm, cyclone, typhoon, atmospheric disturbance, depression or other weather phenomena designated by the US National Hurricane Center and where a name (and not only a number) has been applied.
29. "Normal" means the condition that would have existed had no loss occurred.
30. "Occurrence" means, except as may be more specifically defined for a Covered Cause of Loss, any one loss, disaster or casualty, or series of losses, disasters or casualties arising out of one event. When the word applies to loss or losses from the perils of tornado, tsunami, windstorm, Named Windstorm, hail, riot, riot attending a strike, civil commotion, malicious mischief, "flood", "earthquake" or leakage from fire extinguishing equipment due to "earthquake", if such perils are covered under this "policy", one event shall be construed to be all losses arising during a continuous period of seventy-two (72) hours. When filing proof of loss, you may elect the moment at which such seventy-two (72) hour period shall be deemed to have commenced, which shall not be earlier than when the first loss to property or interests insured under this policy occurs. However, we shall not be liable hereunder for any loss or damage:
- a. occurring before this policy becomes effective; or
 - b. arising from an "occurrence" which is in progress at the time this policy becomes effective, even if such loss or damage occurs after this policy becomes effective; or
 - c. occurring after the expiration of this policy, except loss or damage arising from an "occurrence" in progress at the time this policy expires.
31. "Operations" means:
- a. Your business activities occurring at an "insured location"; and
 - b. The tenant ability of an "insured location", if Rental Value coverage applies.
32. "Period of restoration" means the period of time that:
- a. Begins: immediately after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at an "insured location"; and
 - b. Ends on the earlier of:
 - (1) The date when the property at an "insured location" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent "location".
- "Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:
- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
 - (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- The expiration date of this policy will not cut short the "period of restoration".
- The "period of restoration" definition, with respect to "contingent property", is the same as above, but with the term "contingent property" replacing "insured location".
33. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including, but not limited to, asbestos, dioxin, polychlorinated biphenols, smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- "Pollutants" include, but are not limited to those materials that can cause or threaten damage to human health or human welfare or cause or threaten damage, deterioration, loss of value, marketability or loss of use to property including "bacteria", fungi, mold, mildew, virus or hazardous substances as listed in the Federal Water Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency or any other governing authority.

34. "Program" means recorded instructions, whether digital or otherwise, for the processing, collecting, transmitting, recording, retrieval or storage of "data".
35. "Rental Value" means:
- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of an "insured location" as furnished and equipped by you, including fair rental value of any portion of an "insured location" which is occupied by you; and
 - b. Continuing "normal" operating expenses incurred in connection with that "insured location", including:
 - (1) Payroll; and
 - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
36. "Repair or replacement cost" means the lesser of:
- a. The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
 - b. The cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
 - c. The selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss.
 - d. The cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
 - e. The increased cost of demolition, if any, resulting from loss covered by this Policy, if such property is scheduled for demolition.
 - f. The actual cash value if such property is:
 - (1) useless to you; or
 - (2) not repaired, replaced or rebuilt on the same or another site within one year from the date of loss.
- "Repair or replacement cost" does not include any increase of loss resulting from enforcement of any law, ordinance, regulation or rule, regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of property at an "insured location" other than that provided for in the Ordinance or Law provision of the Extensions of Coverage.
37. "Securities" means all negotiable and nonnegotiable instruments or contracts representing either "money" or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include "money".
38. "Specified Causes of Loss" means the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
- a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or
 - (2) Sinking or collapse of land into man-made underground cavities.
 - b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.
39. "Stock" means "merchandise" held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.
40. "Suspension" means:
- a. The slowdown or cessation of your business activities; or
 - b. That a part or all of the "insured location" is rendered untenable, if coverage for "rental value" applies.
41. "Tier 1 Windstorm Areas" means the following counties, parishes and independent cities including barrier islands within these states:
- 1. Florida: All
 - 2. Hawaii: All
 - 3. Alabama: Baldwin, Mobile
 - 4. Georgia: Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
 - 5. Louisiana: Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Martin, St. Mary, St. Tammany, Terrebonne, Vermilion
 - 6. Mississippi: Hancock, Harrison, Jackson
 - 7. North Carolina: Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, Washington
 - 8. South Carolina: Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper
 - 9. Texas: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Refugio, Orange, San Patricio, Willacy
 - 10. Virginia: Accomack, Gloucester, Isle of Wight, James City, Lancaster, Matthews, Middlesex, Northampton, Northumberland, Surry, York and Independent Cities of Chesapeake, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach.
42. "Time Element" means coverage provided under the Time Element section of this policy.
43. "Total Insurable Value" means 100% value of the Covered Property at the time of loss or damage at the "locations" where the physical damage occurred plus full 12 months Time Element values that would have been earned in the 12-month period following the "occurrence" by use of the facilities at the "location" where the physical damage occurred and all other "locations" where Time Element loss ensues.
44. "Utility services" means;
- a. the following property supplying water to the "insured location":
 - 1. Pumping stations; and
 - 2. Water mains.
 - b. the following property supplying communication services, including telephone, radio, microwave or television services to the "insured locations":
 - 1. Communication transmission lines, including optic fiber transmission lines;
 - 2. Coaxial cables; and
 - 3. Microwave radio relays except satellites.

c. the following types of property supplying electricity, steam or gas to "insured locations":

1. Utility generating plants;
2. Switching stations;
3. Substations;
4. Transformers; and
5. Transmission lines.

Utility Services does not mean or include overhead transmission lines.

45. "Unoccupied" means containing contents pertaining to the occupancy of the building while operations or other customary activities are suspended.
46. "Vacant" means containing no contents pertaining to operations or activities customary to occupancy of the building.

Earthquake (Excluding Sprinkler Leakage) Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

AmWINS PROPERTY FORM

1. Paragraph B, **Exclusion**, item b. **Earth Movement**, of the **Covered Causes Of Loss And Exclusions** Section is replaced by the following:

b. Earth Movement

Any earth movement (other than earthquake and volcanic eruption), such as landslide, or earth sinking, rising or shifting. But, if loss or damage by fire or explosion results, we will pay for that resulting loss or damage.

2. The following is added to Paragraph E, **Limit of Liability** of the **Property Damage Coverage Schedule** Section.

Earthquake Limit Of Liability:

The liability of the Company for loss or damage caused by earthquake and volcanic eruption shall not exceed the sum of **PER POLICY FORM**, for loss or damage at any one Insured location. Notwithstanding the limit of liability stated herein, if any, liability shall not exceed the sum of **PER POLICY FORM** due to any one earthquake or volcanic eruption loss nor shall it exceed the sum of **PER POLICY FORM** in any one year period or policy period, whichever is less.

3. The following is added to Paragraph F, **Deductible** of the **Property Damage Coverage Schedule** Section.

Earthquake Deductible:

The sum of **PER POLICY FORM** shall be deducted from any adjusted claim due to earthquake or volcanic eruption.

4. Each loss by earthquake or volcanic eruption shall constitute a single claim hereunder; provided that if more than one earthquake shock or volcanic eruption shall occur within any period of 72 hours during the term of this endorsement, such shocks shall be considered to constitute a single earthquake or volcanic eruption.
5. If the coverage of the policy to which this endorsement is attached includes Property Damage and Business Interruption, the foregoing limits shall be the maximum amounts collectible under this policy for loss or damage resulting from the peril describes in Paragraph 2. above, regardless of whether the loss involves Property Damage alone or both Property Damage and Business Interruption.
6. This policy does not cover liability for direct loss or damage to covered property caused by or resulting from sprinkler leakage from fire protective equipment even if such sprinkler leakage is caused directly by earthquake as insured against by this policy.

CAT Minimum Earned Premium

The following additional provisions shall apply with respect to the cancellation clause of this policy:

- A. If this policy covers any location or locations in "Tier 1 wind zone(s)" as defined in this policy, and the policy is cancelled at the request of the Insured, the following provision will apply.

If coverage existed at any time during the period from June 1st to November 30th, the amount of premium we will return will be a percentage of the total premium, determined as follows:

1 Year Policy

Days in Force	Percentage
1 to 180	20%
181 to 210	15%
211 to 240	10%
241 to 270	7.5%
271 to 300	5.0%
301 to 330	2.5%
331 to 365	0.0%

If a coverage or location is added or deleted to the policy, each type of coverage or such location(s) shall be underwritten separately and the rate will be determined based upon the characteristics of the risk.

If a location within a "Tier 1 wind zone" is added or deleted, and coverage for that location existed at any time during the period from June 1st to November 30th, the premium to be returned for that location will be determined using the table above.

If a location is not within a "Tier 1 wind zone" and is added or deleted, normal pro rata or short rate factors shall apply as appropriate.

- B. Tier 1 wind zone is defined as follows:

All reference herein to "Tier I", "Tier I Windstorm" or similar "Tier I" references, shall be defined as all locations situated within *Tier I States or Counties* as specified below:

Alabama:	Baldwin, Mobile;
Florida:	Entire State of Florida;
Georgia:	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh;
Hawaii:	Entire State of Hawaii;
Louisiana:	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Mary, St. Bernard, St. Martin, St. Tammany, Terrebonne, Vermilion;
Mississippi:	Hancock, Harrison, Jackson;
North Carolina:	Beaufort, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans; Tyrrell, Washington;
South Carolina:	Beaufort, Berkeley, Charleston, Colleton, Georgetown, Horry, Jasper;
Texas:	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Willacy;
Virginia:	Accomack, Northampton, Virginia Beach City, Chesapeake, Gloucester, Hampton City, Isle of Wright, James City, Lancaster, Mathews, Middlesex, Newport News, Norfolk City, Northumberland, Poquoson City, Portsmouth City, Suffolk City, York;
All other states:	As provided by endorsement hereto (if any).

All other terms and conditions of the policy remain the same.

Electronic Date Recognition Exclusion (EDRE)

Any other similar Exclusion within this Policy (or within any other Endorsement which forms part of this Policy) is deleted and replaced by the following:

This Policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a. the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not; or
- b. any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

Biological Or Chemical Materials Exclusion

Any other similar Exclusion within this Policy (or within any other Endorsement which forms part of this Policy) is deleted and replaced by the following:

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

Radioactive Contamination Exclusion Clause – Physical Damage – Direct (U.S.A)

Any other similar Exclusion within this Policy (or within any other Endorsement which forms part of this Policy) is deleted and replaced by the following:

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

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

Land, Water And Air Exclusion

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or right therein.

Seepage And/Or Pollution And/Or Contamination Exclusion

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- a. any loss, damage, cost or expense, or
- b. any increase in insured loss, damage, cost or expense, or
- c. any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term "any kind of seepage or any kind of pollution and/or contamination" as used in this Endorsement includes (but is not limited to):

- a. seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material" by the United States Department of Transportation, or defined as a "toxic substance" by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- b. the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

Asbestos Endorsement

Any other similar Provision within this Policy (or within any other Endorsement which forms part of this Policy) is deleted and replaced by the following:

- A.** This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the period of insurance by one of these Listed Perils:

fire; explosion; lightning; windstorm; hail; direct impact of vehicle, aircraft or vessel; riot or civil commotion, vandalism or malicious mischief; or accidental discharge of fire protective equipment.

This coverage is subject to each of the following specific limitations:

1. The said building or structure must be insured under this Policy for damage by that Listed Peril.
 2. The Listed Peril must be the immediate, sole cause of the damage of the asbestos.
 3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Policy does not insure any such damage first reported to the Underwriters more than 12 months after the expiration, or termination, of the period of insurance.
 4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:
 - a. Any faults in the design, manufacture or installation of the asbestos;
 - b. Asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.
- B.** Except as set forth in the foregoing Section A, this Policy does not insure asbestos or any sum relating thereto.

Electronic Data Endorsement B

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a. This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b. However, in the event that a peril listed below results from any of the matters described in paragraph a. above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils:

- (1) Fire
- (2) Explosion

2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Insured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

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Flood Exclusion

Any other similar Exclusion within this Policy (or within any other Endorsement which forms part of this Policy) is deleted and replaced by the following:

This policy does not insure against loss or damage caused by any of the following, regardless of the cause of such event and regardless of any other cause or event contributing concurrently or in any other sequence to the loss or damage:

(1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

(2) Mudslide or mudflow;

(3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;

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

a. Foundations, walls, floors or paved surfaces;

b. Basements, whether paved or not; or

c. Doors, windows or other openings; or

(5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph 1., 3. or 4., or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs 1. through 5., is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs 1. through 5., results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

Occurrence Limit of Liability - Stated Value

1. The Limit of Liability or Amount of Insurance shown on the face of this policy, or endorsed onto this policy, is the total of the Insurer(s) liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this policy to the contrary, in no event shall the liability of the Insurer(s) exceed this limit or amount irrespective of the number of locations involved.

The term "occurrence" shall have the same meaning as that provided in the Policy/ies of the Primary Insurer(s).

2. The premium for this policy is based upon the Statement of Values on file with the Insurer(s), or attached to this policy. In the event of loss hereunder, liability of the Insurer(s), subject to terms of paragraph 1. above, shall be limited to the least of the following:

- a. The actual adjusted amount of loss, less applicable deductible(s).
- b. 100% of the individually stated value for each scheduled item of property involved, as shown on the latest Statement of Values on file with Insurer(s), less applicable deductible(s) and primary and underlying excess limits. If no value is shown for a scheduled item then there is no coverage for that item; or
- c. The Limit of Liability or Amount of Insurance shown on the Declarations of this policy or as endorsed onto this policy.

Equipment Breakdown Coverage Form

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we," "us" and "our" refer to the Company providing this Insurance. Other words and phrases that appear in quotation marks have special meaning. Refer to Section G. DEFINITIONS. Examples are shown for illustrative purposes only and do not represent predicted or expected outcomes.

A. COVERAGE

This Equipment Breakdown Coverage provides insurance for a Covered Cause of Loss as defined in A.1. below. In the event of a Covered Cause of Loss, we will pay for loss as described in A.2. below.

1. Covered Cause of Loss – "Accident"

The Covered Cause of Loss for this Equipment Breakdown Coverage is an "accident." Without an "accident," there is no Equipment Breakdown Coverage.

a. "Accident" means a fortuitous event that causes direct physical damage to "covered equipment."

The event must be one of the following:

- (1) Mechanical breakdown, including rupture or bursting caused by centrifugal force;
- (2) Artificially generated electrical current, including electrical arcing, that damages electrical devices, appliances or wires;
- (3) Explosion, other than combustion explosion, of steam boilers, steam piping, steam engines or steam turbines;
- (4) An event inside steam boilers, steam pipes, steam engines or steam turbines that damages such equipment;
- (5) An event inside hot water boilers or other water heating equipment that damages such equipment; or
- (6) Bursting, cracking or splitting.

"Accident" does not include any condition or event listed in Definition G.1.b.

b. "Covered Equipment" means the following:

(1) Unless specified otherwise in the Declarations:

- (a) Equipment that generates, transmits or utilizes energy, including electronic communications and data processing equipment; or
- (b) Equipment which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

"Covered equipment" may utilize conventional design and technology or new or newly commercialized design and technology.

(2) Except as specifically provided for under Off Premises Property Damage, Service Interruption, Contingent Business Income, paragraph (2) of Perishable Goods and Civil Authority, such equipment must be at a location described in the Declarations and must be owned or leased by you or operated under your control.

"Covered equipment" does not include any property listed in Definition G.9.b.

2. Coverages Provided

This section lists the coverages that may apply in the event of an "accident." Each coverage is subject to a specific limit as shown in the Declarations. See paragraph C.2. for details. These coverages apply only to the direct result of an "accident." For each coverage, we will pay only for that portion of the loss, damage or expense that is solely attributable to the "accident."

a. Property Damage

We will pay for physical damage to "covered property" that is at a location indicated in the Declarations at the time of the "accident."

b. Off Premises Property Damage

If you have transportable "covered

equipment" that, at the time of the "accident," is within the Coverage Territory, but is not:

- (1) At a location indicated in the Declarations; or
- (2) At any other location owned or leased by you, we will pay for physical damage to such "covered equipment."

c. Business Income

- (1) We will pay your actual loss of "business income" during the "period of restoration" that results directly from the necessary total or partial interruption of your business.
- (2) We will also pay any necessary expenses you incur during the

- "period of restoration" to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- (3) We will consider the actual experience of your business before the "accident" and the probable experience you would have had without the "accident" in determining the amount of our payment.
- d. **Extra Expense**
We will pay the reasonable and necessary "extra expense" to operate your business during the "period of restoration."
- e. **Service Interruption**
We will pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of an "interruption of service."
- f. **Contingent Business Income**
We will pay for your loss and expense as defined under Business Income and Extra Expense coverages that:
- (1) Results from an "interruption of supply"; or
 - (2) Results from an "accident" to an "anchor location."
- g. **Perishable Goods**
- (1) We will pay for physical damage to "perishable goods" due to "spoilage."
 - (2) We will also pay for physical damage to "perishable goods" due to "spoilage" that is the result of an "interruption of service."
 - (3) We will also pay for physical damage to "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
 - (4) We will also pay any necessary expenses you incur during the "period of restoration" to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- h. **Data Restoration**
- (1) We will pay for your reasonable and necessary cost to research, replace or restore lost "data."
 - (2) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of h.(1) above, if such coverage is otherwise

applicable under this policy. This coverage is included within and subject to your Data Restoration limit.

i. **Demolition**

- (1) This coverage applies if an "accident" damages a building that is "covered property" and the loss is increased by an ordinance or law that:
 - (a) Requires the demolition of a building that is otherwise reparable;
 - (b) Is in force at the time of the "accident"; and
 - (c) Is not addressed under Hazardous Substances coverage.
- (2) We will pay for the following additional costs to comply with such ordinance or law:
 - (a) Your actual and necessary cost to demolish and clear the site of the undamaged parts of the building; and
 - (b) Your actual and necessary cost to reconstruct the undamaged parts of the building.
- (3) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no such ordinance or law been in force at the time of the "accident."
- (4) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of i.(1) above, if such coverage is otherwise applicable under this policy. This coverage is included within and subject to your Demolition limit.

j. **Ordinance or Law**

- (1) This coverage applies if an "accident" damages a building that is "covered property" and the loss is increased by an ordinance or law that:
 - (a) Regulates the construction or repair of buildings, including "building utilities";
 - (b) Is in force at the time of the "accident"; and
 - (c) Is not addressed under Demolition coverage or Hazardous Substances coverage.
- (2) We will pay for the following additional costs to comply with

such ordinance or law:

- (a) Your actual and necessary cost to repair the damaged portions of the building;
 - (b) Your actual and necessary cost to reconstruct the damaged portions of the building; and
 - (c) Your actual and necessary cost to bring undamaged portions of the building into compliance with the ordinance or law.
- (3) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no such ordinance or law been in force at the time of the "accident."
- (4) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of j.(1) above, if such coverage is otherwise applicable under this policy. This coverage is included within and subject to your Ordinance or Law limit.

k. Expediting Expenses

With respect to your damaged "covered property," we will pay the reasonable extra cost to:

- (1) Make temporary repairs; and
- (2) Expedite permanent repairs or permanent replacement.

l. Hazardous Substances

- (1) We will pay for the additional cost to repair or replace "covered property" because of contamination by a "hazardous substance." This includes the additional expenses to clean up or dispose of such property. This does not include contamination of "perishable goods" by refrigerant, including but not limited to ammonia, which is addressed in Perishable Goods, A.2.g.(3).
- (2) As used in this coverage, additional costs mean those beyond what would have been payable under this Equipment Breakdown Coverage had no "hazardous substance" been involved.
- (3) We will also pay for your loss and expense as defined under Business Income coverage and Extra Expense coverage that is the result of l.(1) above, if such coverage is otherwise applicable under this policy. This coverage is included within and subject to your Hazardous Substances limit.

m. Newly Acquired Locations

- (1) You will notify us promptly of any newly

acquired location that you have purchased or leased during the Policy Period.

- (2) All coverages applicable to any scheduled location under this Equipment Breakdown Coverage are extended to a newly acquired location that you have purchased or leased during the Policy Period.
 - (3) This coverage begins at the time you acquire the property. As respects newly constructed properties, we will only consider them to be acquired by you when you have fully accepted the completed project.
 - (4) This coverage ends when any of the following first occurs:
 - (a) This Policy expires;
 - (b) The number of days specified in the Declarations for this coverage expires after you acquire the location;
 - (c) The location is incorporated into the regular coverage of this policy; or
 - (d) The location is incorporated into the regular coverage of another Equipment Breakdown policy you have.
 - (5) If limits or deductibles vary by location, the highest limits and deductibles will apply to newly acquired locations. However, the most we will pay for loss, damage or expense arising from any "one accident" is the amount shown as the Newly Acquired Locations limit in the Declarations.
 - (6) We will charge you additional premium for newly acquired locations from the date you acquire the property.
- n. Course of Construction**
- This coverage is automatically included and does not need to be indicated in the Declarations.
- (1) You will notify us promptly of any expansion or rehabilitation of any location described in the Declarations.
 - (2) All coverages applicable to any location described in the Declarations are extended to an expansion or rehabilitation of that location.
 - (3) This coverage begins at the time you begin the expansion or rehabilitation project.
 - (4) We will charge you additional

premium for newly acquired equipment from the date the equipment is installed.

o. Civil Authority

We will pay for your loss and expense as defined under Business Income and Extra Expense coverages that results from a civil authority prohibiting access to a location described in the Declarations due solely to an "accident" that causes damage to property within one mile of such location, provided that such action is taken in response to dangerous physical conditions resulting from the "accident," or to enable a civil authority to have unimpeded access to the damaged property.

B. EXCLUSIONS

We will not pay for any excluded loss, damage or expense, even though any other cause or event contributes concurrently or in any sequence to the loss, damage or expense.

1. We will not pay for loss, damage or expense caused directly or indirectly by any of the following, whether or not caused by or resulting from an "accident."

a. Fire and Explosion

- (1) Fire, including smoke from a fire.
- (2) Combustion explosion. This includes, but is not limited to, a combustion explosion of any steam boiler or other fired vessel.
- (3) Any other explosion, except as specifically provided in A.1.a.(3).

b. Ordinance or Law

The enforcement of, or change in, any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration, use, operation, construction or installation, except as specifically provided in A.2.i., j. and l. (Demolition, Ordinance or Law and Hazardous Substances coverages).

c. Earth Movement

Earth movement, whether natural or human-made, including but not limited to earthquake, shock, tremor, subsidence, landslide, rock fall, earth sinking, sinkhole collapse or tsunami.

d. Nuclear Hazard

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

e. War and Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using

- military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, political violence or action taken by governmental authority in hindering or defending against any of these.

f. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow; or
- (3) Water that backs up or overflows from a sewer, drain or sump. However, if electrical "covered equipment" requires drying out because of the above, we will pay for the amount you actually expend to dry out such equipment, subject to the applicable Property Damage limit and Direct Coverage deductible. We will not pay more than the Actual Cash Value of the affected electrical "covered equipment." We will not pay to replace such equipment or for any other loss, damage or expense.

g. Failure to Protect Property

Your failure to use all reasonable means to protect "covered property" from damage following an "accident."

h. Fines

Fine, penalty or punitive damage.

i. Mold

Mold, fungus, mildew or yeast, including any spores or toxins created or produced by or emanating from such mold, fungus, mildew or yeast. This includes, but is not limited to, costs arising from clean-up, remediation, containment, removal or abatement of such mold, fungus, mildew, yeast, spores or toxins. However, this exclusion does not apply to "spoilage" of personal property that is "perishable goods" to the extent that such "spoilage" is covered under Perishable Goods coverage.

j. Vandalism

Vandalism, meaning a willful and malicious act that causes damage or destruction.

2. We will not pay for an "accident" caused by or resulting from any of the following causes of loss:

a. Lightning.

- b. Windstorm or Hail. However, this exclusion does not apply when:

- (1) "Covered equipment" located within a building or structure suffers an "accident" that results from

- wind-blown rain, snow, sand or dust;
and
- (2) The building or structure did not first sustain wind or hail damage to its roof or walls through which the rain, snow, sand or dust entered.
 - c. Collision or any physical contact caused by a "vehicle." This includes damage by objects falling from aircraft. However, this exclusion does not apply to any unlicensed "vehicles" which you own or which are operated in the course of your business.
 - d. Riot or Civil Commotion.
 - e. Leakage or discharge of any substance from an automatic sprinkler system, including collapse of a tank that is part of the system.
 - f. Volcanic Action.
 - g. An electrical insulation breakdown test.
 - h. A hydrostatic, pneumatic or gas pressure test.
 - i. Water or other means intended to extinguish a fire, even when such an attempt is unsuccessful.
 - j. Elevator collision.
3. We will not pay for an "accident" caused by or resulting from any of the following perils, if such peril is a covered cause of loss under another coverage part or policy of insurance you have, whether collectible or not, and without regard to whether or not the other coverage part or policy of insurance provides the same coverage or scope of coverage as this policy.
 - a. Falling Objects.
 - b. Weight of Snow, Ice or Sleet.
 - c. Water Damage, meaning discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance containing water or steam.
 - d. Collapse.
 - e. Breakage of Glass.
 - f. Freezing caused by cold weather.
 - g. Discharge of molten material from equipment, including the heat from such discharged material.
 4. Exclusions 2. and 3. do not apply if all of the following are true:
 - a. The excluded peril occurs away from any location described in the Declarations and causes an electrical surge or other electrical disturbance;
 - b. Such surge or disturbance is transmitted through utility service transmission lines to a described location;
 - c. At the described location, the surge or disturbance results in an "accident" to "covered equipment" that is owned or operated under the control of you or your landlord; and
 - d. The loss, damage or expense caused by such surge or disturbance is not a covered cause of loss under another coverage part or policy of insurance you have, whether collectible or not, and without regard to whether or not the other coverage part or policy of insurance provides the same coverage or scope of coverage as this policy.
 5. With respect to Business Income, Extra Expense and Service Interruption coverages, we will also not pay for:
 - a. Loss associated with business that would not or could not have been carried on if the "accident" had not occurred;
 - b. Loss caused by your failure to use due diligence and dispatch and all reasonable means to resume business;
 - c. That part of any loss that extends beyond or occurs after the "period of restoration." This includes, but is not limited to:
 - (1) "Business income" that would have been earned after the "period of restoration," even if such loss is the direct result of the suspension, lapse or cancellation of a contract during the "period of restoration"; and
 - (2) "Extra expense" to operate your business after the "period of restoration," even if such loss is contracted for and paid during the "period of restoration."
 - d. Any increase in loss resulting from an agreement between you and your customer or supplier. This includes, but is not limited to, contingent bonuses or penalties, late fees, demand charges, demurrage charges and liquidated damages.
 6. With respect to Off Premises Property Damage coverage, Service Interruption coverage, Contingent Business Income coverage, paragraph (2) of Perishable Goods coverage and Civil Authority coverage, we will also not pay for an "accident" caused by or resulting from any of the perils listed in Exclusion 3. above, whether or not such peril is a covered cause of loss under another coverage part or policy of insurance you have.
 7. With respect to Data Restoration coverage, we will also not pay to reproduce:
 - a. Software programs or operating systems that are not commercially available; or
 - b. "Data" that is obsolete, unnecessary or useless to you.
 8. With respect to Demolition and Ordinance or Law coverages, we will also not pay for:

- a. Increased demolition or reconstruction costs until they are actually incurred; or
- b. Loss due to any ordinance or law that:
 - (1) You were required to comply with before the loss, even if the building was undamaged; and
 - (2) You failed to comply with; whether or not you were aware of such non-compliance.

C. LIMITS OF INSURANCE

Any payment made under this Equipment Breakdown Coverage will not be increased if more than one insured is shown in the Declarations or if you are comprised of more than one legal entity.

1. Equipment Breakdown Limit

The most we will pay for loss, damage or expense arising from any "one accident" is the amount shown as the Equipment Breakdown Limit in the Declarations.

2. Coverage Limits

- a. The limit of your insurance under each of the coverages listed in A.2. from loss, damage or expense arising from any "one accident" is the amount indicated for that coverage in the Declarations. These limits are a part of, and not in addition to, the Equipment Breakdown Limit. If an amount of time is shown, coverage will continue for no more than that amount of time immediately following the "accident." If a coverage is shown as "Included," that coverage is provided up to the remaining amount of the Equipment Breakdown Limit. If no limit is shown in the Declarations for a coverage, or if a coverage is shown as Excluded in the Declarations, that coverage will be considered to have a limit of \$0.
- b. If two or more coverage limits apply to the same loss or portion of a loss, we will pay only the smallest of the applicable limits for that loss or portion of the loss. This means that if:
 - (1) You have a loss under one of the coverages listed in A.2.; and
 - (2) All or part of the loss is not covered because the applicable coverage is Excluded or has a limit that is less than the amount of your loss,
 we will not pay the remaining amount of such loss under any other coverage.

EXAMPLE 1

Property Damage Limit: \$7,000,000
 Business Income Limit: \$1,000,000
 Newly Acquired Locations Limit: \$500,000
 There is an "accident" at a newly acquired location that results in a Property Damage loss of \$200,000 and a Business Income loss of \$800,000. We will pay \$500,000, because the entire loss is subject to the Newly Acquired Locations Limit of

\$500,000.

EXAMPLE 2

Property Damage Limit: \$7,000,000
 Business Income Limit: \$500,000
 Hazardous Substances Limit: \$25,000
 There is an "accident" that results in a loss of \$100,000. If no "hazardous substance" had been involved, the property damage loss would have been \$10,000 and the business income loss would have been \$20,000. The presence of the "hazardous substance" increased the loss by \$70,000 (increasing the clean up and repair costs by \$30,000 and increasing the business income loss by \$40,000). We will pay \$55,000 (\$10,000 property damage plus \$20,000 business income plus \$25,000 hazardous substances).

D. DEDUCTIBLES

1. Deductibles for Each Coverage

- a. Unless the Declarations indicate that your deductible is combined for all coverages, multiple deductibles may apply to any "one accident."
- b. We will not pay for loss, damage or expense under any coverage until the amount of the covered loss or damage exceeds the deductible amount indicated for that coverage in the Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable deductible amount, subject to the applicable limit indicated in the Declarations.
- c. If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident," only the highest deductible for each coverage will apply.
- d. The following applies when a deductible is expressed as a function of the horsepower rating of a refrigerating or air conditioning system. If more than one compressor is used with a single system, the horsepower rating of the largest motor or compressor will determine the horsepower rating of the system.

2. Direct and Indirect Coverages

- a. Direct Coverages Deductibles and Indirect Coverages Deductibles may be indicated in the Declarations.
- b. Unless more specifically indicated in the Declarations:
 - (1) Indirect Coverages Deductibles apply to Business Income and Extra Expense loss, regardless

of where such coverage is provided in this Equipment Breakdown Coverage; and

- (2) Direct Coverages Deductibles apply to all remaining loss, damage or expense covered by this Equipment Breakdown Coverage.

EXAMPLE

An "accident" results in covered losses as follows:

\$100,000 Total Loss (all applicable coverages)
\$35,000 Business Income Loss (including \$2,000 of business income loss payable under Data Restoration coverage)
\$5,000 Extra Expense Loss

In this case, the Indirect coverages loss totals \$40,000 before application of the Indirect Coverage Deductible. The Direct coverages loss totals the remaining \$60,000 before application of the Direct Coverage Deductible.

3. Application of Deductibles

a. Dollar Deductibles

We will not pay for loss, damage or expense resulting from any "one accident" until the amount of loss, damage or expense exceeds the applicable deductible or deductibles shown in the Declarations. We will then pay the amount of loss, damage or expense in excess of the applicable deductible or deductibles, subject to the applicable limits shown in the Declarations.

b. Time Deductibles

If a time deductible is shown in the Declarations, we will not be liable for any loss occurring during the specified number of hours or days immediately following the "accident." If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

c. Multiple of Average Daily Value (ADV) Deductibles

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:
The ADV (Average Daily Value) will be the "business income" that would have been earned during the period of interruption had no "accident" occurred, divided by the number of working days in that period. The ADV applies to the "business income" value of the entire location, whether or not the loss affects the entire location. If more than one location is included in the valuation of the loss, the ADV will be the combined value of all affected locations. For

purposes of this calculation, the period of interruption may not extend beyond the "period of restoration."

The number indicated in the Declarations will be multiplied by the ADV as determined above. The result will be used as the applicable deductible.

EXAMPLE

Business is interrupted, partially or completely, for 10 working days. If there had been no "accident," the total "business income" at the affected location for those 10 working days would have been \$5,000. The Indirect Coverages Deductible is 3 Times ADV.
 $\$5,000 / 10 = \500 ADV
 $3 \times \$500 = \$1,500 \text{ Indirect Coverages Deductible}$

d. Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, we will not be liable for the indicated percentage of the gross amount of loss, damage or expense (prior to any applicable deductible or coinsurance) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated Minimum Deductible, the Minimum Deductible will be the applicable deductible.

E. LOSS CONDITIONS

The following conditions apply:

1. Abandonment

There can be no abandonment of any property to us.

2. Brands and Labels

- a. If branded or labeled merchandise that is "covered property" is damaged by an "accident," but retains a salvage value, you may:

- (1) Stamp the word SALVAGE on the merchandise or its containers if the stamp will not physically damage the merchandise; or
- (2) Remove the brands or labels, if doing so will not physically damage the merchandise. You must re-label the merchandise or its containers to comply with the law.

- b. We will pay for any reduction in value of the salvage merchandise resulting from either of the two actions listed in 2.a. above, subject to all applicable limits.
- c. We will also pay the reasonable and necessary expenses you incur to perform either of the two actions described in 2.a. above. We will pay for such expenses to the extent that they do not exceed the amount recoverable from salvage.

- d. If a Brands and Labels Limit is shown on the Declarations, we will not pay more than the indicated amount for coverage under this Condition.

3. Coinsurance - Business Income Coverage

- a. Unless otherwise shown in the Declarations, Business Income coverage is subject to coinsurance. This means that we will not pay the full amount of any "business income" loss if the "business income actual annual value" is greater than the "business income estimated annual value" at the affected location at the time of the "accident." Instead, we will determine the most we will pay using the following steps:

- (1) Divide the "business income estimated annual value" by the "business income actual annual value" at the time of the "accident";
- (2) Multiply the total amount of the covered loss of "business income" by the amount determined in paragraph (1) above;
- (3) Subtract the applicable deductible from the amount determined in paragraph (2) above;

The resulting amount, or the Business Income Limit, whichever is less, is the most we will pay. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

- b. Coinsurance applies separately to each insured location.
- c. If you report a single "business income estimated annual value" for more than one location, without providing information on how that amount should be distributed among the locations, we will distribute the amount evenly among all applicable locations.

EXAMPLE 1 (Underinsurance)

When:

The "business income actual annual value" at the location of loss at the time of the "accident" is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$100,000.

The actual loss of "business income" resulting from the "accident" is \$40,000.

The Business income limit is \$100,000.

The Business Income deductible is \$5,000.

Step 1: $\$100,000 / \$200,000 = .5$

Step 2: $\$40,000 \times .5 = \$20,000$

Step 3: $\$20,000 - \$5,000 = \$15,000$

The total "business income" loss recovery, after deductible, would be \$15,000. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

We will also charge you an additional premium in recognition of the "business income actual annual value."

EXAMPLE 2 (Adequate insurance)

When:

The "business income actual annual value" at the location of loss at the time of the "accident" is \$200,000.

The "business income estimated annual value" shown in the Declarations for the location of loss is \$200,000.

The actual loss of "business income" resulting from the "accident" is \$40,000.

The Business Income limit is \$100,000.

The Business Income deductible is \$5,000.

Step 1: $\$200,000 / \$200,000 = 1$

Step 2: $\$40,000 \times 1 = \$40,000$

Step 3: $\$40,000 - \$5,000 = \$35,000$

The total "business income" loss recovery, after deductible, would be \$35,000.

4. Coinsurance - Coverages other than Business Income

Coverages other than Business Income may be subject to coinsurance if so indicated in the Declarations. If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any loss if the value of the property subject to the coverage at the time of the "accident" times the Coinsurance percentage shown for it in the Declarations is greater than the applicable limit.

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

- (1) Multiply the value of the property subject to the coverage at the time of the "accident" by the Coinsurance percentage;
- (2) Divide the applicable limit by the amount determined in step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the amount determined in step (2); and
- (4) Subtract the deductible from the amount determined in step (3).

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

- b. Coinsurance applies separately to each insured location.

EXAMPLE 1 (Underinsurance)

When:

The actual value of "perishable goods" at the location of loss at the time of the "accident" is \$200,000.

The Perishable Goods limit is \$100,000 @ 80% coinsurance.

The loss under Perishable Goods coverage resulting from the "accident" is \$60,000.

The Perishable Goods deductible is \$5,000.

Step 1: $\$200,000 \times 80\% = \$160,000$

Step 2: $\$100,000 / \$160,000 = .625$

Step 3: $\$60,000 \times .625 = \$37,500$

Step 4: $\$37,500 - \$5,000 = \$32,500$

The total Perishable Goods loss recovery, after deductible, would be \$32,500. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

EXAMPLE 2 (Adequate insurance)

When:

The actual value of "perishable goods" at the location of loss at the time of the "accident" is \$100,000.

The Perishable Goods limit is \$100,000 @ 80% coinsurance.

The loss under Perishable Goods coverage resulting from the "accident" is \$60,000.

The Perishable Goods deductible is \$5,000.

Step 1: $\$100,000 \times 80\% = \$80,000$

Step 2: $\$100,000 / \$80,000 = 1.25$

Coinsurance does not apply.

Step 3: $\$60,000 - \$5,000 = \$55,000$

The total Perishable Goods loss recovery, after deductible, would be \$55,000.

5. Defense

We have the right, but are not obligated, to defend you against suits arising from claims of owners of property in your care, custody or control. When we do this, it will be at our expense.

6. Duties in the Event of Loss or Damage

You must see that the following are done in the event of loss or damage:

- a. Give us a prompt notice of the loss or damage, including a description of the property involved.
- b. You must reduce your loss, damage or expense, if possible, by:
 - (1) Protecting property from further damage. We will not pay for your failure to protect property, as stated in Exclusion B.1.g.
 - (2) Resuming business, partially or completely at the location of loss or at another location;
 - (3) Making up lost business within a reasonable amount of time. This includes working extra time or overtime at the location of loss or at another location. The reasonable amount of time does not necessarily end when the operations are resumed;
 - (4) Using merchandise or other property available to you;

(5) Using the property or services of others; and

(6) Salvaging the damaged property.

- c. Allow us a reasonable time and opportunity to examine the property and premises before repair or replacement is undertaken or physical evidence of the "accident" is removed. But you must take whatever measures are necessary for protection from further damage.
- d. Make no statement that will assume any obligation or admit any liability, for any loss, damage or expense for which we may be liable, without our consent.
- e. Promptly send us any legal papers or notices received concerning the loss, damage or expense.
- f. As often as may be reasonably required, permit us to inspect your property, premises and records. Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
- g. If requested, permit us to examine you and any of your agents, employees and representatives under oath. We may examine any insured under oath while not in the presence of any other insured. Such examination:
 - (1) May be at any time reasonably required;
 - (2) May be about any matter relating to this insurance, your loss, damage or expense, or your claim, including, but not limited to, your books and records; and
 - (3) May be recorded by us by any methods we choose.
- h. Send us a signed, sworn proof of loss containing the information we request. You must do this within 60 days after our request.
- i. Cooperate with us in the investigation and settlement of the claim.

7. Errors and Omissions

- a. We will pay your loss covered by this Equipment Breakdown coverage if such loss is otherwise not payable solely because of any of the following:
 - (1) Any error or unintentional omission in the description or location of property as insured under this policy;
 - (2) Any failure through error to include any premises owned or occupied by you at the inception of this policy; or
 - (3) Any error or unintentional omission by you that results in cancellation of

- any premises insured under this policy.
- b. No coverage is provided as a result of any error or unintentional omission by you in the reporting of values or the coverage you requested.
 - c. It is a condition of this coverage that such errors or unintentional omissions shall be reported and corrected when discovered. The policy premium will be adjusted accordingly to reflect the date the premises should have been added had no error or omission occurred.
 - d. If an Errors and Omissions Limit is shown on the Declarations, we will not pay more than the indicated amount for coverage under this Condition.
- 8. Proving Your Loss**
It is your responsibility, at your own expense, to provide documentation to us:
- a. Demonstrating that the loss, damage or expense is the result of an "accident" covered under this Equipment Breakdown Coverage; and
 - b. Calculating the dollar amount of the loss, damage and expense that you claim is covered.
- Your responsibility in 8.a. above is without regard to whether or not the possible "accident" occurred at your premises or involved your equipment.
- 9. Salvage and Recoveries**
When, in connection with any loss under this Equipment Breakdown Coverage, any salvage or recovery is received after the payment for such loss, the amount of the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amounts thus found to be due either party from the other shall be paid promptly.
- 10. Valuation**
We will determine the value of "covered property" as follows:
- a. Except as specified otherwise, our payment for damaged "covered property" will be the smallest of:
 - (1) The cost to repair the damaged property;
 - (2) The cost to replace the damaged property on the same site; or
 - (3) The amount you actually spend that is necessary to repair or replace the damaged property.
 - b. The amount of our payment will be based on the most cost-effective means to replace the function, capacity and remaining useful life of the damaged property. This may include the use of generic, used or reconditioned parts, equipment or property.
 - c. Except as described in d. below, you must pay the extra cost of replacing damaged property with property of a better kind or quality or of a different size or capacity.
 - d. Environmental, Safety and Efficiency Improvements
If "covered equipment" requires replacement due to an "accident," we will pay your additional cost to replace with equipment that we agree is better for the environment, safer for people or more energy efficient than the equipment being replaced, subject to the following conditions:
 - (1) We will not pay more than 150% of what the cost would have been to replace with like kind and quality;
 - (2) We will not pay to increase the size or capacity of the equipment;
 - (3) This provision only applies to Property Damage coverage;
 - (4) This provision does not increase any of the applicable limits;
 - (5) This provision does not apply to any property valued on an Actual Cash Value basis; and
 - (6) This provision does not apply to the replacement of component parts.
 - e. The following property will be valued on an Actual Cash Value basis:
 - (1) Any property that does not currently serve a useful or necessary function for you;
 - (2) Any "covered property" that you do not repair or replace within 24 months after the date of the "accident"; and
 - (3) Any "covered property" for which Actual Cash Value coverage is specified in the Declarations.
 Actual Cash Value includes deductions for depreciation.
 - f. If any one of the following conditions is met, property held for sale by you will be valued at the sales price as if no loss or damage had occurred, less any discounts and expenses that otherwise would have applied:
 - (1) The property was manufactured by you;
 - (2) The sales price of the property is less than the replacement cost of the property; or
 - (3) You are unable to replace the property before its anticipated sale.
 - g. Except as specifically provided for under

Data Restoration coverage, "data" and "media" will be valued on the following basis:

- (1) For mass produced and commercially available software, at the replacement cost.
 - (2) For all other "data" and "media," at the cost of blank "media" for reproducing the records. We will not pay for "data" representing financial records based on the face value of such records.
- h. Air conditioning or refrigeration equipment that utilizes a refrigerant containing CFC (chlorofluorocarbon) substances will be valued at the cost to do the least expensive of the following:
- (1) Repair or replace the damaged property and replace any lost CFC refrigerant;
 - (2) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
 - (3) Replace the system with one using a non-CFC refrigerant.

In determining the least expensive option, we will include any associated Business Income or Extra Expense loss. If option (2) or (3) is more expensive than (1), but you wish to retrofit or replace anyway, we will consider this better for the environment and therefore eligible for valuation under paragraph d., Environmental, Safety and Efficiency Improvements. In such case, E.10.d.(1) is amended to read: "We will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality."

F. ADDITIONAL CONDITIONS

The following conditions apply in addition to the Loss Conditions:

1. Additional Insured

If a person or organization is designated in this Equipment Breakdown Coverage as an additional insured, we will consider them to be an insured under this Equipment Breakdown Coverage only to the extent of their interest in the "covered property."

2. Bankruptcy

The bankruptcy or insolvency of you or your estate will not relieve you or us of any obligation under this Equipment Breakdown Coverage.

3. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this policy by mailing or delivering to the first Named Insured written

notice of cancellation at least:

- (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
 - d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
 - e. If this policy is canceled, 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.
 - f. If notice is mailed, proof of mailing will be sufficient proof of notice.

4. 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.

5. Concealment, Misrepresentation or Fraud

We will not pay for any loss and coverage will be void if you or any additional insured at any time:

- a. Intentionally cause or allow loss, damage or expense in order to collect on insurance; or
- b. Intentionally conceal or misrepresent a material fact concerning:
 - (1) This Equipment Breakdown Coverage;
 - (2) The "covered property";
 - (3) Your interest in the "covered property"; or
 - (4) A claim under this Equipment Breakdown Coverage.

6. Examination of Your Books and Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

7. Inspections and Surveys

- a. We have the right to:
 - (1) Make inspections and surveys at any time;
 - (2) Give you reports on the conditions we find; and
 - (3) Recommend changes.

- b. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions 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.
 - c. Paragraphs a. and b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
- 8. Jurisdictional Inspections**
It is your responsibility to comply with any state or municipal boiler and pressure vessel regulations. If any "covered equipment" that is "covered property" requires inspection to comply with such regulations, at your option we agree to perform such inspection.
- 9. Legal Action Against Us**
No one may bring a legal action against us under this Equipment Breakdown Coverage unless:
 - a. There has been full compliance with all the terms of this Equipment Breakdown Coverage; and
 - b. The action is brought within two years after the date of the "accident" or
 - c. We agree in writing that you have an obligation to pay for damage to "covered property" of others or until the amount of that obligation has been determined by final judgment or arbitration award. No one has the right under this policy to bring us into an action to determine your liability.
- 10. Liberalization**
If we adopt any standard form revision for general use that would broaden the coverage under this Equipment Breakdown Coverage without additional premium, the broadened coverage will apply to this Equipment Breakdown Coverage commencing on the date that such revision becomes effective in the jurisdiction where the "accident" occurs.
- 11. Loss Payable**
 - a. We will pay you and the loss payee shown in the Declarations for loss covered by this Equipment Breakdown Coverage, as interests may appear. The insurance covers the interest of the loss payee unless the loss results from conversion, secretion or embezzlement on your part or on the part of the loss payee.
 - b. We may cancel the policy as allowed by the Cancellation Condition. Cancellation ends this agreement as to the loss payee's interest. If we cancel, we will mail you and the loss payee the same advance notice.
 - c. If we make any payment to the loss payee, we will obtain their rights against any other party.
- 12. Maintaining Your Property and Equipment**
It is your responsibility to appropriately maintain your property and equipment. We will not pay your costs to maintain, operate, protect or enhance your property or equipment, even if such costs are to comply with our recommendations or prevent loss, damage or expense that would be covered under this policy.
- 13. Mortgage Holders**
 - a. The term mortgage holder includes trustee.
 - b. We will pay for direct damage to "covered property" due to an "accident" to "covered equipment" to you and each mortgage holder shown in the Declarations in their order of precedence, as interests in the "covered property" may appear.
 - c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the "covered property."
 - d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Equipment Breakdown Coverage, the mortgage holder will still have the right to receive loss payment, provided the mortgage holder does all of the following:
 - (1) Pays any premium due under this Equipment Breakdown Coverage at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so;
 - (3) Has notified us of any change in ownership or material change in risk known to the mortgage holder; and
 - (4) Has complied with all other terms and conditions of this Policy.
 All of the terms of this Equipment Breakdown Coverage will then apply directly to the mortgage holder.
 - e. If we pay the mortgage holder for any loss and deny payment to you because of your acts or because you have failed

to comply with the terms of this Equipment Breakdown Coverage:

- (1) The mortgage holder's right under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

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

- f. If we cancel this policy, we will give written notice to the mortgage holder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least 10 days before the expiration date of this policy.
- h. If we suspend coverage, it will also be suspended as respects the mortgage holder. We will give written notice of the suspension to the mortgage holder.

14. Other Insurance

If there is other insurance that applies to the same loss, damage or expense, this Equipment Breakdown Coverage shall apply only as excess insurance after all other applicable insurance has been exhausted.

15. Policy Period, Coverage Territory

Under this Equipment Breakdown Coverage:

- a. The "accident" must occur during the Policy Period, but expiration of the policy does not limit our liability.
- b. The "accident" must occur within the following Coverage Territory:
 - (1) The United States of America (including its territories and possessions);
 - (2) Puerto Rico; and
 - (3) Canada.
- c. With respect to Off Premises Property Damage coverage only, the "accident" may occur in any country except one in which the United States has imposed sanctions, embargoes or similar restrictions on the provision of insurance.

16. Premiums

The first Named Insured shown in the Declarations:

- a. Is responsible for the payment of all premiums; and

- b. Will be the payee for any return premiums we pay.

17. Privilege to Adjust with Owner

In the event of loss, damage or expense involving property of others in your care, custody or control, we have the right to settle the loss, damage or expense with respect to such property with the owner of the property. Settlement with owners of that property will satisfy any claim of yours.

18. Suspension

Whenever "covered equipment" is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "accident" to that "covered equipment." This can be done by delivering or mailing a written notice of suspension to:

- a. Your last known address; or
- b. The address where the "covered equipment" is located.

Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment."

If we suspend your insurance, you will get a pro rata refund of premium for that "covered equipment" for the period of suspension. But the suspension will be effective even if we have not yet made or offered a refund.

19. 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.

20. Transfer of Rights of Recovery Against Others to Us

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

- a. Prior to an "accident."
- b. After an "accident" only if, at time of the "accident," that party is one of the following:

- (1) Someone insured by this Policy; or
- (2) A business firm:
 - (a) Owned or controlled by you; or
 - (b) That owns or controls you.

G. DEFINITIONS

1. "Accident"

- a. "Accident" is defined in A.1.a.
- b. None of the following is an "accident," however caused and without regard to whether such condition or event is normal and expected or unusual and unexpected:
 - (1) Depletion, deterioration, rust, corrosion, erosion, settling or wear and tear;
 - (2) Any gradually developing condition;
 - (3) Any defect, programming error, programming limitation, computer virus, malicious code, loss of "data," loss of access, loss of use, loss of functionality or other condition within or involving "data" or "media" of any kind;
 - (4) Contamination by a "hazardous substance"; or
 - (5) Misalignment, miscalibration, tripping off-line, or any condition which can be corrected by resetting, tightening, adjusting or cleaning, or by the performance of maintenance.

- 2. "Anchor Location" means a location, operated by others, upon which you depend to attract customers to your location. An "anchor location" must have been open for business for at least six months prior to the "accident," and must be located within one mile of your location.

3. "Boilers and Vessels" means:

- a. Boilers;
- b. Steam piping;
- c. Piping that is part of a closed loop used to conduct heat from a boiler;
- d. Condensate tanks; and
- e. Unfired vessels which, during normal usage, operate under vacuum or pressure, other than the weight of contents. This term does not appear elsewhere in this coverage form, but may appear in the Declarations.

- 4. "Building Utilities" means "covered equipment" permanently mounted on or in a building and used to provide any of the following services within the building: heating, ventilating, air conditioning, electrical power, hot water, elevator or escalator services, natural gas service or communications. "Building utilities" does not include personal property or equipment used in manufacturing or processing.

- 5. "Buried Vessels or Piping" means any piping or vessel buried or encased in the earth, concrete or other material, whether above or below

grade, or in an enclosure which does not allow access for inspection and repair.

6. "Business Income" means the sum of:

- a. The Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal and necessary operating expenses incurred, including employee payroll.

- 7. "Business Income Actual Annual Value" means the "business income" for the current fiscal year that would have been earned had no "accident" occurred.

In calculating the "business income actual annual value," we will take into account the actual experience of your business before the "accident" and the probable experience you would have had without the "accident."

- 8. "Business Income Estimated Annual Value" means the anticipated "business income" reported to us and shown in the Declarations. If no value is shown in the Declarations, the "business income estimated annual value" will be the most recent report of anticipated "business income" values on file with us.

9. "Covered Equipment"

- a. "Covered Equipment" is defined in A.1.b.
- b. None of the following is "covered equipment":

- (1) Structure, including but not limited to the structural portions of buildings and towers, and scaffolding;
- (2) Foundation;
- (3) Cabinet, compartment, conduit or ductwork;
- (4) Insulating or refractory material;
- (5) "Buried vessels or piping";
- (6) Waste, drainage or sewer piping;
- (7) Piping, valves or fittings forming a part of a sprinkler or fire suppression system;
- (8) Water piping that is not part of a closed loop used to conduct heat or cooling from a boiler or a refrigeration or air conditioning system;
- (9) "Vehicle" or any equipment mounted on a "vehicle";
- (10) Satellite, spacecraft or any equipment mounted on a satellite or spacecraft;
- (11) Dragline, excavation or construction equipment;
- (12) Equipment manufactured by you for sale; or
- (13) "Data."

10. "Covered Property"

- a. "Covered Property" means property that you own or property that is in your care,

custody or control and for which you are legally liable. Such property must be at a location described in the Declarations except as provided under Off Premises Property Damage coverage.

- b. None of the following is "covered property":
- (1) Accounts, bills, currency, deeds or other evidences of debt, money, notes or securities;
 - (2) Fine arts, jewelry, furs or precious stones;
 - (3) Precious metal, unless forming a part of "covered equipment";
 - (4) Animals;
 - (5) Contraband, or property in the course of illegal transportation or trade;
 - (6) Land (including land on which the property is located), water, trees, growing crops or lawns; or
 - (7) Shrubs or plants, unless held indoors for retail sale.

11. **"Data"** means information or instructions stored in digital code capable of being processed by machinery.

12. **"Electrical Generating Equipment"**

- a. "Electrical Generating Equipment" means equipment which converts any other form of energy into electricity. This includes, but is not limited to, the following:
- (1) Boilers used primarily to provide steam for one or more turbine-generator units;
 - (2) Turbine-generators (including steam, gas, water or wind turbines);
 - (3) Engine-generators;
 - (4) Fuel cells or other alternative electrical generating equipment;
 - (5) Electrical transformers, switchgear and power lines used to convey the generated electricity; and
 - (6) Associated equipment necessary for the operation of any of the equipment listed in (1) through (5) above.
- b. "Electrical Generating Equipment" does not mean:
- (1) Elevator or hoist motors that generate electricity when releasing cable; or
 - (2) Equipment intended to generate electricity solely on an emergency, back-up basis.

This term does not appear elsewhere in this coverage form, but may appear in the Declarations.

13. **"Extra Expense"** means the additional cost you incur to operate your business over and above the cost that you normally would have incurred to operate your business during the same period had no "accident" occurred.

14. **"Hazardous Substance"** means any substance that is hazardous to health or has been

declared to be hazardous to health by a governmental agency.

15. **"Interruption of Service"**

- a. "Interruption of Service" means a failure or disruption of the normal supply of any of the Covered Services listed in b. below, when such failure or disruption is caused by an "accident" to "covered equipment," subject to the conditions listed in c. through f. below.
- b. Covered Services are electrical power, waste disposal, air conditioning, refrigeration, heating, natural gas, compressed air, water, steam, internet access, telecommunications services, wide area networks and data transmission.
- c. The "covered equipment" must either be:
- (1) Owned by a company with whom you have a contract to supply you with one of the Covered Services; or
 - (2) Used to supply you with one of the Covered Services and located within one mile of a location described in the Declarations.
- d. If a Service Interruption Distance Limitation is indicated in the Declarations, the "covered equipment" suffering the "accident" must be located within the indicated distance of any location described in the Declarations.
- e. Unless otherwise shown in the Declarations, no failure or disruption of service will be considered to qualify as an "interruption of service" until the failure or disruption exceeds 24 hours immediately following the "accident."
- f. "Interruption of service" does not include any failure or disruption, whether or not arising from or involving an "accident," in which a supplier could have continued to provide service to the location but chose for any reason to reduce or discontinue service.

16. **"Interruption of Supply"**

- a. "Interruption of Supply" means a failure or disruption of the normal supply of any of the Covered Contingencies listed below, when such failure or disruption is caused by an "accident" to "covered equipment" that is located at a Contingent Business Income supplier or receiver location indicated in the Declarations. If no Contingent Business Income supplier or receiver location is indicated in the Declarations, the "covered equipment" must be owned by a supplier from whom you have received the Covered Contingency for at least six

- months prior to the "accident."
- b. Covered Contingencies are raw materials, intermediate products, finished products, packaging materials and product processing services.
17. **"Media"** means material on which "data" is recorded, such as magnetic tapes, hard disks, optical disks or floppy disks.
18. **"One Accident"** means all "accidents" occurring at the same time from the same event. If an "accident" causes other "accidents," all will be considered "one accident."
19. **"Ordinary Payroll"** means the Payroll Expenses associated with all employees other than executives, department managers and employees under contract.
As used above, Payroll Expenses means all payroll, employee benefits directly related to payroll, FICA payments you pay, union dues you pay and workers compensation premiums. "Ordinary payroll" does not include pensions or directors fees.
This term does not appear elsewhere in this coverage form, but may appear in the Declarations.
20. **"Period of Restoration"** means the period of time that begins at the time of the "accident" and continues until the earlier of:
- The date the physical damage to "covered equipment" is repaired or replaced; or
 - The date on which such damage could have been repaired or replaced with the exercise of due diligence and dispatch, plus the number of days, if any, shown in the Declarations for Extended Period of Restoration.
As respects Civil Authority coverage only, "period of restoration" means the period of time that begins as of the time access is prohibited by action of the civil authority and continues until the earlier of:
- 21 days thereafter; or
 - The date access is restored.
21. **"Perishable Goods"** means any "covered property" subject to deterioration or impairment as a result of a change of conditions, including but not limited to temperature, humidity or pressure.
22. **"Production Machinery"** means any machine or apparatus that processes or produces a product intended for eventual sale. This includes all component parts of such machine or apparatus and any other equipment used exclusively with such machine or apparatus. However, "production machinery" does not mean any boiler, or fired or unfired pressure vessel.
This term does not appear elsewhere in this coverage form, but may appear in the Declarations.
23. **"Spoilage"** means any detrimental change in state. This includes but is not limited to thawing of frozen goods, warming of refrigerated goods, freezing of fresh goods, solidification of liquid or molten material and chemical reactions to material in process.
24. **"Vehicle"** means any machine or apparatus that is used for transportation or moves under its own power. "Vehicle" includes, but is not limited to, car, truck, bus, trailer, train, aircraft, watercraft, forklift, bulldozer, tractor or harvester.
However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power source will not be considered a "vehicle."

Equipment Breakdown - Sublimits, Deductibles

Named Insured: A Tebele & Sons ETAL

Policy Number: AQS-190065
HAQS-190065
TR00093911900065

Effective Date: 1/15/2019

Issue Date: 02/05/2019

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

Equipment Breakdown Coverage Form

These coverages apply to any location listed on the Schedule of Locations for Equipment Breakdown

Coverages	Limits
Equipment Breakdown Limit	\$ 22,155,400
Property Damage	\$ 19,834,000
Off Premises Property Damage	\$ 250,000
Business Income	\$ 2,321,400
Extra Expense	\$ 100,000
Service Interruption	\$ 250,000
Contingent Business Income	No Coverage
Perishable Goods	\$ 100,000
Data Restoration	\$ 100,000
Demolition	\$ 250,000
Ordinance or Law	\$ 250,000
Expediting Expense	\$ 100,000
Hazardous Substances	\$ 100,000
Newly Acquired Locations	\$ 250,000
Deductibles	
Combined, All Coverages	\$ 5,000

Other Conditions

Extended Period of Restoration: 0 days

Unless the interruption exceeds 24 hours we will not pay for any loss under Service Interruption or the Service Interruption component of Perishable Goods

Protective Safeguards – Fire Endorsement

SCHEDULE

Symbol(s)	Location(s) Applicable
AS	as indicated on the Schedule of Values on file with the Company.
AA	as indicated on the Schedule of Values on file with the Company.
OTHER	as indicated on the Schedule of Values on file with the Company.
Describe any "OTHER": (a) Ansul Systems – ansul system over all cooking surfaces and semi-annual professional cleaning for hoods and ducts required (b) Heating, Ventilation, and Air Conditioning – maintained and in operation at all times (c) any aluminum wiring in buildings are properly pigtailed or retrofitted with CO/AL receptacles on all switches, outlets and circuit breaker panels and in accordance with local electrical codes.	

Protective Safeguards

- A. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.

The protective safeguard(s) to which this endorsement applies are identified by the following symbols:

1. **"AS" Automatic Sprinkler System**, including related supervisory services.

Automatic Sprinkler System means:

- a. Any automatic fire protective or extinguishing system, including connected:

- (1) Sprinklers and discharge nozzles;
- (2) Ducts, pipes, valves and fittings;
- (3) Tanks, their component parts and supports; and
- (4) Pumps and private fire protection mains.

- b. When supplied from an automatic fire protective system:

- (1) Non-automatic fire protective systems; and
- (2) Hydrants, standpipes and outlets.

2. **"AA" Automatic Fire Alarm**

Means an automatic fire alarm protecting the entire building that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

3. **"SS" Security Service,**

Means a security service with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

4. **"SC" Service Contract**

Means a written contract with a privately owned fire department providing fire protection service to the described premises.

5. **"OTHER"**

Means the protective system described in the Schedule.

- B. The following is added to the **EXCLUSIONS** section of the policy referenced above:

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

SRU-C24 (07-10)
Page 1 of 1

Time Element, Business Income, Extra Expense And Rental Value Options

If indicated by an ☒, the policy is changed as follows:

1. ☐ **Maximum Period Of Indemnity**

- a. Coinsurance does not apply to this section.
- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
 - (1) The amount of loss sustained and expenses incurred during the _____ days immediately following the beginning of the "period of restoration"; or
 - (2) The Limit of Insurance shown in the Declarations.

2. ☐ **Monthly Limit Of Indemnity**

- a. Coinsurance does not apply to this section.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
 - (1) The Limit of Insurance multiplied by
 - (2) The fraction shown below
 - (3) Period of Indemnity fraction is: 1/6

3. ☐ **Business Income Agreed Value**

- a. To activate this Optional Coverage:
 - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
 - a) During the 12 months prior to the date of the Work Sheet; and
 - b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
 - (2) This option's check box must be checked and a limit shown in the Declarations as Agreed Value. The Agreed Value should be at least equal to:
 - a) The Coinsurance percentage shown below multiplied by
 - b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.
 - c) Coinsurance percentage
- b. Coinsurance, is suspended until:
 - (1) 12 months after the effective date of this Optional Coverage; or
 - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
 - (1) Within 12 months of the effective date of this Optional Coverage; or
 - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
 - (1) The Business Income Limit of Insurance; divided by

SRU-027 (07-10)
Page 1 of 2

(2) The Agreed Value.

4. ☐ **Extended Period Of Indemnity**

The Period of Restoration is changed as follows:

a. **Business Income Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

(1) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and

(2) Ends on the earlier of:

a) The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or

b) consecutive days after the date determined in (a)(1) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

b. **"Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

(1) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

(2) Ends on the earlier of:

a) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or

b) consecutive days after the date determined in (b)(1) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

Water Back-Up And Sump Overflow – Aggregate Limit

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

AmWINS PROPERTY FORM

SCHEDULE	
Premises Number	Limit Of Insurance
per Schedule of Values on file with the Company	\$ 100,000 Per Occurrence
	\$ 100,000 Aggregate Limit

- A. We will pay for direct physical loss or damage to Covered Property covered under Section **A. Coverage**, paragraph 1, **Covered Property**, caused by or resulting from:

1. Water or waterborne material which backs up through or overflows or is otherwise discharged from a sewer or drain; or
2. Water or waterborne material which overflows or is otherwise discharged from a sump, sump pump or related equipment, even if the overflow or discharge results from mechanical breakdown of a sump pump or its related equipment.

However, we will not pay the cost of repairing or replacing a sump pump or its related equipment in the event of mechanical breakdown.

- B. The coverage described in Paragraph **A. Coverage**, of this endorsement does not apply to loss or damage resulting from an Insured's failure to:

1. Keep a sump pump or its related equipment in proper working condition; or
2. Perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

- C. With respect to the coverage provided under this endorsement, the **Flood Exclusion** is replaced by the following:

g. Flood

(1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);

(2) Mudslide or mudflow;

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

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

(b) Basements, whether paved or not; or

(c) Doors, windows or other openings; or

(4) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1) or (3), or material carried or otherwise moved by mudslide or mudflow.

This exclusion applies regardless of whether any of the above, in Paragraphs (1) through (4), is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where

a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

But if any of the above, in Paragraphs (1) through (4), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

D. Limit of Liability

The most we will pay for loss or damage in any one occurrence is \$25,000 unless a higher limit is shown in the Schedule.

Regardless of the number of occurrences or locations, the most that we will pay for all loss or damage from water back-up or sump overflow in the policy period is \$25,000 unless a higher Aggregate limit is shown in the Schedule.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Additional Coverage Endorsement - Wind Driven Precipitation

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the:

AmWINS PROPERTY FORM

A. The following is added to section E. Limit of Liability:

Sublimit: \$ 500,000 per Occurrence

The sublimit for Wind Driven Precipitation is included within the Limit of Liability shown in the Declarations as applicable to the covered Building Property. This sublimit does not increase the Limit of Liability.

Sublimit: \$

B. Changes to the Covered Cause of Loss And Exclusions Section

1. The following is added to Paragraph A. Covered Cause of Loss:

The term Covered Cause of Loss includes the Additional Coverage – Wind Driven Precipitation as described below:

We will pay for direct physical loss or damage to the interior of any building or structure, or to personal property in the building or structure caused by or resulting from rain, snow, sleet or ice, when driven by wind.

2. The following is added to section B. Exclusions:

We will not pay for loss or damage caused directly or indirectly by any of the following:

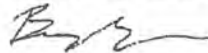
- a. Sand or dust, unless the building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the sand or dust enters;
- b. Thawing of snow, sleet or ice on the building or structure; or
- c. Faulty, inadequate or defective:
 - (1) Planning, zoning, development, surveying, siting;
 - (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - (3) Materials used in repair, construction, renovation or remodeling; or
 - (4) Maintenance;of part or all of any property on or off the described premises.

3. Paragraph 1.c. in section C. Limitations is deleted.

All other terms, conditions, provisions and exclusions of this policy remain the same.

Policy Changes

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NUMBER(S): AOP-190029 AQS-190065 HAQS-190065 TR0009391 1900065	POLICY CHANGES EFFECTIVE: 1/15/2019 POLICY CHANGE NO 2	COMPANY(S): Certain Underwriters at Lloyd's Certain Underwriters at Lloyd's HDI Global Specialty SE General Security Indemnity Company of Arizona
NAMED INSURED: A Tebele & Sons ETAL		AUTHORIZED REPRESENTATIVE: 
<p>It is hereby agreed and understood that the following change(s) are made to this policy:</p> <p>1. Coverage for the Peril of Storm Surge is excluded.</p> <p style="text-align: right;">SRU-040 (03-12) Page 1 of 1</p> <p style="text-align: center;">Includes copyrighted material of Insurance Services Office, Inc. with its permission.</p>		

**Mold, Mildew & Fungus Clause and Microorganism Exclusion
(Map)
(Time Limit & Sublimit)**

A. This policy only insures

1. Physical loss or damage to insured property by mold, mildew or fungus when directly caused by a peril insured by this Policy occurring during the policy period
Or
2. Physical loss or damage, occurring during the policy period, to insured property by a peril insured by this policy resulting directly from mold, mildew or fungus.

This coverage is subject to all limitations in the policy to which this endorsement is attached and, in addition, to each of the following specific limitations:

1. The said property must otherwise be insured under this policy for physical loss or damage by that peril.
2. The Assured must report to Underwriters the existence and cost of the physical loss or damage by mold, mildew or fungus as soon as practicable, but no later than twelve (12) months after the peril first caused any physical loss or damage to insured property during the policy period. This policy does not insure any physical loss or damage by mold, mildew or fungus first reported to Underwriters after that twelve (12) month period.
3. Regardless of circumstance or other policy provisions, the maximum amount insured and payable under this policy for all mold, mildew or fungus caused by or resulting from such peril is \$15,000 for all parts of any claim and in total (the aggregate limit) for the policy period. This sublimit applies to all sections or extensions of the policy combined under which any claim arises or is made.

B. Except as set forth in the foregoing Section A, this policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

Pre-Existing Damage Exclusion Endorsement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is understood and agreed that this policy shall exclude any loss or damage directly or indirectly caused by, resulting from or contributed to by any pre-existing building damage at the time of this Certificate's or this policy's inception. This exclusion shall be removed upon substantial completion of repair or reconstruction of the damaged building.

SRU-068 (C9-17)
Page 1 of 1

**U.S. TREASURY DEPARTMENT'S
OFFICE OF FOREIGN ASSETS CONTROL (OFAC)
ADVISORY NOTICE TO POLICYHOLDERS**

PLEASE READ THIS NOTICE CAREFULLY.

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC.

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of national emergency. OFAC has identified and listed numerous foreign agents, front organizations, terrorists, terrorist organizations and narcotics traffickers as Specially Designated Nationals. This list can be located on the United States Treasury's web site: <http://www.treasury.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments or premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

APPLICABLE LAW (U.S.A.)

This insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (U.S.A.)

14/09/2005

LMA5021

Form approved by Lloyd's Market Association

SANCTION LIMITATION AND EXCLUSION CLAUSE

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

15/09/10

LMA3100

PROPERTY LOSS NOTICE

DATE (MM/DD/YYYY)

AGENCY	INSURED LOCATION CODE	DATE OF LOSS AND TIME	AM PM
	PROPERTY / HOME POLICY		
	CARRIER	NAIC CODE	
	POLICY NUMBER		
	FLOOD POLICY		
CONTACT NAME: PHONE (A/C, Nr, Ext): FAX (A/C, Nr): E-MAIL ADDRESS: CODE: SUBCODE:	CARRIER	NAIC CODE	
AGENCY CUSTOMER ID:	POLICY NUMBER		
	WIND POLICY		
	CARRIER	NAIC CODE	
	POLICY NUMBER		

INSURED

NAME OF INSURED (First, Middle, Last)			INSURED'S MAILING ADDRESS		
DATE OF BIRTH	FEIN (If applicable)	MARITAL STATUS / CIVIL UNION (If applicable)			
PRIMARY PHONE # ☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE # ☐ HOME ☐ BUS ☐ CELL	PRIMARY E-MAIL ADDRESS:			
		SECONDARY E-MAIL ADDRESS:			
NAME OF SPOUSE (First, Middle, Last) (If applicable)			SPOUSE'S MAILING ADDRESS (If applicable)		
DATE OF BIRTH	FEIN (If applicable)	MARITAL STATUS / CIVIL UNION (If applicable)			
PRIMARY PHONE # ☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE # ☐ HOME ☐ BUS ☐ CELL	PRIMARY E-MAIL ADDRESS:			
		SECONDARY E-MAIL ADDRESS:			

CONTACT

CONTACT INSURED					
NAME OF CONTACT (First, Middle, Last)			CONTACT'S MAILING ADDRESS		
PRIMARY PHONE # ☐ HOME ☐ BUS ☐ CELL	SECONDARY PHONE # ☐ HOME ☐ BUS ☐ CELL				
WHEN TO CONTACT			PRIMARY E-MAIL ADDRESS:		
			SECONDARY E-MAIL ADDRESS:		

LOSS

LOCATION OF LOSS				POLICE OR FIRE DEPARTMENT CONTACTED	
STREET:					
CITY, STATE, ZIP:				REPORT NUMBER	
COUNTRY:					
DESCRIBE LOCATION OF LOSS IF NOT AT SPECIFIC STREET ADDRESS:					
KIND OF LOSS	FIRE THEFT	LIGHTNING HAIL	FLOOD WIND	PROBABLE AMOUNT ENTIRE LOSS	
DESCRIPTION OF LOSS & DAMAGE (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)					
REPORTED BY			REPORTED TO		

REMARKS

APPLICABLE IN ALABAMA

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

APPLICABLE IN ALASKA

A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

APPLICABLE IN ARIZONA

For your protection, Arizona law requires the following statement to appear on this form: Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

**APPLICABLE IN ARKANSAS, DELAWARE, KENTUCKY, LOUISIANA, MAINE, MICHIGAN, NEW JERSEY,
NEW MEXICO, NEW YORK, NORTH DAKOTA, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA,
TENNESSEE, TEXAS, VIRGINIA, AND WEST VIRGINIA**

Any person who knowingly and with intent to defraud any insurance company or another person, files a statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact, material thereto, commits a fraudulent insurance act, which is a crime, subject to criminal prosecution and [NY: substantial] civil penalties. In LA, ME, TN, and VA, insurance benefits may also be denied.

APPLICABLE IN CALIFORNIA

For your protection, California law requires the following to appear on this form: Any person who knowingly presents a false or fraudulent claim for payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

APPLICABLE IN COLORADO

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policy holder or claimant for the purpose of defrauding or attempting to defraud the policy holder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado Division of Insurance within the Department of Regulatory Agencies.

APPLICABLE IN THE DISTRICT OF COLUMBIA

Warning: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits, if false information materially related to a claim was provided by the applicant.

APPLICABLE IN FLORIDA

Pursuant to S. 817.234, Florida Statutes, any person who, with the intent to injure, defraud, or deceive any insurer or insured, prepares, presents, or causes to be presented a proof of loss or estimate of cost or repair of damaged property in support of a claim under an insurance policy knowing that the proof of loss or estimate of claim or repairs contains any false, incomplete, or misleading information concerning any fact or thing material to the claim commits a felony of the third degree, punishable as provided in S. 775.082, S. 775.083, or S. 775.084, Florida Statutes.

APPLICABLE IN HAWAII

For your protection, Hawaii law requires you to be informed that presenting a fraudulent claim for payment of a loss or benefit is a crime punishable by fines or imprisonment, or both.

APPLICABLE IN IDAHO

Any person who knowingly and with the intent to injure, defraud, or deceive any insurance company files a statement of claim containing any false, incomplete or misleading information, is guilty of a felony.

APPLICABLE IN INDIANA

A person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

APPLICABLE IN KANSAS

Any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act.

APPLICABLE IN MARYLAND

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

APPLICABLE IN MINNESOTA

A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

APPLICABLE IN NEVADA

Pursuant to NRS 686A.291, any person who knowingly and willfully files a statement of claim that contains any false, incomplete or misleading information concerning a material fact is guilty of a felony.

APPLICABLE IN NEW HAMPSHIRE

Any person who, with purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

APPLICABLE IN OHIO

Any person who, with intent to defraud or knowing that he/she is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

APPLICABLE IN OKLAHOMA

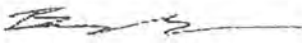
WARNING: Any person who knowingly and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

APPLICABLE IN WASHINGTON

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

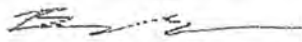
Policy Changes

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NUMBER(S): AOP-190029 AQS-190065 HAQS-190065 TR00093911900065	POLICY CHANGES EFFECTIVE: 1/15/2019 <hr/> POLICY CHANGE NO. 3	COMPANY(S): Certain Underwriters at Lloyd's Certain Underwriters at Lloyd's International Ins. Co. Of Hannover SE General Security Indemnity Company of Arizona
NAMED INSURED: A Tebele and Sons ETAL.		AUTHORIZED REPRESENTATIVE: 
<p>It is hereby agreed and understood that the following change(s) are made to this policy:</p> <p><u>Effective 1/15/2019, the following location is added to the policy for an Additional Premium of \$427.</u></p> <p>504 33rd Ave N Myrtle Beach, SC 29578 TIV \$90,000</p> <p>All other terms and conditions remain unchanged.</p>		

Policy Changes

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NUMBER(S): AOP-190029 AQS-190065 HAQS-190065 TR00093911900065	POLICY CHANGES EFFECTIVE: 1/15/2019 POLICY CHANGE NO. 4	COMPANY(S): Certain Underwriters at Lloyd's Certain Underwriters at Lloyd's International Ins. Co. Of Hannover SE General Security Indemnity Company of Arizona
NAMED INSURED: A Tebelc and Sons ETAL		AUTHORIZED REPRESENTATIVE: 
<p>It is hereby agreed and understood that the following change(s) are made to this policy:</p> <p><u>Effective 1/15/2019, SRU-030 "Schedule of Mortgage Holders" is added to the policy.</u></p> <p>All other terms and conditions remain unchanged.</p>		

SCHEDULE OF MORTGAGE HOLDER(S)

Named Insured
A Tebele & Sons, ETAL

Effective Date:
1/15/2019

Loc. No.	Bldg. No.	Mortgage Holder Name and Mailing Address
17, 18, 19, 20, 21, 22	ALL	Protective Life Ins c/o Mortgage Capital Investments Inc 2104 Sunset Place Nashville TN 37212

Policy Changes

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NUMBER(S): AOP-190029 AQS-190065 HAQS-190065 TR00093911900065	POLICY CHANGES EFFECTIVE: 4/9/2019 POLICY CHANGE NO. 5	COMPANY(S): Certain Underwriters at Lloyd's International Ins. Co. Of Hannover SE General Security Indemnity Company of Arizona
NAMED INSURED: A Tebele and Sons ETAL		AUTHORIZED REPRESENTATIVE: 
<p>It is hereby agreed and understood that the following change(s) are made to this policy:</p> <p><u>Effective 4/9/2019, SRU-030 "Schedule of Mortgage Holders" is added to the policy.</u></p> <p>All other terms and conditions remain unchanged.</p>		

SCHEDULE OF MORTGAGE HOLDER(S)

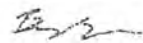
Named Insured
A Tebele and Sons ETAL

Effective Date:
4/9/2019

Loc. No.	Bldg. No.	Mortgage Holder Name and Mailing Address
17, 18, 19, 20, 21, 22,	110, 112, 114, 116, 118, 120	Synovus Bank P.O. Box 200016 Kennesaw, GA 30156

Policy Changes

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY NUMBER(S): AOP-190029 AQS-190065 HAQS-190065 TR00093911900065	POLICY CHANGES EFFECTIVE: 6/18/2019 POLICY CHANGE NO. 6	COMPANY(S): Certain Underwriters at Lloyd's Certain Underwriters at Lloyd's International Ins. Co. Of Hannover SE General Security Indemnity Company of Arizona
NAMED INSURED: A Tebele and Sons ETAL		AUTHORIZED REPRESENTATIVE: 
<p>It is hereby agreed and understood that the following change(s) are made to this policy:</p> <p><u>Effective 6/18/2019, SRU-030 "Schedule of Mortgage Holders is added to the policy.</u></p> <p>All other terms and conditions remain unchanged.</p>		

SCHEDULE OF MORTGAGE HOLDER(S)

Named Insured
A Tebele and Sons ETAL

Effective Date:
6/18/2019

Loc. No.	Bldg. No.	Mortgage Holder Name and Mailing Address
17, 18, 19, 20, 21, 22, 23	All	Synovus Bank P.O. Box 200016 Kennesaw, GA 30156-9248

Medication						
% Dilution	% Final Conc.	% Vol. of Diluent	% Vol. of Drug Sol.	Comp. Drug Vol. Required for 100 ml	Qty. to Add	Units to Add

ACIC Comments:

American Coastal Insurance Company Information

Line	ACIC Class	ACIC Category	Location	ECOS	EC Date	Turnover	Class 3 Contractor	Real Outgoing	Real Incoming	Real 3rd Party	By/Over Insured	Outgoing Insured	Outgoing Insured	AC Real Outgoing	AC Real Incoming	Turnover Outgoing	Turnover Incoming	Turnover Outgoing	Turnover Incoming
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David Egan

From: virginia.mathis@amwins.com
Sent: Thursday, February 07, 2019 10:12 AM
To: david@crescoast.com
Cc: hollan.delany@amwins.com
Subject: A Tebele & Sons ETAL - Policy
Attached: 52662975_A Tebele (SRU) policy.pdf



Dear David:

Please find the attached Property Policy for the following account:

ACCOUNT NAME: A Tebele & Sons ETAL
POLICY NUMBER: AQS190065
POLICY PERIOD: 1/15/2019 - 1/15/2020
CARRIER: Lloyd's of London

The policy sets out the precise coverage terms and conditions that have been bound. Please review the policy carefully. If after review, you find any errors in the issuance, please contact us immediately to discuss.

Lloyd's of London issues policies and endorsements electronically. As such, we won't be mailing a printed copy.

Claim Reporting

Please report any claims in accordance with the terms of the policy. We believe time is crucial in the initial reporting process; therefore, reporting claims in accordance with the policy terms will speed up the process and is in the best interest of the insured. Additionally, direct reporting is what the insurance carrier prefers and what is required by the policy. If you have any questions regarding claims reporting, please feel free to contact us. Please also note that we are available to assist you and your client in claim resolution.

Should you have any questions or need anything further, please feel free to contact me.

Thank you for your business. We truly appreciate it.

Sincerely,

Virginia Mathis

Claims Specialist | AmWINS Brokerage of the Carolinas, LLC
T 704.749.2837 | F 704.365.6348 | virginia.mathis@amwins.com
P.O. Box 221229 | Charlotte, NC 28222 | amwins.com

On behalf of,

Barrett Sellars

Senior Vice President | AmWINS Brokerage of the Carolinas, LLC
T 704.749.2822 | M 704.617.3688 | F 704.365.6348 | barrett.sellars@amwins.com
P.O. Box 221229 | Charlotte, NC 28222 | amwins.com



Crescent Coast 00576

In California: AmWINS Brokerage of the Carolinas Insurance Services, LLC | License No.: 0F19710

Crescent Coast 00577

Photo Sheet

James C. Greene Company

PO Box 25306
Raleigh, NC 27611
Phone (919) 832-6614
Fax (919) 832-6620

Insured: A Tebele & Sons

Claim #: 926649

Policy #:



General - 26-Left Elevation

Date Taken: 2/28/2019

Taken By: Lauraleigh Weaver

Trench for sprinkler system connection



General - 27-Left Elevation

Date Taken: 2/28/2019

Taken By: Lauraleigh Weaver

Trench for sprinkler system connection



PENINSULA INSURANCE BUREAU
ADMINISTRATORS & LOSS ADJUSTERS

August 6, 2019

VIA E-MAIL ONLY

A. Tebele & Sons ET AL.
c/o George Redman, Esq. and
David Gundling, Esq.
Bellamy, Rutenberg, Copeland, Epps, Gravely & Bowers, PA
1000 29th Avenue North
Myrtle Beach, SC 29577

Re:	Insured:	A. Tebele & Sons ET AL
	Claim Number:	926649
	Policy Numbers:	AQS-190065/HAQS-190065/TR00093911900065
	Date of Loss:	2/24/19
	Loss Location:	1901 N. Kings Highway, Myrtle Beach, SC

Dear Mr. Tebele:

I am writing to you on behalf of Peninsula Insurance Bureau, who serves as the Third Party Administrator for the market of insurers providing property coverage to A. Tebele & Sons et al and its related companies with an interest in the Loss Location identified above. This market of insurers includes the **Certain Interested Underwriters at Lloyd's London** subscribing to your **Policy, HDI Global Specialty SE and General Security Indemnity** (collectively referenced as "the Market" or "your Insurers").

At this time, your Insurers present their written coverage decision on **your claim ("the Claim") for fire loss and damage occurring on or about February 24, 2019 ("the Loss Event")**. You presented a Sworn Statement in Proof of Loss claiming \$2,850,000 in insurance proceeds for the Loss Event. Unfortunately, for the reasons discussed below, your Claim for insurance proceeds is declined in its entirety, pursuant to the exclusionary language contained in the Protective Safeguards – Fire Endorsement. This Fire Endorsement required you to maintain an Automatic Sprinkler System in order to protect the premises against fire. On the date of loss, no such system was in complete working order to protect the premises. As such, regrettably, your Claim is declined.

The Policy language from the Fire Endorsement, form SRU-024 (07/10) is set out below, in full:

Protective Safeguards – Fire Endorsement

SCHEDULE



2842 Lent Road – Apopka, FL 32712 | Ph: 407-880-1100 – Fax: 407-880-1102

Email: tpa@pibadjusters.com | Web: <http://www.pibadjusters.com> **TEBELE 000165**

2081

Symbol(s)	Location(s) Applicable
AS	as indicated on the Schedule of Values on file with the Company.
AA	as indicated on the Schedule of Values on file with the Company.
OTHER	as indicated on the Schedule of Values on file with the Company.

Describe any "OTHER": (a) Ansul Systems – ansul system over all cooking surfaces and semi-annual professional cleaning for hoods and ducts required

- (b) Heating, Ventilation, and Air Conditioning – maintained and in operation at all times
- (c) any aluminum wiring in buildings are properly pigtailed or retrofitted with CO/AL receptacles on all switches, outlets and circuit breaker panels and in accordance with local electrical codes.

Protective Safeguards

A. As a condition of this insurance, you are required to maintain the protective devices or services listed in the Schedule above.

The protective safeguard(s) to which this endorsement applies are identified by the following symbols:

1. "AS" Automatic Sprinkler System, including related supervisory services.
Automatic Sprinkler System means:

a. Any automatic fire protective or extinguishing system, including connected:

- (1) Sprinklers and discharge nozzles;
- (2) Ducts, pipes, valves and fittings;
- (3) Tanks, their component parts and supports; and
- (4) Pumps and private fire protection mains.

b. When supplied from an automatic fire protective system:

- (1) Non-automatic fire protective systems; and
- (2) Hydrants, standpipes and outlets.

2. "AA" Automatic Fire Alarm

Means an automatic fire alarm protecting the entire building that is:

- a. Connected to a central station; or
- b. Reporting to a public or private fire alarm station.

3. "SS" Security Service,

Means a security service with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

4. "SC" Service Contract

Means a written contract with a privately owned fire department providing fire protection service

to the described premises.

5. "OTHER"

Means the protective system described in the Schedule.

B. The following is added to the **EXCLUSIONS** section of the policy referenced above:

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order.

Coverage is excluded for the fire loss if "prior to the fire, you failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, in complete working order." There is no dispute that there was no operational sprinkler system connected to water at the time of the fire loss. Obviously, if an operational sprinkler system had been connected to water at the time of the fire loss, the fire damage would have been substantially reduced, if not completely prevented.

Your public adjuster and attorneys have advocated that even though the sprinkler system was not connected to water at the time of the loss, coverage should still be afforded to you. You deferred to them in this regard during your Examination Under Oath, at page 112. Your Insurers do not agree with their assertion.

Your public adjuster and attorneys have advocated on, for example, March 22, 2019 and May 18, 2019, that you were not required to maintain an operational sprinkler system at all. This is incorrect. The Protective Safeguards-Fire Endorsement was made part of your Policy when it was bound for coverage on January 14, 2019. The Exclusion in Section B. of the Fire Endorsement **references the requirement to maintain "any protective safeguard listed in the Schedule above."** The "Schedule above" that Exclusion identifies three possible types of safeguards which would be **"indicated on the Schedule of Values on file with the Company".** The "Schedule of Values" on file with your Insurers indicates that for the Loss Location, the property was to be 100% sprinklered. This is consistent with your electronically signed Policy Application for the Loss Location. You were required to maintain an automatic sprinkler system. This was not the case.

Your public adjuster and attorneys have also advocated on March 22, 2019 and May 18, 2019 that because the **symbol "AS" was not noted on the Insurers' Schedule of Values**, no sprinkler system was required to be maintained by you. This, too, is incorrect. The symbol **"AS"** is a legend for the types of protective safeguards subject to the Fire Endorsement, explained therein, all of which are cross-referenced with the Schedule of Values on file for your Insurers, as applicable. The Schedule of Values required the Loss Location to be 100% sprinklered. This was not the case.

Lastly, your attorneys have also advocated on May 18, 2019 that your Insurers were placed on notice of the lack of an operational sprinkler system prior to the Policy being issued on or about January 14, 2019. This is incorrect. While it does appear that Crescent Coast Insurance Agency notified the Tenant's insurance broker of this fact on January 11, 2019, your Insurers were not so

notified. Regardless, you proceeded to electronically sign your Application for this Policy with your Insurers, containing the Protective Safeguards - Fire Endorsement, three days later, on January 14, 2019. There is no indication that your Insurers were ever made aware of the lack of an operational sprinkler system, until after the Loss Event occurred. Your Policy was never modified prior to the Loss Event to reflect any lack of an operational sprinkler system being in place. It was, in fact, required, but was not in place.

To conclude, based on the language of the Exclusion contained in the Protective Safeguards – Fire Endorsement, coverage for this fire loss is excluded, entirely. Your Insurers regret to inform you that no payments will be forthcoming for this loss.

If you wish to provide any further information or discuss the matter further, please direct such information or communication request to my attention. Your Insurers reserve their right to review any new information or submissions pursuant to the Policy conditions and applicable law.

Thank you for your attention to this matter.

Sincerely,

Duncan Speak

Duncan Speak
Account Manager

To: Jim Twaddell[jtwaddell@gggai.com]
From: Abe tebele
Sent: Fri 4/5/2019 2:31:53 PM
Subject: Re: Duncan Spaak

I don't see how it can hurt. We haven't had any substantive conversation since he told me he was the guy that was going to be getting my checks from London. In the meantime I have a technical guy reviewing the sprinkler docs and Rob Shelton is supposed to speak to Chris Lee from City of Myrtle Beach to see what he can share about why the install was not yet done at the time of the loss. There may have been unforeseen circumstances that led to delays that were beyond anyone's control. Don't forget at the time the broker filled out the application and obtained final quotes the full expectation was that the connection work would take a week to two weeks which would have been well in advance of the loss and made all this a moot issue. I believe it can't hurt to know what led to the delays.

Abe

Sent from my iPhone

> On Apr 5, 2019, at 10:24 AM, Jim Twaddell <JTwaddell@gggai.com> wrote:

>

> I don't find it unusual that Duncan won't discuss the claim. He has most likely been instructed to not say anything. Lauraleigh is completely out of the loop at this point.

>

> Would you like me to propose a conference call with Duncan for this afternoon? Perhaps it's time that he hears your frustrations directly.

>

>

> Regards,

>

> James S. Twaddell, Esq.

> Executive Vice President/Principal

> Goodman-Gable-Gould/Adjusters International

> 128 South Tryon Street, Suite 1550 | Charlotte, North Carolina 28202

> Mobile: 704.650.5268 | Office: 704.339.0900 | Fax: 704.339.0902

> jtwaddell@gggco.com

> www.ggg-ai.com

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>

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>

>

> -----Original Message-----

> From: Abe tebele [mailto:abraham.tebele@gmail.com]

> Sent: Friday, April 05, 2019 7:33 AM

> To: Jim Twaddell

> Subject: Re: Duncan Spaak

>

> It's curious that Duncan won't discuss the claim. I would think that is part of his job. I know Lauraleigh said she was willing to speak to me but couldn't because I was "represented". I have a big problem with them refusing to discuss the claim because I believe they are required to do that or must put us in touch with the reps for Lloyd's. I won't make any predictions beyond saying that their case for a denial is shaky and would expose them to a huge bad faith claim. My attorney keeps saying that they often "adjust the claim". How often do you see that happen and what's the odds that they are looking at that? If you do get Duncan today let me know if you want conversation and I will make myself available.

>



> Abe

>

> Sent from my iPhone

>

>> On Apr 4, 2019, at 10:48 AM, Jim Twaddell <JTwaddell@gggai.com> wrote:

>>

>> He just returned my call from yesterday. He did not have any information except that he passed along my emails from last week to the Underwriters. When I pushed him for a time frame for a decision he said "it should be soon. Maybe today or tomorrow." I told him I would try him back tomorrow. He said he would be in touch as soon as he heard anything.

>>

>> Sent from my iPhone

To: Jim Twaddell[jtwaddell@gggai.com]
From: Abe tebele
Sent: Fri 3/8/2019 3:33:06 PM
Subject: Fwd: 1901 N. Kings Highway

;;;This is the most recent written request to Crawford of when work was to be done. It's just a theory but it's possible that the storm which hit the area in the fall and caused untold flooding and difficulties in crews entering the area delayed their ability to begin and complete the work. There is no way to have foreseen that it would not be connected by the time this policy was binded.
Abe

Sent from my iPhone

Begin forwarded message:

[REDACTED]



AmWINS

SPECIAL RISK UNDERWRITERS

Quote/Authorization

Insured: A Tebele & Sons ETAL
PO Box 1496
Myrtle Beach, SC 29578

Company: AB-NC - Charlotte
Broker: Barrett Sellars
Account #: S-1811-583686-01
(SRU Internal Use Only)

Home State: (required at binding)

Effective Date: 01/15/19

Expiration Date: 01/15/20

Limits of Liability: \$ 22,155,400 Per occurrence

Sublimits of Liability are subject to and not in addition to the Limit of Liability shown above. These Sublimits of Liability are: (i) Per Occurrence unless otherwise indicated, and (ii) 100% layer sublimits, of which we assume the percentage share as indicated in Limits of Liability, above.

See Sublimits Addendum Below:

TIV: \$ 22,155,400 Per schedule on file with AmWINS Special Risk Underwriters- not blanket coverage

Coverage: Real Property;
Business Personal Property;
Business Interruption - Gross Earnings

Perils Insured: All Risk as Defined in the policy form
Excluding Flood, Storm Surge
Including Earthquake
Including Boiler and Machinery

Deductibles: \$5,000 All Other Perils per occurrence, except:
\$ 10,000 All Other Wind/Hail per occurrence
2% per Scheduled TIV, PER BUILDING, subject to \$25,000 minimum per occurrence respects Earthquake
1% per Scheduled TIV, PER BUILDING, subject to \$25,000 minimum per occurrence respects Named Storm
1% per Scheduled TIV, PER BUILDING, subject to \$25,000 minimum per occurrence respects Wind Driven Precipitation

Valuation/ Replacement Cost on Real & Business Personal Property, Actual Loss Sustained as respects to Business
Coinsurance: Interruption
Coinsurance: 80%

Premium: \$ 105,000 Property
\$ 5,250 TRIA
\$ 370 Inspection Fee
\$ 500 AmWINS CAT Modeling Fee (non-refundable)
\$ 111,120 Total

This company has been approved by the director or his designee of the South Carolina Department of Insurance to write business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.

South Carolina Premium: \$105,000 x-TRIA
Fees: \$500 mkt / \$370 insp / \$500 service

Surplus Lines Tax: \$6382.20

TOTAL: \$112,752.20

DEFENDANT'S
EXHIBIT

64

DEFENDANT'S
EXHIBIT

2088

David Egan

From: hollan.delany@amwins.com
Sent: Monday, February 18, 2019 08:38 AM
To: david@crescoast.com
Subject: A Tebele & Sons ETAL - Endorsement
Attached: 52937803_CORRECTED ENDT 3 GROUPED INVOICE.pdf;52937805_AQS1900065 #3.pdf

Dear David:

Please find the attached Endorsement #3 for the following policy. This replaces the original endorsement I sent last week - please just toss that one out.

INSURED: A Tebele & Sons ETAL
POLICY NUMBER: AQS190065
POLICY PERIOD: 1/15/2019 - 1/15/2020
CARRIER: Lloyd's of London

Following is a summary of the premium associated with this endorsement:

ENDORSEMENT PREMIUM:	\$427.00	Premium
	\$25.62	Surplus Lines Taxes and Fees
	\$452.62	Total Premium, Taxes and Fees

Carrier	Premium	TRIA Premium	Fees	SL Taxes & Fees	Total
Lloyd's of London	\$262.00	\$0.00	\$0.00	\$15.72	\$277.72
Lloyd's of London	\$12.00	\$0.00	\$0.00	\$0.72	\$12.72
International Insurance Company of Hannover SE	\$49.00	\$0.00	\$0.00	\$2.94	\$51.94
General Security Indemnity Company of Arizona	\$104.00	\$0.00	\$0.00	\$6.24	\$110.24

COMMISSION: 10.000%

Sincerely,

Hollan Delany

Assistant Vice President | AmWINS Brokerage of the Carolinas, LLC
T 704.749.2843 | M 980.939.2778 | F 704.365.6348 | hollan.delany@amwins.com
4725 Piedmont Row Drive | Suite 600 | Charlotte, NC 28210 | amwins.com

In California: AmWINS Brokerage of the Carolinas Insurance Services, LLC | License 0F19710



Crescent Coast 00578

2089

David Egan

From: Marie Simonetti <marie.simonetti@yahoo.com>
Sent: Wednesday, January 30, 2019 11:15 AM
To: David Egan; Abe Tebele
Subject: Property Insurance Breakdown
Attachments: img408.pdf

Upon review of your Property Insurance Breakdown, the following Locations (addresses) need to be added/adjusted:

A. Tebele & Sons

94-96 Hwy 17 S, NMB —
98 Hwy 17 S, NMB
504 33rd Ave N, MB

✓ Atlantic Beach Center
2901 - 2911 Hwy 17 S, AB

two separate buildings on policy

~~2901 - 2911 Hwy 17 S, AB~~
✓ 6th Ave Shopping Center
600 - 612 S. Kings Hwy, MB

✓ Sundial Centre, LP
100 -118 Hwy 17 S, NMB

Please include the following properties under A. Tebele, LLC
900 Chester Street, MB

312 - 314 9th Ave N, MB

Attached is the insurance breakdown from 2018 for your review.

Marie



Crescent Coast 00670

2090

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A NO. 2020-CP-26-00808

A. Tebele & Sons, a South Carolina
General Partnership,

Plaintiff,

vs.

Certain Underwriters at Lloyd's; HDI
Global Specialty SE; General Security
Indemnity Company of Arizona; and
Crescent Coast Insurance, LLC,

Defendants.

PLAINTIFF'S REQUESTS
FOR JURY CHARGES

Attached hereto are Plaintiff's Request for Jury Instructions Numbers 1 through 22.

KELAHHER, CONNELL & CONNOR, P.C.



s/Gene M. Connell, Jr.

Gene M. Connell, Jr. (S.C. Bar No. 1358)

The Courtyard, Suite 209

1500 U.S. Highway 17 North

Post Office Drawer 14547

Surfside Beach, South Carolina 29587-4547

(843) 238-5648 (phone)

(843) 238-5050 (facsimile)

gconnell@classactlaw.net

William W. DesChamps, III (S.C. Bar No. 77150)

DesChamps Law Firm

1357 21st Avenue North Suite 102

Myrtle Beach, SC 29577

trey@deschampsllaw.com

(843) 448-2391 x 21

December 12, 2023

Attorney for Plaintiff

PLAINTIFF'S REQUEST TO CHARGE NO. 1:

I charge you insurance has long been recognized as a business affected with public interest. It is a complicated business and its intricacies often confuse the average layman. The Legislature has accordingly provided for the licensing of insurance agents by the State so as to place the business of insurance in competent and trustworthy hands. "It is one of many complications, requiring, for its safe conduct, not only expert knowledge, but such knowledge as can be acquired only by experience in the business."

PLAINTIFF'S REQUEST TO CHARGE NO. 2:

I charge you that in the light of the fact that the agent was an expert dealing in a highly specialized business, with knowledge and means of knowledge not possessed by the average applicant for insurance.

PLAINTIFF'S REQUEST TO CHARGE NO. 3:

I charge you that we have long recognized the general rule that insurance agents and brokers "are required to exercise due care in placing insurance and would be personally liable for the neglect of that duty."

PLAINTIFF'S REQUEST TO CHARGE NO. 4:

I charge you that "[a]mbiguous or conflicting terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer." *Diamond State Ins. V. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995).

PLAINTIFF'S REQUEST TO CHARGE NO. 5:

I charge you that ambiguity and incomprehensibility seem to be the favorite tools of the insurance trade in drafting policies. Most are a virtually impenetrable thicket of incomprehensible verbosity. It seems that insurers generally are attempting to convince the customer when selling the policy that everything is covered and convince the court when acclaim is made that nothing is covered. The miracle of it all is that the English language can be subjected to such abuse and still remain an instrument of communications.

South Carolina Ins. Co. v. Fid. & Guar. Ins., 327 S.C. 207, 219 (S.C. 1997).

PLAINTIFF'S REQUEST TO CHARGE NO. 6

I charge you agency is a question for the jury to decide.

Mebane v. Taylor, 164 S.C. 87, 162 S.E.65 (1932).

PLAINTIFF'S REQUEST TO CHARGE NO. 7:

I charge you to establish a parent agency the principal must be shown to have represented another as is agent by affirmative conduct or conscious involuntary inaction, and that the plaintiff relief upon such representation to his detriment whether the requisites of apparent agency have been proved is a question for the jury.

Taylor v. U.S. Casualty Co., 229 S.C. 230, 92 S.E.2d 647 (1956).

PLAINTIFF'S REQUEST TO CHARGE NO. 8:

I charge you that a sales agent that the principal consigns for sale on commission becomes the agent of the principal.

Holman v. Frost, 26 S.C. 290, 2 S.E. 16 (1887)

PLAINTIFF'S REQUEST TO CHARGE NO. 9:

I charge you that an agent's implied authority is authority proved or evidence by conduct, whereas apparent authority is authority that the principal intended the agent to have for such power that a principal holds his agent as possessing or permits him to exercise.

See Moore v. Pilot Life Ins., 205 S.C. 474, 32 S.E.2d 757 (1945) and *Beasley v. Kerr-McGee Chem. Corp.*, 273 S.C. 523, 257 S.E.2d 726 (1979).

PLAINTIFF'S REQUEST TO CHARGE NO. 10:

I charge you the authority of an agent is a question of fact for the jury.

Robert Buist Co. v. Lancaster Mercantile Co., 73 S.C. 48, 52 S.E. 789 (1905). (Interpretation of a contract in dispute between a principal and agent was properly submitted to jury.)

PLAINTIFF'S REQUEST TO CHARGE NO. 11:

I charge you the knowledge of an agent received during a transaction pertaining to a matter within the scope of his employment is imputable to the principal.

Able v. Pilot Life Ins. Co., 194 S.E 628 (1938)

PLAINTIFF'S REQUEST TO CHARGE NO. 12:

I charge you the general rule is that for a breach of contract the defendant is liable for whatever damages follow as a natural consequence and a proximate result of such breach.

National Tire Rubber Co. v. Hoover, 128 S.C. 344, 122 S.E. 858; and *Smyth v. Fleishmann*, 214 S.C. 263, 52 S.E.2d 199.

PLAINTIFF'S REQUEST TO CHARGE NO. 13:

I charge you where the language of an insurance contract may be understood in more senses than one, or where it is doubtful whether the given words were used in an enlarged or restricted sense, other things being equal, that construction should be adopted, which is most beneficial to the insured and construed most strongly against the insurer.

Prosser v. Carolina Mut. Ben. Corp., 179 S.C. 238, 183 S.E. 710; *Schultz v. Benefit Ass'n of Ry. Employees*, 175 S.C. 182, 178 S.E. 867; *Carolina Veneer Lumber Co. v. American Mut. Liability Ins. Co.*, 202 S.C. 103, 24 S.E.2d 153; *Smith v. Sovereign Camp. W.O.W.*, 204 S.C. 193, 28 S.E.2d 808.

PLAINTIFF'S REQUEST TO CHARGE NO. 14:

I charge you the client may recover from the agent the loss he sustains as a result of the agent's failure to procure the desired coverage if the actions of the agent warranted an assumption by the client that he was properly insured in the amount of the desired coverage.

PLAINTIFF'S REQUEST TO CHARGE NO. 15:

I charge you an insurance agent who undertakes to procure insurance for another owes an obligation to his client to use reasonable diligence in attempting to place the insurance requested and to notify the client promptly if he has failed to obtain the requested. Insurance. The client may recover from the agent the loss he sustains as a result of the agent's failure to procure the desired coverage if the actions of the agent warranted an assumption by the client that he was properly insured in the amount of the desired coverage.

PLAINTIFF'S REQUEST TO CHARGE NO. 16:

I charge you that the terms of an insurance policy should be construed most liberally in favor of the insured, and that in case of a conflict or ambiguity, a construction will not be adopted that defeats recovery if the policy is reasonably susceptible of a meaning that will permit recovery.

Cogdill v. Equity Life & Annuity Co., 262 S.C. 248, 253, 203 S.E.2d 674, 677 (1974).

PLAINTIFF'S REQUEST TO CHARGE NO. 17:

I charge you an insurance policy or policy provision is ambiguous when the policy language is reasonably capable of being understood in more than one way.

Williams v. Gov't Emples. Ins. Co., 409 S.C. 586, 598, 762 S.E.2d 705, 711 (2014).

PLAINTIFF'S REQUEST TO CHARGE NO. 18:

I charge you questions of agency and the imputation of knowledge are factual questions reserved for the jury.

Holmes v. McKay, 334 S.C. 433, 513 S.E.2d 851 (Ct. App. 1999); *Bost*, 242 S.C. at 282-83, 130 S.E.2d at 911.

PLAINTIFF'S REQUEST TO CHARGE NO. 19:

I charge you whether an alleged agent was an agent of an insurer as to the issue of imputation of knowledge is a question of fact for the jury to determine.

George Washington Fire ins. Co., 148 S.C. at 244, 146 S.E. at 17.

PLAINTIFF'S REQUEST TO CHARGE NO. 20:

I charge you the statements and conduct of a local agent are admissible as evidence against the insurer.

Whaley, 124 S.C. at 177, 117 S.E.2d at 210; See *Allstate Ins. Co. v. Smoak*, 256 S.C. 382, 182 S.E.2d 749 (1971).

PLAINTIFF'S REQUEST TO CHARGE NO. 21:

I charge you that if an insured can demonstrate bad faith or unreasonable action by the insurer in processing a claim under the mutually binding insurance contract, he can recover consequential damages in a tort action. Actual damages are not limited by the contract.

Nichols v. State Farm Mut. Auto. Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983).

PLAINTIFF'S REQUEST TO CHARGE NO. 22:

I charge you that a person may not sell, solicit, or negotiate insurance in this State for any line or lines of insurance unless the person is licensed for that line of authority in accordance with this chapter.

Section 38-43-20. Producer's license required; exceptions.