

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

Case No.: 2007-CP-10-3224
Appellate Case No.: 2015-001383

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SC Court of Appeals

Jana Wright, as Guardian ad Litem for Travis M., a
minor over the age of 14 years. Plaintiff,

v.

Tema Brown. Respondent,

v.

GeoVera Specialty Insurance Co. Appellant.

RECORD ON APPEAL
Volume I of I

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THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
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Case No.: 2007-CP-10-3224
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07-015354

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) C/A No. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad
Litem for TRAVIS MILLIGAN, a
minor over the age of 14 years

Plaintiff,

vs.

TEMA BROWN,

Defendants.

ORDER OF DEFAULT

FILED
2000 JAN 10 PM 2:41
JULIE L. ARMSTRONG
CLERK OF COURT
BY _____

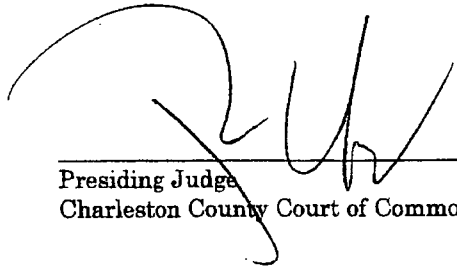
Defendant Tema Brown, having failed to plead, move or otherwise appear in the above captioned matter, is hereby in default. It further appears that this Defendant is not an infant, minor or incompetent person, nor is this Defendant engaged in the military service of the United States so as to entitle this Defendant to protection from participation in this action.

IT IS HEREBY ORDERED, ADJUDGED and DECREED that Defendant Tema Brown is in default in this matter and that the Clerk of Court shall enter such default against Defendant Tema Brown as provided by the South Carolina Rules of Civil Procedure; and

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Plaintiffs shall be granted a damages hearing at a later date to determine the amount of damages owed by this Defendant to the Plaintiffs as a result of the matters alleged in Plaintiff's Complaint.

IT IS SO ORDERED!





Presiding Judge
Charleston County Court of Common Pleas

Charleston, South Carolina
11/3/08, 2007

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C/A No. 2007-CP-10-3224
JANA WRIGHT, as Guardian ad)
Litem for TRAVIS MILLIGAN, a)
minor over the age of 14 years)
Plaintiff,)
vs.)
TEMA BROWN,)
Defendant.)

ORDER OF REFERENCE TO
SPECIAL REFEREE

FILED
2009 MAR 11 AM 11:46
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before me on February 12, 2009, by way of motion filed by the Plaintiff. After reviewing the motion and hearing oral arguments, I find the requirements of S.C. Code Ann. Section 14-11-60 and Rule 53, SCRPC have been met and that this case should be referred to a special referee.

There, it is hereby ordered that this matter shall be referred to Special Referee Tom Wills, Esq., for determination of all matters in the above referenced case.

IT IS SO ORDERED!


The Honorable Roger A. Young
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina
3/11, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)
_____)

ORDER OF JUDGMENT

2009 SEP 11 PM 2:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

This case came before me by way of an Order appointing me as a special master dated March 11, 2009. The complaint was filed on October 17, 2007, and the Defendant was personally served on November 19, 2007. An order of default was entered on January 3, 2008. A hearing was held before me on June 30, 2009. Present at the hearing was Jana Wright, mother of and guardian ad litem for Travis Milligan, Travis Milligan, as well as their attorneys Barry I. Baker, Esq., and Amanda R. Maybank, Esq. The Defendant Tema Brown and her son LaRon Brown were also present. After hearing testimony from the Plaintiffs as well as from Ms. Brown, I hereby make the following findings of fact and conclusions of law.

FACTS

This case stems from a dog bite suffered by Travis Milligan on April 20, 2005. On that date, Travis then 13 years old, was riding his bike in front

of the house he shares with his mother. Ms. Brown lived across the street. At the time, Ms. Brown had possession of a dog. The testimony of Ms. Wright and Mr. Milligan established that as Travis was riding his bike, Ms. Brown's dog ran off of her property and attacked Travis on the back of his leg.

Ms. Brown testified that she did in fact have possession of a dog, that the dog got loose, and bit Travis on the back of the leg. Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a vicious dog.

Following the attack, Travis was taken to the nearest paramedic station and then to the emergency room where he received treatment for the wound. Doctors were unable to stitch the wound closed due to the fact that a section of flesh was missing. As a result, the wound took approximately three months to heal. During the three months Travis was unable to participate in activities such as football in order to allow the wound to heal.

Travis testified that even though the wound has healed, he continues to have problems with the scar breaking open. Travis also testified that he experiences pain and throbbing when he is on his feet for an extended period of time. Currently, Travis is an upcoming senior in high school, and works as a bagger at the Johns Island Piggly Wiggly and at Burger King. Travis also has continued to have a noticeable discolored scar as well as problems of dryness of the skin on and around the scar and severe itching.



Following the dog bite, on June 20, 2005, Travis began treating with Peter de Vito, M.D. Dr. de Vito opined that Travis will require two to three surgeries to improve the functionality of the scar. However, according to Dr. de Vito, nothing can be done to improve the appearance of the scar.

LAW

South Carolina Code Ann. § 47-3-110 provides that "[w]henver any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked."

In personal injury actions the plaintiff may recover for the necessary and reasonable expense caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense and care and nursing. *Sossamon v. Nationwide Mut. Ins. Co.*, 243 S.C. 552, 135 S.E.2d 87 (S.C. 1964). To recover for future medical expenses, the expenses must be established with reasonable certainty. *Campbell v. Pashcal*, 290 S.c. 1, 347 S.E.2d 892 (Ct. App. 1986). A party need not, however, prove future damages in a personal injury case to a mathematical certainty. *Id.*



In this case, the testimony of Ms. Brown established that she had possession of a dog and that the dog attacked Travis. S.C. Code Ann. § 47-3-110.

At the hearing, Plaintiffs entered evidence of actual damages in the following amounts:

• MUSC	\$395.00
• University Medical Associates	\$244.00
• Peter de Vito, M.D. (current expenses)	\$590.00
• Peter de Vito, M.D. (future medical expenses)	\$29,000.00
TOTAL	\$30,229.00

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). Damages for "loss of enjoyment of life" compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, or hobbies. *Id.*

In this case Plaintiff presented evidence of both pain and suffering following the incident, and the effects the injury has had and continues to have on his life. Travis testified that due to the fact flesh was missing from his leg, the wound took three months to heal. During this time, he was unable to participate in activities of a normal 13 year old. He also testified

that the healing process was very painful and that the wound became infected once.

Travis further testified that even after the wound healed, he has continued to have itching and dryness of the scar, and the area of the scar becomes painful when he is on his feet for an extended period of time. Additionally, Travis testified that due to the instability of the scar tissue, he has to restrict his physical activity to prevent the scar from breaking open. Additionally, the appearance of scar on his calf remains discolored and noticeable. Dr. de Vito opined that very little if anything can be done to improve the appearance of the scar, and that even after surgery Travis will still have noticeable scars from the injury. At the time of the injury, Travis was only 13 years old, and his life expectancy pursuant to S.C. Code Ann. 19-1-150 was 58.60 years. He has and will likely continue to suffer the effects of the injury for the rest of his life.¹ As a result, I find that Plaintiffs are entitled to \$70,000.00 in damages for pain and suffering and loss of enjoyment of life. *See Boan, supra.*



With regard to punitive damages, the purpose of punitive damages is to punish the wrongdoer and to deter the wrongdoer from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). In this case, I find that punitive damages are not warranted. Ms. Brown testified that the dog was not a vicious dog and was a mixed breed, but not a pit bull. She also

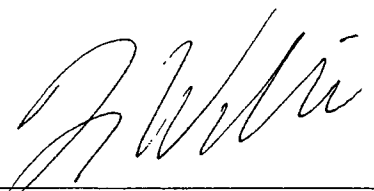
testified that the dog was restrained on her property; however, due to the excitement of her children coming home that day, the dog was able to get loose and run across the street.

CONCLUSION

Having heard the testimony and received evidence I find that Plaintiffs are entitled to actual damages of \$100,229. I deny the request for punitive damages based on the reasoning above.

IT IS SO ORDERED!

ms
July 18, 2009
Charleston, SC



Thomas J. Wills, IV
Special Master

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C/A No. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendants.)

CONSENT ORDER

FILED
2011 JAN -6 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT

11-357
This matter comes before the me on the Motion of the Plaintiff with the consent of the Defendants for an order allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings. The Defendant is granted leave to file a Third Party Complaint against her insurance company.

AND IS SO ORDERED.


HONORABLE MARKLEY DENNIS
Ninth Judicial Circuit

Charleston, SC
December 34, 2010

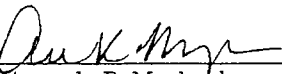
RMD9/1

WE SO CONSENT:

By: 
BARRY BAKER

As Assignee for Tema Brown

MAYBANK LAW FIRM, LLC

By: 
Amanda R. Maybank

Attorney for Plaintiff

Rmd9/2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3224

CONSENT ORDER

FILED
2011 JUL 14 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING by the signatures of counsel that Andrew K. Epting has been retained to bring the third-party complaint and all parties consent to his appearing as Counsel to bring the third-party complaint,

IT IS HEREBY ORDERED that Andrew K. Epting, Jr., is permitted to appear in this action and is authorized to file the third-party complaint within 30 days of this order, and that this matter is then referred to the Master-in-Equity pursuant to Rule 53(b) SCRPC..

IT IS SO ORDERED.

July 13
2011
Charleston, SC

Kristi Lea Harrington
Honorable Kristi Lea Harrington
Chief Administrative Judge

WE SO MOVE:

MAYBANK LAW FIRM, LLC

By Amanda R. Maybank
Amanda R. Maybank Attorney for Plaintiff

WE MOVE:

By Barry Baker
Barry Baker for Tema Brown in her capacity as assignor of claims to Plaintiff.

I CONSENT:

ANDREW K. EPTING, JR., LLC

By Andrew K. Epting, Jr.
Andrew K. Epting, Jr. for Third Party Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
JANA WRIGHT, as Guardian ad Litem
for TRAVIS MILLIGAN, a minor over
the age of 14 years

Plaintiff,

vs.

TEMA BROWN,

Defendant/Third-Party Plaintiff,

vs.

Constitution State Services,

Third-Party Defendant,

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3224

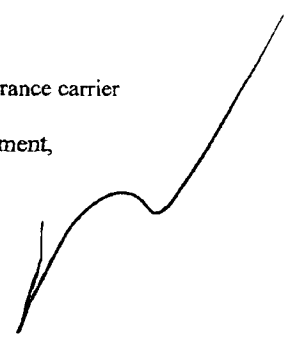
ORDER

FILED
2011 DEC -9 AM 10:04
JULIE J ARMSTRONG
CLERK OF COURT
BY 

THIS MATTER IS BEFORE ME on the defendant/third-party plaintiff Tema Brown's motion to amend her third-party complaint to add GeoVera Specialty Insurance Company as a third-party defendant.

A motion to amend is addressed to the sound discretion of the trial judge. *Stanley v. Kirkpatrick*, 357 S.C. 169, 592 S.E.2d 296 (2004). Leave to amend pleadings pursuant to Rule 15, SCRCP, shall be liberally and freely given when justice so requires and does not prejudice any other party. *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 493 S.E.2d 826 (1997). The party opposing the amendment has the burden of establishing prejudice. *Foggie v. CSX Transp., Inc.*, 315 S.C. 17, 431 S.E.2d 587 (1993).

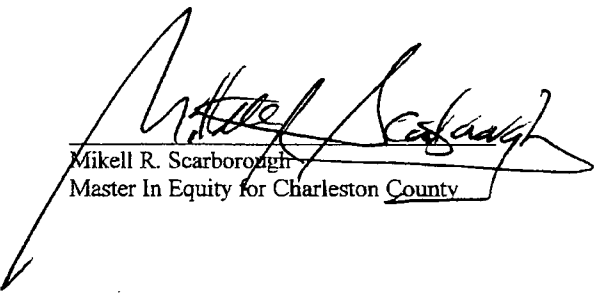
As it appears GeoVera Specialty Insurance Company is the homeowner's insurance carrier for Ms. Brown and no party has established they would be prejudiced by the amendment,



IT IS HEREBY ORDERED that Tema Brown is allowed to amend her third-party complaint to add GeoVera Specialty Insurance Company as a third-party defendant.

IT IS SO ORDERED.

Charleston, South Carolina
December 7, 2010



Mikell R. Scarborough
Master In Equity for Charleston County

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

vs.)

Constitution State Services & GeoVera)
Specialty Insurance Co.)

Third-Party Defendants.)

CONSENT ORDER DISMISSING
CONSTITUTION STATE SERVICES
WITH PREJUDICE

FILED
2011 DEC 18 PM 12:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY

This matter comes before me on agreement of the parties to dismiss Third-Party Defendant Constitution State Services (hereinafter "Constitution State") with the following stipulations agreed to by the parties:

1. Third-Party Defendant GeoVera Specialty Insurance Company (hereinafter "GeoVera") is the successor to USF&G Specialty Insurance Company (hereinafter "USF&G Specialty") and that, at all times pertinent to this action, Constitution State was acting as the agent of USF&G Specialty, including for notice of this claim and the date of the filing of this suit, (although Constitution State and GeoVera reserve the right to contest whether and when any such notice was given and/or received).
Neither Constitution State, USF&G Specialty, nor GeoVera will, however, take the position that any notice of this claim or of the date of the filing of this suit that was

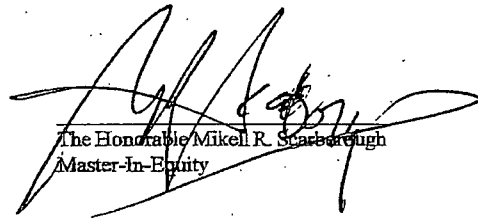
given or received by Constitution State was not notice to USF&G Specialty.

GeoVera acknowledges that it is liable for any acts and omissions of Constitution State in connection with the matters that are the subject of this action to the same extent that USF&G Specialty would have been so liable; and

2. This dismissal of the agent in no way inures to the benefit of the principal, and GeoVera is charged with any and all notice and/or knowledge of Constitution State.

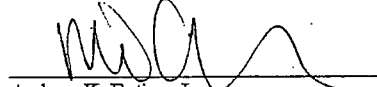
THEREFORE, Third-Party Defendant Constitution State is hereby dismissed from this action with prejudice.

IT IS SO ORDERED.

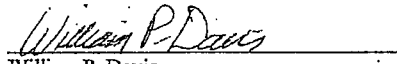


The Honorable Mikel R. Scarborough
Master-In-Equity

WE CONSENT:

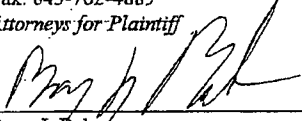


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*Attorneys for Defendant/Third
Party Plaintiff*

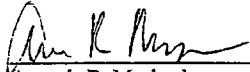


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File No.: 7746.1857
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Phone: 843-762-4820
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Attorneys for Plaintiff


Barry L. Baker
P.O. Box 31265
Charleston, SC 29417
Attorneys for Plaintiff

I CONSENT:



Amanda R. Maybank
Roy P. Maybank
Maybank Law Firm, LLC
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Phone: 843-762-4820
Fax: 843-762-4889
Attorneys for Plaintiff

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2007 CP-10-324

JANNA WRIGHT, as Guardian ad Litem for TRAVIS
WILLIAMS, a minor over the age of 14 years

GeoVers Specialty Insurance

PLAINTIFF(S)

DEFENDANT(S)

Submitted by	Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: See attached Corrected Order

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property, or a monetary award. If there is no judgment information, indicate in the appropriate boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Jenna Brown	GeoVers Specialty Insurance Co.	\$100,229.00
		\$
		\$

If applicable, describe the property, including tax map information and address referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

Date

SCRPC Form 4C (10/2011)

Page 1 of 2

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian *ad Litem*
for TRAVIS MILLIGAN, a minor over
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

vs.)

GeoVera Specialty Insurance Co.,)

Third-Party Defendant,)

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-10-3224

CORRECTED ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2015 MAR 24 PM 2:29

FILED

THIS MATTER comes before me on cross-motions for Summary Judgment. I deny the Third-Party Defendant's motion and grant the motion of the Third-Party Plaintiff.

I. PROCEDURAL HISTORY

Plaintiff filed suit on behalf of a minor against the Defendant Tema Brown. The Defendant's dog bit a minor child and this suit followed. The claim was tendered to the Defendant's homeowner's insurance carrier which failed to defend. The case was tried before Special Referee, Tom Wills, Esquire, who entered judgment in favor of the Plaintiff on August 18, 2009 in the amount of \$100,229.00.

Plaintiff sought and received permission to refer this case for all purposes, including supplemental proceedings, which permission was granted by the Honorable Markley Dennis on November 24, 2010. On July 13, 2011, Judge Harrington permitted the filing of a third-party complaint and likewise referred this matter to this Court. The Third-Party Complaint was filed



against Constitution State Services on July 19, 2011 and GeoVera Specialty Insurance Co. ("GeoVera") by consent was substituted on December 18, 2012 as the proper Third-Party Defendant.

II. MOTION TO AMEND BY PLAINTIFF AND THIRD-PARTY PLAINTIFF

A motion to amend the Third-Party Complaint to assert a bad faith claim was filed on October 14, 2013. At the hearing on June 3, 2014, this motion was withdrawn. Remaining in the Third-Party Complaint is a declaratory judgment action seeking a declaration of the rights and duties of the parties.

III. THE THIRD-PARTY DEFENDANT, GEOVERA'S MOTION FOR SUMMARY JUDGMENT

The Third-Party Defendant's motion asserts three grounds:

A) Brown as the Defendant and Third-Party Plaintiff is not the proper party to bring this claim in light of assignment of the claim to the Plaintiff Jana Wright on November 4, 2010;

B) The Third-Party Complaint is untimely and this Court has no subject matter jurisdiction; and

C) The Statute of Limitations has run.

A. The Defendant is not the real party of interest

First, this is a declaratory judgment action to declare the rights and duties of all parties. The Third-Party Complaint specifically asserts the judgment of Plaintiff against the Defendant and specifically alleges that GeoVera has coverage for the judgment.

Second, the claim against the carrier resides in one or both, the Plaintiff or the Third-Party Plaintiff. GeoVera does not dispute the assignment of the claim and /or the proceeds collected from it in the pursuit of the judgment. Rule 17 SCRCP expressly directs that no action

shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest and that the substitution relates back to the time of filing of the suit.¹

As motion was made at the June 3 hearing to allow the claim to be pursued in the name of the Plaintiff, and GeoVera claims the Plaintiff is the real party in interest, I grant the motion and substitute the assignee Plaintiff as the real party in interest. In accord with Rule 17 SCRCP, the substitution relates back to the initial filing.

B. This Court lacks jurisdiction

GeoVera's second ground is that a judgment was rendered in favor of the Plaintiff against Tema Brown and that bringing a Third-Party Complaint more than 10 days after that judgment was untimely, resulting in this Court having no jurisdiction. There are numerous reasons that this argument fails.

1. Subject matter jurisdiction

The Third-Party Defendant argues that after 10 days of the entry of a judgment the Court no longer has subject matter jurisdiction. As is clear from *Russell v. Wachovia Bank* 633 SE2d 722 (2006), the 10 days is a time limitation and not a matter of subject matter jurisdiction. In *Russell*, the Supreme Court held:

Jurisdiction refers to the trial court's authority to retain jurisdiction over the case, not the court's subject matter jurisdiction. See *Ex parte Beard*, 359 S.C. at 358, 597 S.E.2d 835. (explaining that the ten day rule is a time limitation on the court's ability to retain the case not the power of the trial court to hear cases of that nature).

Russell v. Wachovia Bank, N.A., 370 S.C. 5, 20, 633 S.E.2d 722, 730 (2006).

¹ Rule 17, SCRCP: "No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed, after objection, for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest."



2. No Standing

First, the 10 day rule referenced in *Russel* and raised by GeoVera contemplates that this rule applies to parties to the action; GeoVera was not a party at the time and cannot assert the 10 day rule. Further, as both then parties consented to the amendment, the 10 day rule does not apply.

3. This Court's Authority

There are two orders of Circuit Court judges referring this matter to me, one for the express purpose of bringing a Third-Party action. This Court has no authority to overrule a Circuit Court. The Third-Party Defendant should have sought relief from either or both Judge Dennis or Judge Harrington. It did neither.

4. Timeliness

Assuming this issue is properly before me and not the Circuit Court, I would reject any timeliness argument as certainly this Court has authority to conduct supplemental proceedings. If in the process of such proceedings, it became apparent that an asset existed or a judgment debtor had a claim, the Master-In-Equity has the authority to allow the claim to be brought. Allowing it within this action furthers judicial efficiency. The Third-Party Defendant has not asked for a jury trial and never sought to remove this case to Federal Court contending the Third-Party action was a new action. The Third-Party Defendant's assertions lack substance. It is as if the Third-Party Defendant is asking for a new case number to be assigned.

5. Third-Party Defendant's Consent to substitute GeoVera

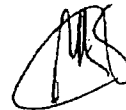
Assuming this Court and not the Circuit Court can entertain the Third-Party Defendant's motion, the Third-Party Defendant asked this Court to enter an order substituting GeoVera as the proper Third-Party Defendant. This Order was entered on December 18, 2012. Further, counsel



has made a general appearance on behalf of GeoVera, answering the pleadings, participating in hearings and motions, entering into consent orders, and participating in discovery. Having made a general appearance and having recognized this Court's authority and the validity of this proceeding, the Third-Party Defendant cannot now assert otherwise. *See Connell v. Connell*, 249 S.C. 162, 167-68, 153 S.E.2d 396, 399 (1967) (Since we have concluded that the appellant filed an answer going to the merits of the controversy here involved, he waived his objection to the jurisdiction of the court.); *Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 389, 242 S.E.2d 430, 431 (1978) (Although the respondents are correct that consent has no bearing on the question of subject matter jurisdiction since such jurisdiction is not waivable, consent does have a bearing on the question of jurisdiction over the person.)

C. Statute of Limitations

The Third-Party Defendant argues that it sent notice of the denial of coverage for this claim on September 28, 2006, January 7, 2008, and April 7, 2008, and that suit was not filed until July of 2011. The Defendant proffers the affidavit of Brenda Trawick Smith stating that the reservation of rights letter dated July 28, 2005, the denial letter dated September 26, 2006, and a further denial letter dated April 7, 2008, commenced the time for the insured to bring this claim. While it is apparent from GeoVera's Exhibits G and H, that the letters were returned as "undeliverable, it is unnecessary, and would be improper at Summary Judgment, for this Court to conduct this factual inquiry. The claim asserted here is for indemnity which is distinct from a claim that the insurer has a duty to defend. An insurer's duty to defend is separate and distinct from its obligation to pay a judgment rendered against an insured. *City of Hartsville v. S. Carolina Mun. Ins. & Risk Fin. Fund*, 382 S.C. 535, 544, 677 S.E.2d 574, 578 (2009). Under South Carolina law, while the duty to defend is based on the allegations in the complaint, the



duty to indemnify is based on evidence found by the fact finder. *Ellett Brothers, Inc. v. United States Fid. & Guar. Co.*, 275 F.3d 384, 388 (4th Cir. 2001). Courts have often found that when "no findings of fact have been made ... [an] indemnity claim is not ripe" for adjudication. *Id.* The judgment entered against the Defendant and Third-Party Plaintiff insured was entered on August 18, 2009, and suit was filed seeking a declaration of coverage in July of 2011. As to indemnity claims, the statute of limitations does not commence until there is a judgment. *First General Services of Charleston, Inc. v. Miller*, 314 S.C. 439 (1994) ("As to claim for indemnity, statute of limitations runs from the time judgment is entered against the defendant."); see also *Madigan v. Yballe*, 336 Ill. Dec. 522, 920 N.E.2d 1112 (App. Ct. 1st Dist. 2009); 41 Am. Jur. 2d Indemnity § 38, holding a cause of action for a contract of indemnity does not accrue until the defendant has a judgment entered against him or until he settles the claim made against him; only at that point does the cause of action for indemnity accrue and the statute of limitations begin to run.

Indeed, in the context of insurance and a suit brought by a Plaintiff who has a judgment against an insured, suit cannot be brought until after a judgment is obtained. It is a tautology to say that no right exists to make a claim on the policy until the Plaintiff has a judgment and then hold there is no claim as the statute of limitations ran before the judgment was entered.

D. Conclusion

As to the Third-Party Defendant's Motion, for the reasons stated above, the motion is denied.

IV. PLAINTIFF AND THIRD-PARTY PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

A. The issue presented by the motion

The Movant does not take the position that the insurer is not entitled to raise coverage defenses, rather it is movant's position that the insurer may not raise as a coverage defense an



issue of fact that was determined by the trial of the underlying action.

B. Facts

GeoVera claims that the insured admitted the dog was a pitbull, and the policy excludes coverage for pitbulls. The exclusion relied on by GeoVera requires the insurer to establish that the dog either had previously bitten someone else, which is not at issue in this case, or that the dog's lineage contains at least 50% pit bull. (See Master Endorsement). It is true that at one point, in a recorded statement that the insured was coaxed into saying someone told her the dog was a pitbull. This does not ring true as in the same statement, the insured states she did not know if the dog was a pitbull, did not know what a pitbull looked like, and that she had no papers indicating whether the dog's lineage was that of a pitbull. (Recorded Statement of Tema Brown p. 4). GeoVera's first adjuster prepared a Reservation of Rights letter that actually accepted the defense obligation and prepared a letter to the insured stating until they received veterinary records or a breeders' record of the dog's lineage, the case against the insured would be defended. (Exh G to GeoVera's Motion, Reservation of Rights). The Third-Party Defendant's reservation of rights letter is after the recorded statement referenced above and after receipt of medical records.² However, this Court is not called upon to weigh the facts as the issue of the dogs lineage was actually tried, testimony received, and decided. The Special Referee after hearing the testimony refused to award punitive damages on the grounds that the dog was neither a vicious dog nor a pitbull. (See September 9, 2011 Order of Tom Wills, Esquire). What is the effect of the Special Referees determination of facts?

² The insurer assumes the risk that witnesses change their testimony or that facts evolve that place a claim within the coverage when the insurer prematurely decides that it has no defense obligation. Fact witnesses are free to change their testimony. In this case, from the statement it is difficult to conclude that the insured really knew if this was a pitbull or not. The insurer chose to believe what it wanted to believe, not examine the facts with a desire to find the truth, nor did the insurer ever obtain the veterinary records or information on the dog's lineage that it deemed necessary in its Reservation of Rights letter to deny coverage. (See Exh G to GeoVera's Motion, Reservation of Rights).

C. Law

Williston states the law this way:

The general rule of estoppel provides that an insurer which takes the position that a complaint potentially alleging coverage is not covered under a policy that includes a duty to defend may not simply refuse to defend the insured. Rather, the insurer has two options: (1) defend the suit under a reservation of rights or (2) seek a declaratory judgment that there is no coverage.

If the insurer fails to take either of these steps and is later found to have wrongfully denied coverage, the insurer is estopped from raising policy defenses to coverage....

16 Williston on Contracts § 49:103 (4th ed.).

The Third-Party Defendant had the opportunity to file a Declaratory Judgment action; the Third-Party Defendant contemplated defending under a reservation of rights. The Third-Party Defendant did neither. When counsel for the Third-party Defendant was asked at oral argument if it was the Third-Party Defendant's position that the underlying facts could be retried on liability and damages, he stated it was. If this were true, then there would be no reason for an insurer ever to defend as the underlying determination would be of no consequence and the insurer could try the case to a separate finding of facts and obtains a different result. I reject this. I know of no jurisdiction in which this is true.

I find persuasive those cases that hold an insurer is bound by the underlying trial as to issues and facts actually litigated. *See e.g. Pub. Nat. Ins. Co. v. Wheat*, 100 Ga. App. 695, 112 S.E.2d 194 (1959)(Liability insurer who has right to defend actions against insured and has timely notice of an action but elects not to defend is bound by the judgment as to issues litigated, with respect to subsequent action against insurer by injured person.); *DeWitt v. Monterey Ins. Co.*, 204 Cal. App. 4th 233, 246, 138 Cal. Rptr. 3d 705, 715 (2012)(An insurer who fails to defend may contest coverage in a subsequent action only "where the issues upon which coverage

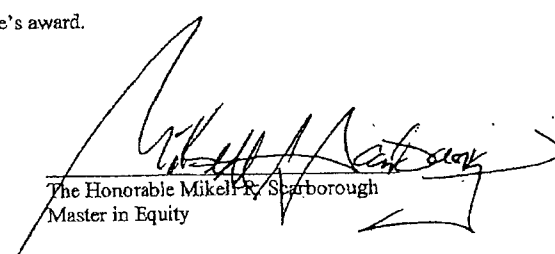
depends are not raised or necessarily adjudicated in the underlying action."); *Wilhide v Keystone Ins. Co.* (1961, DC Pa) 195 F Supp 659)(Having had notice to come in and defend the prior action brought against the insured by the administrator of a person killed when struck by a tractor-trailer owned and operated in behalf of the insured, and having refused to appear and defend, the liability insurance company was concluded by the judgment in that suit, so far as it determined the cause of the injury, the amount of damages sustained, and the liability of the insured corporation).

In the trial before the Special Referee, punitive damages were denied on the ground that the dog was a mixed breed, not vicious, and usually restrained. If the Plaintiff attempted to retry their claim for punitive damages, certainly the insurer would advance, that the issue was determined in the underlying case, and Plaintiff would be bound by the underlying result.

D. CONCLUSION

As the issue of the dog's lineage has been actually litigated as well as the extent of the damages suffered by the Plaintiff, this Court grants the Plaintiffs' Motion for Summary Judgment and enters an award of \$100,229.00 together with interest at the statutory judgment rate since the date of the Special Referee's award.

AND IT IS SO ORDERED.


The Honorable Mikell R. Scarborough
Master in Equity

On this 10 day of June 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO: 2007-CP-10-3224

JANA WRIGHT, as Guardian *ad Litem*)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
Plaintiff,)

**ORDER DENYING THIRD-PARTY
DEFENDANT'S MOTION FOR
RECONSIDERATION AND TO ALTER
OR AMEND JUDGMENT**

vs.)

TEMA BROWN,)
Defendant/Third-Party Plaintiff,)

vs.)

GeoVera Specialty Insurance Co.,)
Third-Party Defendant,)

FILED
2015 JUN -3 AM 10:03
JULIE J. ARMSTRONG
CLERK OF COURT

THIS MATTER comes before this court upon Third-Party Defendant GeoVera Specialty Insurance Co.'s ("Defendant" or "GeoVera") Motion for Reconsideration and to Alter or Amend Judgment. Present for the Third-Party Plaintiff, Tema Brown ("Plaintiff" or "Brown"), was Andrew K. Epting, Jr., Esq. and present for Defendant was William P. Davis, Esq. I deny Defendant's motion for reconsideration and to alter or amend judgment.

**DEFENDANT'S MOTION TO RECONSIDER AND TO ALTER OR AMEND
JUDGMENT OF THE CORRECTED ORDER FROM MARCH 24, 2015 IS DENIED.**

This is an action for contractual indemnification. Judgment was rendered on September 11, 2009. This matter was referred to me by order of Judge R. Markley Dennis, Jr. on December 24, 2010, for supplemental proceeding, and by Judge Kristi Lea Harrington on July 13, 2011, on the third-party complaint of Tema Brown. As stated in this Court's Corrected Order of March 24,

2015, this Court has subject matter jurisdiction, and the Plaintiff is the real party in interest, and the Third Party Plaintiff is proper.

The substance of this dispute lies in whether or not the Defendant insurance company is liable under the contractual indemnification provisions of its insurance policy. The policy has an exclusion for vicious animals, which includes a dog with at least fifty percent (50%) "American Pit-bull Terrier." This classification is the gravamen of Defendant's argument, which is premised upon the case of Sims v. Nationwide Mut. Ins. Co., 145 S.E.2d 523, 247 S.C. 82 (S.C. 1965).

Since I find Defendant's interpretation of Sims not applicable to this fact situation, I find that the motion should be denied.

ANALYSIS

In Sims, the trial court directed a verdict against the insurer after finding that the actions of the Defendant in pursuing the Plaintiff in her automobile, running her off the road, and shooting her constituted acts of negligence, not an intentional tort. The Supreme Court in Sims ruled that the acts were intentional torts and therefore excluded from the insurance policy despite the trial court's finding of negligence.

In this case, the pivotal issue is the nature and breed of the dog and not the actions of the dog or its owners. The "Special Master" found that the dog was not a "vicious dog" nor a pit bull. Based upon that ruling, the Special Master declined to award punitive damages. I find this factual determination, made after testimony at trial, to be dispositive on this issue.

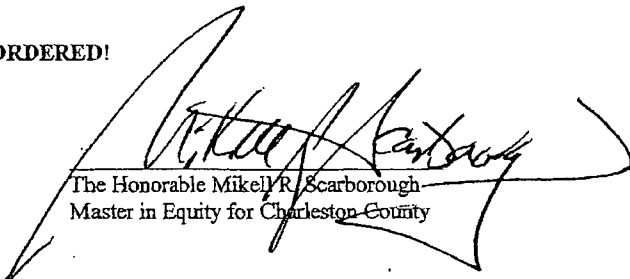
Further, this Court's reading of Sims indicates that the general rule in South Carolina is that an insurer has either a duty to defend under a reservation of rights or it may bring a declaratory judgment action to determine coverage. Here, the insurer did neither. The Sims Court finds the exception applies when the insurer is in a conflict of interest and therefore cannot

adequately represent its interests. No such conflict was argued in this instance and the Court does not find such a conflict exists under these facts.

Here, the status of the dog (neither vicious nor pit bull) determined whether or not the insurance policy would apply. I conclude this is distinguishable from the acts of the insured. The finding by the Special Master that the dog was not a vicious animal is one in which the insurer had the opportunity to contest or determine in the underlying action. This it did not do. It is therefore bound by this finding of fact which was relevant to the Special Master's determination. Therefore the motion is DENIED.

AND IT IS THEREFORE ORDERED!

On this 18 day of May, 2015
Charleston, South Carolina


The Honorable Mikell R. Scarborough
Master in Equity for Charleston County

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2007-CP-10-3224
	)	
JANA WRIGHT, as Guardian ad Litem)	)	
for TRAVIS MILLIGAN, a minor over)	)	
the age of 14 years	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	
	)	
TEMA BROWN,	)	
	)	
Defendant.	)	
_____	)	

FILED
 2007 OCT 17 AM 9:10
 JULIE J. ARMSTRONG
 CLERK OF COURT

NOW COMES THE PLAINTIFF, above named, complaining of the
 Defendant, above-named, to allege and show this honorable Court as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of the State of South Carolina,
 County of Charleston.
2. On or about August 8, 2007, Plaintiff was appointed by the Court
 Guardian ad Litem, for her minor child, Travis Milligan.
3. Plaintiff is authorized to bring this lawsuit on behalf of her minor
 child, Travis Milligan.
4. The Defendant, Tema Brown, (hereinafter "Brown"), is upon
 information and belief a resident and citizen of the State of South Carolina, County
 of Charleston.

5. That on April 20, 2005, and at all times relevant hereto, Defendant Brown was the owner of or was harboring, caring and keeping a dog at her residence.

6. That on April 20, 2005, Travis Milligan, a minor child, was riding his bicycle on Habitat Boulevard, the street on which both he and Defendant Brown reside.

7. That Defendant Brown's dog, which was outside her residence, unrestrained, escaped from the yard.

8. Upon leaving Brown's property, Defendant Brown's dog viscously attacked Milligan, a minor child, without provocation, knocking him off of his bicycle and severely biting him on his leg thereby injuring him as will more fully be set forth hereafter.

9. That under South Carolina law, someone who harbors, cares for and/or controls a dog, and someone who controls the use of property where the dog runs at large, has a duty not to allow the dog to harm other human beings, and if such harm occurs, the Defendant as the controller of the dog, is strictly liable for a person's injuries and damages, such as this Plaintiff suffered, from the dog's attack.

10. As a direct and proximate cause and result of Defendant's aforesaid negligence, and acts regarding the lack of control of the dog, and by allowing this dog to run at large; Milligan, the minor child, suffered the following personal injuries and damages on April 20, 2005:

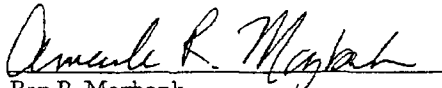
- a) suffered severe bites to his leg;

- b) had an area of flesh torn from his leg;
- c) will require corrective plastic surgery;
- d) has suffered and will suffer in the future pain and discomfort;
- e) has incurred medical expenses for emergency medical treatment, follow up medical care and treatment, drugs, medical supplies, and bandages;
- f) is informed and believes that he will require future medical care and treatment, but will still be left with permanent scarring;
- g) that he suffered mental anguish and developed a great fear of dogs;
- h) that the minor child's, enjoyment of life has been adversely affected.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, in a sum that will fully and fairly compensate the minor child for his actual damages, and for punitive damages as a jury may deem appropriate, together with attorney fees and the costs of this action.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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Amanda R. Maybank

Barry L. Baker
P.O. 31265
Charleston, SC 29417

Attorneys for Plaintiff

Charleston, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA .)
)
COUNTY OF CHARLESTON)
)
JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
)
Plaintiff,)
)
vs.)
)
TEMA BROWN,)
)
Defendant/Third-Party Plaintiff,)
)
vs.)
)
Constitution State Services,)
)
Third-Party Defendant,)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2007-CP-10-3224

ANSWER AND
THIRD-PARTY COMPLAINT

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2011 JUL 19 AM 10:45
JULIE J. ARMSTRONG
CLERK OF COURT

The Third-Party Plaintiff asserts this complaint against Constitution State Services ("CSS") as follows:

1. This case has been tried and a verdict rendered against Tema Brown as will appear from Exhibit A and this case has been referred for supplemental proceedings and for this third party complaint which was authorized to be filed (Exhibit B). Tema Brown has consented to the referral and to submit to supplemental proceedings. This claim is asserted against CSS which has denied coverage.

2. Third-Party Defendant Constitution State Services is an entity that is not organized under the laws of the State of South Carolina, but conducted business in the State of South Carolina and provided an insurance policy to the Tema Brown.

3. The Third-Party Defendant Constitution State Services provided a home owner's insurance policy to Tema Brown.

4. On or about August 20, 2005, Tema Brown was at all times relevant hereto, was the owner of a dog at her residence.

5. On or about August 20, 2005, Tema Brown's dog escaped from her yard and attacked Plaintiff, Travis Milligan, a minor child.

6. The Plaintiff brought suit against Tema Brown seeking damages as a result of the dog bite as more fully set forth in the Complaint of the Plaintiff's attached hereto as "Exhibit C".

7. Constitution State Services refused to accept and pay this claim.

8. On September 11, 2009, a judgment on behalf of the Plaintiff was entered against Tema Brown in the amount of \$100,229.00 and said judgment recorded as of September 11, 2009.

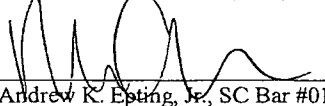
9. Constitution State Services has coverage.

11. This claim is brought to declare the rights and duties of the parties to this action.

WHEREFORE, the Third-Party Plaintiff prays for a declaration of coverage and entitlement together with such other relief that is just.

July , 2011

ANDREW K. EPTING, JR., LLC



Andrew K. Epting, Jr., SC Bar #01908
Michelle N. Endemann, SC Bar #78894
3 State Street
Charleston, SC 29401
843-377-1871; Fax: 843-377-1310

Attorneys for the Third-Party Plaintiff

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)

ORDER OF JUDGMENT

2009 SEP 11 PM 2:30
JULIE J. AUSTIN
CLERK OF COURT
BY

FILED

This case came before me by way of an Order appointing me as a special master dated March 11, 2009. The complaint was filed on October 17, 2007, and the Defendant was personally served on November 19, 2007. An order of default was entered on January 3, 2008. A hearing was held before me on June 30, 2009. Present at the hearing was Jana Wright, mother of and guardian ad litem for Travis Milligan, Travis Milligan, as well as their attorneys Barry I. Baker, Esq., and Amanda R. Maybank, Esq. The Defendant Tema Brown and her son LaRon Brown were also present. After hearing testimony from the Plaintiffs as well as from Ms. Brown, I hereby make the following findings of fact and conclusions of law.

FACTS

This case stems from a dog bite suffered by Travis Milligan on April 20, 2005. On that date, Travis then 13 years old, was riding his bike in front



of the house he shares with his mother. Ms. Brown lived across the street. At the time, Ms. Brown had possession of a dog. The testimony of Ms. Wright and Mr. Milligan established that as Travis was riding his bike, Ms. Brown's dog ran off of her property and attacked Travis on the back of his leg.

Ms. Brown testified that she did in fact have possession of a dog, that the dog got loose, and bit Travis on the back of the leg. Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a vicious dog.

Following the attack, Travis was taken to the nearest paramedic station and then to the emergency room where he received treatment for the wound. Doctors were unable to stitch the wound closed due to the fact that a section of flesh was missing. As a result, the wound took approximately three months to heal. During the three months Travis was unable to participate in activities such as football in order to allow the wound to heal.

Travis testified that even though the wound has healed, he continues to have problems with the scar breaking open. Travis also testified that he experiences pain and throbbing when he is on his feet for an extended period of time. Currently, Travis is an upcoming senior in high school, and works as a bagger at the Johns Island Piggly Wiggly and at Burger King. Travis also has continued to have a noticeable discolored scar as well as problems of dryness of the skin on and around the scar and severe itching.



Following the dog bite, on June 20, 2005, Travis began treating with Peter de Vito, M.D. Dr. de Vito opined that Travis will require two to three surgeries to improve the functionality of the scar. However, according to Dr. de Vito, nothing can be done to improve the appearance of the scar.

LAW

South Carolina Code Ann. § 47-3-110 provides that "[w]henver any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked."

In personal injury actions the plaintiff may recover for the necessary and reasonable expense caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense and care and nursing. *Sossamon v. Nationwide Mut. Ins. Co.*, 243 S.C. 552, 135 S.E.2d 87 (S.C. 1964). To recover for future medical expenses, the expenses must be established with reasonable certainty. *Campbell v. Pashcal*, 290 S.c. 1, 347 S.E.2d 892 (Ct. App. 1986). A party need not, however, prove future damages in a personal injury case to a mathematical certainty. *Id.*

In this case, the testimony of Ms. Brown-established that she had possession of a dog and that the dog attacked Travis. S.C. Code Ann. § 47-3-110.

At the hearing, Plaintiffs entered evidence of actual damages in the following amounts:

• MUSC	\$395.00
• University Medical Associates	\$244.00
• Peter de Vito, M.D. (current expenses)	\$590.00
• Peter de Vito, M.D. (future medical expenses)	\$29,000.00
TOTAL	\$30,229.00

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). Damages for "loss of enjoyment of life" compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, or hobbies. *Id.*

In this case Plaintiff presented evidence of both pain and suffering following the incident, and the effects the injury has had and continues to have on his life. Travis testified that due to the fact flesh was missing from his leg, the wound took three months to heal. During this time, he was unable to participate in activities of a normal 13 year old. He also testified

that the healing process was very painful and that the wound became infected once.

Travis further testified that even after the wound healed, he has continued to have itching and dryness of the scar, and the area of the scar becomes painful when he is on his feet for an extended period of time. Additionally, Travis testified that due to the instability of the scar tissue, he has to restrict his physical activity to prevent the scar from breaking open. Additionally, the appearance of scar on his calf remains discolored and noticeable. Dr. de Vito opined that very little if anything can be done to improve the appearance of the scar, and that even after surgery Travis will still have noticeable scars from the injury. At the time of the injury, Travis was only 13 years old, and his life expectancy pursuant to S.C. Code Ann. 19-1-150 was 58.60 years. He has and will likely continue to suffer the effects of the injury for the rest of his life.¹ As a result, I find that Plaintiffs are entitled to \$70,000.00 in damages for pain and suffering and loss of enjoyment of life. *See Boan, supra.*



With regard to punitive damages, the purpose of punitive damages is to punish the wrongdoer and to deter the wrongdoer from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). In this case, I find that punitive damages are not warranted. Ms. Brown testified that the dog was not a vicious dog and was a mixed breed, but not a pit bull. She also

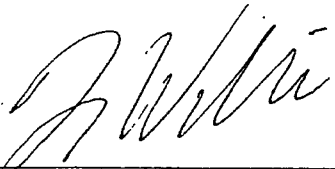
testified that the dog was restrained on her property; however, due to the excitement of her children coming home that day, the dog was able to get loose and run across the street.

CONCLUSION

Having heard the testimony and received evidence I find that Plaintiffs are entitled to actual damages of \$100,229. I deny the request for punitive damages based on the reasoning above.

IT IS SO ORDERED!

pnz
July 18, 2009
Charleston, SC



Thomas J. Wills, IV
Special Master

EXHIBIT B

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) C/A No. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

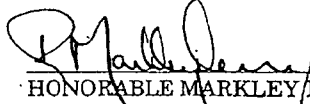
Defendants.)

CONSENT ORDER

FILED
2011 JAN -6 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT

11-352
This matter comes before me on the Motion of the Plaintiff with the consent of the Defendants for an order allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings. The Defendant is granted leave to file a Third Party Complaint against her insurance company.

AND IS SO ORDERED.


HONORABLE MARKLEY DENNIS
Ninth Judicial Circuit

Charleston, SC
December 31, 2010



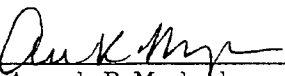
Rmdg/1

WE SO CONSENT:

By: 
BARRY BAKER

As Assignee for Tema Brown

MAYBANK LAW FIRM, LLC

By: 
Amanda R. Maybank

Attorney for Plaintiff

Rmd 9/2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
)
Plaintiff,)
)
vs.)
)
TEMA BROWN,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3224

CONSENT ORDER

FILED
2011 JUL 14 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING by the signatures of counsel that Andrew K. Epting has been retained to bring the third-party complaint and all parties consent to his appearing as Counsel to bring the third-party complaint,

IT IS HEREBY ORDERED that Andrew K. Epting, Jr., is permitted to appear in this action and is authorized to file the third-party complaint within 30 days of this order, and that this matter is then referred to the Master-in-Equity pursuant to Rule 53(b) SCRCP..

IT IS SO ORDERED.

July 13, 2011
Charleston, SC

Kristi Lea Harrington

Honorable Kristi Lea Harrington
Chief Administrative Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
By *[Signature]*
DEPUTY CLERK

WE SO MOVE:

MAYBANK LAW FIRM, LLC

By Amanda R. Maybank
Amanda R. Maybank Attorney for Plaintiff

WE MOVE:

By Barry Baker
Barry Baker for Tema Brown in her capacity as assignor of claims to Plaintiff.

I CONSENT:

ANDREW K. EPTING, JR., LLC

By Andrew K. Epting, Jr.
Andrew K. Epting, Jr. for Third Party Plaintiff

EXHIBIT C

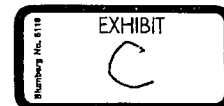
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2007-CP-10-3224
	)	
JANA WRIGHT, as Guardian ad Litem)	)	
for TRAVIS MILLIGAN, a minor over)	)	
the age of 14 years	)	
	)	
Plaintiff,	)	
	)	COMPLAINT
vs.	)	
	)	
TEMA BROWN,	)	
	)	
Defendant.	)	
	)	

FILED
2007 OCT 17 AM 9:10
JULIE J. ARMSTRONG
CLERK OF COURT

NOW COMES THE PLAINTIFF, above named, complaining of the
Defendant, above-named, to allege and show this honorable Court as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of the State of South Carolina,
County of Charleston.
2. On or about August 8, 2007, Plaintiff was appointed by the Court
Guardian ad Litem, for her minor child, Travis Milligan.
3. Plaintiff is authorized to bring this lawsuit on behalf of her minor
child, Travis Milligan.
4. The Defendant, Tema Brown, (hereinafter "Brown"), is upon
information and belief a resident and citizen of the State of South Carolina, County
of Charleston.



5. That on April 20, 2005, and at all times relevant hereto, Defendant Brown was the owner of or was harboring, caring and keeping a dog at her residence.

6. That on April 20, 2005, Travis Milligan, a minor child, was riding his bicycle on Habitat Boulevard, the street on which both he and Defendant Brown reside.

7. That Defendant Brown's dog, which was outside her residence, unrestrained, escaped from the yard.

8. Upon leaving Brown's property, Defendant Brown's dog viscously attacked Milligan, a minor child, without provocation, knocking him off of his bicycle and severely biting him on his leg thereby injuring him as will more fully be set forth hereafter.

9. That under South Carolina law, someone who harbors, cares for and/or controls a dog, and someone who controls the use of property where the dog runs at large, has a duty not to allow the dog to harm other human beings, and if such harm occurs, the Defendant as the controller of the dog, is strictly liable for a person's injuries and damages, such as this Plaintiff suffered, from the dog's attack.

10. As a direct and proximate cause and result of Defendant's aforesaid negligence, and acts regarding the lack of control of the dog, and by allowing this dog to run at large, Milligan, the minor child, suffered the following personal injuries and damages on April 20, 2005:

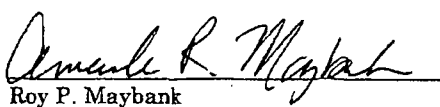
- a) suffered severe bites to his leg;

- b) had an area of flesh torn from his leg;
- c) will require corrective plastic surgery;
- d) has suffered and will suffer in the future pain and discomfort;
- e) has incurred medical expenses for emergency medical treatment, follow up medical care and treatment, drugs, medical supplies, and bandages;
- f) is informed and believes that he will require future medical care and treatment, but will still be left with permanent scarring;
- g) that he suffered mental anguish and developed a great fear of dogs;
- h) that the minor child's, enjoyment of life has been adversely affected.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, in a sum that will fully and fairly compensate the minor child for his actual damages, and for punitive damages as a jury may deem appropriate, together with attorney fees and the costs of this action.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

MAYBANK LAW FIRM, LLC
102 Wappoo Creek Drive, Suite 2A
P.O. Box 12579
Charleston, SC 29422
P: (843) 762-4820
F: (843) 762-4889


Roy P. Maybank
Amanda R. Maybank

Barry I. Baker
P.O. 31265
Charleston, SC 29417

Attorneys for Plaintiff

Charleston, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
)
Plaintiff,)
)
vs.)
)
TEMA BROWN,)
)
Defendant/Third-Party Plaintiff,)
)
vs.)
)
Constitution State Services &)
GeoVera Specialty Insurance Co.)
)
Third-Party Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO. 2007-CP-10-3224

AMENDED
THIRD-PARTY COMPLAINT

BY
JULIE J. ARMSTRONG
CLERK OF COURT
2011 DEC 28 AM 10:39

FILED

The Third-Party Plaintiff asserts this complaint against Constitution State Services ("CSS") and GeoVera Specialty Insurance Company ("GeoVera") as follows:

1. This case has been tried and a verdict rendered against Tema Brown as will appear from "Exhibit A" and this case has been referred for supplemental proceedings and for this third party complaint which was authorized to be filed (See Exhibit B). Tema Brown has consented to the referral and to submit to supplemental proceedings. This claim is asserted against CSS and GeoVera which have denied coverage.

2. Third-Party Defendant CSS is an entity that is not organized under the laws of the State of South Carolina, but conducted business in the State of South Carolina and provided and/or administered a homeowners' insurance policy to Tema Brown.

3. Third-Party Defendant GeoVera (formerly USF&G Specialty) is an insurance company, organized and existing under the laws of a state other than South Carolina, licensed to do business in South Carolina.

4. GeoVera issued homeowner's insurance policy, policy number GH20051152 effective December 23, 2004 through December 23, 2005, to Tema Brown. (See Exhibit C).

5. On or about August 20, 2005, Tema Brown was the owner of a dog at her residence.

6. On or about August 20, 2005, Tema Brown's dog escaped from her yard and attacked Plaintiff, Travis Milligan, a minor child.

7. The Plaintiff brought suit against Tema Brown seeking damages as a result of the dog bite as more fully set forth in the Complaint attached hereto as "Exhibit D".

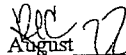
8. The Third-Party Defendants have refused to accept and pay this claim.

9. On September 11, 2009, a judgment on behalf of the Plaintiff was entered against Tema Brown in the amount of \$100,229.00 and said judgment recorded as of September 11, 2009.

10. The Third-Party Defendants have coverage.

11. This claim is brought to declare the rights and duties of the parties to this action.

WHEREFORE, the Third-Party Plaintiff prays for a declaration of coverage and entitlement together with such other relief this Court finds just.


August 22 2011

ANDREW K. EPTING, JR., LLC


Andrew K. Epting, Jr., SC Bar #01908
Michelle N. Endemann, SC Bar #78894
3 State Street
Charleston, SC 29401
843-377-1871; Fax: 843-377-1310

Attorneys for the Third-Party Plaintiff

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)

ORDER OF JUDGMENT

2009 SEP 11 PM 2:30
JULIE J. ANDERSON
CLERK OF COURT

FILED

This case came before me by way of an Order appointing me as a special master dated March 11, 2009. The complaint was filed on October 17, 2007, and the Defendant was personally served on November 19, 2007. An order of default was entered on January 3, 2008. A hearing was held before me on June 30, 2009. Present at the hearing was Jana Wright, mother of and guardian ad litem for Travis Milligan, Travis Milligan, as well as their attorneys Barry I. Baker, Esq., and Amanda R. Maybank, Esq. The Defendant Tema Brown and her son LaRon Brown were also present. After hearing testimony from the Plaintiffs as well as from Ms. Brown, I hereby make the following findings of fact and conclusions of law.

FACTS

This case stems from a dog bite suffered by Travis Milligan on April 20, 2006. On that date, Travis then 18 years old, was riding his bike in front



of the house he shares with his mother. Ms. Brown lived across the street. At the time, Ms. Brown had possession of a dog. The testimony of Ms. Wright and Mr. Milligan established that as Travis was riding his bike, Ms. Brown's dog ran off of her property and attacked Travis on the back of his leg.

Ms. Brown testified that she did in fact have possession of a dog, that the dog got loose, and bit Travis on the back of the leg. Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a vicious dog.

Following the attack, Travis was taken to the nearest paramedic station and then to the emergency room where he received treatment for the wound. Doctors were unable to stitch the wound closed due to the fact that a section of flesh was missing. As a result, the wound took approximately three months to heal. During the three months Travis was unable to participate in activities such as football in order to allow the wound to heal.

Travis testified that even though the wound has healed, he continues to have problems with the scar breaking open. Travis also testified that he experiences pain and throbbing when he is on his feet for an extended period of time. Currently, Travis is an upcoming senior in high school, and works as a bagger at the Johns Island Piggly Wiggly and at Burger King. Travis also has continued to have a noticeable discolored scar as well as problems of dryness of the skin on and around the scar and severe itching.



Following the dog bite, on June 20, 2005, Travis began treating with Peter de Vito, M.D. Dr. de Vito opined that Travis will require two to three surgeries to improve the functionality of the scar. However, according to Dr. de Vito, nothing can be done to improve the appearance of the scar.

LAW

South Carolina Code Ann. § 47-3-110 provides that "[w]hensoever any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked."

In personal injury actions the plaintiff may recover for the necessary and reasonable expense caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense and care and nursing. *Sossamon v. Nationwide Mut. Ins. Co.*, 243 S.C. 552, 135 S.E.2d 87 (S.C. 1964). To recover for future medical expenses, the expenses must be established with reasonable certainty. *Campbell v. Pashcal*, 290 S.c. 1, 347 S.E.2d 892 (Ct. App. 1986). A party need not, however, prove future damages in a personal injury case to a mathematical certainty. *Id.*

In this case, the testimony of Ms. Brown established that she had possession of a dog and that the dog attacked Travis. S.C. Code Ann. § 47-3-110.

At the hearing, Plaintiffs entered evidence of actual damages in the following amounts:

• MUSC	\$395.00
• University Medical Associates	\$244.00
• Peter de Vito, M.D. (current expenses)	\$590.00
• Peter de Vito, M.D. (future medical expenses)	\$29,000.00
TOTAL	\$30,229.00

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). Damages for "loss of enjoyment of life" compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, or hobbies. *Id.*

In this case Plaintiff presented evidence of both pain and suffering following the incident, and the effects the injury has had and continues to have on his life. Travis testified that due to the fact flesh was missing from his leg, the wound took three months to heal. During this time, he was unable to participate in activities of a normal 13 year old. He also testified

that the healing process was very painful and that the wound became infected once.

Travis further testified that even after the wound healed, he has continued to have itching and dryness of the scar, and the area of the scar becomes painful when he is on his feet for an extended period of time. Additionally, Travis testified that due to the instability of the scar tissue, he has to restrict his physical activity to prevent the scar from breaking open. Additionally, the appearance of scar on his calf remains discolored and noticeable. Dr. de Vito opined that very little if anything can be done to improve the appearance of the scar, and that even after surgery Travis will still have noticeable scars from the injury. At the time of the injury, Travis was only 18 years old, and his life expectancy pursuant to S.C. Code Ann. 19-1-150 was 58.60 years. He has and will likely continue to suffer the effects of the injury for the rest of his life.¹ As a result, I find that Plaintiffs are entitled to \$70,000.00 in damages for pain and suffering and loss of enjoyment of life. *See Boan, supra.*



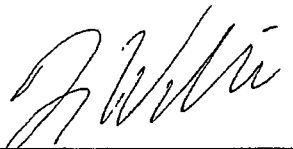
With regard to punitive damages, the purpose of punitive damages is to punish the wrongdoer and to deter the wrongdoer from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). In this case, I find that punitive damages are not warranted. Ms. Brown testified that the dog was not a vicious dog and was a mixed breed, but not a pit bull. She also

testified that the dog was restrained on her property; however, due to the excitement of her children coming home that day, the dog was able to get loose and run across the street.

CONCLUSION

Having heard the testimony and received evidence I find that Plaintiffs are entitled to actual damages of \$100,229. I deny the request for punitive damages based on the reasoning above.

IT IS SO ORDERED!



Thomas J. Wills, IV
Special Master


July 18, 2009
Charleston, SC

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad Litem
for TRAVIS MILLIGAN, a minor over
the age of 14 years

Plaintiff,

vs.

TEMA BROWN,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-10-3224

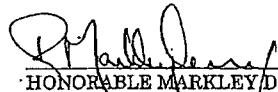
CONSENT ORDER

FILED
2011 JAN -6 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT

1/- 352

This matter comes before the me on the Motion of the Plaintiff with the consent of the Defendants for an order allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings. The Defendant is granted leave to file a Third Party Complaint against her insurance company.

AND IS SO ORDERED.


HONORABLE MARKLEY DENNIS
Ninth Judicial Circuit

Charleston, SC
December 31, 2010



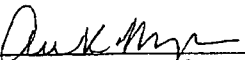
Rmdg/1

WE SO CONSENT:

By: 
BARRY BAKER

As Assignee for Tema Brown

MAYBANK LAW FIRM, LLC

By: 
Amanda R. Maybank

Attorney for Plaintiff

Rmd9/2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
Plaintiff,)
vs.)
TEMA BROWN,)
Defendant)

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3224

CONSENT ORDER

FILED
2011 JUL 14 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING by the signatures of counsel that Andrew K. Epting has been retained to bring the third-party complaint and all parties consent to his appearing as Counsel to bring the third-party complaint,

IT IS HEREBY ORDERED that Andrew K. Epting, Jr., is permitted to appear in this action and is authorized to file the third-party complaint within 30 days of this order, and that this matter is then referred to the Master-in-Equity pursuant to Rule 53(b) SCRPC..

IT IS SO ORDERED.

Julie 13 2011
Charleston, SC

Kristi Lea Harrington
Honorable Kristi Lea Harrington
Chief Administrative Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.O.
By *[Signature]*
DEPUTY CLERK

WE SO MOVE:

MAYBANK LAW FIRM, LLC

By Amanda R. Maybank
Amanda R. Maybank Attorney for Plaintiff

WE MOVE:

By Barry H. Baker
Barry Baker for Tema Brown in her capacity as assignor of claims to Plaintiff

I CONSENT:

ANDREW K. EPTING, JR., LLC

By Andrew K. Epting, Jr.
Andrew K. Epting, Jr. for Third Party Plaintiff

EXHIBIT C

11/11/2008 11:40 8437661295

BARRY BAKER ATTY

PAGE 83/22

Insured

Coverage is provided under this policy for the residence located at:

TEMA BROWN

3388 HABITAT BLVD
JOHNS ISLAND

SC 29456

3388 HABITAT BLVD
JOHNS ISLAND

SC 29486-7119

Mail To: Insured

THIS IS A TRUE
AND CERTIFIED COPY

Producer Name & Address #111289
843-786-6316

TEMA BROWN

3388 HABITAT BLVD
JOHNS ISLAND

SC 29456

CLIFF HEATH INSURANCE, INC.
1730 SAVANNAH HIGHWAY
P O BOX 30388
CHARLESTON

SC 29407

USF&G Specialty Insurance Company

RENEWAL DECLARATIONS

GH20051152	12 Month(s)	12/23/04	12/23/08 12:01 AM Standard Time at the Insured Premises.

Insurance is provided only with respect to those specific limits of liability applicable thereto:

Section I		
A - Dwelling	\$	90,000
B - Other Structures	\$	9,000
C - Personal Property	\$	63,000
D - Loss of Use	\$	18,000
Section II		
E - Personal Liability	\$	300,000
F - Medical Payments to Others	\$	2,000

Premium	\$	878.00
Inspection Fee	\$	0.00
Policy Fee	\$	75.00
State Tax	\$	87.18
Total Policy Amount	\$	1,040.18

\$	1800.00

\$	1000.00

Forms and endorsements made part of this policy at time of issuance:

CLIL-180 07-02 HO-00-03 10-00 HO-01-39 09-01
HO-04-65 10-00 HO-04-77 10-00 HO-04-90 10-00
HO-04-96 10-00 HOPRIV 04-03 US-01-09 04-03
US-03-55 04-03 US-03-80 02-03 US-04-35 02-03
US-04-42 02-03 US-04-91 02-03 US-05-01 02-03
US-82-01 02-03

"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 is not afforded guaranty fund protection."

Authorized Agent:
Robert L. Lowery
Hull & Company (Mid-Atlantic), Inc.
14120 Baltimore Corporate Place, Suite 525
Charlotte, NC 28277-2747
Surplus Lines Agent, #223641881

Countersigned by:

Robert L. Lowery

Countersigned at CHARLOTTE, NC DATE: 12/23/04

THIS DECLARATION PAGE, WITH POLICY PROVISIONS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED HOMEOWNERS POLICY.

FSCRND-090204

TO REPORT ANY CLAIM, CALL 1.800.631.6475, 24 HOURS A DAY.

Insured

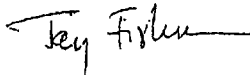
11/11/2008 11:46 8437661295

BARRY BAKER ATTY

PAGE 04/22

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be signed on the Declarations Page by an authorized representative of the Company.

USF&G Specialty Insurance Company



Jay Fishman
President



Bruce Backberg
Secretary

HOMEOWNERS
HO 01 38 08 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS – SOUTH CAROLINA

SECTION I – CONDITIONS

C. Suit Against Us is deleted and replaced by the following:

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within three years after the date of loss.

The following condition is added to all forms except HO 00 D4 and HO 00 08:

S. Valuation Clause

With respect to the perils of fire and lightning, we agree that the limit of liability stated in Coverage A of the Declaration of this policy is the value of the building described. This valuation is established for insurance purposes only.

SECTIONS I AND II – CONDITIONS

C. Cancellation

Paragraph 2. is deleted and replaced by the following:

2. We may cancel this policy only for the reasons stated below, by written notification to you and, if any, your insurance agent of the date cancellation takes effect and the precise reason for cancellation. This cancellation notice may be delivered or mailed to you and your agent at the mailing addresses shown in the Declaration or the last known addresses. Proof of mailing will be sufficient proof of notice.

a. When you have not paid the premium, we may cancel at any time by letting you and your agent know at least 10 days before the date cancellation takes effect.

b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you and your agent know at least 30 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more at any time if it is renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy;

(2) If the risk has changed substantially since the policy was issued, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing this policy;

(3) In the event of a substantial breach of a contractual duty, condition or warranty, or

(4) If we lose our reinsurance covering all or a significant portion of this policy, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of this state. Cancellation for these reasons is subject to approval by the Insurance Commissioner.

This can be done by letting you and your agent know at least 30 days before the date cancellation takes effect.

D. Nonrenewal is deleted and replaced by the following:

D. Nonrenewal

We may elect not to renew this policy. We may do so by written notification to you and your agent at least 30 days before:

1. The expiration date of the policy, for a policy written for a term of one year or less; or

2. The anniversary date of the policy, for a policy written for a term of more than one year or for an indefinite term, provided that we did not collect additional premium to guarantee renewal.

The nonrenewal notice, together with the precise reason for nonrenewal, may be delivered or mailed to you and your agent at the mailing addresses shown in the Declaration or the last known addresses.

All other provisions of this policy apply.

POLICY NUMBER:

HOMEOWNERS
HO 04 65 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE C INCREASED SPECIAL LIMITS OF LIABILITY**SCHEDULE*****SECTION I - PROPERTY COVERAGES**
COVERAGE C - PERSONAL PROPERTY**3. Special Limits Of Liability**

The special limits of liability are increased as noted below:

Property	Increase In Limit Of Liability	Total Limit Of Liability
a. Money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.		
b. Securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps.		
e. Jewelry, watches, furs, precious and semiprecious stones for loss by theft, but not more than \$1,000 for any one article.	\$1,000	\$2,500
f. Firearms and related equipment for loss by theft.		
g. Silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware for loss by theft.		
j. Electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		
k. Electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		

All other provisions of this policy apply.

*Entries may be left blank if shown elsewhere in this policy for this coverage.

POLICY NUMBER:

HOMEOWNERS
HO 04 77 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ORDINANCE OR LAW
INCREASED AMOUNT OF COVERAGE**

SCHEDULE*

New Total Percentage Amount: 25%
*Entry may be left blank if shown elsewhere in this policy for this coverage.

**SECTION I - PROPERTY COVERAGES
ADDITIONAL COVERAGES**

11. Ordinance Or Law

The total limit of liability that applies:

a. To Coverage A, or

b. For Form HO 00 04, to Building Additions And Alterations;

is increased from 10% to the percentage amount shown in the Schedule above.

This is Additional Coverage 10, in Form HO 00 08.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 80 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL PROPERTY REPLACEMENT COST LOSS SETTLEMENT

A. Eligible Property

1. Covered losses to the following property are settled at replacement cost at the time of the loss;
 - a. Coverage C; and
 - b. If covered in this policy:
 - (1) Awnings, outdoor antennas and outdoor equipment; and
 - (2) Carpeting and household appliances; whether or not attached to buildings.
2. This method of loss settlement will also apply to the following articles or classes of property if they are separately described and specifically insured in this policy and not subject to agreed value loss settlement:
 - a. Jewelry;
 - b. Furs and garments:
 - (1) Trimmed with fur; or
 - (2) Consisting principally of fur;
 - c. Cameras, projection machines, films and related articles of equipment;
 - d. Musical equipment and related articles of equipment;
 - e. Silverware, silver-plated ware, goldware, gold-plated ware and pewterware, but excluding:
 - (1) Pens or pencils;
 - (2) Flasks;
 - (2) Smoking implements; or
 - (3) Jewelry; and
 - f. Golfer's equipment meaning golf clubs, golf clothing and golf equipment.

Personal Property Replacement Cost loss settlement will not apply to other classes of property separately described and specifically insured.

B. Ineligible Property

- Property listed below is not eligible for replacement cost loss settlement. Any loss will be settled at actual cash value at the time of loss but not more than the amount required to repair or replace.

1. Antiques, fine arts, paintings and similar articles of rarity or antiquity which cannot be replaced.
2. Memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value.
3. Articles not maintained in good or workable condition.
4. Articles that are outdated or obsolete and are stored or not being used.

C. Replacement Cost Loss Settlement Condition

The following loss settlement condition applies to all property described in A. above:

1. We will pay no more than the least of the following amounts:
 - a. Replacement cost at the time of loss without deduction for depreciation;
 - b. The full cost of repair at the time of loss;
 - c. The limit of liability that applies to Coverage C, if applicable;
 - d. Any applicable special limits of liability stated in this policy; or
 - e. For loss to any item described in A.2.a. - f. above, the limit of liability that applies to the item.
2. If the cost to repair or replace the property described in A. above is more than \$600, we will pay no more than the actual cash value for the loss until the actual repair or replacement is complete.
3. You may make a claim for loss on an actual cash value basis and then make claim for any additional liability in accordance with this endorsement provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 98 10 00

THIS ENDORSEMENT DOES NOT CONSTITUTE A REDUCTION OF COVERAGE.

NO SECTION II – LIABILITY COVERAGES FOR
HOME DAY CARE BUSINESS
LIMITED SECTION I – PROPERTY COVERAGES FOR
HOME DAY CARE BUSINESS

- A. "Business", as defined in the policy, means:
1. A trade, profession or occupation engaged in on a full-time, part-time, or occasional basis; or
 2. Any other activity engaged in for money or other compensation, except the following:
 - a. One or more activities:
 - (1) Not described in b. through d. below; and
 - (2) For which no "insured" receives more than \$2000 in total compensation for the 12 months before the beginning of the policy period;
 - b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - d. The rendering of home day care services to a relative of an "insured".
- B. If an "insured" regularly provides home day care services to a person or persons other than "insureds" as their trade, profession or occupation, that service is a "business".
- C. If home day care service is not a given "insured's" trade, profession or occupation but is an activity:
1. That an "insured" engages in for money or other compensation; and
 2. From which an "insured" receives more than \$2,000 in total/combined compensation from it and any other activity for the 12 months before the beginning of the policy period;
- the home day care service and other activity will be considered a "business".
- D. With respect to C. above, home day care service is only an example of an activity engaged in for money that may be a "business". Any single activity or combination of activities:
1. Described in A.2. above, and
 2. Engaged in for money by a single "insured";
- may be considered a "business" if the \$2000 threshold is exceeded.
- E. With respect to A. through D. above, coverage does not apply to or is limited with respect to home day care service which is a "business". For example, this policy:
1. Does not provide:
 - a. Section II coverages. This is because a "business" of an "insured" is excluded under E.2. of Section II – Exclusions;
 - b. Coverage, under Section I, for other structures from which any "business" is conducted; and
 2. Limits Section I coverage, under Coverage C – Special Limits of Liability, for "business" property:
 - a. On the "residence premises" for the home day care "business" to \$2,500. This is because Category h. (e. in Form HO 00 08) imposes that limit on "business" property on the "residence premises";
 - b. Away from the "residence premises" for the home day care "business" to \$500. This is because Category i. (f. in Form HO 00 08) imposes that limit on "business" property away from the "residence premises". Category i. does not apply to property described in Categories j. and k. (g. and h. respectively in Form HO 00 08).

HOPRIV (04-03)

USF&G Specialty Insurance Company's Privacy Policy

Thank you for selecting USF&G Specialty Insurance Company as your homeowner's insurer. At USF&G Specialty Insurance Company, a member of The St. Paul Companies, we recognize that privacy is important to you. That is why we are committed to protecting your privacy through the adoption of the following privacy principles:

Collection of Information

We collect, retain and use information about you, including members of your household, only where we believe that it will help or is necessary to provide you products and services or otherwise conduct our business. We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you or through your agent or broker on applications or other forms;
- Information we receive from or about you in the process of adjusting claims;
- Information about your coverages and loss activity with other carriers; and
- Information we receive from a consumer reporting agency.

Such information includes identifying information such as your name, address, and social security number; financial information such as your income, payment history or credit history; and, under certain circumstances, health information such as information about an illness, disability or injury. It could also include information on claims with other insurance companies and us and the condition and maintenance of your property.

Any information obtained from a report prepared by an insurance-support organization may be retained by the insurance support organization and disclosed to other persons.

Disclosure of Information

We usually do not disclose nonpublic personal information about you without your consent. However, in some circumstances we may disclose information to others without your prior authorization:

- Information from your application or other forms, such as your name, address and social security number;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history; and
- Information about your claim history.

We do not disclose any personal information about you to anyone unless allowed by law. We may disclose personal information about you to:

- State insurance departments, for their regulation of our business;

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- Other government authorities;
- Our agents and brokers as necessary to conduct our business;
- Organizations that perform underwriting and claims investigations;
- Another insurance company to which you have applied for a policy or submitted a claim;
- Insurance support agencies, law enforcement agencies and our reinsurers; and
- Any other third party, as permitted or required by law.

Most importantly, USF&G Specialty Insurance Company does not and will not disclose or sell your nonpublic personal information to anyone for marketing purposes.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those who need it to serve your insurance needs and to maintain and improve customer service. We maintain physical, electronic, and procedural safeguards that comply with federal and state laws and regulations to guard your nonpublic personal information.

Your Right to Access and Correct Information

Upon your written request, we will send you a copy of relevant information we have about you in connection with your application for coverage. Please address your request to Government Affairs, The St. Paul Companies, Inc., Mail Code S14C, 385 Washington Street, St. Paul, MN 55102. If you feel that our information is incorrect, let us know and we will review it. If we agree, we will correct our files. If we do not agree, you may file a short statement of dispute with us. This statement will be included with any information disclosure we make in the future, or sent to anyone you designate who may have received such information in the past two years, or as otherwise required by law.

Disclosure and Protection of Former Customers' Information

We may disclose all the personal information we have collected, as described above. However, even if you no longer have a customer relationship with us, we will continue to follow our privacy policies and practices to protect your information.

Changes in Privacy Policy

We may choose to modify our policy regarding the treatment of personal information at any time. Before we do so, we will notify you and provide an updated notice.

HOPRIV (04-03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

USF&G SPECIALTY INSURANCE COMPANY SPECIAL PROVISIONS

DEFINITIONS

The definition of "occurrence" is replaced by the following:

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

Assault and battery is not an "occurrence", whether or not committed by or at the direction of an "insured".

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A:

Asbestos or Lead

Asbestos or Lead means the presence or effects of any form of asbestos or lead.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Asbestos or Lead

- a. "Bodily injury" arising out of the absorption, ingestion, or inhalation of, or prolonged exposure to, any form of asbestos or lead;
- b. "Property damage" arising out of any form of asbestos or lead; or
- c. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way

respond to, or assess the effects of, any form of asbestos or lead.

Because asbestos and lead are pollutants, this exclusion applies in addition to the Pollution Exclusion and any other pollution-related exclusion made a part of this policy.

Assault or Battery

"Bodily injury" or "property damage" arising out of assault or battery, whether or not committed by or at the direction of an "insured".

Pollution

- a. "Bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants at, on, in or from any "insured location"; or
- b. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of, pollutants.

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

This exclusion does not apply to "bodily injury" or "property damage" caused by heat, smoke, or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it is intended to be.

Punitive or Exemplary Damages

Punitive or exemplary damages, or any costs or interest attributable to such damages.

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SECTIONS I AND II -- CONDITIONS

The following condition is added:

Service of Suit

If we fail to pay any amount claimed to be due under this policy and you sue us, we will, at your request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Service of process in such suit may be made on General Counsel, Legal Services Department, The St. Paul, 385 Washington Street, St. Paul, Minnesota 55102, or his or her representative. Service of process in such suit may also be made on the Superintendent, Commissioner, or Director of Insurance for the state in which the suit is being filed, if the law so provides. We designate that appropriate officer, or that officer's successor, to mail a copy of the papers to us.

For the State of California, we authorize Lori Castaneda, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833, to be served and to mail us the papers.

Nothing in this condition constitutes a waiver of our right to bring an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by law.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED SMOG, RUST, MOLD, ROT, OR BACTERIA COVERAGE AND
LIMITED SEEPAGE OR LEAKAGE COVERAGE**
FORM HO 00 03 ONLY

DEFINITIONS

The following definitions are added:

"Bacteria" means any type or form of bacterium, or any mycotoxin, spore, scent, or byproduct produced or released by such bacterium.

"Mold or other fungi" means:

- a. Any type or form of mold or mildew;
- b. Any other type or form of fungus; or
- c. Any mycotoxin, spore, scent, or byproduct produced or released by such mold, mildew, or other fungus.

"Per policy period seepage or leakage combined total sublimit" means the \$1,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by or resulting from water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more; and
- b. covered "bodily injury" or "property damage" arising out of water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more.

This combined total \$1,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, or the number of "occurrences" or claims made. This sublimit is included in, but does not increase, the maximum limits of liability

under Sections I and II of your policy as shown on the declarations page.

"Per policy period mold combined total sublimit" means the \$5,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from any Peril Insured Against; and
- b. covered "bodily injury" or "property damage" arising out of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

This combined total \$5,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, the number of "occurrences" or claims made, or the number or type of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" that caused the loss, injury, or damage. This sublimit is included in, but does not increase, the maximum limits of liability under Sections I and II of your policy as shown on the declarations page.

SECTION I - PROPERTY COVERAGES

The first paragraph of D. Coverage D - Loss of Use is replaced by the following:

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

However, loss of use covered under these three coverages caused by:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject

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to the "per policy period mold combined total sublimit"; and

- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

The following is added to E. Additional Coverages:

Seepage or Leakage

We insure for direct physical loss to property described in Coverages A and B caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more. However, such coverage is subject to the "per policy period seepage or leakage combined total sublimit".

SECTION I - PERILS INSURED AGAINST

Paragraphs 2.c.(5) and 2.c.(6)(o) of A. Coverage A - Dwelling And Coverage B - Other Structures are deleted.

The following is added to B. Coverage C - Personal Property:

Seepage or Leakage

This peril means the seepage or leakage of water or steam, or the presence or condensation of humidity, moisture, or vapor, above the surface of the ground.

However, loss caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A.:

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria"

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria" means the presence, growth, proliferation, spread or any activity of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

Loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from a Peril Insured Against is covered. However, such loss is subject to the "per policy period mold combined total sublimit".

SECTION II - CONDITIONS

The following is added to A. Limit of Liability:

However, our liability under Coverages E and F for any covered "bodily injury" or "property damage" arising out of:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject to the "per policy period mold combined total sublimit"; and
- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

Paragraph B. Severability of Insurance is replaced by the following:

This insurance applies separately to each "insured" except with respect to the "per policy period mold combined total sublimit" and the "per policy period seepage or leakage combined total sublimit". This condition will not increase our limit of liability for any one "occurrence".

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR HAZARD AND BIOCHEMICAL RELEASE FROM
TERRORISM EXCLUSIONS**

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A.:

Biochemical Release From Terrorism

Biochemical Release From Terrorism means the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. Intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. Involves, or appears to a reasonable person was intended to involve, release of any such substances.

SECTION I - CONDITIONS

If this endorsement is attached to Form HO 00 03 or HO 00 06, Paragraph M.3 is replaced by the following:

If this endorsement is attached to Form HO 00 04, Paragraph L.3 is replaced by the following:

3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard. Direct loss by fire resulting from the nuclear hazard is covered to the extent required by law.

SECTION II - EXCLUSIONS

The following exclusion is added to Paragraph E.:

Biochemical Release From Terrorism

"Bodily Injury" or "property damage" arising out of or in connection with the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. Intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. Involves, or appears to a reasonable person was intended to involve, release of any such substances.

All other provisions of this policy apply.

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LOSS ASSESSMENT COVERAGE

1. Additional Insurance – Residence Premises

We will pay up to a total of \$5,000 for all assessments covered under:

a. Section I Additional Coverage E.7. Loss Assessment (Additional Coverage D.7. in Form HO 00 06); or

b. Section II – Additional Coverage D. Loss Assessment; or

c. Both a. and b. above;

arising out of a single loss.

2. Special Limit

We will not pay more than \$1,000 of your assessment that results from a deductible in the policy of insurance purchased by a corporation or association of property owners.

3. Section II – Exclusions

Section II – Exclusion F.1.a. does not apply to this coverage.

All other provisions of this policy apply.

US 04 42 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Fraud)
 FORM HO 00 03 ONLY

DEFINITIONS

The definition of "residence premises" is replaced by the following:

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three, or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declaration.

"Residence premises" also includes other structures and grounds at that location.

However, "residence premises" does not include mobile homes, whether or not they are permanently affixed to a foundation.

The following definition is added:

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage C - Personal Property, 4. Property Not Covered:

Mobile homes, or their contents, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- a. "vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler; or
- e. Doberman Pinscher.

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 60% of that breed.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

SECTION II - CONDITIONS

J. Concealment Or Fraud is deleted.

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SECTIONS I AND II - CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "insured", their agent, or their broker:

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INFLATION GUARD

SECTION I - CONDITIONS

The following condition is added:

Inflation Guard

For each policy period, we will re-evaluate the cost index we use to determine the approximate replacement cost of the dwelling and structures covered under Coverage A. This may result in an increase in the amount of premium you are charged and an increase in the limits of liability for Coverages A, B, C, and D.

Any adjustment in premium resulting from the application of the adjusted cost index will be made based on the premium rates used by us at the time of the change.

All other provisions of this policy apply.

US 05 01 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PREMIUM PAYMENT AND REFUND WAIVER

SECTIONS I AND II - CONDITIONS

The following condition is added:

Premium Payment and Refund Waiver

We will waive your payment to us of additional premium due on this policy which is \$5.00 or less, and we will not send to you return premium due on this policy which is \$5.00 or less.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REPLACEMENT COST PROTECTION - UP TO 125%

SECTION I - CONDITIONS

The following condition is added:

Replacement Cost Protection

If you have:

1. Allowed us to adjust the limit of liability for Coverage A and the premium in accordance with:
 - a. The property evaluations we make; and
 - b. Any increases in inflation;
2. Notified us, within 30 days of completion, of any alterations to the dwelling covered under Coverage A which increase the dwelling's replacement cost by 5% or more; and
3. Elected to repair or replace the dwelling covered under Coverage A after it is damaged;

We will:

4. Increase the limit of liability for Coverage A to equal the dwelling's current replacement cost, up to a maximum of 125% of the limit of liability for Coverage A, if the amount of loss to the dwelling is more than the limit of liability shown in the Declarations;
5. Increase, by the same percentage applied to Coverage A, the limits of liability for Coverages B, C, and D. However, we will do this only if the Coverage A limit of liability is increased under paragraph 4. above as a result of a Coverage A loss; and
6. Adjust the premium from the time of loss for the remainder of the policy term based on the increased limits of liability.

If you comply with paragraphs 1, 2, and 3 of the Replacement Cost Protection condition, Section I Condition C., Loss Settlement paragraph 2. is replaced by the following:

2. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

- a. We will pay not more than the least of the following amounts:

(1) The limit of liability that applies to the building, adjusted as provided in paragraphs 4 and 6 of the Replacement Cost Protection condition;

(2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete.

- c. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 00 03 10 00

HOMEOWNERS 3 - SPECIAL FORM

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

A. In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance.

B. In addition, certain words and phrases are defined as follows:

1. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in b. below, mean the following:
 - a. Liability for "bodily injury" or "property damage" arising out of the:
 - (1) Ownership of such vehicle or craft by an "insured";
 - (2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
 - (3) Entrustment of such vehicle or craft by an "insured" to any person;
 - (4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
 - (5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.
 - b. For the purpose of this definition:
 - (1) Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;
 - (2) Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, firecraft and air cushion vehicles;
 - (3) Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and
 - (4) Motor vehicle means a "motor vehicle" as defined in 7. below.

2. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

3. "Business" means:

a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or

b. Any other activity engaged in for money or other compensation, except the following:

- (1) One or more activities, not described in (2) through (4) below; for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
- (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
- (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
- (4) The rendering of home day care services to a relative of an "insured".

4. "Employee" means an employee of an "insured", or an employee leased to an "insured" by a labor leasing firm under an agreement between an "insured" and the labor leasing firm, whose duties are other than those performed by a "residence employee".

5. "Insured" means:

a. You and residents of your household who are:

- (1) Your relatives; or
- (2) Other persons under the age of 21 and in the care of any person named above;

b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:

- (1) 24 and your relative; or
- (2) 21 and in your care or the care of a person described in a.(1) above; or

c. Under Section II:

- (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner; or
- (2) With respect to a "motor vehicle" to which this policy applies:
 - (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (b) Other persons using the vehicle on an "insured location" with your consent.

Under both Sections I and II, when the word an immediately precedes the word "insured", the words an "insured" together mean one or more "insureds".

6. "Insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence; and
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
- f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or

- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

7. "Motor vehicle" means:

- a. A self-propelled land or amphibious vehicle; or
- b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in a. above.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

9. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

10. "Residence employee" means:

- a. An employee of an "insured", or an employee leased to an "insured" by a labor leasing firm, under an agreement between an "insured" and the labor leasing firm, whose duties are related to the maintenance or use of the "residence premises", including household or domestic services; or
- b. One who performs similar duties elsewhere not related to the "business" of an "insured".

A "residence employee" does not include a temporary employee who is furnished to an "insured" to substitute for a permanent "residence employee" on leave or to meet seasonal or short-term workload conditions.

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

DEDUCTIBLE

Unless otherwise noted in this policy, the following deductible provision applies:

Subject to the policy limits that apply, we will pay only that part of the total of all loss payable under Section I that exceeds the deductible amount shown in the Declarations.

SECTION I - PROPERTY COVERAGES**A. Coverage A - Dwelling**

1. We cover:
 - a. The dwelling on the "residence premises" shown in the Declarations, including structures attached to the dwelling; and
 - b. Materials and supplies located on or next to the "residence premises" used to construct, alter or repair the dwelling or other structures on the "residence premises".
2. We do not cover land, including land on which the dwelling is located.

B. Coverage B - Other Structures

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.
2. We do not cover:
 - a. Land, including land on which the other structures are located;
 - b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
 - c. Other structures from which any "business" is conducted; or
 - d. Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.
3. The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

C. Coverage C - Personal Property**1. Covered Property**

We cover personal property owned or used by an "insured" while it is anywhere in the world. After a loss and at your request, we will cover personal property owned by:

- a. Others while the property is on the part of the "residence premises" occupied by an "insured"; or
- b. A guest or a "residence employee", while the property is in any residence occupied by an "insured".

2. Limit For Property At Other Residences

Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises", is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater. However, this limitation does not apply to personal property:

- a. Moved from the "residence premises" because it is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- b. In a newly acquired principal residence for 30 days from the time you begin to move the property there.

3. Special Limits Of Liability

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.

- a. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.
- b. \$1,600 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the information from the lost or damaged material.

- c. \$1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.
 - d. \$1,500 on trailers or semitrailers not used with watercraft of all types.
 - e. \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
 - f. \$2,500 for loss by theft of firearms and related equipment.
 - g. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
 - h. \$2,500 on property, on the "residence premises", used primarily for "business" purposes.
 - i. \$600 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus and other property described in Categories j. and k. below.
 - j. \$1,500 on electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category j.
 - k. \$1,500 on electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category k.
4. **Property Not Covered**
We do not cover:
- a. Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;
 - b. Animals, birds or fish;
 - c. "Motor vehicles".
 - (1) This includes:
 - (a) Their accessories, equipment and parts; or
 - (b) Electronic apparatus and accessories designed to be operated solely by power from the electrical system of the "motor vehicle". Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described above.

The exclusion of property described in (a) and (b) above applies only while such property is in or upon the "motor vehicle".
 - (2) We do cover "motor vehicles" not required to be registered for use on public roads or property which are:
 - (a) Used solely to service an "insured's" residence; or
 - (b) Designed to assist the handicapped;
 - d. Aircraft meaning any contrivance used or designed for flight including any parts whether or not attached to the aircraft.
We do cover model or hobby aircraft not used or designed to carry people or cargo;
 - e. Hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
 - f. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";
 - g. Property in an apartment regularly rented or held for rental to others by an "insured", except as provided in E.10. Landlord's Furnishings under Section I - Property Coverages;
 - h. Property rented or held for rental to others off the "residence premises";
 - i. "Business" data, including such data stored in:
 - (1) Books of account, drawings or other paper records; or
 - (2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;

J. Credit cards, electronic fund transfer cards or access devices used solely for deposit, withdrawal or transfer of funds except as provided in E.G. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages; or

k. Water or steam.

D. Coverage D - Loss Of Use

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

1. Additional Living Expense

If a loss covered under Section I makes that part of the "residence premises" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

2. Fair Rental Value

If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest time required to repair or replace such premises.

3. Civil Authority Prohibits Use

If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against, we cover the loss as provided in 1. Additional Living Expense and 2. Fair Rental Value above for no more than two weeks.

4. Loss Or Expense Not Covered

We do not cover loss or expense due to cancellation of a lease or agreement.

The periods of time under 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use above are not limited by expiration of this policy.

E. Additional Coverages

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

- (1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- (2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit is available for such expense.

b. We will also pay your reasonable expense, up to \$1,000, for the removal from the "residence premises" of:

- (1) Your tree(s) felled by the peril of Wind-storm or Hail or Weight of Ice, Snow or Sleet; or
- (2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage C; provided the tree(s);
- (3) Damage(s) a covered structure; or
- (4) Does not damage a covered structure, but:

(a) Block(s) a driveway on the "residence premises" which prevent(s) a "motor vehicle", that is registered for use on public roads or property, from entering or leaving the "residence premises"; or

(b) Block(s) a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

The \$1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than \$500 of this limit will be paid for the removal of any one tree.

This coverage is additional insurance.

2. Reasonable Repairs

a. We will pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by a Peril Insured Against from further damage.

b. If the measures taken involve repair to other damaged property, we will only pay if that property is covered under this policy and the damage is caused by a Peril Insured Against. This coverage does not:

- (1) Increase the limit of liability that applies to the covered property; or
- (2) Relieve you of your duties, in case of a loss to covered property, described in B.4, under Section I - Conditions.

3. Trees, Shrubs And Other Plants

We cover trees, shrubs, plants or lawns, on the "residence premises", for loss caused by the following Perils Insured Against:

- a. Fire or Lightning;
- b. Explosion;
- c. Riot or Civil Commotion;
- d. Aircraft;
- e. Vehicles not owned or operated by a resident of the "residence premises";
- f. Vandalism or Malicious Mischief; or
- g. Theft.

We will pay up to 6% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be paid for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

This coverage is additional insurance.

4. Fire Department Service Charge

We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. Property Removed

We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money

a. We will pay up to \$500 for:

- (1) The legal obligation of an "Insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "Insured's" name;
- (2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "Insured's" name;
- (3) Loss to an "Insured" caused by forgery or alteration of any check or negotiable instrument; and
- (4) Loss to an "Insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

This coverage is additional insurance. No deductible applies to this coverage.

b. We do not cover:

- (1) Use of a credit card, electronic fund transfer card or access device:
 - (a) By a resident of your household;
 - (b) By a person who has been entrusted with either type of card or access device; or
 - (c) If an "Insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or
- (2) Loss arising out of "business" use or dishonesty of an "Insured".

c. If the coverage in a. above applies, the following defense provisions also apply:

- (1) We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.
- (2) If a suit is brought against an "Insured" for liability under a.(1) or (2) above, we will provide a defense at our expense by counsel of our choice.
- (3) We have the option to defend at our expense an "Insured" or an "Insured's" bank against any suit for the enforcement of payment under a.(3) above.

7. Loss Assessment

- a. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. The assessment must be made as a result of direct loss to property, owned by all members collectively, of the type that would be covered by this policy if owned by you, caused by a Peril Insured Against under Coverage A, other than:

- (1) Earthquake; or
- (2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

- b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

- c. Paragraph P, Policy Period under Section I - Conditions does not apply to this coverage.

This coverage is additional insurance.

B. Collapse

- a. With respect to this Additional Coverage:

- (1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
- (2) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.
- (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.
- (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

- (1) The Perils Insured Against named under Coverage C;
- (2) Decay that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse;
- (3) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an "insured" prior to collapse;
- (4) Weight of contents, equipment, animals or people;
- (5) Weight of rain which collects on a roof; or
- (6) Use of defective material or methods in construction, remodeling or renovation. If the collapse occurs during the course of the construction, remodeling or renovation.

- c. Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under b.(2) through (6) above, unless the loss is a direct result of the collapse of a building or any part of a building.

- d. This coverage does not increase the limit of liability that applies to the damaged covered property.

8. Glass Or Safety Glazing Material

- a. We cover:

- (1) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;
- (2) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and
- (3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

- (1) To covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or
- (2) On the "residence premises" if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property.

10. Landlord's Furnishings

We will pay up to \$2,500 for your appliances, carpeting and other household furnishings, in each apartment on the "residence premises" regularly rented or held for rental to others by an "insured", for loss caused by a Peril Insured Against in Coverage C, other than Theft.

This limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishings involved in the loss.

This coverage does not increase the limit of liability applying to the damaged property.

11. Ordinance Or Law

a. You may use up to 10% of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
- (2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or
- (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.

b. You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a. above.

c. We do not cover:

- (1) The loss in value to any covered building or other structure due to the requirements of any ordinance or law; or
- (2) The costs to comply with any ordinance or law which 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 in or on any covered building or other structure.

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

This coverage is additional insurance.

12. Grave Markers

We will pay up to \$5,000 for grave markers, including mausoleums, on or away from the "residence premises" for loss caused by a Peril Insured Against under Coverage C.

This coverage does not increase the limits of liability that apply to the damaged covered property.

SECTION I - PERILS INSURED AGAINST

A. Coverage A - Dwelling And Coverage B - Other Structures

1. We insure against risk of direct physical loss to property described in Coverages A and B.
2. We do not insure, however, for loss:
 - a. Excluded under Section I - Exclusions;
 - b. Involving collapse, except as provided in E.B. Collapse under Section I - Property Coverages; or
 - c. Caused by:

- (1) Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This provision does not apply if you have used reasonable care to:

- (a) Maintain heat in the building; or

- (b) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

For purposes of this provision a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

- (2) Freezing, thawing, pressure or weight of water or ice; whether driven by wind or not; to a:

(a) Fence, pavement, patio or swimming pool;

(b) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of a building, or other structure;

(c) Retaining wall or bulkhead that does not support all or part of a building or other structure; or

(d) Pier, wharf or dock;

- (3) Theft in or to a dwelling under construction; or of materials and supplies for use in the construction until the dwelling is finished and occupied;

- (4) Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

- (5) Mold, fungus or wet rot. However, we do insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure if such loss results from the accidental discharge or overflow of water or steam from within:

(a) A plumbing, heating, air conditioning or automatic fire protective sprinkler system; or a household appliance, on the "residence premises"; or

- (b) A storm drain, or water, steam or sewer pipe, off the "residence premises".

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment; or

- (6) Any of the following:

(a) Wear and tear, marring, deterioration;

(b) Mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;

(c) Smog, rust or other corrosion, or dry rot;

(d) Smoke from agricultural smudging or industrial operations;

(e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C.

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

(f) Settling, shrinking, bulging or expansion, including resultant cracking, of bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;

(g) Birds, vermin, rodents, or insects; or

(h) Animals owned or kept by an "insured".

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage A or B resulting from an accidental discharge or overflow of water or steam from within a:

- (i) Storm drain, or water, steam or sewer pipe, off the "residence premises"; or

(ii) Plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the "residence premises". This includes the cost to tear out and replace any part of a building, or other structure, on the "residence premises", but only when necessary to repair the system or appliance. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building on the "residence premises".

We do not cover loss to the system or appliance from which this water or steam escaped.

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, down spout or similar fixtures or equipment.

Section I - Exclusion A.3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under c.(5) and (6) above.

Under 2.b. and c. above, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

B. Coverage C - Personal Property

We insure for direct physical loss to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section I - Exclusions.

1. Fire Or Lightning

2. Windstorm Or Hail

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

3. Explosion

4. Riot Or Civil Commotion

5. Aircraft

This peril includes self-propelled missiles and spacecraft.

6. Vehicles

7. Smoke

This peril means sudden and accidental damage from smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism Or Malicious Mischief

9. Theft

a. This peril includes attempted theft and loss of property from a known place when it is likely that the property has been stolen.

b. This peril does not include loss caused by theft:

(1) Committed by an "insured";

(2) In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;

(3) From that part of a "residence premises" rented by an "insured" to someone other than another "insured"; or

(4) That occurs off the "residence premises" of:

(a) Trailers, semitrailers and campers;

(b) Watercraft of all types, and their furnishings, equipment and outboard engines or motors; or

(c) Property while at any other residence owned by, rented to, or occupied by an "insured", except while an "insured" is temporarily living there. Property of an "insured" who is a student is covered while at the residence the student occupies to attend school as long as the student has been there at any time during the 60 days immediately before the loss.

10. Falling Objects

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight Of Ice, Snow Or Sleet

This peril means weight of ice, snow or sleet which causes damage to property contained in a building.

12. Accidental Discharge Or Overflow Of Water Or Steam

a. This peril means accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

b. This peril does not include loss:

- (1) To the system or appliance from which the water or steam escaped;
- (2) Caused by or resulting from freezing except as provided in Peril Insured Against 14. Freezing;
- (3) On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises"; or
- (4) Caused by mold, fungus or wet rot unless hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure.

c. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

d. Section I - Exclusion A.3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. Sudden And Accidental Tearing Apart, Cracking, Burning Or Bulging

This peril means sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

We do not cover loss caused by or resulting from freezing under this peril.

14. Freezing

a. This peril means freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance but only if you have used reasonable care to:

- (1) Maintain heat in the building; or
- (2) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

b. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

15. Sudden And Accidental Damage From Artificially Generated Electrical Current

This peril does not include loss to tubes, transistors, electronic components or circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.

16. Volcanic Eruption

This peril does not include loss caused by earthquake, land shock waves or tremors.

SECTION I - EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. Ordinance Or Law

Ordinance Or Law means any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion A.1.a. does not apply to the amount of coverage that may be provided for in E.11. Ordinance Or Law under Section I - Property Coverages;

b. The requirements of which result in a loss in value to property; or

c. Requiring 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.

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

This Exclusion A.1. applies whether or not the property has been physically damaged.

2. Earth Movement

Earth Movement means:

a. Earthquake, including land shock waves or tremors before, during or after a volcanic eruption;

- b. Landslide, mudslide or mudflow;
- c. Subsidence or sinkhole; or
- d. Any other earth movement including earth sinking, rising or shifting;

caused by or resulting from human or animal forces or any act of nature unless direct loss by fire or explosion ensues and then we will pay only for the ensuing loss.

This Exclusion A.2. does not apply to loss by theft.

3. Water Damage

Water Damage means:

- a. Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or
- c. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

caused by or resulting from human or animal forces or any act of nature.

Direct loss by fire, explosion or theft resulting from water damage is covered.

4. Power Failure

Power Failure means the failure of power or other utility service if the failure takes place off the "residence premises". But if the failure results in a loss, from a Peril Insured Against on the "residence premises", we will pay for the loss caused by that peril.

5. Neglect

Neglect means neglect of an "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

6. War

War includes the following and any consequence of any of the following:

- a. Undeclared war, civil war, insurrection, rebellion or revolution;
- b. Warlike act by a military force or military personnel; or
- c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

7. Nuclear Hazard

This Exclusion A.7. pertains to Nuclear Hazard to the extent set forth in M. Nuclear Hazard Clause under Section I - Conditions.

8. Intentional Loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.

9. Governmental Action

Governmental Action means the destruction, confiscation or seizure of property described in Coverage A, B or C by order of any governmental or public authority.

This exclusion does not apply to such acts ordered by any governmental or public authority that are taken at the time of a fire to prevent its spread. If the loss caused by fire would be covered under this policy.

B. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

1. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in A. above to produce the loss.
2. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
3. Faulty, inadequate or defective:
 - a. Planning, zoning, development, surveying, siting;
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c. Materials used in repair, construction, renovation or remodeling; or
 - d. Maintenance;

of part or all of any property whether on or off the "residence premises".

SECTION I - CONDITIONS**A. Insurable Interest And Limit Of Liability**

Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

1. To an "insured" for more than the amount of such "insured's" interest at the time of loss; or
2. For more than the applicable limit of liability.

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or our agent;
2. Notify the police in case of loss by theft;
3. Notify the credit card or electronic fund transfer card or access device company in case of loss as provided for in E.6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages;
4. Protect the property from further damage. If repairs to the property are required, you must:
 - a. Make reasonable and necessary repairs to protect the property; and
 - b. Keep an accurate record of repair expenses;
5. Cooperate with us in the investigation of a claim;
6. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
7. As often as we reasonably require:
 - a. Show the damaged property;
 - b. Provide us with records and documents we request and permit us to make copies; and
 - c. Submit to examination under oath, while not in the presence of another "insured", and sign the same;
8. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - a. The time and cause of loss;
 - b. The interests of all "insureds" and all others in the property involved and all liens on the property;
 - c. Other insurance which may cover the loss;

- d. Changes in title or occupancy of the property during the term of the policy;
- e. Specifications of damaged buildings and detailed repair estimates;
- f. The inventory of damaged personal property described in 6. above;
- g. Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- h. Evidence or affidavit that supports a claim under E.6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages, stating the amount and cause of loss.

C. Loss Settlement

In this Condition C., the terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in E.11. Ordinance Or Law under Section I - Property Coverages. Covered property losses are settled as follows:

1. Property of the following types:
 - a. Personal property;
 - b. Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings;
 - c. Structures that are not buildings; and
 - d. Grave markers, including mausoleums;
 at actual cash value at the time of loss but not more than the amount required to repair or replace.
2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (1) The limit of liability under this policy that applies to the building;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:

- (1) The actual cash value of that part of the building damaged; or
- (2) That proportion of the cost to repair or replace, after application of any deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

- c. To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:

- (1) Excavations, footings, foundations, piers, or any other structures or devices that support all or part of the building, which are below the undersurface of the lowest basement floor;
- (2) Those supports described in (1) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
- (3) Underground flues, pipes, wiring and drains.

- d. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss as noted in 2.a. and b. above.

However, if the cost to repair or replace the damage is both:

- (1) Less than 5% of the amount of insurance in this policy on the building; and
- (2) Less than \$2,500;

we will settle the loss as noted in 2.a. and b. above whether or not actual repair or replacement is complete.

- e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

D. Loss To A Pair Or Set

In case of loss to a pair or set we may elect to:

1. Repair or replace any part to restore the pair or set to its value before the loss; or
2. Pay the difference between actual cash value of the property before and after the loss.

E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

F. Other Insurance And Service Agreement

If a loss covered by this policy is also covered by:

1. Other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or
2. A service agreement, this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

H. Our Option

If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with material or property of like kind and quality.

I. Loss Payment

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

1. Reach an agreement with you;
2. There is an entry of a final judgment; or
3. There is a filing of an appraisal award with us.

J. Abandonment Of Property

We need not accept any property abandoned by an "insured".

K. Mortgage Clause

1. If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.
2. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Paragraphs E, Appraisal, G, Suit Against Us and I, Loss Payment under Section I - Conditions also apply to the mortgagee.
3. If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.
4. If we pay the mortgagee for any loss and deny payment to you:
 - a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

5. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

L. No Benefit To Ballee

We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

M. Nuclear Hazard Clause

1. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
2. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.
3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

N. Recovered Property

If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

O. Volcanic Eruption Period

One or more volcanic eruptions that occur within a 72 hour period will be considered as one volcanic eruption.

P. Policy Period

This policy applies only to loss which occurs during the policy period.

Q. Concealment Or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

1. Intentionally concealed or misrepresented any material fact or circumstance;

2. Engaged in fraudulent conduct; or
3. Made false statements;
relating to this insurance.

R. Loss Payable Clause

If the Declarations show a loss payable for certain listed insured personal property, the definition of "insured" is changed to include that loss payable with respect to that property.

If we decide to cancel or not renew this policy, that loss payee will be notified in writing.

SECTION II - LIABILITY COVERAGES

A. Coverage E - Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

B. Coverage F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury". Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except "residence employees". As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location", if the "bodily injury":
 - a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
 - b. Is caused by the activities of an "insured";
 - c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
 - d. Is caused by an animal owned by or in the care of an "insured".

SECTION II - EXCLUSIONS

A. "Motor Vehicle Liability"

1. Coverages E and F do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":
 - a. Is registered for use on public roads or property;
 - b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence"; or
 - c. Is being:
 - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
 - (2) Rented to others;
 - (3) Used to carry persons or cargo for a charge; or
 - (4) Used for any "business" purpose except for a motorized golf cart while on a golfing facility.
2. If Exclusion A.1. does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:
 - a. In dead storage on an "insured location";
 - b. Used solely to service an "insured's" residence;
 - c. Designed to assist the handicapped and, at the time of an "occurrence", it is:
 - (1) Being used to assist a handicapped person; or
 - (2) Parked on an "insured location";
 - d. Designed for recreational use off public roads and:
 - (1) Not owned by an "insured"; or
 - (2) Owned by an "insured" provided the "occurrence" takes place on an "insured location" as defined in Definitions B. 6.a., b., d., e. or h.; or
 - e. A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:
 - (1) A golfing facility and is parked or stored there, or being used by an "insured" to:
 - (a) Play the game of golf or for other recreational or leisure activity allowed by the facility;

- (b) Travel to or from an area where "motor vehicles" or golf carts are parked or stored; or
- (c) Cross public roads at designated points to access other parts of the golfing facility; or
- (2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an "insured's" residence.

B. "Watercraft Liability"

1. Coverages E and F do not apply to any "watercraft liability" if, at the time of an "occurrence", the involved watercraft is being:
 - a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;
 - b. Rented to others;
 - c. Used to carry persons or cargo for a charge; or
 - d. Used for any "business" purpose.
2. If Exclusion B.1. does not apply, there is still no coverage for "watercraft liability" unless, at the time of the "occurrence", the watercraft:
 - a. is stored;
 - b. is a sailing vessel, with or without auxiliary power, that is:
 - (1) Less than 26 feet in overall length; or
 - (2) 26 feet or more in overall length and not owned by or rented to an "insured"; or
 - c. is not a sailing vessel and is powered by:
 - (1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:
 - (a) 50 horsepower or less and not owned by an "insured"; or
 - (b) More than 50 horsepower and not owned by or rented to an "insured"; or
 - (2) One or more outboard engines or motors with:
 - (a) 25 total horsepower or less;
 - (b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";
 - (c) More than 26 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period; or

- (d) More than 26 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:

- (i) You declare them at policy inception; or

- (ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

The coverages in (c) and (d) above apply for the policy period.

Horsepower means the maximum power rating assigned to the engine or motor by the manufacturer.

C. "Aircraft Liability"

This policy does not cover "aircraft liability".

D. "Hovercraft Liability"

This policy does not cover "hovercraft liability".

E. Coverage E - Personal Liability And Coverage F - Medical Payments To Others

Coverages E and F do not apply to the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

- a. is of a different kind, quality or degree than initially expected or intended; or
- b. is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

2. "Business"

- a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

- b. This Exclusion E.2. does not apply to:

- (1) The rental or holding for rental of an "insured location";

- (a) On an occasional basis if used only as a residence;
 - (b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
 - (c) In part, as an office, school, studio or private garage; and
 - (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;
3. **Professional Services**
 "Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;
4. **"Insured's" Premises Not An "Insured Location"**
 "Bodily injury" or "property damage" arising out of a premises:
- a. Owned by an "insured";
 - b. Rented to an "insured"; or
 - c. Rented to others by an "insured";
- that is not an "insured location";
5. **War**
 "Bodily injury" or "property damage" caused directly or indirectly by war, including the following and any consequences of any of the following:
- a. Undeclared war, civil war, insurrection, rebellion or revolution;
 - b. Warlike act by a military force or military personnel; or
 - c. Destruction, seizure or use for a military purpose.
- Discharge of a nuclear weapon will be deemed a warlike act even if accidental;
6. **Communicable Disease**
 "Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";
7. **Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse**
 "Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse; or

8. **Controlled Substance**

"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include, but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

Exclusions A. "Motor Vehicle Liability", B. "Watercraft Liability", C. "Aircraft Liability", D. "Hovercraft Liability" and E.4. "Insured's" Premises Not An "Insured Location" do not apply to "bodily injury" to a "residence employee" arising out of and in the course of the "residence employee's" employment by an "insured".

F. **Coverage E - Personal Liability**

Coverage E does not apply to:

1. **Liability:**

a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in D. Loss Assessment under Section II - Additional Coverages;

b. Under any contract or agreement entered into by an "insured". However, this exclusion does not apply to written contracts:

(1) That directly relate to the ownership, maintenance or use of an "insured location"; or

(2) Where the liability of others is assumed by you prior to an "occurrence"; unless excluded in a. above or elsewhere in this policy;

2. "Property damage" to property owned by an "insured". This includes costs or expenses incurred by an "insured" or others to repair, replace, enhance, restore or maintain such property to prevent injury to a person or damage to property of others, whether on or away from an "insured location";

3. "Property damage" to property rented to, occupied or used by or in the care of an "insured". This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

4. "Bodily injury" to any person eligible to receive any benefits voluntarily provided or required to be provided by an "insured" under any:

a. Workers' compensation law;

- b. Non-occupational disability law; or
- c. Occupational disease law;
- 5. "Bodily injury" or "property damage" for which an "insured" under this policy:
 - a. Is also an insured under a nuclear energy liability policy issued by the:
 - (1) Nuclear Energy Liability Insurance Association;
 - (2) Mutual Atomic Energy Liability Underwriters;
 - (3) Nuclear Insurance Association of Canada;
 or any of their successors; or
 - b. Would be an insured under such a policy but for the exhaustion of its limit of liability; or
- 6. "Bodily injury" to you or an "insured" as defined under Definitions B.a. or b.
 This exclusion also applies to any claim made or suit brought against you or an "insured":
 - a. To repay; or
 - b. Share damages with;
 another person who may be obligated to pay damages because of "bodily injury" to an "insured".

G. Coverage F - Medical Payments To Others

Coverage F does not apply to "bodily injury":

- 1. To a "residence employee" if the "bodily injury":
 - a. Occurs off the "insured location"; and
 - b. Does not arise out of or in the course of the "residence employee's" employment by an "insured";
- 2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:
 - a. Workers' compensation law;
 - b. Non-occupational disability law; or
 - c. Occupational disease law;
- 3. From any:
 - a. Nuclear reaction;
 - b. Nuclear radiation; or
 - c. Radioactive contamination;
 all whether controlled or uncontrolled or how-ever caused; or
 - d. Any consequence of any of these; or
- 4. To any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

A. Claim Expenses

We pay:

- 1. Expenses we incur and costs taxed against an "insured" in any suit we defend;
- 2. Premiums on bonds required in a suit we defend, but not for bond amounts more than the Coverage E limit of liability. We need not apply for or furnish any bond;
- 3. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$250 per day, for assisting us in the investigation or defense of a claim or suit; and
- 4. Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

B. First Aid Expenses

We will pay expenses for first aid to others incurred by an "insured" for "bodily injury" covered under this policy. We will not pay for first aid to an "insured".

C. Damage To Property Of Others

- 1. We will pay, at replacement cost, up to \$1,000 per "occurrence" for "property damage" to property of others caused by an "insured".
- 2. We will not pay for "property damage":
 - a. To the extent of any amount recoverable under Section I;
 - b. Caused intentionally by an "insured" who is 13 years of age or older;
 - c. To property owned by an "insured";
 - d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or
 - e. Arising out of:
 - (1) A "business" engaged in by an "insured";
 - (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or
 - (3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

This exclusion e.(3) does not apply to a "motor vehicle" that:

- (a) is designed for recreational use off public roads;
- (b) is not owned by an "insured"; and
- (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

D. Loss Assessment

1. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
 - a. "Bodily injury" or "property damage" not excluded from coverage under Section II - Exclusions; or
 - b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - (1) is elected by the members of a corporation or association of property owners; and
 - (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph I. Policy Period under Section II - Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:
 - a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
 - b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

SECTION II - CONDITIONS

A. Limit Of Liability

Our total liability under Coverage E for all damages resulting from any one "occurrence" will not be more than the Coverage E limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".

Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage F limit of liability shown in the Declarations.

B. Severability Of Insurance

This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
 - a. The identity of the policy and the "named insured" shown in the Declarations;
 - b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - c. Names and addresses of any claimants and witnesses;
2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
4. At our request, help us:
 - a. To make settlement;
 - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";

- c. With the conduct of suits and attend hearings and trials; and
- d. To secure and give evidence and obtain the attendance of witnesses;
- 5. With respect to C. Damage To Property Of Others under Section II - Additional Coverages, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in an "insured's" control;
- 6. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury".
- D. Duties Of An Injured Person - Coverage F - Medical Payments To Others**
 - 1. The injured person or someone acting for the injured person will:
 - a. Give us written proof of claim, under oath if required, as soon as is practical; and
 - b. Authorize us to obtain copies of medical reports and records.
 - 2. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.
- E. Payment Of Claim - Coverage F - Medical Payments To Others**
Payment under this coverage is not an admission of liability by an "insured" or us.
- F. Suit Against Us**
 - 1. No action can be brought against us unless there has been full compliance with all of the terms under this Section II.
 - 2. No one will have the right to join us as a party to any action against an "insured".
 - 3. Also, no action with respect to Coverage E can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.
- G. Bankruptcy Of An "Insured"**
Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.
- H. Other Insurance**
This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.
- I. Policy Period**
This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

J. Concealment Or Fraud

We do not provide coverage to an "insured" who, whether before or after a loss, has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;
 - 2. Engaged in fraudulent conduct; or
 - 3. Made false statements;
- relating to this insurance.

SECTIONS I AND II - CONDITIONS**A. Liberalization Clause**

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

- 1. A subsequent edition of this policy; or
- 2. An amendatory endorsement.

B. Waiver Or Change Of Policy Provisions

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

C. Cancellation

- 1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- 2. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
 - a. When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
 - b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or

(2) If the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

d. When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

3. When this policy is canceled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.

4. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

D. Nonrenewal

We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

E. Assignment

Assignment of this policy will not be valid unless we give our written consent.

F. Subrogation

An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

Subrogation does not apply to Coverage P or Paragraph C. Damage To Property Of Others under Section II - Additional Coverages.

G. Death

If any person named in the Declarations or the spouse, if a resident of the same household, dies, the following apply:

1. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death; and

2. "Insured" includes:

a. An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and

b. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	CASE NO. 2007-CP-10-8224
JANA WRIGHT, as Guardian ad Litem)	)	
for TRAVIS MILLIGAN, a minor over)	)	
the age of 14 years	)	
Plaintiff,	)	
vs.	)	COMPLAINT
TEMA BROWN,	)	
Defendant.	)	

FILED
2007 OCT 17 AM 9:10
JULIE J. ARMSTRONG
CLERK OF COURT

NOW COMES THE PLAINTIFF, above named, complaining of the
Defendant, above-named, to allege and show this honorable Court as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of the State of South Carolina,
County of Charleston.
2. On or about August 8, 2007, Plaintiff was appointed by the Court
Guardian ad Litem, for her minor child, Travis Milligan.
3. Plaintiff is authorized to bring this lawsuit on behalf of her minor
child, Travis Milligan.
4. The Defendant, Tama Brown, (hereinafter "Brown"), is upon
information and belief a resident and citizen of the State of South Carolina, County
of Charleston.



5. That on April 20, 2005, and at all times relevant hereto, Defendant Brown was the owner of or was harboring, caring and keeping a dog at her residence.

6. That on April 20, 2005, Travis Milligan, a minor child, was riding his bicycle on Habitat Boulevard, the street on which both he and Defendant Brown reside.

7. That Defendant Brown's dog, which was outside her residence, unrestrained, escaped from the yard.

8. Upon leaving Brown's property, Defendant Brown's dog viscously attacked Milligan, a minor child, without provocation, knocking him off of his bicycle and severely biting him on his leg thereby injuring him as will more fully be set forth hereafter.

9. That under South Carolina law, someone who harbors, cares for and/or controls a dog, and someone who controls the use of property where the dog runs at large, has a duty not to allow the dog to harm other human beings, and if such harm occurs, the Defendant as the controller of the dog, is strictly liable for a person's injuries and damages, such as this Plaintiff suffered, from the dog's attack.

10. As a direct and proximate cause and result of Defendant's aforesaid negligence, and acts regarding the lack of control of the dog, and by allowing this dog to run at large, Milligan, the minor child, suffered the following personal injuries and damages on April 20, 2005:

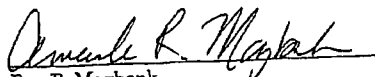
- a) suffered severe bites to his leg;

- b) had an area of flesh torn from his leg;
- c) will require corrective plastic surgery;
- d) has suffered and will suffer in the future pain and discomfort;
- e) has incurred medical expenses for emergency medical treatment, follow up medical care and treatment, drugs, medical supplies, and bandages;
- f) is informed and believes that he will require future medical care and treatment, but will still be left with permanent scarring;
- g) that he suffered mental anguish and developed a great fear of dogs;
- h) that the minor child's, enjoyment of life has been adversely affected.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, in a sum that will fully and fairly compensate the minor child for his actual damages, and for punitive damages as a jury may deem appropriate, together with attorney fees and the costs of this action.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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Charleston, SC 29417

Attorneys for Plaintiff

Charleston, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA

)IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

vs.)

Constitution State Services & GeoVera)
Specialty Insurance Co.)

Third-Party Defendants.)

) ANSWER OF THIRD-PARTY DEFENDANT
) GEO VERA SPECIALTY INSURANCE
) COMPANY TO AMENDED
) THIRD-PARTY COMPLAINT

FILED
2012 FEB -3 PM 2:38
JULIE J. ARMSTRONG
CLERK OF COURT

Third-Party Defendant GeoVera Specialty Insurance Company (hereinafter "GeoVera"),
improperly named in the Third-Party Complaint as GeoVera Specialty Insurance Co., answers the
Amended Third-Party Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Third-Party Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. On information and belief, GeoVera denies the allegation contained in paragraph one (1) that this case has been tried and a verdict rendered against Tema Brown. On information and belief, Defendant admits that this case has been referred to the Master-In-Equity for Charleston County for all purposes allowed by the rules pursuant to the consent order of December 24, 2010, a copy of which is attached to the Amended Third-Party Complaint as Exhibit B. GeoVera is without

knowledge or information sufficient to form a belief as to whether Tema Brown has consented to said referral and to submit to supplemental proceedings. GeoVera admits so much of paragraph one (1) as could be construed to allege that Constitution State Services, on behalf GeoVera's predecessor-in-interest, USF&G Specialty Insurance Company, denied coverage to Ms. Brown under her policy number GH20051152 for the claim out of which this action arose.

3. GeoVera admits so much of paragraph two (2) as alleges that Constitution State Services is an entity that is not organized under the laws of South Carolina, but conducted business in South Carolina and administered the Plaintiff's claim against Tema Brown on behalf of GeoVera's predecessor-in-interest, USF&G Specialty Insurance Company, but denies the remaining allegations contained in paragraph two (2), and affirmatively alleges that its predecessor-in-interest, USF&G Specialty Insurance Company, was at all times pertinent hereto authorized to do business in South Carolina.

4. GeoVera admits the allegations contained in paragraph three (3) except that GeoVera Specialty Insurance Company was formerly USF&G Specialty Insurance Company.

5. GeoVera denies the allegations contained in paragraph four (4) but admits that its predecessor-in-interest, USF&G Specialty Insurance Company, issued the policy referenced therein for the policy period referenced therein.

6. GeoVera is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph five (5), and said allegation is therefore denied. On information and belief, GeoVera affirmatively alleges that Tema Brown was the owner of the dog on April 20, 2005.

7. On information and belief, GeoVera denies the allegations contained in paragraph six (6), but admits that, on or about April 20, 2005, Tema Brown's dog escaped from her yard and attacked Plaintiff Travis Milligan, a minor child.

8. On information and belief, GeoVera admits the allegations contained in paragraph seven (7).

9. Answering the allegations contained in paragraph eight (8) as they relate to it, GeoVera admits that it did not accept or pay the Plaintiff's claim. GeoVera also admits so much of paragraph eight (8) as may be construed to allege that its predecessor-in-interest denied coverage for Plaintiff's claim against Tema Brown on the ground that the claim falls within an exclusion in the policy.

10. Responding to paragraph nine (9), GeoVera admits that a judgment against Tema Brown was filed on September 11, 2009.

11. GeoVera denies the allegation contained in paragraph ten (10).

12. Answering paragraph eleven (11), GeoVera admits that Third-Party Plaintiff seeks a declaration of the rights and duties of the parties, but GeoVera denies that it is appropriate to do so and that Third-Party Plaintiff is entitled to do so.

FOR A SECOND DEFENSE

13. Coverage for the Plaintiff's claim against Tema Brown and the default judgment entered in connection therewith is not available under the subject policy because the claimant's injuries and damages arose out of a dog owned by or in the care of Tema Brown that was a Staffordshire Bull Terrier or an American Pit Bull Terrier as defined by the policy, as a result of which the "Vicious Dogs" exclusion applies. A true and correct copy of the Master Endorsement to

the subject policy containing said exclusion is attached hereto as Exhibit A.

FOR A THIRD DEFENSE

14. Third-Party Plaintiff has failed to comply with the conditions precedent in her policy by, among other things, failing to promptly forward to her insurer "every notice, demand, summons or other process" relating to the incident out of which this action arose, substantially prejudicing Third-Party Defendants. A true and correct copy of the applicable "Conditions" portion of said policy is attached hereto as Exhibit B.

FOR A FOURTH DEFENSE

15. The Amended Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

FOR A FIFTH DEFENSE

16. On information and belief, Third-Party Plaintiff lacks standing to seek the judicial declaration sought in her Amended Third-Party Complaint.

FOR A SIXTH DEFENSE

17. On information and belief, Third-Party Plaintiff is not the real party in interest.

FOR A SEVENTH DEFENSE

18. There is no justiciable controversy appropriate for a declaratory judgment.

FOR AN EIGHTH DEFENSE

19. This action was terminated upon entry of judgment against Third-Party Plaintiff on or about September 11, 2009.

FOR A NINTH DEFENSE

20. On information and belief, Third-Party Plaintiff lacks the capacity to assert the Third-Party Complaint, in that she assigned the right to do so, if any, to Plaintiff.

FOR A TENTH DEFENSE

21. GeoVera has been substantially and unfairly prejudiced by the assertion of the Third-Party Complaint almost four years after the entry of default against Third-Party Plaintiff in this action, in that GeoVera has thereby been deprived of its rights under Rule 14(a), SCRCP.

FOR AN ELEVENTH DEFENSE

22. The Amended Third-Party Complaint is barred by the doctrine of laches.

FOR A TWELFTH DEFENSE

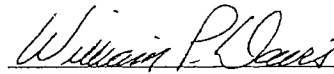
23. The Amended Third-Party Complaint is barred by the applicable statute of limitations.

FOR A THIRTEENTH DEFENSE

24. GeoVera has not been properly named or identified in this action.

WHEREFORE, having fully answered the Amended Third-Party Complaint, GeoVera prays for its dismissal, for costs, and for such other and further relief as this Court deems just and proper.

Columbia, South Carolina
February 2, 2012


William P. Davis
BAKER, RAVENEL & BENDER, L.L.P.
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Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax (803) 779-3423
File No.: 7746.1857 wdavis@brblegal.com
Attorneys for Third-Party Defendant
GeoVera Specialty Insurance Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Fraud)
FORM HO 00 03 ONLY

DEFINITIONS

The definition of "residence premises" is replaced by the following:

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three, or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

However, "residence premises" does not include mobile homes, whether or not they are permanently affixed to a foundation.

The following definition is added:

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage C - Personal Property, 4. Property Not Covered:

Mobile homes, or their contents, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- a. "vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler; or
- e. Doberman Pinscher.

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 50% of that breed.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

SECTION II - CONDITIONS

J. Concealment Or Fraud is deleted.

Exhibit A

US 04 42 (02-03)

SECTIONS I AND II – CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "Insured", their agent, or their broker:

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

This exclusion e.(3) does not apply to a "motor vehicle" that:

- (a) is designed for recreational use off public roads;
- (b) is not owned by an "insured"; and
- (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

D. Loss Assessment

1. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
 - a. "Bodily injury" or "property damage" not excluded from coverage under Section II – Exclusions; or
 - b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - (1) is elected by the members of a corporation or association of property owners; and
 - (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph I. Policy Period under Section II – Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:
 - a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
 - b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

SECTION II – CONDITIONS

A. Limit Of Liability

Our total liability under Coverage E for all damages resulting from any one "occurrence" will not be more than the Coverage E limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".

Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage F limit of liability shown in the Declarations.

B. Severability Of Insurance

This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
 - a. The identity of the policy and the "named insured" shown in the Declarations;
 - b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - c. Names and addresses of any claimants and witnesses;
2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
4. At our request, help us:
 - a. To make settlement;
 - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";

Exhibit B

- c. With the conduct of suits and attend hearings and trials; and
 - d. To secure and give evidence and obtain the attendance of witnesses;
 - 5. With respect to C. Damage To Property Of Others under Section II - Additional Coverages, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in an "insured's" control;
 - 6. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury".
- D. Duties Of An Injured Person - Coverage F - Medical Payments To Others**
- 1. The injured person or someone acting for the injured person will:
 - a. Give us written proof of claim, under oath if required, as soon as is practical; and
 - b. Authorize us to obtain copies of medical reports and records.
 - 2. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.
- E. Payment Of Claim - Coverage F - Medical Payments To Others**
- Payment under this coverage is not an admission of liability by an "insured" or us.
- F. Suit Against Us**
- 1. No action can be brought against us unless there has been full compliance with all of the terms under this Section II.
 - 2. No one will have the right to join us as a party to any action against an "insured".
 - 3. Also, no action with respect to Coverage E can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.
- G. Bankruptcy Of An "Insured"**
- Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.
- H. Other Insurance**
- This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.
- I. Policy Period**
- This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

J. Concealment Or Fraud

We do not provide coverage to an "insured" who, whether before or after a loss, has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;
 - 2. Engaged in fraudulent conduct; or
 - 3. Made false statements;
- relating to this insurance.

SECTIONS I AND II - CONDITIONS

A. Liberalization Clause

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

- 1. A subsequent edition of this policy; or
- 2. An amendatory endorsement.

B. Waiver Or Change Of Policy Provisions

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

C. Cancellation

- 1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- 2. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
 - a. When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
 - b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

COPY

STATE OF SOUTH CAROLINA

)IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

)CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

vs.)

Constitution State Services & GeoVera)
Specialty Insurance Co.)

Third-Party Defendants.)

AMENDED ANSWER
OF THIRD-PARTY DEFENDANT
CONSTITUTION STATE SERVICES TO
AMENDED THIRD-PARTY COMPLAINT

FILED
FEB 13 AM 11:27
JULIE J. ARMSTRONG
CLERK OF COURT

Third-Party Defendant Constitution State Services LLC (hereinafter "CSS"), improperly named in the Third-Party Complaint as Constitution State Services, amends its answers to the Amended Third-Party Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Third-Party Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. On information and belief, CSS denies the allegation contained in paragraph one (1) that this case has been tried and a verdict rendered against Tema Brown. On information and belief, Defendant admits that this case has been referred to the Master-In-Equity for Charleston County for all purposes allowed by the rules pursuant to the consent order of December 24, 2010, a copy of which is attached to the Amended Third-Party Complaint as Exhibit B. CSS is without

knowledge or information sufficient to form a belief as to whether Tema Brown has consented to said referral and to submit to supplemental proceedings. CSS admits so much of paragraph one (1) as could be construed to allege that CSS, on behalf USF&G Specialty Insurance Company, denied coverage to Ms. Brown under her policy number GH20051152 for the claim out of which this action arose.

3. CSS admits so much of paragraph two (2) as alleges that it is an entity that is not organized under the law of South Carolina, but conducted business in South Carolina and administered the Plaintiff's claim against Tema Brown on behalf of USF&G Specialty Insurance Company, but denies the remaining allegations contained in paragraph two (2), and affirmatively alleges that it was, at all times pertinent hereto, authorized to do business in South Carolina.

~~4. On information and belief, CSS admits the allegations contained in paragraph three~~
~~(3) except that Third-Party Defendant GeoVera Specialty Insurance Company was, on information~~
~~and belief, formerly USF&G Specialty Insurance Company.~~

5. On information and belief, CSS denies the allegations contained in paragraph four (4) but, on information and belief, admits that Third-Party Defendant GeoVera Specialty Insurance Company's predecessor, USF&G Specialty Insurance Company, issued the policy referenced therein for the policy period referenced therein.

6. CSS is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph five (5), and said allegation is therefore denied. On information and belief, CSS affirmatively alleges that Tema Brown was the owner of the dog on April 20, 2005.

7. On information and belief, CSS denies the allegations contained in paragraph six (6), but admits that, on or about April 20, 2005, Tema Brown's dog escaped from her yard and attacked

Plaintiff Travis Milligan, a minor child.

8. On information and belief, CSS admits the allegations contained in paragraph seven (7).

9. Answering the allegations contained in paragraph eight (8) as they relate to it, CSS admits that it did not accept or pay the Plaintiff's claim, in that its role was that of third-party administrator for USF&G Specialty Insurance Company, and it issued no policy whatsoever to Tema Brown. CSS also admits so much of paragraph eight (8) as may be construed to allege that Third-Party Defendant GeoVera Specialty Insurance Company's predecessor denied coverage for Plaintiff's claim against Tema Brown on the ground that the claim falls within an exclusion in the policy.

10. Responding to paragraph nine (9), CSS admits that a judgment against Tema

~~Brown was filed on September 11, 2009.~~

11. ~~CSS denies the allegation contained in paragraph ten (10).~~

12. Answering paragraph eleven (11), CSS admits that Third-Party Plaintiff seeks a declaration of the rights and duties of the parties, but CSS denies that it is appropriate to do so and that Third-Party Plaintiff is entitled to do so.

FOR A SECOND DEFENSE

13. Coverage for the Plaintiff's claim against Tema Brown and the default judgment entered in connection therewith is not available under the subject policy because the claimant's injuries and damages arose out of a dog owned by or in the care of Tema Brown that was a Staffordshire Bull Terrier or an American Pit Bull Terrier as defined by the policy, as a result of which the "Vicious Dogs" exclusion applies. A true and correct copy of the Master Endorsement to the subject policy containing said exclusion is attached hereto as Exhibit A.

FOR A THIRD DEFENSE

14. Third-Party Plaintiff has failed to comply with the conditions precedent in her policy by, among other things, failing to promptly forward to her insurer "every notice, demand, summons or other process" relating to the incident out of which this action arose, substantially prejudicing Third-Party Defendants. A true and correct copy of the applicable "Conditions" portion of said policy is attached hereto as Exhibit B.

FOR A FOURTH DEFENSE

15. The Amended Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

FOR A FIFTH DEFENSE

~~16. On information and belief, Third-Party Plaintiff lacks standing to seek the judicial~~
~~declaration sought in her Amended Third-Party Complaint.~~

FOR A SIXTH DEFENSE

17. On information and belief, Third-Party Plaintiff is not the real party in interest.

FOR A SEVENTH DEFENSE

18. There is no justiciable controversy appropriate for a declaratory judgment.

FOR AN EIGHTH DEFENSE

19. This action was terminated upon entry of judgment against Third-Party Plaintiff on or about September 11, 2009.

FOR A NINTH DEFENSE

20. On information and belief, Third-Party Plaintiff lacks the capacity to assert the Third-Party Complaint, in that she assigned the right to do so, if any, to Plaintiff.

FOR A TENTH DEFENSE

21. CSS has been substantially and unfairly prejudiced by the assertion of the Third-Party Complaint almost four years after the entry of default against Third-Party Plaintiff in this action, in that CSS has thereby been deprived of its rights under Rule 14(a), SCRCP.

FOR AN ELEVENTH DEFENSE

22. The Amended Third-Party Complaint is barred by the doctrine of laches.

FOR A TWELFTH DEFENSE

23. The Amended Third-Party Complaint is barred by the applicable statute of limitations.

FOR A THIRTEENTH DEFENSE

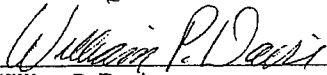
24. CSS has not been properly named or identified in this action.

FOR A FOURTEENTH DEFENSE

~~25. This Court lacks personal jurisdiction over CSS, in that this action was terminated~~
before CSS was added as a Third-Party Defendant.

WHEREFORE, having fully answered the Amended Third-Party Complaint, CSS prays for its dismissal, for costs, and for such other and further relief as this Court deems just and proper.

Columbia, South Carolina
February 10, 2012


William P. Davis
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax (803) 779-3423
File No.: 7746.1857 wdavis@brblegal.com
Attorneys for Third-Party Defendant
Constitution State Services

 COPY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

)IN THE COURT OF COMMON PLEAS
)
)CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

vs.)

Constitution State Services & GeoVera)
Specialty Insurance Co.)

Third-Party Defendants.)

) AMENDED ANSWER OF THIRD-PARTY
) DEFENDANT GEO VERA SPECIALTY
) INSURANCE COMPANY TO AMENDED
) THIRD-PARTY COMPLAINT

2012 MAR -5 PM 12:49
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

Third-Party Defendant GeoVera Specialty Insurance Company (hereinafter "GeoVera"),
improperly named in the Third-Party Complaint as GeoVera Specialty Insurance Co., amends its
answer to the Amended Third-Party Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Amended Third-Party Complaint not hereinafter specifically admitted, qualified, or explained is denied.
2. On information and belief, GeoVera denies the allegation contained in paragraph one (1) that this case has been tried and a verdict rendered against Tema Brown. On information and belief, Defendant admits that this case has been referred to the Master-In-Equity for Charleston County for all purposes allowed by the rules pursuant to the consent order of December 24, 2010, a copy of which is attached to the Amended Third-Party Complaint as Exhibit B. GeoVera is without

knowledge or information sufficient to form a belief as to whether Tema Brown has consented to said referral and to submit to supplemental proceedings. GeoVera admits so much of paragraph one (1) as could be construed to allege that Constitution State Services, on behalf GeoVera's predecessor-in-interest, USF&G Specialty Insurance Company, denied coverage to Ms. Brown under her policy number GH20051152 for the claim out of which this action arose.

3. GeoVera admits so much of paragraph two (2) as alleges that Constitution State Services is an entity that is not organized under the laws of South Carolina, but conducted business in South Carolina and administered the Plaintiff's claim against Tema Brown on behalf of GeoVera's predecessor-in-interest, USF&G Specialty Insurance Company, but denies the remaining allegations contained in paragraph two (2), and affirmatively alleges that its predecessor-in-interest, USF&G Specialty Insurance Company, was at all times pertinent hereto authorized to do business in South Carolina.

4. GeoVera admits the allegations contained in paragraph three (3) except that GeoVera Specialty Insurance Company was formerly USF&G Specialty Insurance Company.

5. GeoVera denies the allegations contained in paragraph four (4) but admits that its predecessor-in-interest, USF&G Specialty Insurance Company, issued the policy referenced therein for the policy period referenced therein.

6. GeoVera is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph five (5), and said allegation is therefore denied. On information and belief, GeoVera affirmatively alleges that Tema Brown was the owner of the dog on April 20, 2005.

7. On information and belief, GeoVera denies the allegations contained in paragraph six (6), but admits that, on or about April 20, 2005, Tema Brown's dog escaped from her yard and attacked Plaintiff Travis Milligan, a minor child.

8. On information and belief, GeoVera admits the allegations contained in paragraph seven (7).

9. Answering the allegations contained in paragraph eight (8) as they relate to it, GeoVera admits that it did not accept or pay the Plaintiff's claim. GeoVera also admits so much of paragraph eight (8) as may be construed to allege that its predecessor-in-interest denied coverage for Plaintiff's claim against Tema Brown on the ground that the claim falls within an exclusion in the policy.

10. Responding to paragraph nine (9), GeoVera admits that a judgment against Tema Brown was filed on September 11, 2009.

11. GeoVera denies the allegation contained in paragraph ten (10).

12. Answering paragraph eleven (11), GeoVera admits that Third-Party Plaintiff seeks a declaration of the rights and duties of the parties, but GeoVera denies that it is appropriate to do so and that Third-Party Plaintiff is entitled to do so.

FOR A SECOND DEFENSE

13. Coverage for the Plaintiff's claim against Tema Brown and the default judgment entered in connection therewith is not available under the subject policy because the claimant's injuries and damages arose out of a dog owned by or in the care of Tema Brown that was a Staffordshire Bull Terrier or an American Pit Bull Terrier as defined by the policy, as a result of which the "Vicious Dogs" exclusion applies. A true and correct copy of the Master Endorsement to

the subject policy containing said exclusion is attached hereto as Exhibit A.

FOR A THIRD DEFENSE

14. Third-Party Plaintiff has failed to comply with the conditions precedent in her policy by, among other things, failing to promptly forward to her insurer "every notice, demand, summons or other process" relating to the incident out of which this action arose, substantially prejudicing Third-Party Defendants. A true and correct copy of the applicable "Conditions" portion of said policy is attached hereto as Exhibit B.

FOR A FOURTH DEFENSE

15. The Amended Third-Party Complaint fails to state facts sufficient to constitute a cause of action upon which relief may be granted.

FOR A FIFTH DEFENSE

16. On information and belief, Third-Party Plaintiff lacks standing to seek the judicial declaration sought in her Amended Third-Party Complaint.

FOR A SIXTH DEFENSE

17. On information and belief, Third-Party Plaintiff is not the real party in interest.

FOR A SEVENTH DEFENSE

18. There is no justiciable controversy appropriate for a declaratory judgment.

FOR AN EIGHTH DEFENSE

19. This action was terminated upon entry of judgment against Third-Party Plaintiff on or about September 11, 2009.

FOR A NINTH DEFENSE

20. On information and belief, Third-Party Plaintiff lacks the capacity to assert the Third-Party Complaint, in that she assigned the right to do so, if any, to Plaintiff.

FOR A TENTH DEFENSE

21. GeoVera has been substantially and unfairly prejudiced by the assertion of the Third-Party Complaint almost four years after the entry of default against Third-Party Plaintiff in this action, in that GeoVera has thereby been deprived of its rights under Rule 14(a), SCRCP.

FOR AN ELEVENTH DEFENSE

22. The Amended Third-Party Complaint is barred by the doctrine of laches.

FOR A TWELFTH DEFENSE

23. The Amended Third-Party Complaint is barred by the applicable statute of limitations.

FOR A THIRTEENTH DEFENSE

24. GeoVera has not been properly named or identified in this action.

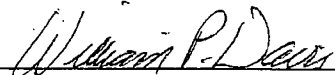
FOR A FOURTEENTH DEFENSE

25. This Court lacks personal jurisdiction over GeoVera, in that this action was terminated before GeoVera was added as a Third-Party Defendant.

WHEREFORE, having amended its answer to the Amended Third-Party Complaint, GeoVera prays for its dismissal, for costs, and for such other and further relief as this Court deems just and proper.

(Signature on following Page)

Columbia, South Carolina
March 2, 2012



William P. Davis
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax (803) 779-3423
File No.: 7746.1857 wdavis@brblegal.com
Attorneys for Third-Party Defendant
GeoVera Specialty Insurance Company

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	C/A No. 2007-CP-10-3224
	)	
JANA WRIGHT, as Guardian ad	)	
Litem for TRAVIS MILLIGAN, a	)	
minor over the age of 14 years	)	
	)	
Plaintiff,	)	
	)	NOTICE OF MOTION AND MOTION
vs.	)	FOR AN ORDER OF REFERENCE TO
	)	A SPECIAL REFEREE
TEMA BROWN,	)	
	)	
Defendants.	)	
	)	

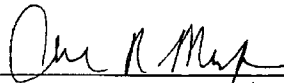
FILED
JULIE J. ARMSTRONG
CLERK OF COURT
DEC -8 PM 4:17

00-18089

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and S.C. Code Ann. Section 14-11-60, the Plaintiff hereby moves for an Order referring this matter to a Special Referee for a determination of all matters in this case. This motion is based on the fact that Defendant was served on November 19, 2007, and made no appearance. On January 10, 2008, an order of default was entered by the Court. As such, the requirements of Rule 53, SCRCP and S.C. Code Ann. Section 14-11-60 have been met and an order of reference to a special referee is proper.

[Signature Page Follows]

MAYBANK LAW FIRM, LLC
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8103
Email: amanda@maybanklaw.com



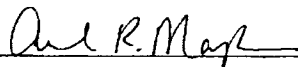
Amanda R. Maybank (S.C. #69825)
Roy P. Maybank (S.C. #69643)
Attorneys for Plaintiff
JANA WRIGHT, as Guardian ad Litem
for TRAVIS MILLIGAN,
a minor over the age of 14 years.

Charleston, South Carolina
Dec 5, 2008

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing
was served on each party or counsel of record by ☒
mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in
the manner prescribed by the applicable Rule of Civil
Procedure.

This 5 day of Dec., 2008.



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad Litem
Litem for TRAVIS MILLIGAN, a minor
over the age of 14 years,

Plaintiff,

v.

TEMA BROWN,

Defendant/Third-Party Plaintiff,

v.

GeoVera Specialty Insurance Co.

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007-CP-10-3224

THIRD-PARTY DEFENDANT GEOVERA
SPECIALTY INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT

FILED
2014 MAY 12 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

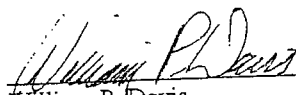
TO: ANDREW K. EPTING, JR., ESQUIRE AND MICHELLE N. ENDEMANN, ESQUIRE,
ATTORNEYS FOR DEFENDANT/THIRD-PARTY PLAINTIFF:

Pursuant to Rule 56 of the SCRCF, Third-Party Defendant GeoVera Specialty Insurance Company (hereinafter "GeoVera") hereby withdraws its motion for summary judgment filed on October 28, 2013 and, in its stead, hereby moves for order granting summary judgment against Third-Party Plaintiff on the grounds that there is no genuine issue as to any material fact and Third-Party Defendant is entitled to a judgment as a matter of law because (1) the time period within which to bring the third-party complaint for declaratory judgment has expired and is barred by the applicable statute of limitations; (2) the time period within which to bring a bad faith cause of action, which Third-Party Plaintiff seeks to do by means of her motion filed October 14, 2013, has expired and is thereby barred under the applicable statute of limitations; (3) Third-Party Plaintiff assigned her

claims against GeoVera to the Plaintiff, and therefore is not the real party in interest with regard to said claims, and therefore lacks standing to assert them; (4) under Rule 14, SCRPC, the third-party complaint is untimely and prejudicial to Third-Party Defendant because this action was terminated in the form of a final adjudication prior to the filing of the Third-Party Complaint, and this Court therefore lacks personal jurisdiction over Third-Party Defendant.

This motion is further made upon the pleadings, affidavits, and discovery, applicable case law and a memorandum of law to be filed at a later time.

Columbia, South Carolina
May 7, 2014


William P. Davis
Mariel D. Norton
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax (803) 779-3423
File No.: 7746.1857 wdavis@brblegal.com
Attorneys for Third-Party Defendant
GeoVera Specialty Insurance Company

 COPY

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

v.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

v.)

GeoVera Specialty Insurance Co.)

Third-Party Defendant.)

STATE OF FLORIDA)

COUNTY OF ORANGE)

AFFIDAVIT OF
BRENDA TRAWICK-SMITH

2014 MAY 12 PM 3:06
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

COMES NOW BEFORE ME, Brenda Trawick-Smith, who, being first duly sworn,
deposes and says that:

1. I am over the age of twenty-one years;
2. I am currently employed as Senior Technical Specialist for The Travelers Indemnity Company (hereinafter "Travelers") in Orlando, Florida.
3. I have been employed by Travelers for approximately thirty-nine (39) years.
4. Constitution State Services was at all times pertinent hereto, and continues to be, the third-party administrator arm of Travelers.

5. In my capacity as Senior Technical Specialist for Travelers, I am one of the persons with responsibility for and familiarity with Constitution State Services' records concerning the aforementioned claim, including those attached as exhibits hereto.

6. At all times pertinent to the facts set forth in this affidavit, USF&G Specialty Insurance Company was under the umbrella of Travelers insurance companies.

7. In my capacity as Senior Technical Specialist for Travelers, I was assigned and handled a claim of a USF&G Specialty Insurance Company insured named Tema Brown, which claim had been asserted on behalf of Travis Milligan, a minor, as a result of a dog bite alleged to have occurred on April 20, 2005.

8. In connection with my handling of the aforementioned claim and in the ordinary course of business at Travelers, I wrote a letter on September 28, 2006 to Tema Brown at the address shown on her policy (Exhibit A).

9. The document attached hereto as Exhibit A is a true and correct copy of the aforementioned letter, two copies of which I put in the outgoing mail at Travelers in accordance with its normal and usual business practices and procedures concerning such matters, with one copy of said letter being mailed by certified mail, return receipt requested, and the other being mailed by regular U.S. mail.

10. In the event that the aforementioned letter (Exhibit A) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters, but neither the letter nor the envelopes were returned to me or to my file as undeliverable.

11. On January 7, 2008, I mailed another letter, a true and correct copy of which is attached hereto as Exhibit B, by regular U.S. mail to Tema Brown at the address shown on her policy. Enclosed with my letter of January 7, 2008 (Exhibit B) was a copy of my letter of September 28, 2006 (Exhibit A).

12. In the event that the aforementioned letter (Exhibit B) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters, but neither the letter nor the envelope was returned to me or to my file as undeliverable.

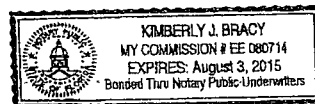
13. At all times pertinent to the matters contained in this affidavit, it was the regular practice of Travelers and Constitution State Services to prepare and generate records such as and including those attached hereto as Exhibits A and B, and said documents were prepared at or near the times of the transactions and matters described and depicted therein, and they are kept in the normal course of business at Travelers.

Brenda Trawick-Smith
Brenda Trawick-Smith

SWORN to and subscribed before me,
this 6th day of MAY, 2014.

Kimberly J. Bracy
Notary Public for the State of Florida

My Commission Expires: 8-3-15



Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2006

Terna Brown
3368 Habitat Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Terna Brown
Claim Number: GCGUS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GHZ0051152 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jinx, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jinx.

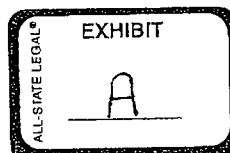
The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jinx is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Heath Insurance Inc.



Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

January 7, 2008

Ms. Tema Brown
3368 Habitat Blvd.
Johns Island, SC 29455

Account: Tema Brown
Claim Number: GCGUS040299
Date of Loss: 04/20/2005
Claimant: Travis Milligan

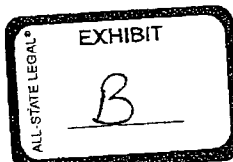
Dear Ms. Brown:

This letter will serve as a follow up to our telephone conversation.

I have enclosed correspondence that was previously sent to you explaining why coverage was not afforded under the policy issued to you by USF&G under policy number GE20051152.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573



COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO.: 2007-CP-10-3224
	)	
JANA WRIGHT, as Guardian ad Litem	)	
Litem for TRAVIS MILLIGAN, a minor	)	
over the age of 14 years,	)	
	)	
Plaintiff,	)	THIRD-PARTY DEFENDANT GEOVERA
	)	SPECIALTY INSURANCE COMPANY'S
v.	)	MEMORANDUM IN SUPPORT OF ITS
	)	MOTION FOR SUMMARY JUDGMENT
TEMA BROWN,	)	AND IN OPPOSITION TO THIRD-PARTY
	)	PLAINTIFF'S MOTION FOR SUMMARY
Defendant/Third-Party Plaintiff,	)	JUDGMENT
	)	
v.	)	
	)	
GeoVera Specialty Insurance Co.	)	
	)	
Third-Party Defendant.	)	

FILED
2014 MAY 19 AM 11:36
JULIE J. ARMSTRONG
CLERK OF COURT
BY

INTRODUCTION

A dog belonging to the Third-Party Plaintiff, Tema Brown, bit the Plaintiff's thirteen-year-old son on April 20, 2005. The Plaintiff asserted a claim against Ms. Brown, who seeks a judicial declaration that liability coverage is available to her under a homeowner's insurance policy issued by Third-Party Defendant's predecessor, USF&G Specialty Insurance Company. The policy excludes liability coverage for such incidents if the insured's dog is an American Pit Bull Terrier. Various records of the incident indicate that the dog was a "Pit Bull" and Ms. Brown herself gave a recorded statement nine days after the incident in which she described the dog as an "American Pitbull." The insurer therefore denied coverage and, when Plaintiff brought this suit against Ms. Brown, it went into default. Ms. Brown testified at the damages hearing that the dog is not a Pit Bull. A default judgment was entered on September 11, 2009. About a year and two months later, Ms. Brown assigned all of her rights against her insurer to the Plaintiff.

Notwithstanding the default judgment and the assignment, Ms. Brown filed an "Answer/Third-Party Complaint" against the administrator of the claim, but not the insurer, on July 19, 2011 – almost five years after the claim was denied. She amended her Third-Party Complaint to name the insurer on December 28, 2011 – more than five years after the denial.

By bringing the third-party complaint in the name of the assignor, even though she had already assigned all of her rights against her insurer to the Plaintiff, Third-Party Plaintiff is attempting to (1) avoid the statute of limitations by bootstrapping a request for a judicial declaration of coverage onto an action that was concluded with the default judgment on September 11, 2009; and (2) avoid the exclusion by seeking to bind the insurer to Ms. Brown's testimony at the damages hearing that the dog was not a Pit Bull, notwithstanding overwhelming evidence to the contrary, including her own statement, and notwithstanding South Carolina law to the contrary. For the reasons set forth below, such machinations cannot succeed, and Third-Party Defendant is entitled to summary judgment.

BACKGROUND

There is no dispute that, on April 20, 2005, a dog belonging to Defendant/Third-Party Plaintiff, Tema Brown, escaped from her yard and attacked Plaintiff's son, Travis Milligan, who was thirteen years old at the time. At the time of the incident, Tema Brown was the named insured of a homeowners insurance policy issued by USF&G Specialty Insurance Company ("USF&G"). (Exhibit A) Her policy included the following exclusion:

SECTION II – EXCLUSIONS

* * *

Vicious Dogs

**"Bodily injury" or "property damage arising out
of any canine owned by or in the care of any**

"insured" that is a:

a. "vicious canine";

* * *

c. American Pit Bull Terrier;

* * *

We will consider a canine to be a . . . , American Pit Bull Terrier . . . if its lineage contains at least 50% of that breed.

* * *

Master Endorsement, p. 1 of 2 (Exhibit A)

Travis sought medical treatment at the emergency room of the Medical University of South Carolina ("MUSC"). MUSC's Children's Hospital's records of that visit include the following:

CHIEF COMPLAINT: riding bike and pit bull bit him

* * *

History of the present illness:

13 yo BM was riding bike & pit bull bit him about 1-2 hours ago.

(Exhibit B)

The South Carolina Department of Health and Environmental Control ("DHEC") Report includes the following:

Animal Information--

* * *

Type: dog . . . Breed: Pitbull . . .
Owner: Tema Brown

(Exhibit C)

Travis's attorney, Barry Baker, thereafter referred him to Peter C. DeVito, M.D. Dr. DeVito's office note of June 20, 2005 begins, "Travis Milligan is a very pleasant thirteen years old boy who sustained severe injuries when he was attacked by a pit bull dog on May 20, 2005 [sic]." (Exhibit D)

On April 29, 2005, Travis's attorney, Barry Baker, wrote Mr. and Mrs. Lavonne Brown advising them of his representation and asking that they turn his "letter over to the agent who handles your homeowner's insurance" (Exhibit E) Ms. Brown notified USF&G, which investigated the claim. On May 10, 2005, Stan Hawkins, CPCU of NCA Group, third-party administrator for USF&G, took a recorded statement of Tema Brown in which the following exchange took place:

Q. Are the current pets that you have, the pets that are being alleged to be involved in this incident?

A. Yes.

Q. All right. Tell me about your pets.

A. He is a American Pitbull. He is not quite a year old yet, maybe - nine months old.

* * *

Q. Okay. Were you told that it was a pitbull?

A. Yes.

Q. Were you told that there was another mix of the breed involved?

A. No, I wasn't told.

Q. And is it safe to assume that when this dog was sold to you, it was sold as a full blooded pitbull?

A. Yes.

(Exhibit F) On July 28, 2005, Mr. Hawkins sent a reservation of rights letter to Ms. Brown citing the exclusion quoted above, among other things. (Exhibit G) On September 28, 2006, Brenda Trawick-Smith of another third-party administrator of the claim, Constitution State Services, wrote Ms. Brown on behalf of USF&G advising her that liability coverage was not available to her for the incident in question because her dog was an American Pit Bull Terrier. (Exhibit H) On the same day, she wrote Travis Milligan's attorney, Barry Baker, to the same effect. (Exhibit I)

Barry Baker and Amanda Maybank, as counsel for Plaintiff, filed suit in the name of Jana Wright, as Guardian ad Litem for Travis Milligan on October 17, 2007. (Exhibit J) An affidavit of service indicates that Ms. Brown was served on November 19, 2007. (Exhibit K) On January 7, 2008, Brenda Trawick-Smith sent a second letter to Ms. Brown confirming their telephone conversation and enclosing a copy of the September 28, 2006 denial letter. Affidavit of Brenda Trawick-Smith. (Exhibit L) An order of default was filed on January 10, 2008. Another letter reiterating the denial was sent to Ms. Brown on or about April 7, 2008 by Terence Youngblood of Constitution State Services. (Exhibit M)

On December 5, 2008, Ms. Maybank filed a motion to refer the matter to a Special Referee (Exhibit N), which was granted by order of March 11, 2009 of The Honorable Roger M. Young appointing Thomas J. Wills, IV. (Exhibit O) According to the Order of Judgment filed on September 11, 2009, a hearing was conducted on June 30, 2009, at which Jana Wright, Travis Milligan and their attorneys, Barry Baker and Amanda Maybank, were present, along with Tema Brown and her son, LaRon Brown. (Exhibit P) The order includes a default judgment in the amount of \$100,229. Id. It indicates that, "Ms. Brown testified that the dog was not a viscous [sic] dog and was a mixed breed, but not a pit bull." Id., at p. 5, last two lines.

On November 4, 2010, Ms. Brown executed an assignment of "any and all rights and claims for injuries and damages of whatsoever kind sustained by her on account of her insurer's failure to defend and provide coverage in the suit brought by Jana Wright, as Guardian ad Litem for Travis Milligan" (Exhibit Q)

On January 6, 2011, The Honorable Markley Dennis entered a "Consent Order" "on the Motion of the Plaintiff with the consent of the Defendants . . . allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings." (Exhibit R) It specifically granted Ms. Brown "leave to file a Third Party Complaint against her insurance company." *Id.* That order was consented to by Barry Baker "As Assignee for Tema Brown" and by Amanda R. Maybank as "Attorney for Plaintiff." *Id.* On July 14, 2011 a "Consent Order" was entered by The Honorable Kristi Lea Harrington to the effect that "Andrew K. Epting, Jr. is permitted to appear . . . and is authorized to file the third-party complaint within 30 days" and referring the matter to the Master-in-Equity. (Exhibit S) Amanda R. Maybank signed as movant and as the attorney for Plaintiff. Barry Baker also signed as movant "for Tema Brown in her capacity as assignor of claims to Plaintiff." Mr. Epting consented, signing for Third Party Plaintiff. *Id.*

On July 19, 2011, Third-Party Plaintiff, Tema Brown, filed an "Answer and Third-Party Complaint" against Constitution State Services. On August 17, 2011, she filed a "Motion to Amend Third-Party Complaint" to add GeoVera as a Third-Party Defendant, which was granted by order of this court filed on December 9, 2011. The Amended Third-Party Complaint was filed on December 28, 2011. Constitution State Services and GeoVera filed their answers on January 13, 2012 and February 3, 2012 respectively, after which Constitution State filed an amended answer on February 13, 2012. On December 18, 2012, this court entered a consent

order dismissing Constitution State. On October 14, 2013, Ms. Brown moved to amend her third-party complaint to add a cause of action for "bad faith insurance practices." GeoVera filed a motion for summary judgment on October 28, 2013, which has been withdrawn in favor of the motion for summary judgment filed on May 12, 2014 after receipt of Third-Party Plaintiff's discovery responses. Third-Party Plaintiff filed her motion for summary judgment on or about May 15, 2014.

The following timeline summarizes the significant events described above:

12/23/04 – 12/23/05	Policy Term
04/20/05	Dog Bite/ER records and DHEC Animal Incident/Rabies Investigation Report refer to Pit Bull
04/29/05	Tema Brown gives recorded statement confirming her dog was a Pit Bull
06/20/05	Dr. de Vito's record refers to Pit Bull
07/28/05	Reservation of Rights letter
09/28/06	Denial letter
10/17/07	Complaint against Tema Brown
01/07/08	Letter reiterating denial by enclosing September 28, 2006 denial letter.
01/10/08	Entry of Default
04/07/08	Letter reiterating denial.
03/11/09	Order of Reference to Special Referee
06/30/09	Damages hearing/Tema Brown testifies that dog was not a Pit Bull
09/11/09	Order of Judgment for \$100,229
11/04/10	Tema Brown executes assignment of all claims to Plaintiff
01/06/11	Consent Order (Referral to Master/leave to file Third-Party Complaint)
07/14/11	Consent Order (leave to file Third-Party Complaint)

07/19/11	Answer/Third-Party Complaint against Constitution State Services
08/17/11	Motion to Amend Third-Party Complaint
12/09/11	Order Granting Motion to Amend Third-Party Complaint
12/28/11	Amended Third-Party Complaint
01/13/12	Constitution State Services' Answer
02/03/12	GeoVera's Answer
12/18/12	Consent Order Dismissing Constitution State Services
10/14/13	Third-Party Plaintiff's Motion to Amend Third-Party Complaint/Motion to Compel Discovery
05/12/14	GeoVera's Motion for Summary Judgment
05/15/14	Third-Party Plaintiff's Motion for Summary Judgment

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. "Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein." Rule 56(e), SCRPC. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. Bankers Trust of S.C. v. Benson, 267 S.C. 152, 155 226 S.E.2d 703, 705-(1976). "The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact." Bradley v. Doe, 374 S.C. 622, 625, 649 S.E.2d 153, 155 (Ct. App. 2007) "With respect to an issue upon which the non-moving party has the burden of proof, this initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case." Hedgepath v. Am. Tel. &

Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct.App.2001). After the moving party meets its initial burden, the “opposing party must, under Rule 56(e), ‘do more than simply show that there is some metaphysical doubt as to the material facts’ but ‘must come forward with specific facts showing that there is a genuine issue for trial.’” Id. (quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. Moore v. Weinberg, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). “In determining whether any triable issues of fact exist, the evidence and all reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party.” Bradley, 374 at 625, 649 at 155. It is not sufficient that a party creates an inference which is not reasonable or an issue of fact that is not genuine. Main v. Corley, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). “The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case.” Harris v. Rose's Stores, Inc., 315 S.C. 344, 346, 433 S.E.2d 905, 906 (Ct. App. 1993) (citing Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986)).

ARGUMENT

I. The applicable statute of limitations expired before the Third-Party Complaint was filed.

Tema Brown's claim for liability coverage under her homeowner's policy was denied by letter dated September 28, 2006 addressed to her at the address shown on her policy and mailed both by certified mail, return receipt requested, and by regular mail. (Exhibit H) That denial was reiterated in a letter mailed on January 7, 2008, which specifically indicated that it was being sent as “follow up” to a telephone conversation between the Senior Technical Specialist handling the claim and Ms. Brown. Copies of prior correspondence “explaining why coverage was not

afforded" were enclosed. (Affidavit of Brenda Trawick-Smith, ¶ 11) (Exhibit L) On April 7, 2008, still another letter reiterating the denial and the reasons therefor was sent by certified mail, return receipt requested. (Exhibit M) Significantly, counsel for the Plaintiff, to whom Tema Brown assigned her claims on November 4, 2010, and who therefore is the real party in interest, was copied with that letter. However, Ms. Brown's "Answer and Third-Party Complaint" was not filed until July 19, 2011 – almost five years after the original denial letter of September 28, 2006; more than three and a half years after the follow-up letter of January 7, 2008 enclosing the original denial letter; and more than three years, three months after the April 7, 2008 letter reiterating the previous denials. (Exhibits H, L, and M, respectively)

In her Third-Party Complaint, Ms. Brown sought a judicial declaration of "the rights and duties of the parties" and she prayed "for a declaration of coverage and entitlement" (Answer and Third-Party Complaint, ¶ 11 and prayer) A declaratory judgment action to determine coverage under an insurance policy is an action at law. State Farm Mut. Auto. Ins. Co. v. Calcutt, 340 S.C. 231, 237, 530 S.E.2d 896, 899 (Ct.App. 2000), *overruled on other grounds by* Sweetser v. S.C. Dept. of Ins. Reserve Fund, 390 S.C. 632, 703 S.E.2d 509 (2010); *see also* Travelers Indem. Co. v. Auto World of Orangeburg, Inc., 334 S.C. 137, 140, 511 S.E.2d 692, 694 (Ct.App. 1999) ("An action to determine coverage under an automobile policy is an action at law.")

"Under the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered . . . [and this] discovery rule applies to breach of contract actions." Prince v. Liberty Life Ins. Co., 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Ct. App. 2010) (applying section 15-3-350(1) to a situation involving a life insurance policy). This discovery rule has been explained as follows:

The exercise of reasonable diligence means simply that an injured party must act with some promptness where the facts and circumstances of an injury would put a person of common knowledge and experience on notice that some right of his has been invaded or that some claim against another party might exist. The statute of limitations begins to run from this point and not when advice of counsel is sought or a full blown theory of recovery is developed.

Royal Ins. Co. of Am. v. Reliance Ins. Co., 140 F.Supp.2d 609, 622 (D.S.C. 2001) (citing to Snell v. Columbia Gun Exchange, 273 S.C. 301, 278 S.E.2d 333 (1981)).

Even if the most recent of the aforementioned letters is considered the date when Ms. Brown first knew or should have known that she may have a claim, the three-year limitations period expired in April 2011 – more than three months before the “Answer and Third-Party Complaint” was filed. In addition, it was not filed until almost seven months after Judge Dennis signed the “Consent Order” granting her “leave to file a Third Party Complaint against her insurance company.” Moreover, as set forth above, counsel for the Plaintiff was copied with that letter. Tema Brown assigned her claims against her insurance company to the Plaintiff on November 4, 2010. Thus, the party who ultimately was assigned the right to assert Tema Brown’s claims, thereby becoming the real party in interest, was herself on notice of the denial in April of 2008 at the latest. Notwithstanding what appears to be a valid and binding assignment, the Plaintiff has not asserted her claims. Rather, the Defendant, Tema Brown, has attempted to do so. However, even if she had the right to do so, her Third-Party Complaint was too late.

Furthermore, the Third-Party Defendant named in the “Answer and Third-Party Complaint” filed on July 19, 2011, Constitution State Services, is not an insurance company and did not issue the homeowner’s policy at issue, or any other policy, to Tema Brown. (See affidavit of Brenda Trawick-Smith, Exhibit L, ¶ 4, 7) As set forth above, that policy was issued by USF&G, to which GeoVera is the successor. (See December 18, 2012 Consent Order Dismissing Constitution State Services With Prejudice, ¶ 1.) An Amended Third-Party

Complaint adding GeoVera as a Third-Party Defendant was not filed until December 28, 2011 – more than three years and eight months after the most recent of the aforementioned letters reiterating the denial of coverage and just short of one year after Judge Dennis’s order granting leave to Ms. Brown to file a third-party complaint “against her insurance company.”

In its answer thereto, GeoVera admitted that Ms. Brown sought “a declaration of the rights and duties of the parties, but . . . denie[d] that it is appropriate to do so and that Third-Party Plaintiff is entitled to do so.” GeoVera’s Answer to Third-Party Complaint, ¶ 12. GeoVera’s answer also included the following defenses:

FOR A TENTH DEFENSE

21. GeoVera has been substantially and unfairly prejudiced by the assertion of the Third-Party Complaint almost four years after the entry of default against Third-Party Plaintiff in this action, in that GeoVera has thereby been deprived of its rights under Rule 14(a), SCRCP.

FOR AN ELEVENTH DEFENSE

22. The Amended Third-Party Complaint is barred by the doctrine of laches.

FOR A TWELFTH DEFENSE

23. The Amended Third-Party Complaint is barred by the applicable statute of limitations.

II. Third-Party Plaintiff assigned her claims against GeoVera to the Plaintiff and therefore lacks standing to assert her Third-Party claims, and is not the real party in interest.

As set forth above, on November 4, 2010, Third-Party Plaintiff, Tema Brown, assigned “any and all rights and claims for injuries and damages of whatsoever kind sustained by her on account of her insurer’s failure to defend and provide coverage in the suit brought by Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years.” (Exhibit Q, ¶ 1) She agreed to “waive any and all rights to any proceeds recovered by Jana Wright, as Guardian ad Litem for Travis Milligan, from Brown’s insurer for its failure to defend and indemnify in [said] lawsuit as well as any and all rights for any bad faith action brought against said insurer.” *Id.*, ¶ 3. Notwithstanding this unequivocal assignment, Plaintiff has never filed an action, nor sought to add GeoVera as a party to the within action, in order to assert a claim against it. (If she had done so, it would have been barred by the statute of limitations for the same reasons set forth in II. above. It also would have been barred for the reasons set forth in III. below.) Rather, she sought and obtained a consent order “allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules” Plaintiff’s counsel, Amanda Maybank and Barry Baker, consented to Judge Dennis’s order (Exhibit R) granting Defendant “leave to file a Third Party Complaint against her insurance company.” (Ms. Maybank signed the consent order as “Attorney for Plaintiff”, while Mr. Baker signed “As Assignee for Tema Brown.”)

Having assigned her rights to the Plaintiff, Ms. Brown had no claims to assert against her insurance company. In South Carolina, it is well established that an “assignee . . . stands in the shoes of its assignor” Twelfth RMA Partners, L.P. v. Nat’l Safe Corp., 335 S.C. 635, 639-40, 518 S.E.2d 44, 46 (Ct.App. 1999) (citing Singletary v. Aetna Cas. & Sur. Co., 316 S.C. 199,

201 447 S.E.2d 869, 870 (Ct. App. 1994). No action against GeoVera having been filed by the Plaintiff, and no Third-Party Complaint having been filed by the Defendant, a second consent order was entered on July 14, 2011. (Exhibit S) In that order, Judge Harrington authorized Andrew K. Epting, Jr. to appear and file the Third-Party Complaint within thirty days, and she then referred the case to this court. Again, Ms. Maybank signed the consent order as "Attorney for Plaintiff." Mr. Baker signed "For Tema Brown in her capacity as assignor of claims to Plaintiff." Mr. Epting consented on behalf of Ms. Brown. Thus, not only does the assignment assign all of Ms. Brown's claims against GeoVera to the Plaintiff, but the parties very clearly recognized that such an assignment had occurred. In fact, in their recent responses to GeoVera's ninth request to produce requesting "Any and all documents concerning the dog at issue in this case, including . . . vaccination records, pet licenses, registration records, pedigree information and veterinary records and reports", Third-Party Plaintiff responded that, "As this third-party complaint is filed pursuant to the assignment dated November 4, 2010, Plaintiff is not in possession of documents responsive to this request." (Exhibit T).

"In South Carolina a chose or thing in action is statutorily included in one's personal property and is assignable." 5 S.C. Juris. Assignments § 19, citing S.C. Code Ann. § 15-1-40 (Law. Co-op. 1976). "The general rule is that an assignor loses all control over a contract right or chose in action and can do nothing to defeat the rights of the assignee." *Id.*, § 41, citing 6 A C.J.S. Assignments § 85 (1975). "Generally, if a claim has been assigned in full, the assignee is the real party in interest with the right to pursue an action thereon, as the assignor loses control over the action when he or she makes the assignment. This is important because generally only a real party in interest may pursue a cause of action." 6 A C.J.S. Assignments § 135.

Rule 17(a), SCRCR, requires in part that, "Every action shall be prosecuted in the name of the real party in interest." Because Ms. Brown, by virtue of the assignment, is not the real party in interest, she lacks standing to assert the claims included in her Third-Party Complaint.

"Standing to sue is a fundamental requirement in instituting an action." Connor Holdings, LLC v. Cousins, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). It is a part of the concept of justiciability that concerns whether a party may make a legal claim or argument. Powell ex rel. Kelley v. Bank of America, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Cl.App. 2008). The general rule in South Carolina is that for parties to have standing, they must have (1) a personal stake in the subject matter of the lawsuit and (2) be a real party in interest. Ex Parte Gov't Employees Ins. Co., 373 S.C. 132, 644 S.E.2d 699 (2007). By virtue of the assignment, Ms. Brown can meet neither requirement.

"Where an assignment transfers all interest of the assignor in an insurance policy to the assignee, the assignor no longer has any standing to sue on the policy in his or her own name for his or her own benefit" 17 Couch on Ins. § 241:18, citing Harris v. Aetna Ins. Co., 32 Ga. App. 48, 123 S.E. 27 (1924). "[A]n insured who assigned his or her claim against his or her insurer for failure to settle within policy limits to the injured person, thereafter had no standing to sue for bad faith or negligent refusal to settle." Id., citing Southern General Ins. Co. v. Holt, 262 Ga. 267, 416 S.E.2d 274 (1992). Thus, even if the statute of limitations had not expired, Tema Brown does not have standing to assert the claims set forth in her Third-Party Complaint, having unequivocally assigned them to the Plaintiff on November 4, 2010.

Apparently recognizing these issues, Ms. Brown attempts to solve the problem by stating in her interrogatory answers that, "Ms. Brown further agreed to waive[] her right to the proceeds, if any, recovered by Ms. Wright and allow this action to proceed in her name."

(Defendant/Third-Party Plaintiff's Answers to GeoVera's Discovery, Interrogatory 9) (Exhibit U). The assignment, however, says nothing about Ms. Brown allowing this action to proceed in her name. Moreover, any such argument cannot succeed because, as set forth above, it is the Plaintiff, as assignee, who is the real party in interest. Ms. Brown, as assignor, lost control over the action when she made the assignment. An assignee stands in the shoes of the assignor, and an innocent assignee receives all the rights of the assignor. BAC Home Loan Servicing, L.P. v. Kinder, 398 S.C. 619, 731 S.E.2d 547 (2012); see also Moore v. Weinberg, 373 S.C. 209, 644 S.E.2d 740 (Ct.App. 2007). Since Ms. Brown is not the real party in interest by virtue of her unequivocal assignment, she does not have standing to pursue her third-party complaint even if it were not barred by the statute of limitations. Standing is a fundamental requirement for instituting an action, and no justiciable controversy is presented unless the plaintiff had standing to maintain the action, and once it is determined that a plaintiff has no standing to prosecute, the court must dismiss the action. Brock v. Bennett, 313 S.C. 513, 443 S.E.2d 409 (Ct.App. 1994).

III. This Court lacks jurisdiction over Third-Party Defendant because this action was terminated in the form of a final adjudication prior to the filing of the Third-Party Complaint.

The Special Master's Order of Judgment filed on September 11, 2009 awarding the Plaintiff damages in the amount of \$100,229 (Exhibit P) was a final judgment, ending the action. See Drennan v. Brown, 114 S.C. 491, 103 S.E. 889 (1920). "A default judgment is a final order terminating the case and establishing liability and damages. It is the same as any other judgment and entered pursuant to Rule 58 [Entry of Judgment]" Flanagan, *South Carolina Civil Procedure*, 2nd ed., p. 437. According to American Jurisprudence (Second):

"There is authority that the effect of the clerk's entry of default is to cut off the defendant's right to take any further affirmative steps such as pleadings or motions. A defendant against whom a default has been entered is out of court and is not entitled to take any

further steps in the cause affecting plaintiff's right of action; the defendant cannot thereafter, until such default is set aside in a proper proceeding, file pleadings or move for a new trial or demand notice of subsequent proceedings."

46 American Jurisprudence 2d, Judgments § 320.

In Arkansas Bankers Life Insurance Company v. Tomerlin, the Arkansas Supreme Court made clear that the inclusion of a third-party complaint post-judgment was in error, requiring reversal. See Arkansas Bankers Life Ins. Co. v. Tomerlin, 340 Ark. 701, 13 S.W.3d 581 (2000). In Tomerlin, judgment was entered after a trial in July 1995. In September 1995, a motion for leave to file a third-party complaint was filed and granted. Id., at 702, 13 S.W.3d at 582. The third-party defendant filed a motion to dismiss and strike the third-party complaint, arguing that the case had been finally adjudicated. Id. The third-party defendant's motion was denied. Id. at 703, 13 S.W.3d at 582. On appeal, the Arkansas Supreme Court reversed, relying on Aclin Ford Co. v. Fiat Motors of North America, Inc., 275 Ark. 445, 631 S.W.2d 283 (1982):

Affirming the trial court, [in Aclin] we held that implicit in Rule 14 is the assumption that the third party complaint will be filed before the issues are resolved at trial; otherwise, its provisions allowing the third party defendant to assert defenses against the original plaintiff would have no meaning

The facts in the present case are not distinguishable from the facts in Aclin. Here, Ford filed suit against appellee and recovered judgment. Thereafter, appellee requested and was granted permission to file a third-party complaint against appellant and the trial court denied appellant's motion to strike appellee's third-party complaint. Based on Aclin, we conclude that permitting the third-party complaint to be filed after the entry of judgment in the underlying suit was error and requires that the ruling be reversed.

Id. at 705, 13 S.W.3d at 583; see also Liberty Ins. Co. v. Milne, 98 So.3d 613 (Fla. Dist. Ct. App. 2012) (finding a lack of subject matter jurisdiction over a third-party complaint which was filed after the entry of final judgment); Travelers Cas. & Sur. Co. of Am. v. Culbreath Isles Prop.

Owners Ass'n, 103 So.3d 896 (Fla. Dist. Ct. App. 2012) (finding that the lower court had exceeded its jurisdiction in allowing a third-party complaint against an insurance carrier after final judgment). (Rule 14 of Arkansas' Rules of Civil Procedure is virtually identical to Rule 14 of both the South Carolina and Federal Rules of Civil Procedure.)

The Third-Party Complaint was filed four and a half years after the complete and final adjudication of the within action in the form of a default judgment. As set forth above, Ms. Brown made no attempt to file any action against her insurer until she filed her "Answer and Third-Party Complaint" on July 19, 2011. Not only was this after the statute of limitations had expired, but it was after she had assigned the right to do so to the Plaintiff. Moreover, the Third-Party Complaint named Constitution State Services, which was neither her insurer (USF&G Specialty) nor its successor (GeoVera), but rather merely the third-party administrator of her claim. She did not file an Amended Third-Party Complaint adding GeoVera as a purported Third-Party Defendant until December 28, 2011.

Neither Plaintiff nor Defendant Tema Brown could bring a separate suit against GeoVera because the statute of limitations had expired by the time the Answer and Third-Party Complaint was filed. For the reasons set forth above, neither the Plaintiff (as assignee) nor the Third-Party Plaintiff can avoid the statute of limitations by asserting the claim in a Third-Party Complaint. Because this action terminated upon entry of the default judgment, the Circuit Court was without subject matter jurisdiction to enter the aforementioned consent orders granting Ms. Brown leave to file a Third-Party Complaint, and this Court is also without subject matter jurisdiction to adjudicate her Third-Party Complaint. "A court, lacking subject matter jurisdiction, cannot enforce its own decrees." Hallums v. Bowens, 318 S.C. 1, 428 S.E.2d 894, 895 (Ct. App. 1993). "Whenever it appears by suggestion of the parties or otherwise, that the court lacks jurisdiction

of the subject matter, the court shall dismiss the action.” Rule 12(h)(3), SCRPC. GeoVera is therefore entitled to summary judgment.

IV. There has been no factual finding that the Third-Party Plaintiff's dog was not a Pit Bull, and even if there were, it is not binding on GeoVera.

Third-Party Plaintiff's position is that, because GeoVera did not retain counsel to appear and defend Ms. Brown, it is bound by the factual findings contained in the September 11, 2009 order of default judgment entered after the damages hearing. This argument fails for two reasons.

First, the Special Master's order of judgment contains no finding that the dog in question was a Pit Bull. Rather, in the “FACTS” section, the Special Master indicated that “Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a viscous [sic] dog.” Order of Judgment, p. 2, 1st full ¶ (Exhibit P). In the “LAW” section of the order, he said, “Ms. Brown testified that the dog was not a viscous [sic] dog and was a mixed breed, but not a pit bull.” *Id.*, p. 5, last sentence. In short, the Special Master merely recited Ms. Brown's testimony (which, as set forth above, is contrary to what is found in the ER records, DHEC's records, the treating physician's records, and in the transcript of her own recorded statement). He did not make any finding that the dog was a pit bull. Nor was it necessary for him to do so, since the issue before him was damages – not the breed of the dog in question nor insurance coverage.

Second, Third-Party Plaintiff argues that there is law to the effect that a liability insurer that declines to defend an action against its insured is bound by the material facts established against its insured at the trial; however, under South Carolina law, any such rule has no

application to the case at bar, by virtue of Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965).

In Sims, Nationwide had issued an automobile insurance policy to Booker T. Sims, but denied liability and declined to defend him in an action brought by Moses Bates. Mr. Bates alleged that he was injured while a passenger in another vehicle as a result of Mr. Sims' actions while operating the insured vehicle. Nationwide alleged that Mr. Sims's actions were intentional, as a result of which liability coverage was not available to him under the policy.

Mr. Bates's suit against Mr. Sims was tried without a jury and resulted in a verdict in favor of Bates. The presiding judge's order, prepared by counsel, indicated that "... the defendant was negligent in passing said automobile and colliding with same, but the defendant was not willful." Id., at 84, 524.

In Mr. Sims's action against Nationwide, Nationwide offered evidence that Mr. Sims had intentionally caused his vehicle to collide with the vehicle in which Mr. Bates was a passenger, which was being driven by Mr. Sims's girlfriend, and that, after both vehicles came to a stop, Mr. Sims got out of his car, got a gun and shot her.

The trial court held that Nationwide was precluded from offering evidence that Mr. Sims's actions were intentional and directed a verdict in his favor. The South Carolina Supreme Court reversed, stating in part:

It is perfectly obvious, we think, that had the insurer here undertaken to defend the insured in the tort action and asserted therein its defense that the injuries sustained by Bates were intentionally caused by its insured, a clear conflict of interest between insurer and insured would have been presented, and the insurer could not in that action have undertaken to assert its defense and at the same time defend the insured against a charge of simple negligence.

The court then quoted the following with approval from Farm Bureau Mutual Ins. Co. v.

Hammer et al., 4th C.C.A., 177 F.2d 793:

It is, however, obvious that the binding effect of a judgment against the insured does not extend to matters outside the scope of the insurance contract, and that the Insurance Company is neither obligated to defend nor bound by the findings of the court if the claim against the insured is not covered by the policy. To hold otherwise would be to estop the Insurance Company by the acts of parties in a transaction in which it has no concern and over which it has no control, and to deprive it of its day in court to show that the transaction is foreign to the contract of insurance. 'If it cannot do this,' as was said in the dissenting opinion in Stefus v. London & Lancashire Indemnities Co., 111 N.J.L. 6, 166 A. 339, 341, 'it is at the mercy of every unscrupulous litigant who, regardless of his facts, sees fit to falsely allege a claim on which the insurance company would be liable and thereunder establish another claim on which no liability could attach, and forsooth collect because the insurer cannot show the true facts.'

This issue was also addressed in Ranta v. The Catholic Mut. Relief Soc. of America, 492 Fed.Appx. 373 (4th Cir. 2012). Mr. Ranta brought suit in South Carolina state court against a former priest, the Roman Catholic Diocese of Savannah, Georgia, and others, alleging that the priest had sexually abused him over a period of years. Ranta thereafter reached a settlement with the Diocese and others, not including the priest. He later filed a motion for summary judgment against the priest, which was granted, with the court awarding a total of \$100 million in actual and punitive damages. Mr. Ranta then brought a declaratory judgment action against the insurer, Catholic Mutual, arguing that it was obligated to pay the judgment. Catholic Mutual removed the case to federal court. The district court granted Catholic Mutual's motion for summary judgment on the ground that the intentional sexual molestation was not an "occurrence" within the meaning of the policy at issue. On appeal, Mr. Ranta advanced an argument similar to that made by Third-Party Plaintiff in the within action, which the court addressed as follows:

Ranta next asserts that the district court erroneously awarded Catholic Mutual summary judgment because Catholic Mutual failed to defend [the priest] in the underlying South Carolina litigation, thereby waiving its coverage defense. Because Catholic Mutual elected not to defend [the priest], Ranta advances, Catholic Mutual is estopped from challenging the state court's judgment that [the priest's] negligence was a proximate cause of Ranta's injuries.

The district court properly rejected Ranta's argument, as the elements of collateral estoppel are not present. Under South Carolina law, collateral estoppel precludes only "a party to the prior action or when in privity with a party to the prior action" from relitigating an issue previously litigated. *Ex parte Allstate Ins. Co.*, 339 S.C. 202, 528 S.E.2d 679, 681 (S.C.Ct.App.2000). The term "privity" means "one so identified in interest with another that he represents the same legal right." *Id.* Accordingly, when an insurer elects not to defend a tort suit on the ground that the insured's tortious conduct was outside the scope of the insurance policy, the insured and the insurer do not share an identity of interest regarding the underlying action and, therefore, are not in privity. *See State Farm Fire & Cas. Co. v. Garrity*, 785 F.2d 1225, 1227 (4th Cir. 1986) ("When the insured is sued for negligence and the insurance company believes the injury was intentional, [] the interests of the insurer and the insured diverge.").

Moreover, an insurance company "is neither obligated to defend nor bound by the findings of the court if the claim against the insured is not covered by the policy." *Farm Bureau Mut. Auto. Ins. Co. v. Hammer*, 177 F.2d 793, 799 (4th Cir. 1949). The district court properly found that the allegations of Ranta's complaint established that there was no duty to defend. Accordingly, **the South Carolina tort judgment does not bar Catholic Mutual from asserting that [the priest's] conduct was intentional and, therefore, outside the scope of insurance coverage.**

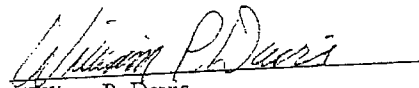
Id., at 376-77 (emphasis added).

Third-Party Plaintiff's argument must fail for similar reasons. As in *Sims*, the insurer had evidence, including Ms. Brown's own recorded statement, that the dog in question was at least fifty percent Pit Bull, as a result of which its exclusion applied. Contrary to her own statement and the overwhelming evidence, Ms. Brown then testified to the contrary at the damages hearing.

For the reasons set forth in the Sims opinion, GeoVera cannot be bound by such testimony, not only because the Special Master made no such finding, but also given the overwhelming evidence to the contrary.

CONCLUSION

For the reasons set forth above, GeoVera respectfully requests that its motion for summary judgment be granted, and that Third-Party Plaintiff's motion for summary judgment be denied.


William P. Davis
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BAKER, RAVENEL & BENDER, L.L.P.
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Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091
Fax: (803) 779-3423
E-Mail: wdavis@brblegal.com
Our File No.: 7746.1857
Attorneys for Third-Party Defendant

Columbia, South Carolina
May 15, 2014

EXHIBIT A

**Certified Policy
USF&G Specialty Insurance Company**

11/11/2008 11:48 8437661295
Insured

BARRY BAKER ATTY

PAGE 83/22

Coverage is provided under this policy for
the residence located at:

TEMA BROWN

3368 HABITAT BLVD
JOHNS ISLAND

SC 29455

3368 HABITAT BLVD
JOHNS ISLAND

SC 29455-7118

Matl To: Insured

TEMA BROWN

2368 HABITAT BLVD
JOHNS ISLAND

SC 29455

THIS IS A TRUE
AND CERTIFIED COPY

Cliff Heath 1-2007

Producer Name & Address #111285
843-786-6316

CLIFF HEATH INSURANCE, INC.
1730 SAVANNAH HIGHWAY
P O BOX 30369
CHARLESTON

SC 29407

USF&G Specialty Insurance Company

RENEWAL DECLARATIONS

GH20051152	12 Months	12/23/04	12/23/08 12:01 AM Standard Time at the Insured Premises.

Insurance is provided only with respect to those specific limits of liability applicable thereto:

Section I		
A - Dwelling	\$	90,000
B - Other Structures	\$	9,000
C - Personal Property	\$	63,000
D - Loss of Use	\$	18,000
Section II		
E - Personal Liability	\$	200,000
F - Medical Payments to Others	\$	2,000

Premium	\$	878.00
Inspection Fee	\$	0.00
Policy Fee	\$	75.00
State Tax	\$	57.18
Total Policy Amount	\$	1,010.18

\$	1800.00

\$	1000.00

Forms and endorsements made part of this policy
at time of issuance:

CHIL-180 07-02 HO-00-03 10-00 HO-01-39 09-01
HO-04-65 10-00 HO-04-77 10-00 HO-04-90 10-00
HO-04-96 10-00 HOPRIV 04-03 US-01-09 04-03
US-03-55 04-03 US-03-80 02-03 US-04-35 02-03
US-04-42 02-03 US-04-91 02-03 US-05-01 02-03
US-82-01 02-03

"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 is not
afforded guaranty fund protection."

Authorized Agent:
Robert L. Lowery
Hull & Company (Mid-Atlantic), Inc.
14120 Ballantyne Corporate Place, Suite 525
Charlotte, NC 28277-2747
Surplus Lines Agent, #223641951

Countersigned by:

Robert L. Lowery

Countersigned at: CHARLOTTE, NC DATE: 12/23/04

THIS DECLARATION PAGE, WITH POLICY PROVISIONS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THE
ABOVE NUMBERED HOMEOWNERS POLICY.

FSORMD-010724

TO REPORT ANY CLAIM, CALL 1.800.631.6478, 24 HOURS A DAY.

Insured

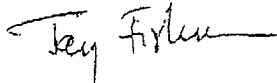
11/11/2008 11:48 8437561295

BARRY BAKER ATTY

PAGE 04/22

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be signed on the Declarations Page by an authorized representative of the Company.

USF&G Specialty Insurance Company



Jay Fishman
President



Bruce Backberg
Secretary

HOMEOWNERS
HO 01 38 08 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS - SOUTH CAROLINA

SECTION I - CONDITIONS

G. Suit Against Us is deleted and replaced by the following:

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within three years after the date of loss.

The following condition is added to all forms except HO 00 04 and HO 00 08:

S. Valuation Clause

With respect to the perils of fire and lightning, we agree that the limit of liability stated in Coverage A of the Declaration of this policy is the value of the building described. This valuation is established for insurance purposes only.

SECTIONS I AND II - CONDITIONS

C. Cancellation

Paragraph 2. is deleted and replaced by the following:

2. We may cancel this policy only for the reasons stated below, by written notification to you and, if any, your insurance agent of the date cancellation takes effect and the precise reason for cancellation. This cancellation notice may be delivered or mailed to you and your agent at the mailing addresses shown in the Declarations or the last known addresses. Proof of mailing will be sufficient proof of notice.

a. When you have not paid the premium, we may cancel at any time by letting you and your agent know at least 10 days before the date cancellation takes effect.

b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you and your agent know at least 30 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more at any time if it is renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy;

(2) If the risk has changed substantially since the policy was issued, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing this policy;

(3) In the event of a substantial breach of a contractual duty, condition or warranty, or

(4) If we lose our reinsurance covering all or a significant portion of this policy, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of this state. Cancellation for these reasons is subject to approval by the Insurance Commissioner.

This can be done by letting you and your agent know at least 30 days before the date cancellation takes effect.

D. Nonrenewal is deleted and replaced by the following:

D. Nonrenewal

We may elect not to renew this policy. We may do so by written notification to you and your agent at least 30 days before:

1. The expiration date of the policy, for a policy written for a term of one year or less; or
2. The anniversary date of the policy, for a policy written for a term of more than one year or for an indefinite term, provided that we did not collect additional premium to guarantee renewal.

The nonrenewal notice, together with the precise reason for nonrenewal, may be delivered or mailed to you and your agent at the mailing addresses shown in the Declarations or the last known addresses.

All other provisions of this policy apply.

11/11/2008 11:48

8437661295

BARRY BAKER ATTY

PAGE 06/22

POLICY NUMBER:

HOMEOWNERS
HO 04 65 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE C INCREASED SPECIAL LIMITS OF LIABILITY

SCHEDULE*

SECTION 1 - PROPERTY COVERAGES COVERAGE C - PERSONAL PROPERTY

3. Special Limits Of Liability

The special limits of liability are increased as noted below:

Property	Increase In Limit Of Liability	Total Limit Of Liability
a. Money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.		
b. Securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps.		
e. Jewelry, watches, furs, precious and semiprecious stones for loss by theft, but not more than \$1,000 for any one article.	\$1,000	\$2,500
f. Firearms and related equipment for loss by theft.		
g. Silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware for loss by theft.		
j. Electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		
k. Electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		

All other provisions of this policy apply.

*Entries may be left blank if shown elsewhere in this policy for this coverage.

11/11/2008 11:48

8437661295

BARRY BAKER ATTY

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POLICY NUMBER:

HOMEOWNERS
HO 04 77 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW INCREASED AMOUNT OF COVERAGE

SCHEDULE*

New Total Percentage Amount: 25%

*Entry may be left blank if shown elsewhere in this policy for this coverage.

SECTION I - PROPERTY COVERAGES ADDITIONAL COVERAGES

11. Ordinance Or Law

The total limit of liability that applies:

a. To Coverage A, or

b. For Form HO 00 04, to Building Additions And Alterations;

is increased from 10% to the percentage amount shown in the Schedule above.

This is Additional Coverage 10, in Form HO 00 06.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 80 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL PROPERTY REPLACEMENT COST LOSS SETTLEMENT

A. Eligible Property

1. Covered losses to the following property are settled at replacement cost at the time of the loss:
 - a. Coverage C; and
 - b. If covered in this policy:
 - (1) Awnings, outdoor antennas and outdoor equipment; and
 - (2) Carpeting and household appliances; whether or not attached to buildings.
2. This method of loss settlement will also apply to the following articles or classes of property if they are separately described and specifically insured in this policy and not subject to agreed value loss settlement:
 - a. Jewelry;
 - b. Furs and garments:
 - (1) Trimmed with fur; or
 - (2) Consisting principally of fur;
 - c. Cameras, projection machines, films and related articles of equipment;
 - d. Musical equipment and related articles of equipment;
 - e. Silverware, silver-plated ware, goldware, gold-plated ware and pewterware, but excluding:
 - (1) Pens or pencils;
 - (2) Flasks;
 - (2) Smoking implements; or
 - (3) Jewelry; and
 - f. Golfer's equipment meaning golf clubs, golf clothing and golf equipment.

Personal Property Replacement Cost loss settlement will not apply to other classes of property separately described and specifically insured.

B. Ineligible Property

Property listed below is not eligible for replacement cost loss settlement. Any loss will be settled at actual cash value at the time of loss but not more than the amount required to repair or replace.

1. Antiques, fine arts, paintings and similar articles of rarity or antiquity which cannot be replaced.
2. Memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value.
3. Articles not maintained in good or workable condition.
4. Articles that are outdated or obsolete and are stored or not being used.

C. Replacement Cost Loss Settlement Condition

The following loss settlement condition applies to all property described in A. above:

1. We will pay no more than the least of the following amounts:
 - a. Replacement cost at the time of loss without deduction for depreciation;
 - b. The full cost of repair at the time of loss;
 - c. The limit of liability that applies to Coverage C, if applicable;
 - d. Any applicable special limits of liability stated in this policy; or
 - e. For loss to any item described in A.2.a. - f. above, the limit of liability that applies to the item.
2. If the cost to repair or replace the property described in A. above is more than \$500, we will pay no more than the actual cash value for the loss until the actual repair or replacement is complete.
3. You may make a claim for loss on an actual cash value basis and then make claim for any additional liability in accordance with this endorsement provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 96 10 00

THIS ENDORSEMENT DOES NOT CONSTITUTE A REDUCTION OF COVERAGE.

**NO SECTION II – LIABILITY COVERAGES FOR
HOME DAY CARE BUSINESS
LIMITED SECTION I – PROPERTY COVERAGES FOR
HOME DAY CARE BUSINESS**

A. "Business", as defined in the policy, means:

1. A trade, profession or occupation engaged in on a full-time, part-time, or occasional basis; or
2. Any other activity engaged in for money or other compensation, except the following:

a. One or more activities:

- (1) Not described in b. through d. below; and
- (2) For which no "insured" receives more than \$2000 in total compensation for the 12 months before the beginning of the policy period;

b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;

c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

d. The rendering of home day care services to a relative of an "insured".

B. If an "insured" regularly provides home day care services to a person or persons other than "insureds" as their trade, profession or occupation, that service is a "business".

C. If home day care service is not a given "insured's" trade, profession or occupation but is an activity:

1. That an "insured" engages in for money or other compensation; and
2. From which an "insured" receives more than \$2,000 in total/combined compensation from it and any other activity for the 12 months before the beginning of the policy period;

the home day care service and other activity will be considered a "business".

D. With respect to C. above, home day care service is only an example of an activity engaged in for money that may be a "business". Any single activity or combination of activities:

1. Described in A.2. above, and
2. Engaged in for money by a single "insured"; may be considered a "business" if the \$2000 threshold is exceeded.

E. With respect to A. through D. above, coverage does not apply to or is limited with respect to home day care service which is a "business". For example, this policy:

1. Does not provide:

- a. Section II coverages. This is because a "business" of an "insured" is excluded under E.2. of Section II – Exclusions;
- b. Coverage, under Section I, for other structures from which any "business" is conducted; and

2. Limits Section I coverage, under Coverage C – Special Limits of Liability, for "business" property:

- a. On the "residence premises" for the home day care "business" to \$2,500. This is because Category h. (e. in Form HO 00 08) imposes that limit on "business" property on the "residence premises";
- b. Away from the "residence premises" for the home day care "business" to \$500. This is because Category i. (f. in Form HO 00 08) imposes that limit on "business" property away from the "residence premises". Category i. does not apply to property described in Categories j. and k. (g. and h. respectively in Form HO 00 08).

HOPRIV (04-03)

USF&G Specialty Insurance Company's Privacy Policy

Thank you for selecting USF&G Specialty Insurance Company as your homeowner's insurer. At USF&G Specialty Insurance Company, a member of The St. Paul Companies, we recognize that privacy is important to you. That is why we are committed to protecting your privacy through the adoption of the following privacy principles:

Collection of Information

We collect, retain and use information about you, including members of your household, only where we believe that it will help or is necessary to provide you products and services or otherwise conduct our business. We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you or through your agent or broker on applications or other forms;
- Information we receive from or about you in the process of adjusting claims;
- Information about your coverages and loss activity with other carriers; and
- Information we receive from a consumer reporting agency.

Such information includes identifying information such as your name, address, and social security number; financial information such as your income, payment history or credit history; and, under certain circumstances, health information such as information about an illness, disability or injury. It could also include information on claims with other insurance companies and us and the condition and maintenance of your property.

Any information obtained from a report prepared by an insurance-support organization may be retained by the insurance support organization and disclosed to other persons.

Disclosure of Information

We usually do not disclose nonpublic personal information about you without your consent. However, in some circumstances we may disclose information to others without your prior authorization:

- Information from your application or other forms, such as your name, address and social security number;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history; and
- Information about your claim history.

We do not disclose any personal information about you to anyone unless allowed by law. We may disclose personal information about you to:

- State insurance departments, for their regulation of our business;

HOPRIV (04-03)

Page 1 of 2

HOPRIV (04-03)

- Other government authorities;
- Our agents and brokers as necessary to conduct our business;
- Organizations that perform underwriting and claims investigations;
- Another insurance company to which you have applied for a policy or submitted a claim;
- Insurance support agencies, law enforcement agencies and our reinsurers; and
- Any other third party, as permitted or required by law.

Most importantly, USF&G Specialty Insurance Company does not and will not disclose or sell your nonpublic personal information to anyone for marketing purposes.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those who need it to serve your insurance needs and to maintain and improve customer service. We maintain physical, electronic, and procedural safeguards that comply with federal and state laws and regulations to guard your nonpublic personal information.

Your Right to Access and Correct Information

Upon your written request, we will send you a copy of relevant information we have about you in connection with your application for coverage. Please address your request to Government Affairs, The St. Paul Companies, Inc., Mail Code 514C, 385 Washington Street, St. Paul, MN 55102. If you feel that our information is incorrect, let us know and we will review it. If we agree, we will correct our files. If we do not agree, you may file a short statement of dispute with us. This statement will be included with any information disclosure we make in the future, or sent to anyone you designate who may have received such information in the past two years, or as otherwise required by law.

Disclosure and Protection of Former Customers' Information

We may disclose all the personal information we have collected, as described above. However, even if you no longer have a customer relationship with us, we will continue to follow our privacy policies and practices to protect your information.

Changes in Privacy Policy

We may choose to modify our policy regarding the treatment of personal information at any time. Before we do so, we will notify you and provide an updated notice.

HOPRIV (04-03)

Page 2 of 2

US 01 08 (04-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

USF&G SPECIALTY INSURANCE COMPANY SPECIAL PROVISIONS

DEFINITIONS

The definition of "occurrence" is replaced by the following:

2. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

Assault and battery is not an "occurrence", whether or not committed by or at the direction of an "insured".

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A:

Asbestos or Lead

Asbestos or Lead means the presence or effects of any form of asbestos or lead.

SECTION II - EXCLUSIONS

The following exclusions are added to E, Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Asbestos or Lead

- a. "Bodily injury" arising out of the absorption, ingestion, or inhalation of, or prolonged exposure to, any form of asbestos or lead;
- b. "Property damage" arising out of any form of asbestos or lead; or
- c. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way

respond to, or assess the effects of, any form of asbestos or lead.

Because asbestos and lead are pollutants, this exclusion applies in addition to the Pollution Exclusion and any other pollution-related exclusion made a part of this policy.

Assault or Battery

"Bodily injury" or "property damage" arising out of assault or battery, whether or not committed by or at the direction of an "insured".

Pollution

- a. "Bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants at, on, in, or from any "insured location"; or
- b. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of, pollutants.

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

This exclusion does not apply to "bodily injury" or "property damage" caused by heat, smoke, or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it is intended to be.

Punitive or Exemplary Damages

Punitive or exemplary damages, or any costs or interest attributable to such damages.

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SECTIONS I AND II - CONDITIONS

The following condition is added:

Service of Suit

If we fail to pay any amount claimed to be due under this policy and you sue us, we will, at your request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Service of process in such suit may be made on General Counsel, Legal Services Department, The St. Paul, 385 Washington Street, St. Paul, Minnesota 55102, or his or her representative. Service of process in such suit may also be made on the Superintendent, Commissioner, or Director of Insurance for the state in which the suit is being filed, if the law so provides. We designate that appropriate officer, or that officer's successor, to mail a copy of the papers to us.

For the State of California, we authorize Lori Castaneda, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833, to be served and to mail us the papers.

Nothing in this condition constitutes a waiver of our right to bring an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by law.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED SMOG, RUST, MOLD, ROT, OR BACTERIA COVERAGE AND
LIMITED SEEPAGE OR LEAKAGE COVERAGE
FORM HD 00 03 ONLY**

DEFINITIONS

The following definitions are added:

"Bacteria" means any type or form of bacterium, or any mycotoxin, spore, scent, or byproduct produced or released by such bacterium.

"Mold or other fungi" means:

- a. Any type or form of mold or mildew;
- b. Any other type or form of fungus; or
- c. Any mycotoxin, spore, scent, or byproduct produced or released by such mold, mildew, or other fungus.

"Per policy period seepage or leakage combined total sublimit" means the \$1,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by or resulting from water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more; and
- b. covered "bodily injury" or "property damage" arising out of water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more.

This combined total \$1,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, or the number of "occurrences" or claims made. This sublimit is included in, but does not increase, the maximum limits of liability

under Sections I and II of your policy as shown on the declarations page.

"Per policy period mold combined total sublimit" means the \$5,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from any Peril Insured Against; and
- b. covered "bodily injury" or "property damage" arising out of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

This combined total \$5,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, or the number of "occurrences" or claims made, or the number or type of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" that caused the loss, injury, or damage. This sublimit is included in, but does not increase, the maximum limits of liability under Sections I and II of your policy as shown on the declarations page.

SECTION I - PROPERTY COVERAGES

The first paragraph of D. Coverage D - Loss of Use is replaced by the following:

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

However, loss of use covered under these three coverages caused by:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject

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to the "per policy period mold combined total sublimit"; and

- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

The following is added to E. Additional Coverages:

Seepage or Leakage

We insure for direct physical loss to property described in Coverages A and B caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more. However, such coverage is subject to the "per policy period seepage or leakage combined total sublimit".

SECTION I - PERILS INSURED AGAINST

Paragraphs 2.c.(5) and 2.c.(6)(c) of A. Coverage A - Dwelling And Coverage B - Other Structures are deleted.

The following is added to B. Coverage C - Personal Property:

Seepage or Leakage

This peril means the seepage or leakage of water or steam, or the presence or condensation of humidity, moisture, or vapor, above the surface of the ground.

However, loss caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A.:

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria"

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria" means the presence, growth, proliferation, spread or any activity of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

Loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from a Peril Insured Against is covered. However, such loss is subject to the "per policy period mold combined total sublimit".

SECTION II - CONDITIONS

The following is added to A. Limit of Liability:

However, our liability under Coverages E and F for any covered "bodily injury" or "property damage" arising out of:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject to the "per policy period mold combined total sublimit"; and
- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

Paragraph B. Severability of Insurance is replaced by the following:

This insurance applies separately to each "insured" except with respect to the "per policy period mold combined total sublimit" and the "per policy period seepage or leakage combined total sublimit". This condition will not increase our limit of liability for any one "occurrence".

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR HAZARD AND BIOCHEMICAL RELEASE FROM
TERRORISM EXCLUSIONS**

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A:

Biochemical Release From Terrorism

Biochemical Release From Terrorism means the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. involves, or appears to a reasonable person was intended to involve, release of any such substances.

SECTION I - CONDITIONS

If this endorsement is attached to Form HO 00 03 or HO 00 06, Paragraph M.3 is replaced by the following:

If this endorsement is attached to Form HO 00 04, Paragraph L.3 is replaced by the following:

3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard. Direct loss by fire resulting from the nuclear hazard is covered to the extent required by law.

SECTION II - EXCLUSIONS

The following exclusion is added to Paragraph E:

Biochemical Release From Terrorism

"Bodily injury" or "property damage" arising out of or in connection with the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. involves, or appears to a reasonable person was intended to involve, release of any such substances.

All other provisions of this policy apply.

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LOSS ASSESSMENT COVERAGE

1. Additional Insurance – Residence- Premises

We will pay up to a total of \$5,000 for all assessments covered under:

- a. Section I Additional Coverage E.7.
Loss Assessment (Additional
Coverage D.7. in Form HO 00 06);
or
- b. Section II – Additional Coverage D.
Loss Assessment; or
- c. Both a. and b. above;

arising out of a single loss.

2. Special Limit

We will not pay more than \$1,000 of
your assessment that results from a
deductible in the policy of insurance
purchased by a corporation or
association of property owners.

3. Section II – Exclusions

Section II – Exclusion F.1.a. does
not apply to this coverage.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT**(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Fraud)**
FORM HO 00 03 ONLY**DEFINITIONS**

The definition of "residence premises" is replaced by the following:

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three, or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

However, "residence premises" does not include mobile homes, whether or not they are permanently affixed to a foundation.

The following definition is added:

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage C - Personal Property, 4. Property Not Covered:

Mobile homes, or their contents, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- a. "vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler; or
- e. Doberman Pinscher.

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 50% of that breed.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

SECTION II - CONDITIONS

J. Concealment Or Fraud is deleted.

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SECTIONS I AND II - CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "insured", their agent, or their broker:

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INFLATION GUARD

SECTION I - CONDITIONS

The following condition is added:

Inflation Guard

For each policy period, we will re-evaluate the cost index we use to determine the approximate replacement cost of the dwelling and structures covered under Coverage A. This may result in an increase in the amount of premium you are charged and an increase in the limits of liability for Coverages A, B, C, and D.

Any adjustment in premium resulting from the application of the adjusted cost index will be made based on the premium rates used by us at the time of the change.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PREMIUM PAYMENT AND REFUND WAIVER

SECTIONS I AND II - CONDITIONS

The following condition is added:

Premium Payment and Refund Waiver

We will waive your payment to us of additional premium due on this policy which is \$5.00 or less, and we will not send to you return premium due on this policy which is \$5.00 or less.

All other provisions of this policy apply.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REPLACEMENT COST PROTECTION – UP TO 125%

SECTION I – CONDITIONS

The following condition is added:

Replacement Cost Protection

If you have:

1. Allowed us to adjust the limit of liability for Coverage A and the premium in accordance with:
 - a. The property evaluations we make; and
 - b. Any increases in inflation;
2. Notified us, within 30 days of completion, of any alterations to the dwelling covered under Coverage A which increase the dwelling's replacement cost by 5% or more; and
3. Elected to repair or replace the dwelling covered under Coverage A after it is damaged;

We will:

4. Increase the limit of liability for Coverage A to equal the dwelling's current replacement cost, up to a maximum of 125% of the limit of liability for Coverage A, if the amount of loss to the dwelling is more than the limit of liability shown in the Declarations;
5. Increase, by the same percentage applied to Coverage A, the limits of liability for Coverages B, C, and D. However, we will do this only if the Coverage A limit of liability is increased under paragraph 4. above as a result of a Coverage A loss; and
6. Adjust the premium from the time of loss for the remainder of the policy term based on the increased limits of liability.

If you comply with paragraphs 1, 2, and 3 of the Replacement Cost Protection condition, Section I Condition C., Loss Settlement paragraph 2. is replaced by the following:

2. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

- a. We will pay not more than the least of the following amounts:

(1) The limit of liability that applies to the building, adjusted as provided in paragraphs 4 and 6 of the Replacement Cost Protection condition;

(2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or

(3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete.

- c. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 00 03 10 00

HOMEOWNERS 3 - SPECIAL FORM

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

- A. In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance.
- B. In addition, certain words and phrases are defined as follows:
1. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in b. below, mean the following:
 - a. Liability for "bodily injury" or "property damage" arising out of the:
 - (1) Ownership of such vehicle or craft by an "insured";
 - (2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
 - (3) Entrustment of such vehicle or craft by an "insured" to any person;
 - (4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
 - (5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.
 - b. For the purpose of this definition:
 - (1) Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;
 - (2) Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
 - (3) Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and
 - (4) Motor vehicle means a "motor vehicle" as defined in 7. below.

2. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.
3. "Business" means:
 - a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
 - b. Any other activity engaged in for money or other compensation, except the following:
 - (1) One or more activities, not described in (2) through (4) below; for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
 - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (4) The rendering of home day care services to a relative of an "insured".
4. "Employee" means an employee of an "insured", or an employee leased to an "insured" by a labor leasing firm under an agreement between an "insured" and the labor leasing firm, whose duties are other than those performed by a "residence employee".
5. "Insured" means:
 - a. You and residents of your household who are:
 - (1) Your relatives; or
 - (2) Other persons under the age of 21 and in the care of any person named above;
 - b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:
 - (1) 24 and your relative; or
 - (2) 21 and in your care or the care of a person described in a.(1) above; or

c. Under Section II:

- (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above, "insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner; or
- (2) With respect to a "motor vehicle" to which this policy applies:
 - (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (b) Other persons using the vehicle on an "insured location" with your consent.

Under both Sections I and II, when the word an immediately precedes the word "insured", the words an "insured" together mean one or more "insureds".

6. "Insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence; and
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
- f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or

- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

7. "Motor vehicle" means:

- a. A self-propelled land or amphibious vehicle; or
- b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in a. above.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

9. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

10. "Residence employee" means:

- a. An employee of an "insured", or an employee leased to an "insured" by a labor leasing firm, under an agreement between an "insured" and the labor leasing firm, whose duties are related to the maintenance or use of the "residence premises", including household or domestic services; or
- b. One who performs similar duties elsewhere not related to the "business" of an "insured".

A "residence employee" does not include a temporary employee who is furnished to an "insured" to substitute for a permanent "residence employee" on leave or to meet seasonal or short-term workload conditions.

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

DEDUCTIBLE

Unless otherwise noted in this policy, the following deductible provision applies:

Subject to the policy limits that apply, we will pay only that part of the total of all loss payable under Section I that exceeds the deductible amount shown in the Declarations.

SECTION I - PROPERTY COVERAGES**A. Coverage A - Dwelling****1. We cover:**

- a. The dwelling on the "residence premises" shown in the Declarations, including structures attached to the dwelling; and
- b. Materials and supplies located on or next to the "residence premises" used to construct, alter or repair the dwelling or other structures on the "residence premises".

2. We do not cover land, including land on which the dwelling is located.**B. Coverage B - Other Structures**

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

2. We do not cover:

- a. Land, including land on which the other structures are located;
- b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
- c. Other structures from which any "business" is conducted; or
- d. Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

3. The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

C. Coverage C - Personal Property**1. Covered Property**

We cover personal property owned or used by an "insured" while it is anywhere in the world. After a loss and at your request, we will cover personal property owned by:

- a. Others while the property is on the part of the "residence premises" occupied by an "insured"; or
- b. A guest or a "residence employee", while the property is in any residence occupied by an "insured".

2. Limit For Property At Other Residences

Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises", is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater. However, this limitation does not apply to personal property:

- a. Moved from the "residence premises" because it is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- b. In a newly acquired principal residence for 30 days from the time you begin to move the property there.

3. Special Limits Of Liability

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.

- a. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.
- b. \$1,500 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the information from the lost or damaged material.

- c. \$1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.
 - d. \$1,500 on trailers or semitrailers not used with watercraft of all types.
 - e. \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
 - f. \$2,500 for loss by theft of firearms and related equipment.
 - g. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
 - h. \$2,500 on property, on the "residence premises", used primarily for "business" purposes.
 - i. \$500 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus and other property described in Categories j. and k. below.
 - j. \$1,500 on electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category j.
 - k. \$1,500 on electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category k.
4. Property Not Covered
- We do not cover:
- a. Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;

- b. Animals, birds or fish;
- c. "Motor vehicles".

(1) This includes:

- (a) Their accessories, equipment and parts; or
- (b) Electronic apparatus and accessories designed to be operated solely by power from the electrical system of the "motor vehicle". Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described above.

The exclusion of property described in (a) and (b) above applies only while such property is in or upon the "motor vehicle".

- (2) We do cover "motor vehicles" not required to be registered for use on public roads or property which are:

- (a) Used solely to service an "insured's" residence; or
- (b) Designed to assist the handicapped;

- d. Aircraft meaning any contrivance used or designed for flight including any parts whether or not attached to the aircraft.

We do cover model or hobby aircraft not used or designed to carry people or cargo;

- e. Hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
- f. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";
- g. Property in an apartment regularly rented or held for rental to others by an "insured", except as provided in E.10. Landlord's Furnishings under Section 1 - Property Coverages;
- h. Property rented or held for rental to others off the "residence premises";
- i. "Business" data, including such data stored in:
 - (1) Books of account, drawings or other paper records; or
 - (2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;

j. Credit cards, electronic fund transfer cards or access devices used solely for deposit, withdrawal or transfer of funds except as provided in E.S. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages; or

k. Water or steam.

D. Coverage D - Loss Of Use

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

1. Additional Living Expense

If a loss covered under Section I makes that part of the "residence premises" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

2. Fair Rental Value

If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest time required to repair or replace such premises.

3. Civil Authority Prohibits Use

If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against, we cover the loss as provided in 1. Additional Living Expense and 2. Fair Rental Value above for no more than two weeks.

4. Loss Or Expense Not Covered

We do not cover loss or expense due to cancellation of a lease or agreement.

The periods of time under 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use above are not limited by expiration of this policy.

E. Additional Coverages

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

(1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or

(2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit is available for such expense.

b. We will also pay your reasonable expense, up to \$1,000, for the removal from the "residence premises" of:

(1) Your tree(s) felled by the peril of Wind-storm or Fall or Weight of Ice, Snow or Sleet; or

(2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage C;

provided the tree(s):

(3) Damage(s) a covered structure; or

(4) Does not damage a covered structure, but:

(a) Block(s) a driveway on the "residence premises" which prevent(s) a "motor vehicle", that is registered for use on public roads or property, from entering or leaving the "residence premises"; or

(b) Block(s) a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

The \$1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than \$500 of this limit will be paid for the removal of any one tree.

This coverage is additional insurance.

2. Reasonable Repairs

a. We will pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by a Peril Insured Against from further damage.

b. If the measures taken involve repair to other damaged property, we will only pay if that property is covered under this policy and the damage is caused by a Peril Insured Against. This coverage does not:

- (1) Increase the limit of liability that applies to the covered property; or
- (2) Relieve you of your duties, in case of a loss to covered property, described in B.4, under Section I - Conditions.

3. Trees, Shrubs And Other Plants

We cover trees, shrubs, plants or lawns, on the "residence premises", for loss caused by the following Perils Insured Against:

- a. Fire or Lightning;
- b. Explosion;
- c. Riot or Civil Commotion;
- d. Aircraft;
- e. Vehicles not owned or operated by a resident of the "residence premises";
- f. Vandalism or Malicious Mischief; or
- g. Theft.

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be paid for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

This coverage is additional insurance.

4. Fire Department Service Charge

We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. Property Removed

We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

*This coverage does not change the limit of liability that applies to the property being removed.

6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money

a. We will pay up to \$500 for:

- (1) The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;
- (2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;
- (3) Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and
- (4) Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

This coverage is additional insurance. No deductible applies to this coverage.

b. We do not cover:

- (1) Use of a credit card, electronic fund transfer card or access device:
 - (a) By a resident of your household;
 - (b) By a person who has been entrusted with either type of card or access device; or
 - (c) If an "insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or
- (2) Loss arising out of "business" use or dishonesty of an "insured".

c. If the coverage in a. above applies, the following defense provisions also apply:

- (1) We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.
- (2) If a suit is brought against an "insured" for liability under a.(1) or (2) above, we will provide a defense at our expense by counsel of our choice.
- (3) We have the option to defend at our expense an "insured" or an "insured's" bank against any suit for the enforcement of payment under a.(3) above.

7. Loss Assessment

- a. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. The assessment must be made as a result of direct loss to property owned by all members collectively, of the type that would be covered by this policy if owned by you, caused by a Peril Insured Against under Coverage A, other than:

- (1) Earthquake; or
- (2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

- b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

- c. Paragraph P, Policy Period under Section I - Conditions does not apply to this coverage.

This coverage is additional insurance.

8. Collapse

- a. With respect to this Additional Coverage:

- (1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
- (2) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.
- (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.
- (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

- (1) The Perils Insured Against named under Coverage C;
- (2) Decay that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse;
- (3) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an "insured" prior to collapse;
- (4) Weight of contents, equipment, animals or people;
- (5) Weight of rain which collects on a roof; or
- (6) Use of defective material or methods in construction, remodeling or renovation, if the collapse occurs during the course of the construction, remodeling or renovation.

- c. Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under b.(2) through (6) above, unless the loss is a direct result of the collapse of a building or any part of a building.

- d. This coverage does not increase the limit of liability that applies to the damaged covered property.

9. Glass Or Safety Glazing Material

- a. We cover:

- (1) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;
- (2) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and
- (3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

- (1) To covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or
- (2) On the "residence premises" if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property.

10. Landlord's Furnishings

We will pay up to \$2,500 for your appliances, carpeting and other household furnishings, in each apartment on the "residence premises" regularly rented or held for rental to others by an "insured", for loss caused by a Peril Insured Against in Coverage C, other than Theft.

This limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishings involved in the loss.

This coverage does not increase the limit of liability applying to the damaged property.

11. Ordinance Or Law

a. You may use up to 10% of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
- (2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or
- (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.

b. You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a. above.

c. We do not cover:

- (1) The loss in value to any covered building or other structure due to the requirements of any ordinance or law; or
- (2) The costs to comply with any ordinance or law which 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 in or on any covered building or other structure.

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

This coverage is additional insurance.

12. Grave Markers

We will pay up to \$5,000 for grave markers, including mausoleums, on or away from the "residence premises" for loss caused by a Peril Insured Against under Coverage C.

This coverage does not increase the limits of liability that apply to the damaged covered property.

SECTION I - PERILS INSURED AGAINST

A. Coverage A - Dwelling And Coverage B - Other Structures

1. We insure against risk of direct physical loss to property described in Coverages A and B.

2. We do not insure, however, for loss:

- a. Excluded under Section I - Exclusions;
- b. Involving collapse, except as provided in E.B. Collapse under Section I - Property Coverages; or
- c. Caused by:

- (1) Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This provision does not apply if you have used reasonable care to:

- (a) Maintain heat in the building; or

- (b) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

For purposes of this provision a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

- (2) Freezing, thawing, pressure or weight of water or ice; whether driven by wind or not, to a:
- (a) Fence, pavement, patio or swimming pool;
 - (b) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of a building, or other structure;
 - (c) Retaining wall or bulkhead that does not support all or part of a building or other structure; or
 - (d) Pier, wharf or dock;
- (3) Theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
- (4) Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief; if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
- (5) Mold, fungus or wet rot. However, we do insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure if such loss results from the accidental discharge or overflow of water or steam from within:
- (a) A plumbing, heating, air conditioning or automatic fire protective sprinkler system, or a household appliance, on the "residence premises"; or

- (b) A storm drain, or water, steam or sewer pipes, off the "residence premises".

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment; or

- (6) Any of the following:

- (a) Wear and tear, marring, deterioration;
 - (b) Mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;
 - (c) Smog, rust or other corrosion, or dry rot;
 - (d) Smoke from agricultural smudging or industrial operations;
 - (e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C.
- Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- (f) Settling, shrinking, bulging or expansion, including resultant cracking, of bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;
 - (g) Birds, vermin, rodents, or insects; or
 - (h) Animals owned or kept by an "insured".

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage A or B resulting from an accidental discharge or overflow of water or steam from within a:

- (i) Storm drain, or water, steam or sewer pipe, off the "residence premises"; or

- (ff) Plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the "residence premises". This includes the cost to tear out and replace any part of a building, or other structure, on the "residence premises", but only when necessary to repair the system or appliance. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building on the "residence premises".

We do not cover loss to the system or appliance from which this water or steam escaped.

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, down spout or similar fixtures or equipment.

Section 1 - Exclusion A.2. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under c.(6) and (6) above.

Under 2.b. and c. above, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

B. Coverage C - Personal Property

We insure for direct physical loss to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section 1 - Exclusions.

1. Fire Or Lightning

2. Windstorm Or Hail

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

3. Explosion

4. Riot Or Civil Commotion

5. Aircraft

This peril includes self-propelled missiles and spacecraft.

6. Vehicles

7. Smoke

This peril means sudden and accidental damage from smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism Or Malicious Mischief

9. Theft

a. This peril includes attempted theft and loss of property from a known place when it is likely that the property has been stolen.

b. This peril does not include loss caused by theft:

- (1) Committed by an "insured";
- (2) In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
- (3) From that part of a "residence premises" rented by an "insured" to someone other than another "insured"; or
- (4) That occurs off the "residence premises" of:
 - (a) Trailers, semitrailers and campers;
 - (b) Watercraft of all types, and their furnishings, equipment and outboard engines or motors; or
 - (c) Property while at any other residence owned by, rented to, or occupied by an "insured", except while an "insured" is temporarily living there. Property of an "insured" who is a student is covered while at the residence the student occupies to attend school as long as the student has been there at any time during the 60 days immediately before the loss.

10. Falling Objects

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight Of Ice, Snow Or Sleet

This peril means weight of ice, snow or sleet which causes damage to property contained in a building.

12. Accidental Discharge Or Overflow Of Water Or Steam

a. This peril means accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

b. This peril does not include loss:

- (1) To the system or appliance from which the water or steam escaped;
- (2) Caused by or resulting from freezing except as provided in Peril Insured Against 14. Freezing;
- (3) On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises"; or
- (4) Caused by mold, fungus or wet rot unless hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure.

c. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

d. Section I - Exclusion A.3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. Sudden And Accidental Tearing Apart, Cracking, Burning Or Bulging

This peril means sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

We do not cover loss caused by or resulting from freezing under this peril.

14. Freezing

a. This peril means freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance but only if you have used reasonable care to:

- (1) Maintain heat in the building; or
- (2) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

b. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

15. Sudden And Accidental Damage From Artificially Generated Electrical Current

This peril does not include loss to tubes, transistors, electronic components or circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.

16. Volcanic Eruption

This peril does not include loss caused by earthquakes, land shock waves or tremors.

SECTION I - EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. Ordinance Or Law

Ordinance Or Law means any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion A.1.a. does not apply to the amount of coverage that may be provided for in E.11. Ordinance Or Law under Section I - Property Coverages;

b. The requirements of which result in a loss in value to property; or

c. Requiring 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.

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

This Exclusion A.1. applies whether or not the property has been physically damaged.

2. Earth Movement

Earth Movement means:

a. Earthquake, including land shock waves or tremors before, during or after a volcanic eruption;

- b. Landslide, mudslide or mudflow;
- c. Subsidence or sinkhole; or
- d. Any other earth movement including earth sinking, rising or shifting;

caused by or resulting from human or animal forces or any act of nature unless direct loss by fire or explosion ensues and then we will pay only for the ensuing loss.

This Exclusion A.2. does not apply to loss by theft.

3. Water Damage

Water Damage means:

- a. Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or
- c. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

caused by or resulting from human or animal forces or any act of nature.

Direct loss by fire, explosion or theft resulting from water damage is covered.

4. Power Failure

Power Failure means the failure of power or other utility service if the failure takes place off the "residence premises". But if the failure results in a loss, from a Peril Insured Against on the "residence premises", we will pay for the loss caused by that peril.

5. Neglect

Neglect means neglect of an "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

6. War

War includes the following and any consequence of any of the following:

- a. Undeclared war, civil war, insurrection, rebellion or revolution;
- b. Warlike act by a military force or military personnel; or
- c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

7. Nuclear Hazard

This Exclusion A.7. pertains to Nuclear Hazard to the extent set forth in M. Nuclear Hazard Clause under Section I - Conditions.

8. Intentional Loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.

B. Governmental Action

Governmental Action means the destruction, confiscation or seizure of property described in Coverage A, B or C by order of any governmental or public authority.

This exclusion does not apply to such acts ordered by any governmental or public authority that are taken at the time of a fire to prevent its spread, if the loss caused by fire would be covered under this policy.

B. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

1. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in A. above to produce the loss.
2. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
3. Faulty, inadequate or defective:
 - a. Planning, zoning, development, surveying, siting;
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c. Materials used in repair, construction, renovation or remodeling;
 - d. Maintenance;
 of part or all of any property whether on or off the "residence premises".

SECTION I - CONDITIONS

A. Insurable Interest And Limit Of Liability

Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

1. To an "insured" for more than the amount of such "insured's" interest at the time of loss; or
2. For more than the applicable limit of liability.

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or our agent;
2. Notify the police in case of loss by theft;
3. Notify the credit card or electronic fund transfer card or access device company in case of loss as provided for in E.6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages;
4. Protect the property from further damage. If repairs to the property are required, you must:
 - a. Make reasonable and necessary repairs to protect the property; and
 - b. Keep an accurate record of repair expenses;
5. Cooperate with us in the investigation of a claim;
6. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
7. As often as we reasonably require:
 - a. Show the damaged property;
 - b. Provide us with records and documents we request and permit us to make copies; and
 - c. Submit to examination under oath, while not in the presence of another "insured", and sign the same;
8. Send to us, within 60 days after our request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:
 - a. The time and cause of loss;
 - b. The interests of all "insureds" and all others in the property involved and all liens on the property;
 - c. Other insurance which may cover the loss;

- d. Changes in title or occupancy of the property during the term of the policy;
- e. Specifications of damaged buildings and detailed repair estimates;
- f. The inventory of damaged personal property described in 8. above;
- g. Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- h. Evidence or affidavit that supports a claim under E.6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages, stating the amount and cause of loss.

C. Loss Settlement

In this Condition C., the terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in E.11. Ordinance Or Law under Section I - Property Coverages. Covered property losses are settled as follows:

1. Property of the following types:
 - a. Personal property;
 - b. Awnings, carpentry, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings;
 - c. Structures that are not buildings; and
 - d. Grave markers, including mausoleums;
 at actual cash value at the time of loss but not more than the amount required to repair or replace.
2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (1) The limit of liability under this policy that applies to the building;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:
- (1) The actual cash value of that part of the building damaged; or
 - (2) That proportion of the cost to repair or replace, after application of any deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.
- c. To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:
- (1) Excavations, footings, foundations, piers, or any other structures or devices that support all or part of the building, which are below the undersurface of the lowest basement floor;
 - (2) Those supports described in (1) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
 - (3) Underground files, pipes, wiring and drains.
- d. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss as noted in 2.a. and b. above.
- However, if the cost to repair or replace the damage is both:
- (1) Less than 5% of the amount of insurance in this policy on the building; and
 - (2) Less than \$2,500;
- we will settle the loss as noted in 2.a. and b. above whether or not actual repair or replacement is complete.

- e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

D. Loss To A Pair Or Set

In case of loss to a pair or set we may elect to:

1. Repair or replace any part to restore the pair or set to its value before the loss; or
2. Pay the difference between actual cash value of the property before and after the loss.

E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

F. Other Insurance And Service Agreement

If a loss covered by this policy is also covered by:

1. Other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or
2. A service agreement, this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

H. Our Option

If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with material or property of like kind and quality.

I. Loss Payment

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

1. Reach an agreement with you;
2. There is an entry of a final judgment; or
3. There is a filing of an appraisal award with us.

J. Abandonment Of Property

We need not accept any property abandoned by an "insured".

K. Mortgage Clause

1. If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgagee.
2. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Paragraphs E, Appraisal, G, Suit Against Us and I, Loss Payment under Section I - Conditions also apply to the mortgagee.
3. If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.
4. If we pay the mortgagee for any loss and deny payment to you:
 - a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

5. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

L. No Benefit To Parties

We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

M. Nuclear Hazard Clause

1. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled, or however caused, or any consequence of any of these.
2. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.
3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

N. Recovered Property

If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

O. Volcanic Eruption Period

One or more volcanic eruptions that occur within a 72 hour period will be considered as one volcanic eruption.

P. Policy Period

This policy applies only to loss which occurs during the policy period.

Q. Concealment Or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

1. Intentionally concealed or misrepresented any material fact or circumstance;

2. Engaged in fraudulent conduct; or
3. Made false statements;
relating to this insurance.

R. Loss Payable Clause

If the Declarations show a loss payable for certain listed insured personal property, the definition of "insured" is changed to include that loss payable with respect to that property.

If we decide to cancel or not renew this policy, that loss payable will be notified in writing.

SECTION II - LIABILITY COVERAGES

A. Coverage E - Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

B. Coverage F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury". Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except "residence employees". As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location", if the "bodily injury":
 - a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
 - b. Is caused by the activities of an "insured";
 - c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
 - d. Is caused by an animal owned by or in the care of an "insured".

SECTION II - EXCLUSIONS

A. "Motor Vehicle Liability"

1. Coverages E and F do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":
 - a. Is registered for use on public roads or property;
 - b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence"; or
 - c. Is being:
 - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
 - (2) Rented to others;
 - (3) Used to carry persons or cargo for a charge; or
 - (4) Used for any "business" purpose except for a motorized golf cart while on a golfing facility.

2. If Exclusion A.1. does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:
 - a. In dead storage on an "insured location";
 - b. Used solely to service an "insured's" residence;
 - c. Designed to assist the handicapped and, at the time of an "occurrence", it is:
 - (1) Being used to assist a handicapped person; or
 - (2) Parked on an "insured location";
 - d. Designed for recreational use off public roads and:
 - (1) Not owned by an "insured"; or
 - (2) Owned by an "insured" provided the "occurrence" takes place on an "insured location" as defined in Definitions B. 6.a., b., d., e. or h.; or
 - e. A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:
 - (1) A golfing facility and is parked or stored there, or being used by an "insured" to:
 - (a) Play the game of golf or for other recreational or leisure activity allowed by the facility;

- (b) Travel to or from an area where "motor vehicles" or golf carts are parked or stored; or
- (c) Cross public roads at designated points to access other parts of the golfing facility; or
- (2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an "insured's" residence.

B. "Watercraft Liability"

1. Coverages E and F do not apply to any "watercraft liability" if, at the time of an "occurrence", the involved watercraft is being:
 - a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;
 - b. Rented to others;
 - c. Used to carry persons or cargo for a charge; or
 - d. Used for any "business" purpose.
2. If Exclusion B.1. does not apply, there is still no coverage for "watercraft liability" unless, at the time of the "occurrence", the watercraft:
 - a. Is stored;
 - b. Is a sailing vessel, with or without auxiliary power, that is:
 - (1) Less than 26 feet in overall length; or
 - (2) 26 feet or more in overall length and not owned by or rented to an "insured"; or
 - c. Is not a sailing vessel and is powered by:
 - (1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:
 - (a) 50 horsepower or less and not owned by an "insured"; or
 - (b) More than 50 horsepower and not owned by or rented to an "insured"; or
 - (2) One or more outboard engines or motors with:
 - (a) 25 total horsepower or less;
 - (b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";
 - (c) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period; or

- (d) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:

(i) You declare them at policy inception; or

(ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

The coverages in (c) and (d) above apply for the policy period.

Horsepower means the maximum power rating assigned to the engine or motor by the manufacturer.

C. "Aircraft Liability"

This policy does not cover "aircraft liability".

D. "Hovercraft Liability"

This policy does not cover "hovercraft liability".

E. Coverage E - Personal Liability And Coverage F - Medical Payments To Others

Coverages E and F do not apply to the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

- a. Is of a different kind, quality or degree than initially expected or intended; or
- b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

2. "Business"

- a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

- b. This Exclusion E.2. does not apply to:

- (1) The rental or holding for rental of an "insured location";

- (a) On an occasional basis if used only as a residence;
- (b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (c) In part, as an office, school, studio or private garage; and
- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

3. Professional Services

"Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;

4. "Insured's" Premises Not An "Insured Location"

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

- a. Owned by an "insured";
 - b. Rented to an "insured"; or
 - c. Rented to others by an "insured";
- that is not an "insured location";

5. War

"Bodily injury" or "property damage" caused directly or indirectly by war, including the following and any consequence of any of the following:

- a. Undeclared war, civil war, insurrection, rebellion or revolution;
- b. Warlike act by a military force or military personnel; or
- c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental;

6. Communicable Disease

"Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";

7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse; or

8. Controlled Substance

"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

Exclusions A. "Motor Vehicle Liability", B. "Watercraft Liability", C. "Aircraft Liability", D. "Hovercraft Liability" and E.4. "Insured's" Premises Not An "Insured Location" do not apply to "bodily injury" to a "residence employee" arising out of and in the course of the "residence employee's" employment by an "insured".

F. Coverage E - Personal Liability

Coverage E does not apply to:

1. Liability:

a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in D. Loss Assessment under Section II - Additional Coverages;

b. Under any contract or agreement entered into by an "insured". However, this exclusion does not apply to written contracts:

(1) That directly relate to the ownership, maintenance or use of an "insured location"; or

(2) Where the liability of others is assumed by you prior to an "occurrence";

unless excluded in a. above or elsewhere in this policy;

2. "Property damage" to property owned by an "insured". This includes costs or expenses incurred by an "insured" or others to repair, replace, enhance, restore or maintain such property to prevent injury to a person or damage to property of others, whether on or away from an "insured location";

3. "Property damage" to property rented to, occupied or used by or in the care of an "insured". This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

4. "Bodily injury" to any person eligible to receive any benefits voluntarily provided or required to be provided by an "insured" under any:

- a. Workers' compensation law;

- b. Non-occupational disability law; or
- c. Occupational disease law;
- 5. "Bodily injury" or "property damage" for which an "insured" under this policy:
 - a. is also an insured under a nuclear energy liability policy issued by the:
 - (1) Nuclear Energy Liability Insurance Association;
 - (2) Mutual Atomic Energy Liability Underwriters;
 - (3) Nuclear Insurance Association of Canada;
 or any of their successors; or
 - b. Would be an insured under such a policy but for the exhaustion of its limit of liability; or
- 6. "Bodily injury" to you or an "insured" as defined under Definitions 5.a. or b.
 This exclusion also applies to any claim made or suit brought against you or an "insured":
 - a. To repay; or
 - b. Share damages with:
 another person who may be obligated to pay damages because of "bodily injury" to an "insured".

G. Coverage F - Medical Payments To Others
 Coverage F does not apply to "bodily injury".

- 1. To a "residence employee" if the "bodily injury":
 - a. Occurs off the "insured location"; and
 - b. Does not arise out of or in the course of the "residence employee's" employment by an "insured";
- 2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:
 - a. Workers' compensation law;
 - b. Non-occupational disability law; or
 - c. Occupational disease law;
- 3. From any:
 - a. Nuclear reaction;
 - b. Nuclear radiation; or
 - c. Radioactive contamination;
 all whether controlled or uncontrolled or how-ever caused; or
 - d. Any consequence of any of these; or
- 4. To any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

A. Claim Expenses

We pay:

- 1. Expenses we incur and costs taxed against an "insured" in any suit we defend;
- 2. Premiums on bonds required in a suit we defend, but not for bond amounts more than the Coverage E limit of liability. We need not apply for or furnish any bond;
- 3. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$250 per day, for assisting us in the investigation or defense of a claim or suit; and
- 4. Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

B. First Aid Expenses

We will pay expenses for first aid to others incurred by an "insured" for "bodily injury" covered under this policy. We will not pay for first aid to an "insured".

C. Damage To Property Of Others

- 1. We will pay, at replacement cost, up to \$1,000 per "occurrence" for "property damage" to property of others caused by an "insured".
- 2. We will not pay for "property damage":
 - a. To the extent of any amount recoverable under Section I;
 - b. Caused intentionally by an "insured" who is 13 years of age or older;
 - c. To property owned by an "insured";
 - d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or
 - e. Arising out of:
 - (1) A "business" engaged in by an "insured";
 - (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or
 - (3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

This exclusion e.(3) does not apply to a "motor vehicle" that:

- (a) is designed for recreational use off public roads;
- (b) is not owned by an "insured"; and
- (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

D. Loss Assessment

1. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
 - a. "Bodily injury" or "property damage" not excluded from coverage under Section II - Exclusions; or
 - b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - (1) is elected by the members of a corporation or association of property owners; and
 - (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph 1. Policy Period under Section II - Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:
 - a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
 - b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

SECTION II - CONDITIONS

A. Limit Of Liability

Our total liability under Coverage E for all damages resulting from any one "occurrence" will not be more than the Coverage E limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".

Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage F limit of liability shown in the Declarations.

B. Severability Of Insurance

This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
 - a. The identity of the policy and the "named insured" shown in the Declarations;
 - b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - c. Names and addresses of any claimants and witnesses;
2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
4. At our request, help us:
 - a. To make settlement;
 - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";

- c. With the conduct of suits and attend hearings and trials; and
- d. To secure and give evidence and obtain the attendance of witnesses;
- 6. With respect to C. Damage To Property Of Others under Section II - Additional Coverages, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in an "insured's" control;
- 6. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury".
- D. Duties Of An Injured Person - Coverage F - Medical Payments To Others
 - 1. The injured person or someone acting for the injured person will:
 - a. Give us written proof of claim, under oath if required, as soon as is practical; and
 - b. Authorize us to obtain copies of medical reports and records.
 - 2. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.
- E. Payment Of Claim - Coverage F - Medical Payments To Others

Payment under this coverage is not an admission of liability by an "insured" or us.
- F. Suit Against Us
 - 1. No action can be brought against us unless there has been full compliance with all of the terms under this Section II.
 - 2. No one will have the right to join us as a party to any action against an "insured".
 - 3. Also, no action with respect to Coverage E can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.
- G. Bankruptcy Of An "insured"

Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.
- H. Other Insurance

This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.
- I. Policy Period

This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

J. Concealment Or Fraud

We do not provide coverage to an "insured" who, whether before or after a loss, has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;
- 2. Engaged in fraudulent conduct; or
- 3. Made false statements; relating to this insurance.

SECTIONS I AND II - CONDITIONS

A. Liberalization Clause

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

- 1. A subsequent edition of this policy; or
- 2. An amendatory endorsement.

B. Waiver Or Change Of Policy Provisions

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

C. Cancellation

- 1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- 2. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
 - a. When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
 - b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or

(2) If the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

d. When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

3. When this policy is canceled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.

4. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

D. Nonrenewal

We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

E. Assignment

Assignment of this policy will not be valid unless we give our written consent.

F. Subrogation

An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

Subrogation does not apply to Coverage F or Paragraph C. Damage To Property Of Others under Section II - Additional Coverages.

G. Death

If any person named in the Declarations or the spouse, if a resident of the same household, dies, the following apply:

1. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death; and

2. "insured" includes:

a. An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and

b. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

EXHIBIT B

Medical University of South Carolina Children's Hospital Record



MUSC
MEDICAL UNIVERSITY
OF SOUTH CAROLINA

"TRIAGE"

Children's Hospital
Children's Emergency Services
Patient Care Record
Page 1 of 3

R 740203
MILLIGAN TRAVIS
12/07/1991 B/H
P842379463

4/20/05
A

Patient Name Travis Milligan
Age 13y DOB 12/7/91

Form Origination Date: 1/05

Version Date: 1/05

DATE 4/20/05 TRIAGE TIME 2047

ARRIVAL MODE: ☒ Walk ☐ Carried ☐ WC Stroller ☐ EMS

☐ RESUSCITATION

☐ EMERGENT

☐ URGENT

☒ LESS URGENT

☐ NON URGENT

VITALS: BP 100/60 mmHg Pulse 88 BPM RR 14 O₂ Sat 98 % Temp 98 °C WEIGHT 58.1 kg HEIGHT cm

PAIN: SCORE

Location

Character

Provoked by

CHIEF COMPLAINT:

riding bike and a pit bull bit him

ASSESSMENT:

going dressing to @cafe noted

PMH

PRIMARY MD

Sea Island Clinic Johns
Island

MEDICATIONS

☐ NONE

Immunizations LTOT

☒ Y ☐ N

?pillers sinuoinfections

LMP

NPO since

ALLERGIES

☒ NKDA

PULMONARY	CARDIO/CIRCULATION	NEURO
☐ Y ☒ N SOB	Capillary Refill ☐ < 2 sec ☐ > 2 sec	☒ Alert
☐ R L Clear	Skin Temp ☐ Normal ☐ Warm ☐ Cool ☐ Hot	☐ Responds to Verbal
☐ R L Coarse	Skin Color ☐ Normal ☐ Pale ☐ Cyanotic ☐ Jaundiced	☐ Responds to Pain
☐ R L Wheezes		☐ Unresponsive
☐ R L Diminished		☐ Hx loss of consciousness
☐ Y ☒ N Upper Airway Complication		☐ Y ☐ N At baseline
GI ☒ Denies	GU ☒ Denies	INFANT ☒ N/A
Abdomen	☐ Dysuria	Crying Quality
☐ Nausea	☐ Hematuria	☐ Normal
☐ Soft	☐ Diaper Rash	☐ Whimpering / Weak Cry
☐ Distended	☐ Discharge	☐ Moaning
Bowel Function	# Wet Diapers	☐ High-pitched cry
☐ Normal	☐ Normal	☐ Y ☐ N Consolable
☐ Diarrhea x	☐ Decreased	Activity Level
☐ Constipation	☐ Increased	☐ Playful/Smiling
Last Bowel Movement		☐ Appropriate
		☐ Quiet/sleeping
		☐ Fussy
		Hydration
		Mucous Membranes
		☐ Moist ☐ Dry
		Teeth ☐ Y ☐ N
		Fontanels ☐ Flat
		☐ Sunken
		☐ Bulging

TRIAGE SIGNATURE

AM George

LP 600002 2/05

pedsednursimp

Patient: MILLIGAN, TRAVIS A

MRN: 740203

Encounter: 842379463

Page 1 of 3

MUSC36 OF 71



MUSC
MEDICAL UNIVERSITY
OF SOUTH CAROLINA

740203
MILLIGAN TRAVIS
12/03/1991 B/H
P842379463

4/20/05

PEDIATRIC
EMERGENCY MEDICINE ENCOUNTER

Time Seen: 9:40	AM/PM	Historian: Patient = Mom
Chief Complaint: Dog Bite		
History of the present illness: 13yo BM was riding bike & pit bull bit him about 1-2 hrs ago. Dog belongs to neighbor; neighbor reports that dog is UTD with vaccinations. Treated typically with alcohol		
Past medical history: (illness, operations, injuries, treatments, birth history) Seasonal allergies		
Family medical history: None noted		
Current medications: Unknown allergy Rx		
Allergies: NKDA		
Social history: Does family/Patient have: ☒ Ability to carry out needed care ☒ Safe/Reasonable environment ☐ Ability to obtain medication Other:		
Primary Care Provider: Sea Island Clinic		
Immunization Status ☒ Up to Date ☐ Unknown		
Source of Information: ☒ Patient History ☐ Patient Immunization Card		
Review of Systems ☒ = Normal ☐ = Abnormal Blank = Not examined or reviewed		
Constitutional ☒	GI ☐	Allergic/Immunologic ☐
Eyes ☐	GU ☐	Hematologic/Lymphatic ☐
Ears, nose, mouth, throat ☒	Musculoskeletal ☐	Endocrine ☐
Cardiovascular ☒	Skin ☒ dog bite, scratches	Psychiatric ☐
Respiratory ☒	Neurological ☐	
ROS Abnormal Findings:		

OTC 804480 1 of 2 Rev. 1/03

Patient: MILLIGAN, TRAVIS A

MRN: 740203

Encounter: 842379463

Page 1 of 2

MUSC41 OF 71

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Animal Incident / Rabies Investigation Report
Bureau of Environmental Health

Date: 4/20/05 Time: 2:55 AM/PM County: Charleston Request/File No.: _____
Phone: _____

Received From: _____ Investigating Sanitarian(s): _____
Received By: _____ Victim Information

Victim: Travis Milligan Date of Incident: 4/20/05
Age: 34 Weight: _____ Sex: M F Phone (Home): 768-1568 (Work): 192-0996
Parent/Guardian (If Minor): Jana Wright U.M.A.
Address (If Not a Street Address, Give Directions): 3873 Herbert Blvd
Johns Island S.C. 29455
Physician: Dr. Jennifer Braden Office Phone: 792-1769 - must be Pediatric

Describe Circumstances, Severity and Location of Wound: (Provoked) ☐ (Unprovoked) ☒ Child riding
bike past dog; dog bit ☒ hind calf

Animal Information

Type: Pitbull Pet ☒ Stray ☐ Wild ☐ Breed: Pitbull Color: Brown Sex: _____ Size: _____
Owner: Tina Brown Phone (Home): _____ (Work): _____
Address (If Not a Street Address, Give Directions): across the street (directly)
between and burgundy shutters
Location and Condition of Animal at Time of Incident: yard - Road
Current Location of Animal: owner Tina Brown

Action Taken

Animal Quarantined: ☐ No ☐ Yes Date Notice of Quarantine Issued: _____ How? _____ Copy Attached: ☐
Victim Notified: ☐ No ☐ Yes Date: _____ How? _____
Dates Visited: _____ Date Released: _____ Victim Notified: ☐ No ☐ Yes How? _____
Current Vaccination: ☐ No ☐ Yes Official Notice Issued: ☐ No ☐ Yes Type: ☐ 1 year ☐ 3 year
Date: _____ Tag No: _____ Vet: _____
Date Head Sent to Lab: _____ Sender: _____ Lab Results: _____ Attached: ☐ Submittal ☐ Results ☐
Date Victim Notified: _____ How? _____ Date Owner Notified: _____ How? _____ PEP Given: ☐
Supervisor Reviews: _____ Report Completed: _____
(Dates and Initials) (Date and Initials)

Other Comments: _____

RECORD ADDITIONAL INFORMATION ON THE BACK

DHEC 1764 (06/2000)

FAX 202-7050

phone 202-7020

EXHIBIT D

Peter C. de Vito, M.D., F.A.C.S. Office Note of June 20, 2005

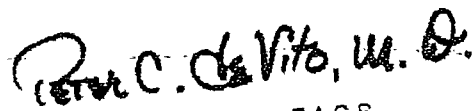
JUN-15-2013 09:21 FROM:

June 20, 2005

OFFICE NOTE:

MILLIGAN, TRAVIS

Travis Milligan is a very pleasant thirteen years old boy who sustained severe injuries when he was attacked by a pit bull dog on May 20, 2005. The patient was riding his bicycle and the dog attacked the patient's left lower leg. The canine incisors penetrated and became impaled into the patient's left lower leg avulsing full thickness tissue at the lateral margin of the injury in addition to producing several long wide linear lacerations. His injuries required emergency transfer to the trauma center. Since a large segment of skin was actually torn from his lower leg, no suturing could be performed. The wounds were allowed to heal by marginal epithelialization. The wide, open area was not skin grafted possibly because of the danger of the infection. Since the wounds are allowed to heal by marginal epithelialization, the resultant scarring is extremely wide. The large area of skin avulsion has now left an open wound which has been gradually epithelializing. There is still a central deep crater of full thickness tissue loss. Eventually, reconstructive surgery will be required to help remove a major portion of this unstable scar. If reconstructive surgery is not performed, this area of scarring will be doomed to recurrent breakdown from even slight blunt excoriation. It is extremely unstable. The skin is not durable. It may be possible to stage resect this area. The patient, however, may require thicker more durable tissues such as thick split thickness or full thickness skin grafting to replace this unstable scar. Although some improvement in function can be expected, the scarring should be considered permanent and it will always be unsightly with pigmentation differential. The dependent leg swelling will persist for quite some time. Muscle fasciculations from the crush component of the injury may also persist. The open wound is dressed with antibiotic ointment and a sterile covering. A return appointment is given to him.



Peter C. de Vito, M.D., F.A.C.S

EXHIBIT E

Letter dated April 29, 2005 from Barry L. Baker to Mr. and Mrs. LaVonne Brown

BARRY L. BAKER
ATTORNEY AND COUNSELLOR AT LAW
ONE CARRIAGE LANE, BLDG. H
POST OFFICE BOX 31265
CHARLESTON, SOUTH CAROLINA 29417-1265

FAX: 843-766-1295

TELEPHONE: 843-766-9007

April 29, 2005

Mr. & Mrs. Lavonne Brown
3358 Habitat Boulevard
Johns Island, SC 29455

Re: Travis Milligan, a minor

Dear Mr. & Mrs. Brown:

This is to advise that I have been retained to represent the above individual for injuries he suffered on April 20, 2005, when he was bitten by your dog.

Please turn this letter over to the agent who handles your homeowner's insurance and have them contact me so that we can work out an amicable settlement of this matter.

With kind regards, I am,

Yours Truly,

Barry L. Baker

BIB/psv

cc: Ms. Jana Wright
(parent & guardian of Travis Milligan, a minor)

QUEST

05/28/2005 08:21 8435715537

EXHIBIT F

Recorded Statement of Tema Brown

RECORDED STATEMENT OF TEMA BROWN

1 (Pages 1 to 4)

Page 1	Page 3
STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON JANA WRIGHT AS GAL FOR TRAVIS MULLIGAN, PLAINTIFF, VS TEMA BROWN, DEFENDANT, VS CONSTITUTION STATE SERVICES AND GEO VERA SPECIALTY INSURANCE CO., DEFENDANTS. RECORDED STATEMENT OF TEMA BROWN TAKEN: 5/10/05 TIME: 2:40 P.M., EST TAKEN BY: DAN HAWKINS CLAKE NO.: G00125040295	Q. And a social security number for identification only. A. 247-59-6661. Q. Married or single? A. Divorced. Q. Your current address? A. 3368 Habitat Boulevard, Johns Island, South Carolina, 29455. Q. And how long have you lived there? A. About five years. Q. And do you have any other people living in the house with you? A. Three children. Q. All right. What are the names and ages of each? A. Laron Brown, L-a-r-o-n, Brown, 15. Chanelle, C-h-a-n-e-l-l-e, Brown, 13. Tyra Brown, T-y-r-a, 11. Q. And do you have any pets? A. Yes. Q. Are the current pets that you have. the pets that are being alleged to be involved in this incident? A. Yes. Q. All right. Tell me about your pets.
Page 2 MR. HAWKINS: This is Dan Hawkins and I'm conducting a recorded interview with Tema Brown in regards to a claim being made against her for an alleged dog bite incident. The date today is May 10, 2005, the time is approximately 1:40 p.m. my time, it's 2:40 p.m. South Carolina time where I have contacted Tema on her cell phone, the phone number being 843-478-2935. EXAMINATION BY MR. HAWKINS: Q. Tema, do you realize I'm recording this interview? A. Yes. Q. And do I have your permission to do so? A. Yes. Q. Would you please state your name and spell your last name for me? A. My first name is T'as in Tom, E, M as in Mary; A. My last name is Brown, B-w-r-o-w-n. Q. B-w-r-o-w-n? A. B-r-o-w-n. Q. Okay. There we go. And what is your date of birth? A. June 6th, 1969.	Page 4 A. He is a American Pitbull. He is not quite a year old yet, maybe -- nine months old. Q. Where did you get him? A. We bought him. Q. From a breeder? A. I'm not sure if he's a breeder or not. Q. So you bought him from an individual? A. Yes. Q. Are there papers? A. We didn't get papers from the seller, no. Q. Is this a -- as much as a pitbull can be a pure blood, is it a pure blood pitbull as far as you know? A. I don't know. Q. Does it look like a pitbull? A. I don't know. Q. Explain to me how you don't know if it looks like a pitbull. A. Because I don't know how a pitbull looks. Q. Okay. Were you told that it was a pitbull? A. Yes. Q. Were you told that there was another mix

GARBER REPORTING SERVICE
803-256-4500

RECORDED STATEMENT OF TEMA BROWN

2 (Pages 5 to 8)

Page 5

1 of the breed involved?
 2 A. No, I wasn't told.
 3 Q. And is it safe to assume that when this
 4 dog was sold to you, it was sold as a full blooded
 5 pitbull?
 6 A. Yes.
 7 Q. Do you remember the individual's name?
 8 Is he in your town?
 9 A. Yes.
 10 Q. Do you remember the name?
 11 A. The name is Jamal Benson.
 12 Q. V-i-n-c-e-n-t?
 13 A. B-e-n-s-o-n, Benson.
 14 Q. And do you have a phone number for
 15 Jamal?
 16 A. 843-555-5083.
 17 Q. Are you friends with Jamal or was this
 18 something out of a newspaper?
 19 A. Related.
 20 Q. All right. So you've had the dog for
 21 about nine months. What's the name?
 22 A. The dog's name?
 23 Q. Yes.
 24 A. Jinx.
 25 Q. J-i-n-x?

Page 6

1 A. Yes.
 2 Q. And Jinx is a male?
 3 A. Male.
 4 Q. In the time that you've owned Jinx,
 5 which is, you know, about nine months old, how
 6 long have you owned him?
 7 A. I'm going to say -- because I got him in
 8 February, I'm thinking.
 9 Q. So you've only owned him for about three
 10 or four months?
 11 A. Yeah, I think so.
 12 Q. All right. In the time that you have
 13 owned Jinx, has he attacked, bitten, or otherwise
 14 caused injury to a person in any way that you know
 15 of?
 16 A. Yes.
 17 Q. When?
 18 A. On 4/20/05, I believe that's the correct
 19 date.
 20 Q. Oh. That's this incident.
 21 A. Yes, this incident.
 22 Q. Okay. Did he do that prior?
 23 A. No.
 24 Q. Any --
 25 A. Not that I know of.

Page 7

1 Q. All right. So the date of loss here is
 2 4/20 of '05.
 3 A. Yes.
 4 Q. Do you know about what time?
 5 A. Approximately about between five and six
 6 in the afternoon. I would say.
 7 Q. Okay. So around 5:30 p.m.?
 8 A. Yeah.
 9 Q. And where did it happen?
 10 A. At my residence. Well, across the
 11 street from my residence.
 12 Q. Okay. So it was outside, across the
 13 street from your house?
 14 A. Yeah.
 15 Q. Is Jinx an inside or outside dog?
 16 A. Well, when we first got him, we kept him
 17 inside the house because he was still a puppy,
 18 which he still is. But as he got a little bigger,
 19 we kept him outside.
 20 Q. Is there a fenced yard?
 21 A. Yes. There is a fenced yard on one
 22 side, the front part.
 23 Q. So it's not completely enclosed?
 24 A. No, it's not.
 25 Q. So how is he secured outside?

Page 8

1 A. On a chain.
 2 Q. And what's the chain secured to?
 3 A. The chain was secured to a trailer.
 4 Q. Like a trailer that you pull behind a
 5 car?
 6 A. Yes.
 7 Q. All right. And was the chain of
 8 adequate strength to hold the dog?
 9 A. Yes.
 10 Q. Okay. Was the dog ever allowed to run
 11 loose in the yard?
 12 A. Only when we were at home.
 13 Q. All right. So on 4/20/05 at around
 14 5:30 p.m., obviously, he was loose.
 15 A. He was loose.
 16 Q. How did he get loose?
 17 A. Well, we are unsure about how he got
 18 unloose. Because when we got home from work and
 19 school that day, he ran up to the car so we
 20 automatically knew that he had gotten off the
 21 chain or somebody had taken him off the chain.
 22 and we realized that he was loose because he ran
 23 up to the car.
 24 Q. All right. Did he still have his collar
 25 on?

GARBER REPORTING SERVICE
 803-256-4500

RECORDED STATEMENT OF TEMA BROWN

3 (Pages 9 to 12)

Page 9

1 A. Yes. He did have his collar on.
 2 Q. But the chain was off?
 3 A. The chain was off.
 4 Q. Did you check the chain?
 5 A. No, I didn't check the chain.
 6 Q. Was the trailer moved at all?
 7 A. No.
 8 Q. All right. So the dog was loose.
 9 A. Yes.
 10 Q. At this point in time when you saw the
 11 dog loose, what time was it?
 12 A. This was approximately -- probably like
 13 at 5:35, 5:40, because we were just getting home,
 14 like I said, between five and six o'clock that
 15 afternoon.
 16 Q. Had he already caused the injury?
 17 A. No, he hadn't.
 18 Q. All right. So if we've got this claim
 19 where he caused the injury around 5:30, is that
 20 about the time that you got home?
 21 A. Right about that time. Because there
 22 was another dog there. I had two dogs at one time
 23 and that dog got hit and died.
 24 MR. HAWKINS: Okay. We have lost
 25 connections. The time now is 1:50 p.m. my

Page 10

1 time and 2:50 p.m. Tema's time. I will be
 2 re-contacting her to establish connections
 3 and
 4 continue the interview.
 5 This is Dan Hawkins and I am now
 6 continuing the recorded interview with Tema
 7 Brown in regards to an alleged dog bite that
 8 is being claimed. Whenever we last left the
 9 interview, Ms. Brown's phone had -- the
 10 battery had died on her cell phone and we
 11 were disconnected. The time is now 3:50 p.m.
 12 my time. It's 4:50 p.m. her time and we are
 13 now re-establishing our contact to continue
 14 with the interview.
 15 BY MR. HAWKINS:
 16 Q. Mr. Brown, do you realize I am
 17 recording?
 18 A. Yes.
 19 Q. And do I have your permission to
 20 continue?
 21 A. Yes, you do.
 22 Q. During the time that we were separated
 23 because your phone went dead, was there ever any
 24 contact or conversation about this claim?
 25 A. Yes.

Page 11

1 Q. During the time that we were gone?
 2 A. Oh. No.
 3 Q. No, there wasn't?
 4 A. No.
 5 Q. All right. Whenever we were
 6 interrupted, we were discussing that this occurred
 7 on 4/20 of '05 at around 5:30 p.m., give or take a
 8 little time.
 9 A. Yes.
 10 Q. You had just returned or returning home
 11 at around 5:30 p.m. and the dog was supposed to
 12 have been tied to the trailer.
 13 A. Yes.
 14 Q. The trailer had not moved.
 15 A. Right.
 16 Q. The dog was still in his collar.
 17 A. Yes.
 18 Q. And the chain was not on the collar.
 19 A. Correct.
 20 Q. You also told me previously that you
 21 purchased this dog from a Jamal Benson who is a
 22 relative.
 23 A. Yes.
 24 Q. And that it was sold to you as a pure
 25 bred pitbull, is that correct?

Page 12

1 A. Correct.
 2 Q. Okay. Now, you pulled in the driveway
 3 or were coming home at 5:30. Did the dog come
 4 running up to your car?
 5 A. Yes.
 6 Q. I'll ask again, had the dog already
 7 caused an injury or did the injury then occur
 8 immediately after?
 9 A. Immediately -- well, immediately after.
 10 Q. All right. What happened?
 11 A. Upon arriving at home that afternoon, I
 12 saw that the dog was not on the trailer. He ran
 13 up to the car. My children got out of the car to
 14 greet the dog. And we had another pet dog. And
 15 that dog also ran up to the car, but that dog
 16 accidentally got ran over, so --
 17 Q. So right then, that day?
 18 A. Right then, that day. Now, prior to us
 19 dealing with that dog being ran over and getting
 20 him out of the way, Jimmy ran across the street to
 21 the little boy's -- in the little boy's yard. And
 22 the little boy was on his bicycle and attacked him
 23 on the leg, or hit him on the leg.
 24 Q. All right. The other dog, what kind of
 25 dog was that?

CAREER REPORTING SERVICE
 803-256-4500

RECORDED STATEMENT OF TEMA BROWN

4 (Pages 13 to 16)

Page 13

1 A. I have no idea. It was a stray dog,
2 puppy, that we picked up and brought home and
3 nursed. And we had him for about four or five
4 years.
5 Q. All right. And was it hit by a car?
6 A. Yes. I was the one who hit the dog.
7 Q. So you hit the dog as you were pulling
8 in the driveway?
9 A. Yes, I did.
10 Q. Okay. So was the dog immediately
11 deceased?
12 A. About maybe five or ten minutes later,
13 him gasping for air and some other things, he
14 died.
15 Q. And it was while you were attending to
16 that dog that your other dog ran across the
17 street?
18 A. Yes.
19 Q. Did the boy riding his bike do anything
20 to upset Jinx to cause this?
21 A. Not to my knowledge. I didn't see him
22 do anything to upset Jinx at all.
23 Q. And did Jinx then bite him once or did
24 he bite him repeatedly?
25 A. Once.

Page 14

1 Q. And was the boy in the street on his
2 bike or was he in his driveway?
3 A. He was in the driveway when Jinx ran
4 over to him.
5 Q. Did Jinx then return to you?
6 A. After my -- we stopped doing what we
7 were doing with the other dog, we called him or my
8 son went over there to get him and we brought him
9 back over to the yard.
10 Q. Do you know the little boy that got
11 bit?
12 A. He's the next door neighbor, just a
13 neighborhood child that my kids frequently play
14 with.
15 Q. Do you know his name?
16 A. I know his first name. I don't have his
17 last name.
18 Q. What's the first name?
19 A. Travis.
20 Q. Have you been contacted by a legal
21 representative for Travis?
22 A. Yes, I have.
23 Q. So he is now represented by an
24 attorney?
25 A. Yes.

Page 15

1 Q. Have they filed suit or is it just a
2 letter?
3 A. Just a letter, I'm assuming. Because
4 the letter stated that for me to get in contact
5 with my home owner's insurance and take this
6 letter to the homeowner's insurance.
7 Q. All right. Do you know if Travis has
8 had any medical treatment?
9 A. That day, the -- she took him to the
10 emergency room. So his mother took -- she took
11 him to the emergency room. And I'm not sure if he
12 had any shots or anything like that, but she did
13 mention something about having an x-ray done.
14 Q. All right. And what hospital was that?
15 A. I believe she said MUSC. It's the
16 Medical University of South Carolina.
17 Q. Do you know if he's had any other
18 medical treatment?
19 A. No, I don't.
20 Q. Do you know if he got any stitches?
21 A. No, I don't.
22 Q. Was your dog up current on its shots?
23 A. He had shots other than rabies. Because
24 at the time when we took him to get shots, he was
25 too young and we was supposed to take him back

Page 16

1 within, I think, a couple of weeks, three or four
2 weeks but we never did take him to get shots.
3 Q. So he was too young to get a rabies?
4 A. Yes. He was too young at the time to
5 get rabies.
6 Q. Is he still with you?
7 A. No. He has been removed from the
8 property.
9 Q. Is he still alive?
10 A. Yes, he is.
11 Q. So you gave Jinx away?
12 A. My ex-husband gave him.
13 Q. And he is on other property now. He is
14 not on your property, correct?
15 A. No, he's not.
16 Q. Have you seen that child since this
17 incident?
18 A. No, I haven't.
19 Q. So is he not playing anymore with the
20 kids?
21 A. Well, he's not been one of the ones
22 that's really have been outside every day playing
23 with the other children, I guess, because of his
24 mother's work schedule. But when they do get a
25 chance to be outside, they do come out. But I

GARBER REPORTING SERVICE
803-256-4500

RECORDED STATEMENT OF TEMA BROWN

5 (Pages 17 to 18)

Page 17

1 have not seen him since.
 2 Q. So he hasn't been out much lately?
 3 A. No.
 4 Q. You don't have any reason to believe
 5 that it's from this dog incident, do you?
 6 A. Oh, no, not at all.
 7 Q. And we're sure it was Jinx and no other
 8 dog, correct?
 9 A. Correct.
 10 Q. Is there anything else you can add about
 11 what happened?
 12 A. No.
 13 Q. Have you understood all my questions?
 14 A. Yes.
 15 Q. Have your answers all been correct to
 16 the best of your knowledge?
 17 A. Yes.
 18 Q. Then, with your permission, I'm going to
 19 go ahead and turn off the recorder.
 20 A. Thanks.
 21 MR. DAWKINS: The time now is
 22 3:56 p.m. my time, it's 4:56 p.m., Tema's
 23 time.
 24 (End of Recording)
 25

Page 18

CERTIFICATE OF REPORTER

1
 2 I, Laura S. DeCillis, Certified Court
 3 Reporter and Notary Public in and for the State of
 4 South Carolina at Larye, do hereby certify:
 5 That the foregoing transcript was
 6 produced from a tape, not taken by same, and that
 7 all audible testimony was transcribed by me to the
 8 best of my ability.
 9 I further certify that I am neither
 10 related to nor counsel for any party to the cause
 11 pending or interested in the events thereof.
 12 Witness my hand, I have hereunto affixed
 13 my official seal this 2nd day of July 2013, at
 14 Columbia, Richland County, South Carolina.
 15
 16 Laura S. DeCillis,
 17 Certified Court Reporter
 18 State of South Carolina at Larye
 19 My Commission expires
 20 August 10, 2015
 21
 22
 23
 24
 25

GARBER REPORTING SERVICE
 803-256-4500

EXHIBIT G

Reservation of Rights letter dated July 28, 2005 to Tema Brown

July 28, 2005
VIA CERTIFIED MAIL RETURN RECEIPT NUMBER 70042510000008731570

Terna Brown
3368 Habitat Blvd.
Johns Island, SC 29455

Re: Claim #: GCGUS040299
Policy #: GH20051152
Insured: Terna Brown
Claimant: Travis Milligan
Date of Loss: 4/20/05

Dear Ms. Brown:

NCA Group (NCA) is the Third Party Administrator for USF&G Specialty Insurance Company (USF&G). As such, the claim involving injuries to Travis Milligan has been assigned to us for investigation and handling. You have a Homeowners Insurance Policy with USF&G written under policy number GH20051152. The coverage form is an HO 00 03 (10-00) with effective dates of 12/23/04-12/23/05.

We are in receipt of a claim for injuries resulting from a dog bite involving your dog Jinx and the claimant, Travis Milligan. As I understand the incident, Jinx is an American Pit Bull Terrier that was supposed to be secured to a trailer by a chain. On the date of the incident Jinx somehow got loose. When you returned home from work there was an accident with your other dog in the driveway. While tending to that dog, Jinx ran after Travis who was riding his bike and the bite occurred. Travis was taken to the hospital but the extent of treatment is unknown.

So that you are aware of the sections of the policy that may have an effect on coverage, we direct your attention to your Homeowners Policy form and specifically to the DEFINITIONS on page 1, SECTION II - LIABILITY COVERAGES on page 16 and the SECTION II - EXCLUSIONS also beginning on page 16. The policy also contains a Master Endorsement written under US 04 42 (02-03). The pertinent sections of the policy and endorsement read, in part, as follows:

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the declarations page and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

Page 2
7/28/05
Brown cont'd

2. "Bodily Injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

5. "Insured" means:

- a. You and residents of your household who are:
 - (1) Your relatives; or
 - (2) Other persons under the age of 21 and in the care of any person named above;
- b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:
 - (1) 24 and relative; or
 - (2) 21 and in your care or the care of a person described in a. (1) above; or

c. Under Section II:

- (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of an "business" or without consent of the owner; or
- (2) With respect to a "motor vehicle" to which this policy applies:
 - (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (b) Other persons using the vehicle on an "Insured location" with your consent.

Under both section I and II, when the word an immediately precedes the word "Insured", the words an "Insured" together mean one or more "Insured's".

6. Insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence and:
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "Insured"; and
 - (2) Where an "Insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "Insured";

Page 3
7/28/05
Brown cont'd

- f. Land owned by or rented to an "insured" on which a one of two family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or
- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

11. "Residence premises" means:

- a. the one family dwelling where you reside;
- b. The two, three or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside; and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

SECTION H - LIABILITY COVERAGES

COVERAGE K - Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to the limit of liability for the damages for which the "insured" is legally liable. Damages include prejudgment interest awarded against the "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

COVERAGE F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury." Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage

Page 4
7/28/05
Brown cont'd

does not apply to you or regular residents of your household except "residence employees." As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location," if the "bodily injury":
 - a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
 - b. Is caused by the activities of an "insured";
 - c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
 - d. Is caused by an Animal owned by or in the care of an "insured."

Now refer to the Master Endorsement, form US9442, 02-03:

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Brand)
FORM ES 04 42 02-03

DEFINITIONS

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION II - EXCLUSIONS

The following exclusions are added to E.
Coverage E - Personal Liability And
Coverage F - Medical Payments to Others:

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- (1) "vicious canine";
- (2) Staffordshire bull Terrier;
- (3) American Pit Bull Terrier
- (4) Rottweiler; or
- (5) Doberman Pinscher

Page 5
7/28/05
Brown cont'd

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 50% of that breed.

Based upon our investigation, Jinx is an American Pit Bull Terrier that was purchased from a relative. There are no papers to verify the breed but your relative, Jamal Vinson, has verbally verified that the parents of Jinx are full-blooded American Pit Bull Terriers. Based upon the above cited exclusion, there may be no coverage for indemnity or defense if it can be verified that Jinx is, in fact, an American Pit Bull Terrier.

To date we have not received anything in writing from Mr. Vinson and we have no Veterinary records to support the breed allegation. Without this support and the coverage issues set forth above, we will continue to handle this claim under a full reservation of rights.

Due to these issues and others that may arise, any investigation made or action taken by NCA, USF&G or other representatives of the insurers on this claim is done with a full reservation of rights under the policy. It is done with the understanding that any investigation, adjustment or defense of the claim or action by ourselves or other representatives of NCA or USF&G will not constitute a waiver of any rights the Insurance Company has under the policy.

Should you have any information that has any bearing on this investigation or coverage, we invite you to submit this information to us. Be assured that any information will be given due consideration by both NCA and USF&G.

In the event that suit is filed and served on you, copies of the lawsuit must be forwarded to us immediately for review to determine if coverage will be afforded under the policy. Receipt of said suit or other documentation is not a waiver of any of the rights afforded by the policy written under policy number GH20051152.

Since Mr. Vinson has shown no sign of cooperating with the signing of an affidavit about his dogs, please make every attempt possible to get the name of a Veterinarian in the area that has treated his dogs in the past. We will need to get the records on both of his dogs to verify the breed of your dog. If Animal Control or the Police were contacted about this incident with Travis Milligan, please provide the name and phone number of the Animal Control office and a report number if you have one. I will proceed to obtain a copy of that report. In addition, we ask that you provide a photo of Jinx if you have one.

Page 6
7/28/05
Brown cont'd

If you have any questions, please feel free to contact me at 636-825-8389.

Sincerely,

Stan Hawkins, CPCU
Authorized Representative of USF&G Specialty Insurance Co.
1417 Cedar Bluff Dr.
Baltwin, MO 63021
1-636-825-8389

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 Domestic Mail Only. No Insurance or Regs. Fines.
 For Delivery Information Visit Our Website at www.usps.com

OFFICIAL USE

Postage \$ 41.40
 Certified Fee \$2.30
 Return Receipt Fee (Endorsement Required) \$1.75
 Restricted Delivery Fee (Endorsement Required) \$0.00
 Total Postage & Fees \$ 45.45

Postmark Here
 07/12/2005

Sent To Bacon
 Street, Apt. No.,
 or PO Box No.
 City, State, ZIP+4

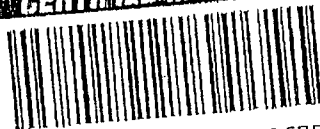
PS Form 3800, June 2002

7004 2510 0000 0873 1570

NCA GROUP

Adjusting & Underwriting Services
1080 Mallard Center Commons, Suite 220
Mallard, Florida 32781

CERTIFIED MAIL



7004 2510 0000 0873 1570



0000



3345H

U.S. POSTAGE
PAID
MANCHESTER, NH
JUL 28 11 15
AMOUNT
\$46.00

USF & g Sack

RETURN RECEIPT
REQUESTED

UNC

Tema Brown
3368 Habitat Blvd.
Johns Island, SC 29455

NAME

8-105

NIXIE

254 1 34 08/00/05
RETURN TO SENDER
NO MAIL RECEIPTABLE
UNABLE TO FORWARD

SC: 32751748170

*0215-00088-28-41

254 2510 0000 0873 1570

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tema Brown
3368 Habitat Blvd.
Johns Island, SC
29455

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent

☐ Addressee

X

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ O.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

2. Article Number
(Transfer from service label)

7004 2510 0000 0873 1570

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-14-1540

EXHIBIT H

Denial letter dated September 28, 2006 to Tema Brown

Constitution State Services

Commercial Lines Claims Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2006

Terna Brown
3368 Hibbard Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Terna Brown
Claim Number: GCGLU5040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GE20051152 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jinx, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jinx.

The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jinx is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Brenda Truwick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Heath Insurance Inc.

Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (407) 266-1419

September 28, 2006

REDACTED

Tema Brown
3368 Habitat Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Tema Brown
Claim Number: GCGLUS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GEH20051152 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jinx, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jinx.

The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jinx is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Brenda Trawick-Smith
Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Heath Insurance Inc.

Certified Mail Privileges

- A mailing receipt
 - A unique identifier for your mailbox
 - A record of delivery kept by the Postal Service for two years
 - Important reminders:
 - Certified Mail may ONLY be combined with First-Class Mail, or Priority Mail.
 - Certified Mail is not available for any other type of mail.
 - NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuable, please consider insuring or registered mail.
 - For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt Service, please complete and attach the Request for Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. To obtain multiple Return Receipts, attach a separate Request for Return Receipt to each duplicate return receipt. A third fee applies for your Certified Mail receipt to be returned to the addresser or mark the multiple with the request.
 - For an additional fee, delivery may be restricted to the addressee or authorized addressee only. Address the date or mark the multiple with the request "Restricted Delivery".
 - If a postmark on the Certified Mail receipt is desired, please present the self-addressed "Restricted Delivery" envelope on the Certified Mail to the post office for postmarking. It is possible to mark the Certified Mail as a postmark, attach and affix label with postage and mark.
- IMPORTANT:** Have this receipt and present it when making an inquiry. Internal queries to delivery information is not available to mail addressed to APO and FPOs.

15. POSTAGE PAID
CERTIFIED MAIL RECEIPT
Domestic Mail Only (to Insurance Domestic Postage)

POSTAGE AND INSURANCE PAID BY ADDRESSEE

OFFICIAL USE

Postage	\$
Certified Fee	
Registered Delivery Fee (Domestic Postage)	
Registered Delivery Fee (Domestic Postage)	
Registered Delivery Fee (Domestic Postage)	
Total Postage & Fees	\$

Postmark Here

Amount To
\$
Cash, Airmail, Reg.
Air-PO Extra Fee
City, State, Zip

Anna Brown

[illegible]

2545567119 POKY
0200000745
RETURN TO SENDER
UNABLE TO FORWARD
43404-0480-22-42
RM 10/09/08
10.2.06
BALTIMORE

Thomas Brown
3388 Habibat Blvd
Johns Island, SC 29456

P.O. Box 716
Orlando, FL 32802-0716

7005 3110 0005 5411 3025
02 IN
0004219407 SEP 28 2008
\$04.50
MAILED FROM ZIP 0005 23P1A
CENTRAL MAIL

Constitution of the Commonwealth

EXHIBIT I

Letter dated September 28, 2006 to Barry Baker denying coverage.

Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2006

Barry Baker, Attorney At Law
P O Box 31265
Charleston, SC 29417-1256

Account: Tema Brown
Claim Number: GCGLUS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Mr. Baker:

This letter is to acknowledge the receipt of the demand package dated September 7, 2006.

The insurance policy issued to Tema Brown contained exclusion for vicious dogs. By Ms. Brown's own admission, the dog involved in the altercation with your client was an American Pit Bull Terrier. The breed, American Pit Bull Terrier, is specifically excluded in the policy issued by USF&G Specialty Insurance Company.

Therefore, USF&G Specialty Insurance Company will not respond to your client's claim for damages.

Tema Brown has been advised that coverage is not afforded in this matter.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573

EXHIBIT J

Summons and Complaint filed October 17, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2007-CP-10-3224

SUMMONS

FILED
2007 OCT 17 AM 9:10
JULIE J. ARMSTRONG
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer thereto on the subscribers at their office located at 102 Wappoo Creek Drive, Suite 2A, Post Office Box 12579, Charleston, South Carolina 29422, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for a default judgment and for the relief sought herein.

MAYBANK LAW FIRM, LLC
102 Wappoo Creek Drive, Suite 2A
P.O. Box 12579
Charleston, SC 29422
P: (843) 762-4820
F: (843) 762-4889
Email: amanda@maybanklaw.com


Amanda R. Maybank (S.C. # 69825)

Barry I. Baker
P.O. 31265
Charleston, SC 29417

Attorneys for Plaintiff
Jana Wright as Guardian ad Litem for Travis Milligan

Charleston, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,

vs.

TEMA BROWN,

Defendant.

IN THE COURT OF COMMON PLEAS
CASE NO. 2007-CP-10-3224

COMPLAINT

FILED
2007 OCT 17 AM 9:10
JULIE J. ARMSTRONG
CLERK OF COURT

NOW COMES THE PLAINTIFF, above named, complaining of the
Defendant, above-named, to allege and show this honorable Court as follows:

FOR A FIRST CAUSE OF ACTION

1. Plaintiff is a resident and citizen of the State of South Carolina,
County of Charleston.
2. On or about August 8, 2007, Plaintiff was appointed by the Court
Guardian ad Litem, for her minor child, Travis Milligan.
3. Plaintiff is authorized to bring this lawsuit on behalf of her minor
child, Travis Milligan.
4. The Defendant, Tema-Brown, (hereinafter "Brown"), is upon
information and belief a resident and citizen of the State of South Carolina, County
of Charleston.

5. That on April 20, 2005, and at all times relevant hereto, Defendant Brown was the owner of or was harboring, caring and keeping a dog at her residence.

6. That on April 20, 2005, Travis Milligan, a minor child, was riding his bicycle on Habitat Boulevard, the street on which both he and Defendant Brown reside.

7. That Defendant Brown's dog, which was outside her residence, unrestrained, escaped from the yard.

8. Upon leaving Brown's property, Defendant Brown's dog viscously attacked Milligan, a minor child, without provocation, knocking him off of his bicycle and severely biting him on his leg thereby injuring him as will more fully be set forth hereafter.

9. That under South Carolina law, someone who harbors, cares for and/or controls a dog, and someone who controls the use of property where the dog runs at large, has a duty not to allow the dog to harm other human beings, and if such harm occurs, the Defendant as the controller of the dog, is strictly liable for a person's injuries and damages, such as this Plaintiff suffered, from the dog's attack.

10. As a direct and proximate cause and result of Defendant's aforesaid negligence, and acts regarding the lack of control of the dog, and by allowing this dog to run at large, Milligan, the minor child, suffered the following personal injuries and damages on April 20, 2005:

a) suffered severe bites to his leg,

- b) had an area of flesh torn from his leg;
- c) will require corrective plastic surgery;
- d) has suffered and will suffer in the future pain and discomfort;
- e) has incurred medical expenses for emergency medical treatment, follow up medical care and treatment, drugs, medical supplies, and bandages;
- f) is informed and believes that he will require future medical care and treatment, but will still be left with permanent scarring;
- g) that he suffered mental anguish and developed a great fear of dogs;
- h) that the minor child's, enjoyment of life has been adversely affected.

WHEREFORE, the Plaintiff prays for judgment against the Defendant, in a sum that will fully and fairly compensate the minor child for his actual damages, and for punitive damages as a jury may deem appropriate, together with attorney fees and the costs of this action.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

MAYBANK LAW FIRM, LLC
102 Wappoo Creek Drive, Suite 2A
P.O. Box 12579
Charleston, SC 29422
P: (843) 762-4820
F: (843) 762-4889


Roy P. Maybank
Amanda R. Maybank

Barry I. Baker
P.O. 31265
Charleston, SC 29417
Attorneys for Plaintiff

Charleston, South Carolina
October 15, 2007

STATE OF SOUTH CAROLINA

COUNTY OF CHARLSTON

JANA WRIGHT, as guardian ad Litem for
TRAVIS MILLIGAN, a minor over the age of
14 years,

Plaintiff(s)

vs.

TEMA BROWN,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2007- CP -10 - 3224

(Please Print)

Submitted By: Amanda R. Maybank
Address: 102 Wappoo Creek Dr., Suite 2A
P.O. Box 12579
Charleston, SC 29422

SC Bar #: 69825
Telephone #: 843-762-4820
Fax #: 843-762-4889
Other:
E-mail: amanda@maybanklaw.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- ☐ Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- ☐ Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Notice/ File Med Mal (230)
☐ Other (299)

- ☐ Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Wrongful Death (360)
☒ Other (399)
Property Damage

- ☐ Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499)

- ☐ Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

- ☐ Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799)

- ☐ Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

- ☐ Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- ☐ Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Petition for appointment of a Guardian ad Litem
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)

Submitting Party Signature:

Amanda R. Maybank

Date: October 15, 2007

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW

102 Wappoo Creek Drive Suite 2A
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Phone: (843) 762-4820
Facsimile: (843) 762-4889

EMAIL: amanda@maybanklaw.com

Roy P. Maybank
Amanda R. Maybank

October 15, 2007

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Jana Wright, as Guardian ad Litem for Travis Milligan, a minor child over
the age of 14 years v. Tema Brown
C.A. No.: 2007-CP-10-3224
MLF File No. 116.001

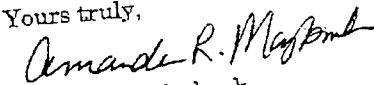
Dear Ms. Armstrong:

Enclosed are the original and three copies of the Summons and Complaint in the above referenced lawsuit. This case was previously opened with the filing of a petition for the appointment of a guardian ad litem, receipt number 07-8585. As such, per instructions from your office, I have not included a filing fee. Please file the original Summons and Complaint, file stamp the copies, and return the copies to me in the envelope provided.

Thank you for your assistance.

With kind regards, I am

Yours truly,



Amanda R. Maybank

ARM/

Enclosures

Cc: Barry I. Baker, Esquire
Ms. Jana Wright

EXHIBIT K

Affidavit of Service – Tema Brown served on November 19, 2007

AFFIDAVIT OF SERVICE

County of CHARLESTON

Common Pleas Court

State of SOUTH CAROLINA

Case Number: 07-CP-10-3224

Plaintiff:
JANA WRIGHT, as Guardian ad Litem for TRAVIS MILLIGAN, a minor
over the age of 14 years

vs.

Defendant:
TEMA BROWN

For:
MAYBANK LAW FIRM
102 Wappoo Creek Dr.,
Suite 2a
Charleston, SC 29422

Received by FALCON EXPRESS SERVICES, LLC to be served on TEMA BROWN, 3368 HABITAT BLVD.,
JOHNS ISLAND, SC 29455.

I, Matthew Krueger, being duly sworn, depose and say that on the 19th day of November, 2007 at 1:30 pm, I:

Individually Served the within named person with a true copy of this SUMMONS AND COMPLAINT with the date
and hour endorsed thereon by me; pursuant to State Statutes.

I certify that I am over the age of 18 and have no interest in the above action.

FILED
2007 NOV 28 PM 2:03
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

Subscribed and Sworn to before me on the 19th day
of November, 2007 by the affiant who is personally
known to me.

Jaimie L. Lott
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 5/19/2016

Matthew Krueger
Matthew Krueger
Process Server

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2007002050

MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW

102 Wappoo Creek Drive Suite 2A
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Phone: (843) 762-4820
Facsimile: (843) 762-4889

EMAIL: amanda@maybanklaw.com

Roy P. Maybank
Amanda R. Maybank

November 26, 2007

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Jana Wright, as Guardian ad Litem for Travis Milligan, a minor child over
the age of 14 years v. Tema Brown
C.A. No.: 2007-CP-10-3224
MLF File No. 116.001

Dear Ms. Armstrong,

Enclosed are the original and two copies of the affidavit of service in the
above referenced case. Please file the original and return the file-stamped copies to
me in the envelope provided.

With kind regards, I am

Yours truly,

Amanda R. Maybank
Amanda R. Maybank

ARM/

Cc: Barry I. Baker, Esq.
Ms. Jana Wright

\\Maybank\Roy's Documents\Litigation Files\116-Barry Baker Dog Bite Case\116.001 Milligan v. Brown\Corresp\1-
Clerk (enclosing affidavit of service).doc

EXHIBIT L

Affidavit of Brenda Trawick-Smith

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

v.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

v.)

GeoVera Specialty Insurance Co.)

Third-Party Defendant.)

STATE OF FLORIDA)

COUNTY OF ORANGE)

AFFIDAVIT OF
BRENDA TRAWICK-SMITH

COMES NOW BEFORE ME, Brenda Trawick-Smith, who, being first duly sworn,

deposes and says that:

1. I am over the age of twenty-one years;
2. I am currently employed as Senior Technical Specialist for The Travelers Indemnity Company (hereinafter "Travelers") in Orlando, Florida.
3. I have been employed by Travelers for approximately thirty-nine (39) years.
4. Constitution State Services was at all times pertinent hereto, and continues to be, the third-party administrator arm of Travelers.

5. In my capacity as Senior Technical Specialist for Travelers, I am one of the persons with responsibility for and familiarity with Constitution State Services' records concerning the aforementioned claim, including those attached as exhibits hereto.

6. At all times pertinent to the facts set forth in this affidavit, USF&G Specialty Insurance Company was under the umbrella of Travelers insurance companies.

7. In my capacity as Senior Technical Specialist for Travelers, I was assigned and handled a claim of a USF&G Specialty Insurance Company insured named Tema Brown, which claim had been asserted on behalf of Travis Milligan, a minor, as a result of a dog bite alleged to have occurred on April 20, 2005.

8. In connection with my handling of the aforementioned claim and in the ordinary course of business at Travelers, I wrote a letter on September 28, 2006 to Tema Brown at the address shown on her policy (Exhibit A).

9. The document attached hereto as Exhibit A is a true and correct copy of the aforementioned letter, two copies of which I put in the outgoing mail at Travelers in accordance with its normal and usual business practices and procedures concerning such matters, with one copy of said letter being mailed by certified mail, return receipt requested, and the other being mailed by regular U.S. mail.

10. In the event that the aforementioned letter (Exhibit A) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters, but neither the letter nor the envelopes were returned to me or to my file as undeliverable.

11. On January 7, 2008, I mailed another letter, a true and correct copy of which is attached hereto as Exhibit B, by regular U.S. mail to Tama Brown at the address shown on her policy. Enclosed with my letter of January 7, 2008 (Exhibit B) was a copy of my letter of September 28, 2006 (Exhibit A).

12. In the event that the aforementioned letter (Exhibit B) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters, but neither the letter nor the envelope was returned to me or to my file as undeliverable.

13. At all times pertinent to the matters contained in this affidavit, it was the regular practice of Travelers and Constitution State Services to prepare and generate records such as and including those attached hereto as Exhibits A and B, and said documents were prepared at or near the times of the transactions and matters described and depicted therein, and they are kept in the normal course of business at Travelers.

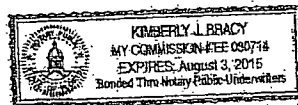
Brenda Trawick-Smith
Brenda Trawick-Smith

SWORN to and subscribed before me,

this 16 day of MAY, 2014.

Kimberly J. Bracy
Notary Public for the State of Florida

My Commission Expires: 8-3-15



Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2005

Taina Brown
3368 Habitat Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Taina Brown
Claim Number: GCHLUS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GCH20051152 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jinx, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jinx.

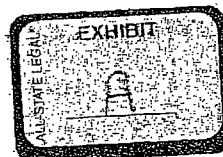
The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jinx is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Branda Trawick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Heath Insurance Inc.



Constellation Auto Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

January 7, 2008

Mrs. Tema Brown
3368 Habitat Blvd
Johns Island, SC 29455

Account: Tema Brown
Claim Number: G0GLUS040299
Date of Loss: 04/20/2005
Claimant: Travis Milligan

Dear Ms. Brown:

This letter will serve as a follow up to our telephone conversation.

I have enclosed correspondence that was previously sent to you explaining why coverage was not afforded under the policy issued to you by CSF&G under policy number GH20051152.

Sincerely,

Brenda Traxick-Smith
Sr. Technical Specialist
407-388-2573

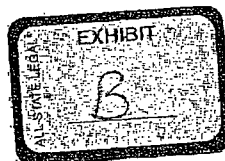


EXHIBIT M

Letter dated April 7, 2008 reiterating denial of coverage

Constitution State Services
Terence Youngblood
Suite 15-396
11250 Old St. Augustine Road
Jacksonville, FL 32257
Telephone: (904) 260-2956
FAX: (904) 260-9428

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

04/07/08

Ms. Tema Brown
3368 Habitat Blvd
Johns Island SC 29455

RE: Tema Brown
Account: GCGLUS040299 (Effective 12/23/04 to 12/23/05)
Policy Number: USF & G Specialty Insurance Company
Insurer: CGLUS040299
CLAIM NUMBER: Jana Wright, as Guardian ad Litem for Travis
PLANTIFF: Milligan, a minor filed in the State of South Carolina,
County of Charleston, in the Court of Common Pleas
Case No.: 07-CP-10-3224
Date of Loss: 04/20/05

Dear Ms. Brown:

Constitution States Services was notified by the attorney representing Ms. Wright of a lawsuit that was filed and a default that was taken in the above mention case.

As a follow up to our previous correspondence, USF & G Specialty Insurance Company has no duty to defend and/or any obligation to indemnify you in this matter. Based upon our investigation, the dog involved in this lawsuit was an American Pit Bull breed.

Your policy contains Master Endorsement US 04 43 (07-05), which includes a specific exclusion for "Vicious Dogs".

"Bodily injury" or "property Damage" arising out of the actions of any canine, owned by or in the care, custody or control of any "insured", that is a :

- a. "Vicious Canine",
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier
- d. Rottweiler
- e. Doberman Pinscher, or
- f. Chow Chow

We will consider a canine to be a Stafford Bull Terrier, American Pit Bull Terrier, Rottweiler, Doberman Pinscher, or Chow Chow if its lineage contains part of that breed.

Consequently, USF & G Specialty Insurance Company has no duty to defend and/or any obligation to indemnify you in this matter under the policy. If you have received any additional information you believe could cause USF & G Specialty Insurance Company to change its coverage position, please forward it for our review and consideration.

This correspondence is not intended to be, nor shall it be construed as an exhaustive listing or discussion of policy terms, conditions, exclusion or endorsements, facts or circumstances, or principles of insurance law which may further provide a basis to preclude coverage under USF & G Specialty Insurance Company policy in this matter. USF & G Specialty Insurance Company reserves the right to supplement its declination should information, not currently known to USF & G Specialty Insurance Company indicate the applicability of additional grounds. We refer you to the specific insurance policy for a comprehensive review of coverage; including policy terms, conditions, exclusions, and endorsements.

If there are any questions regarding USF & G Specialty Insurance Company position in this matter, please feel free to contact me at (904) 260-2956.

Sincerely,

Terence Youngblood
Senior Technical Specialist

Cc:
Maybank Law Firm
Amanda Maybank
102 Wappoo Creek Drive, suite 2A
Charleston SC 29422

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Animals Owned or Kept by an Insured, Unfenced Pools, Bodies of Water, Concealment or Fraud)
FORM HO 00 06 ONLY

DEFINITIONS

The following definitions are added:

"Vicious canine" means a canine, regardless of the breed, that any "insured" knows or should have known has attacked, bitten, or otherwise caused "bodily injury" to any person.

"Animal Owned or Kept by an Insured" means any domestic or wild animal owned by an "insured" or in their care, custody or control.

- a. "Vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler;
- e. Doberman Pinscher; or
- f. Chow Chow

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, Doberman Pinscher, or Chow Chow if its lineage contains part of that breed.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage G - Personal Property, 4. Property Not Covered:

Mobile homes, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of the actions of any canine, owned by or in the care, custody or control of any "insured", that is

a:

Animals Owned or Kept by an Insured

"Bodily injury" or "property damage" arising out of the actions of any "animal owned or kept by an insured". This exclusion does not apply to domestic animals not commonly considered livestock, such as dogs and cats kept as pets, that are owned by or in the care, custody or control of an "insured", and not otherwise excluded under this policy.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

Bodies of Water

"Bodily injury" or "property damage" arising out of any "insured's" ownership or control of any natural or man-made body of water, including but not limited to:

- a. Ponds
- b. Lakes
- c. Streams

USF&G Specialty Insurance Company

- d. Pools
- e. Swamps; and
- f. Creeks

This exclusion does not apply to swimming pools which are not otherwise excluded under this policy.

SECTION II - CONDITIONS

J. Concealment Or Fraud Is deleted.

SECTIONS I AND II - CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "insured", their agent, or their broker:

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

UNCLASIFIED

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>[Signature]</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: <i>Mr. Tema Bohawn</i> <i>3368 Habitat Blvd</i> <i>Johns Island SC</i> <i>29455</i>		B. Received By (Printed Name) <i>Tema Bohawn</i> C. Date of Delivery	
		D. Is delivery address different from item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	
2. Article Number: (Transfer from service label)		7003 2260 0003 7880 9762	
PS Form 3811, February 2004		Domestic Return Receipt 162595-02-M-1540	

UNCLASIFIED

2926 0887 E000 0922 E007

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only Insurance Coverage Provided)	
For delivery information visit our website at www.usps.com	
OFFICIAL USE	
Postage \$	<i>4/9/08</i> Postmark Here <i>AS19628</i>
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees \$	
Sent To <i>Tema Bohawn</i>	
Street, Apt. No., or PO Box No.	
City, State, ZIP+4	
PS Form 3811, June 2002	

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender, Please print your name, address, and ZIP+4 in this box •

TRAVELERS INSURANCE COMPANY
P O BOX 4900
ORLANDO FLORIDA 32802

T Youngblood *A8M9628*

Certified Mail Provides:

- A mailing receipt
- A unique identifier for your mailpiece
- A record of delivery kept by the Postal Service for two years

Important Reminders:

- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
- Certified Mail is not available for any class of international mail.
- NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For valuables, please consider Insured or Registered Mail.
- For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt service, please complete and attach a Return Receipt (PS Form 3811) to the article and add applicable postage to cover the fee. Endorse mailpiece "Return Receipt Requested". To receive a fee waiver for a duplicate return receipt, a USPS postmark on your Certified Mail receipt is required.
- For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the mailpiece with the endorsement "Restricted Delivery".
- If a postmark on the Certified Mail receipt is desired, please present the mail at the post office for postmarking. If a postmark on the Certified Mail receipt is not needed, detach and affix label with postage and mail.

IMPORTANT: Save this receipt and present it when making an inquiry. Internet access to delivery information is not available on mail addressed to APOs and FPOs.

PS Form 3800, June 2002 (Revised)

EXHIBIT N

Notice of Motion and Motion for an Order of Reference to a Special Referee
filed on December 5, 2008

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad Litem for
TRAVIS MILLIGAN, a minor over the age of 14
years,

☒ Plaintiff(s),

Versus

TEMA BROWN,

☐ Defendant(s).

check box above indicating submitting party

Plaintiff's attorney:
Amanda R. Maybank (S.C. #69825)
MAYBANK LAW FIRM, LLC
P.O. Box 12579
(843) 766-8101
(843) 766-8103 fax
amanda@maybanklaw.com

IN THE COURT OF COMMON PLEAS
CASE NO. 07-CP-10-3224

Motion for an Order of Reference

Defendant's attorney:
None

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

Nature of Motion: Motion for an Order of Reference
Estimated Time Needed: 30 minutes
Court Reporter Needed: YES ☒ / NO ☐

- ☒ Written motion attached
☐ Form Motion/Order - Consent Order to Consolidate for Discovery
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff ☐ Defendant
Date submitted: 12-5-08

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ Sexually Violent Predator Act
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

- JUDGE'S SECTION
☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE
CODE: _____ DATE: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: B. Grammer
(print name)

- ☐ MOTION FEE COLLECTED: 25-
☐ CONTESTED-AMOUNT DUE: _____
\\Server1\Commen\docs\116.001\motion slip.doc

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad
Litem for TRAVIS MILLIGAN, a
minor over the age of 14 years

Plaintiff,

vs.

TEMA BROWN,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2007-CP-10-3224

NOTICE OF MOTION AND MOTION
FOR AN ORDER OF REFERENCE TO
A SPECIAL REFEREE

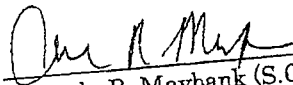
FILED
DEC - 8 PM 4:17
CLERK OF COURT
J. ARMSTRONG

08-18089

Pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, and S.C. Code Ann. Section 14-11-60, the Plaintiff hereby moves for an Order referring this matter to a Special Referee for a determination of all matters in this case. This motion is based on the fact that Defendant was served on November 19, 2007, and made no appearance. On January 10, 2008, an order of default was entered by the Court. As such, the requirements of Rule 53, SCRCP and S.C. Code Ann. Section 14-11-60 have been met and an order of reference to a special referee is proper.

[Signature Page Follows]

MAYBANK LAW FIRM, LLC
P.O. Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8103
Email: amanda@maybanklaw.com



Amanda R. Maybank (S.C. #69825)
Roy P. Maybank (S.C. #69643)
Attorneys for Plaintiff
JANA WRIGHT, as Guardian ad Litem
for TRAVIS MILLIGAN,
a minor over the age of 14 years.

Charleston, South Carolina
Dec 5, 2008

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing
was served on each party or counsel of record by ☒
mailing, ☐ e-mailing, ☐ facsimile, or ☐ hand delivery in
the manner prescribed by the applicable Rule of Civil
Procedure.

This 5 day of Dec., 2008.



MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW

Physical Address
531 Savannah Highway
Charleston, SC 29407

Mailing Address
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Roy P. Maybank
Amanda R. Maybank

Phone: (843) 766-8101
Facsimile: (843) 766-8103

EMAIL: amanda@maybanklaw.com

December 5, 2008

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

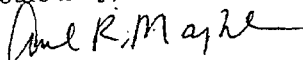
Re: Jana Wright, as Guardian ad Litem for Travis Milligan, a minor
child over the age of 14 years v. Tema Brown
C.A. No. 2007-CP-10-3224
MLF File No. 116.001

Dear Ms. Armstrong,

Enclosed please find the original and one copy of the Motion for an Order of Reference to a Special Referee. Please file the originals, have the judge sign the order of default, and return the clocked copies to me in the enclosed self addressed stamped envelop.

With kind regards, I am

Yours truly,


Amanda Maybank

ARM/ead

Enclosures

Cc: Ms. Tema Brown
Barry I. Baker, Esq.

EXHIBIT O

Order of Reference to a Special Referee Granted by The Honorable Roger M. Young
Filed March 11, 2009

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad
Litem for TRAVIS MILLIGAN, a
minor over the age of 14 years

Plaintiff,

vs.

TEMA BROWN,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A No. 2007-CP-10-3224

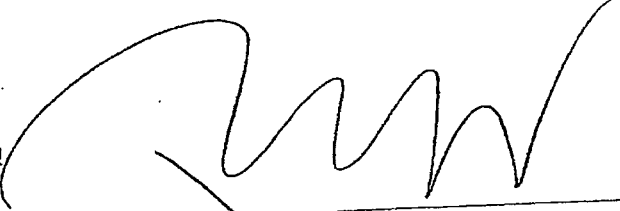
ORDER OF REFERENCE TO
SPECIAL REFEREE

FILED
2009 MAR 11 AM 11:46
JULIE J. ARYSTONG
CLERK OF COURT

This matter came before me on February 12, 2009, by way of motion filed by the Plaintiff. After reviewing the motion and hearing oral arguments, I find the requirements of S.C. Code Ann. Section 14-11-60 and Rule 53, SCRCP have been met and that this case should be referred to a special referee.

There, it is hereby ordered that this matter shall be referred to Special Referee Tom Wills, Esq., for determination of all matters in the above referenced case.

IT IS SO ORDERED!


The Honorable Roger A. Young
Presiding Judge
9th Judicial Circuit

Charleston, South Carolina
3/11, 2009

EXHIBIT P

Order of Judgment filed on September 11, 2009

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)

ORDER OF JUDGMENT

2009 SEP 11 PM 2:30
JULIE J. ARSTRONG
CLERK OF COURT
BY _____

FILED

This case came before me by way of an Order appointing me as a special master dated March 11, 2009. The complaint was filed on October 17, 2007, and the Defendant was personally served on November 19, 2007. An order of default was entered on January 3, 2008. A hearing was held before me on June 30, 2009. Present at the hearing was Jana Wright, mother of and guardian ad litem for Travis Milligan, Travis Milligan, as well as their attorneys Barry I. Baker, Esq., and Amanda R. Maybank, Esq. The Defendant Tema Brown and her son LaRon Brown were also present. After hearing testimony from the Plaintiffs as well as from Ms. Brown, I hereby make the following findings of fact and conclusions of law.

FACTS

This case stems from a dog bite suffered by Travis Milligan on April 20, 2005. On that date, Travis then 13 years old, was riding his bike in front

of the house he shares with his mother. Ms. Brown lived across the street. At the time, Ms. Brown had possession of a dog. The testimony of Ms. Wright and Mr. Milligan established that as Travis was riding his bike, Ms. Brown's dog ran off of her property and attacked Travis on the back of his leg.

Ms. Brown testified that she did in fact have possession of a dog, that the dog got loose, and bit Travis on the back of the leg. Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a vicious dog.

Following the attack, Travis was taken to the nearest paramedic station and then to the emergency room where he received treatment for the wound. Doctors were unable to stitch the wound closed due to the fact that a section of flesh was missing. As a result, the wound took approximately three months to heal. During the three months Travis was unable to participate in activities such as football in order to allow the wound to heal.

Travis testified that even though the wound has healed, he continues to have problems with the scar breaking open. Travis also testified that he experiences pain and throbbing when he is on his feet for an extended period of time. Currently, Travis is an upcoming senior in high school, and works as a bagger at the Johns Island Piggly Wiggly and at Burger King. Travis also has continued to have a noticeable discolored scar as well as problems of dryness of the skin on and around the scar and severe itching.



Following the dog bite, on June 20, 2005, Travis began treating with Peter de Vito, M.D. Dr. de Vito opined that Travis will require two to three surgeries to improve the functionality of the scar. However, according to Dr. de Vito, nothing can be done to improve the appearance of the scar.

LAW

South Carolina Code Ann. § 47-3-110 provides that "[w]henver any person is bitten or otherwise attacked by a dog while the person is in a public place or is lawfully in a private place, including the property of the owner of the dog or other person having the dog in his care or keeping, the owner of the dog or other person having the dog in his care or keeping is liable for the damages suffered by the person bitten or otherwise attacked."

In personal injury actions the plaintiff may recover for the necessary and reasonable expense caused by the injury such as amounts necessarily paid for medicine, medical attendance, hospital expense and care and nursing. *Sossamon v. Nationwide Mut. Ins. Co.*, 243 S.C. 552, 135 S.E.2d 87 (S.C. 1964). To recover for future medical expenses, the expenses must be established with reasonable certainty. *Campbell v. Pashcal*, 290 S.c. 1, 347 S.E.2d 892 (Ct. App. 1986). A party need not, however, prove future damages in a personal injury case to a mathematical certainty. *Id.*

In this case, the testimony of Ms. Brown established that she had possession of a dog and that the dog attacked Travis. S.C. Code Ann. § 47-3-110.

At the hearing, Plaintiffs entered evidence of actual damages in the following amounts:

• MUSC	\$395.00
• University Medical Associates	\$244.00
• Peter de Vito, M.D. (current expenses)	\$590.00
• Peter de Vito, M.D. (future medical expenses)	\$29,000.00
TOTAL	\$30,229.00

An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). Damages for "loss of enjoyment of life" compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, or hobbies. *Id.*

In this case Plaintiff presented evidence of both pain and suffering following the incident, and the effects the injury has had and continues to have on his life. Travis testified that due to the fact flesh was missing from his leg, the wound took three months to heal. During this time, he was unable to participate in activities of a normal 13 year old. He also testified

that the healing process was very painful and that the wound became infected once.

Travis further testified that even after the wound healed, he has continued to have itching and dryness of the scar, and the area of the scar becomes painful when he is on his feet for an extended period of time. Additionally, Travis testified that due to the instability of the scar tissue, he has to restrict his physical activity to prevent the scar from breaking open. Additionally, the appearance of scar on his calf remains discolored and noticeable. Dr. de Vito opined that very little if anything can be done to improve the appearance of the scar, and that even after surgery Travis will still have noticeable scars from the injury. At the time of the injury, Travis was only 13 years old, and his life expectancy pursuant to S.C. Code Ann. 19-1-150 was 58.60 years. He has and will likely continue to suffer the effects of the injury for the rest of his life.¹ As a result, I find that Plaintiffs are entitled to \$70,000.00 in damages for pain and suffering and loss of enjoyment of life. See *Boan, supra*.



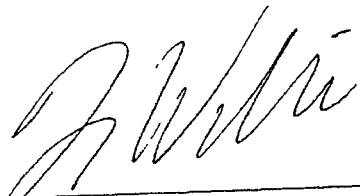
With regard to punitive damages, the purpose of punitive damages is to punish the wrongdoer and to deter the wrongdoer from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). In this case, I find that punitive damages are not warranted. Ms. Brown testified that the dog was not a vicious dog and was a mixed breed, but not a pit bull. She also

testified that the dog was restrained on her property; however, due to the excitement of her children coming home that day, the dog was able to get loose and run across the street.

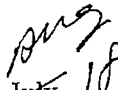
CONCLUSION

Having heard the testimony and received evidence I find that Plaintiffs are entitled to actual damages of \$100,229. I deny the request for punitive damages based on the reasoning above.

IT IS SO ORDERED!



Thomas J. Wills, IV
Special Master


July 18, 2009
Charleston, SC

MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW

Physical Address
531 Savannah Highway
Charleston, SC. 29407

Mailing Address
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Roy P. Maybank
Amanda R. Maybank

Phone: (843) 766-8101
Facsimile: (843) 766-8103
September 8, 2009

EMAIL: amanda@maybanklaw.com

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Jana Wright, as Guardian ad Litem for Travis Milligan, a minor child over
the age of 14 years v. Tema Brown
C.A. No.: 2007-CP-10-3224
MLF File No. 116.001

Dear Ms. Armstrong:

Enclosed are the original and a copy of the Order of Judgment in the above
referenced case. Please file the original, file stamp the copies, and return the copies
to me in the envelope provided.

Thank you for your assistance.

With kind regards, I am

Yours truly,


Amanda R. Maybank

ARM/

Enclosures

Cc: Barry I. Baker, Esquire
Ms. Jana Wright

EXHIBIT Q

Assignment
November 4, 2010

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian
ad Litem for TRAVIS
MILLIGAN, a minor over
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-10-3224

ASSIGNMENT

WHEREAS, on April 20, 2005, Tema Brown was insured by Constitutional State Services, when a dog in her care and custody, and bit and caused injury, to Travis Milligan, a minor;

WHEREAS, Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years, has obtained a judgment against Tema Brown as a result of the dog bite in the amount of \$150,229;

WHEREAS, her insurer has refused to defend or indemnify Tema Brown for the judgment;

NOW THEREFORE, the parties agree as follows:

1. Tema Brown does and hereby assigns any and all rights and claims for injuries and damages of whatsoever kind sustained by her on account of her insurer's failure to defend and provide coverage in the suit brought by Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years.

2. Tema Brown agrees to cooperate with counsel for Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years, in the collection and litigation against her insurer for the failure to defend and provide coverage for the aforesaid judgment.

3. Tema Brown agrees to waive any and all rights to any proceeds recovered by Jana Wright, as Guardian ad Litem for Travis Milligan, from

Brown's insurer for its failure to defend and indemnify in the above lawsuit as well as any and all rights for any bad faith action brought against said insurer.

Tema Brown 11/4/10
Tema Brown

John Jones 11/4/10
Witness

EXHIBIT R

Consent Order entered by The Honorable Markley Dennis
Dated January 6, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JANA WRIGHT, as Guardian ad Litem for
TRAVIS MILLIGAN, a minor over the age of 14
years

☒ Plaintiff(s),

Versus

TEMA BROWN

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 2007-CP-10-3224

Motion Slip
Consent Order

☐ Defendant(s).
check box above indicating submitting party

Plaintiff's attorney:
Amanda P. Maybank, Esquire
Maybank Law Firm, LLC
Post Office Box 12579
Charleston, SC 29422
P: (843) 766-8101
F: (843) 766-8103
E: Amanda@maybanklaw.com

Defendant Pro Se:
Tema Brown
3368 Habitat Blvd
Johns Island, SC 29455
P: (843) 343-0051

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTION I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II AND III)

SECTION I: Hearing Information

Nature of Motion: Consent Order
Estimated Time Needed:

Court Reporter Needed: YES ☐ / NO ☒

SECTION II: MOTION/ORDER TYPE

- ☐ Written motion attached -
☒ Form Motion/Order -

I hereby move for relief or action by the court as set forth in the attached proposed motion.

Signature of Attorney for ☒ Plaintiff ☐ Defendant 12-22-07
Date submitted

SECTION III: Motion Fee

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

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached
order.
☐ Other:

JUDGE
CODE: DATE:

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) C/A No. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem
for TRAVIS MILLIGAN, a minor over
the age of 14 years

) Plaintiff,
)
)

vs.

TEMA BROWN,

) Defendants.
)
)

CONSENT ORDER

FILED
2011 JAN -6 PM 4:51
JULIE J. ARMSTRONG
CLERK OF COURT

11-352
This matter comes before me on the Motion of the Plaintiff with the consent of the Defendants for an order allowing the Defendant to refer this matter to the Master In Equity for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings. The Defendant is granted leave to file a Third Party Complaint against her insurance company.

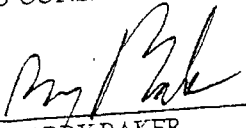
AND IS SO ORDERED.


HONORABLE MARKLEY DENNIS
Ninth Judicial Circuit

Charleston, SC
December 31, 2010

RM09/1

WE SO CONSENT:

By: 
BARRY BAKER

As Assignee for Tema Brown

MAYBANK LAW FIRM, LLC

By: 
Amanda R. Maybank

Attorney for Plaintiff

Rmd9/2

MAYBANK LAW FIRM, LLC

ATTORNEYS AT LAW

Physical Address
531 Savannah Highway
Charleston, SC 29407

Mailing Address
POST OFFICE BOX 12579
CHARLESTON, SC 29422

Roy P. Maybank
Amanda R. Maybank
Jason A. Daigle

Phone: (843) 766-8101
Facsimile: (843) 766-8108

EMAIL: amanda@maybanklaw.com

December 22, 2010

Via Hand Delivery

The Honorable Markley Dennis
Berkley County Clerk of Court
223 N Live Oak Drive
Moncks Corner, SC 29461

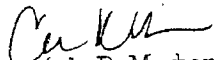
Re: Jana Wright, as Guardian ad Litem for Travis Milligan, a minor child over
the age of 14 years v. Tema Brown
C.A. No.: 2007-CP-10-3224
MLF File No. 116.001

Dear Judge Dennis:

Enclosed please find a signed consent order in the above referenced matter.
If this order meets with your approval, please sign where indicated and call our
office to pick up so we may file with Charleston County Clerk of Court. Should you
have any questions, please do not hesitate to call.

With kind regards, I am

Yours truly,


Amanda R. Maybank

ARM/emg
Enclosures

EXHIBIT S

Consent Order entered by The Honorable Kristi Lea Harrington
Dated July 14, 2011

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JANA WRIGHT, ETC.,
☒ Plaintiff

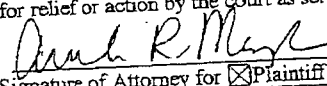
v.

Terna Brown
☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.
2007-CP-10-3224

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Amanda R. Maybank, Bar No. 69825 Address: Maybank Law Firm, PO Box 12579, Charleston SC 29422 phone: 843-766-8101 fax: 843-766-8103 e-mail: Amanda@maybanklaw.com other:		Defendant's Attorney: Terna Brown, Bar No. PRO SE Address: 3368 Habitat Blvd, Johns Island SC 29455 phone: fax: e-mail: other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion:		Court Reporter Needed: ☐ YES / ☐ NO	
Estimated Time Needed:		SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
 Signature of Attorney for ☒ Plaintiff / ☐ Defendant		Date submitted	
SECTION III: Motion Fee			
☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NO. 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)

Plaintiff,)

vs.)

TEMA BROWN,)

Defendant)

CONSENT ORDER

FILED
2011 JUL 14 PM 2:12
JULIE J. ARMSTRONG
CLERK OF COURT

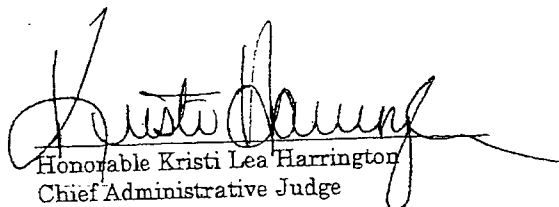
IT APPEARING by the signatures of counsel that Andrew K. Epting has been retained to bring the third-party complaint and all parties consent to his appearing as Counsel to bring the third-party complaint,

IT IS HEREBY ORDERED that Andrew K. Epting, Jr., is permitted to appear in this action and is authorized to file the third-party complaint within 30 days of this order, and that this matter is then referred to the Master-in-Equity pursuant to Rule 53(b)

SCRCP..

IT IS SO ORDERED.

July 13 2011
Charleston, SC


Honorable Kristi Lea Harrington
Chief Administrative Judge

WE SO MOVE:

MAYBANK LAW FIRM, LLC

By Amanda R. Maybank
Amanda R. Maybank Attorney for Plaintiff

WE MOVE:

By Barry Baker
Barry Baker for Tema Brown in her capacity as assignor of claims to Plaintiff

I CONSENT:

ANDREW K. EPTING, JR., LLC

By Andrew K. Epting, Jr.
Andrew K. Epting, Jr. for Third Party Plaintiff

ANDREW K. EPTING, JR.
ATTORNEY AT LAW

July 7, 2011

The Honorable Kristi Lea Harrington
Charleston County
Clerk of Court
100 Broad Street
Charleston, SC 29401

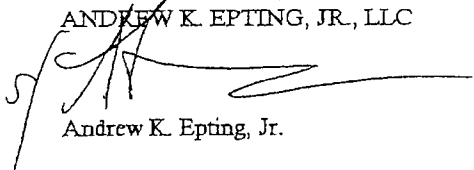
RE: Jana Wrights, as Guardian *ad Litem* for Travis Milligan, a minor over
the age of 14 years v. Tema Brown
Case No.: 2007-CP-10-3224

Dear Judge Harrington:

Enclosed please find the original and two (2) copies of the proposed Consent
Order in the above-referenced matter. Please also find my firm check in the
amount of \$25.00. Should the Order meet your approval, I would greatly
appreciate your signing the Order and returning the certified copies to me in
the self-addressed, stamped envelope provided. Thank you for your assistance
in this matter.

With kindest regards,

ANDREW K. EPTING, JR., LLC


Andrew K. Epting, Jr.

AKE/egg

Enclosures

cc: Amanda R. Maybank, Esquire
Barry Baker, Esquire

P - action screen -
Epting
atty: payment Epting

EXHIBIT T

Defendant/Third-Party Plaintiff's Answers to GeoVera's Discovery, Request to Produce 9

ANSWER: Third-Party Plaintiff is not in possession of any documents evidencing an investigation of any state or local agency or law enforcement agency and does not believe these documents exist.

7. Any and all documents evidencing assignments by, from, or to any of the parties in this action of or concerning any claims, causes of action, or other rights or matters relating to this action or the facts and circumstances out of which it arose.

ANSWER: The assignment dated November 4, 2010 is enclosed.

8. Any and all releases, covenants, settlement agreements or other agreements or contracts between or among any of the parties to this action, excluding the insurance contract attached as Exhibit C to the amended third-party complaint, relating to the within action and the facts and circumstances out of which it arises, or any of them.

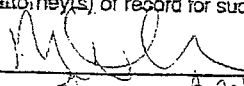
ANSWER: The assignment dated November 4, 2010 is enclosed.

9. Any and all documents concerning the dog at issue in this case, including, but not limited to, vaccination records, pet licenses, registration records, pedigree information, and veterinarian records and reports.

ANSWER: As this third-party complaint is filed pursuant to the assignment dated November 4, 2010, Plaintiff is not in possession of documents responsive to this request.

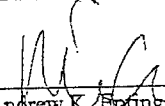
CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).



On this 7 day of April, 2014
Charleston, South Carolina

ANDREW K. EPTING, JR., LLC



Andrew K. Epting Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310

EXHIBIT U

Defendant/Third-Party Plaintiff's Answers to GeoVera's Discovery, Interrogatory 9

ANSWER: Ms. Brown has a judgment against her in the amount of \$100,229.00, attorneys' fees, and interest at the legal rate.

8. List the names and addresses of all expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case, and provide a summary of the opinions which the expert is expected to give and a statement of the facts relied upon by the expert in reaching each opinion.

ANSWER: Third-Party Plaintiff has not yet retained an expert in this case.

9. Set forth the nature of any and all assignments by, from, or to any of the parties in this action of or concerning any claims, causes of action, or other rights or matters relating to this action or the facts and circumstances out of which it arose.

ANSWER: On November 4, 2010, Tema Brown and Jana Wright as Guardian ad Litem for the minor child Travis Milligan entered into an agreement whereby Ms. Brown assigned her claims against her insurer for the insurer's failure to defend and indemnify Ms. Brown for the judgment against her in the amount of \$100,229.00 and her insurer's bad faith. Ms. Brown further agreed to waive her right to the proceeds, if any, recovered by Ms. Wright and allow this action to proceed in her name.

10. Set forth any and all releases, covenants, settlement agreements or other agreements or contracts between or among any of the parties to this action, excluding the insurance contract attached as Exhibit C to the Amended Third-Party Complaint, relating to the within action and the facts and circumstances out of which it arises, or any of them.

ANSWER: See Response to Paragraph 9 above.

11. List names and addresses of all persons who have owned and/or cared for the dog at issue in this case, including the current owner, and the time periods for which the dog was under each individual owner's care.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IANA WRIGHT, as Guardian *ad Litem*)
for TRAVIS MILLIGAN, a minor over)
the age of 14 years)
Plaintiff,)
)
vs.)
)
TEMA BROWN,)
)
Defendant/Third-Party Plaintiff,)
)
vs.)
)
GeoVera Specialty Insurance Co.,)
)
Third-Party Defendant,)
)

IN THE COURT OF COMMON PLEAS
CASE NO: 2007-CP-10-3224

**MOTION FOR SUMMARY
JUDGMENT**

FILED
2014 MAY 16 PM 2:22
JULIE J ARMSTRONG
CLERK OF COURT

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant/Third-Party Plaintiff, Tema Brown, hereby move this honorable Court, pursuant to Rule 56 SCRPC, for an order granting Defendant/Third-Party Plaintiff, Tema Brown summary judgment against Third-Party Defendant GeoVera Specialty Insurance Co. ("GeoVera").

The grounds for this motion are as follows: (1) the facts as determined by special master Tom Wills, Esq. establish there is coverage under the homeowners insurance policy issued to Ms. Brown by GeoVera for the dog bite at issue; (2) the issue upon which coverage depends was raised before Mr. Wills and necessarily adjudicated in the underlying action; (3) GeoVera cannot now, after failing to defend in the underlying action, raise issues or present defenses inconsistent with the judgment against its insured; and (4) there is no genuine issue of material fact with regard to the foregoing and Third-Party Plaintiff is entitled to judgment as a matter of law.

[signature on following page]

ANDREW K. EPTING, JR., LLC



Andrew K. Epting Jr., Esq.

Michelle N. Endemann, Esq.

46A State Street, Charleston, SC 29401

P: 843.377.1871 F: 843.377.1310

ake@epting-law.com

mnc@epting-law.com

ATTORNEYS FOR TEMA BROWN

On this 13 day of May, 2014
Charleston, South Carolina



COPY

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

v.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

v.)

GeoVera Specialty Insurance Co.)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.: 2007-CP-10-3224

THIRD-PARTY DEFENDANT GEOVERA
SPECIALTY INSURANCE COMPANY'S
MOTION FOR RECONSIDERATION
AND TO ALTER OR AMEND JUDGMENT

FILED
JUL 15 2015
CLERK OF COURT

Pursuant to Rule 59(e), SCRPC, Third-Party Defendant GeoVera Specialty Insurance Company ("GeoVera") hereby moves for an order altering or amending the corrected order of The Honorable Mikell R. Scarborough entered on March 24, 2015, and reconsideration of same, on the following grounds:

(1) The corrected order does not address what are arguably the two most important cases addressing the issue of whether a liability insurer is bound by factual findings in the underlying tort action, both arising out of South Carolina and discussed in GeoVera's memorandum of law on pages 19 and 23. Under South Carolina law, the insurer that declines to defend is not bound by the court's findings when the claim against its insured is not covered by the policy, and GeoVera is therefore not estopped to rely on applicable policy defenses. In particular, please see Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965), in which our Supreme Court specifically held that a liability insurer is not bound by factual findings

in the trial of an action against its insured, which it declined to defend on the ground that the allegations were not covered by the policy. Relying instead on Williston on Contracts and cases from Georgia, California and Pennsylvania, the corrected order reaches the opposite conclusion.

(2) The corrected order does not address GeoVera's argument set forth on pages 16 through 19 of its memorandum that the default judgment terminated this action, precluding the third-party complaint or, to the extent this argument was addressed, assumed that it was solely and necessarily based on lack of subject matter jurisdiction, which is not the case. The excerpt from American Jurisprudence (Second) on pages 16 and 17 of GeoVera's memorandum indicates that, under some authority, "A defendant against whom a default has been entered is out of court and is not entitled to take any further steps in the cause affecting plaintiff's right of action" That is, once the case has been finally adjudicated, additional activity in the case is forbidden – not due to a lack of subject matter jurisdiction but because the case has been finally adjudicated. Moreover, as the Arkansas Supreme Court observed in Arkansas Bankers Life Ins. Co. v. Tomerlin, 340 Ark. 701 13 S.W.3d 581 (2000), Rule 14 (which is virtually identical to South Carolina's comparable rule) implies that a third-party complaint will be filed before the issues are resolved at trial, and permitting it to be filed after the entry of judgment was error.

(3) The corrected order erroneously assumes that this Court does not have the authority to grant GeoVera's motion, since the Circuit Court orders authorized the filing of the third-party complaint. The referral was "for all purposes allowed by the rules, including, examination of the Defendants in supplemental proceedings" and pursuant to Rule 53(b). The first order was consented to by both Mr. Baker and Ms. Maybank, both of whom represented the Plaintiff, with Mr. Baker consenting "As Assignee for Tema Brown" and Ms. Maybank consenting as "Attorney for Plaintiff." Similarly, Mr. Baker and Ms. Maybank both moved for

the second order, with Mr. Baker signing "for Tema Brown in her capacity as assignor of claims to Plaintiff" and Ms. Maybank signing as "Attorney for Plaintiff." Under these circumstances, the case having been referred by the Circuit Court "for all purposes allowed by the rules," this Court has the authority to grant GeoVera's motion for summary judgment on the ground that this action was finally adjudicated upon entry of the default judgment.

The two Circuit Court orders, by consent, granted leave to file a third-party complaint. The issues raised in GeoVera's motion for summary judgment and memorandum in support were not before either court. The situation presented is similar to that in Mann v. Walker, 285 S.C. 194, 328 S.E.2d 659 (Ct.App. 1985), in which a Family Court Judge vacated a default judgment previously entered by another Family Court Judge in which he ordered adoption of a child by the plaintiffs. The court rejected plaintiffs' argument that the second judge did not have authority to vacate the first judge's default judgment, since "[t]he threshold questions decided by the two judges were different."

Similarly, in the case at bar, Judge Dennis and Judge Harrington, when presented with proposed consent orders, authorized the filing of the third-party complaint. Undoubtedly, they were not presented with law or arguments to the contrary. This court has been presented with a different issue: whether, after the third-party complaint was filed pursuant to said orders, the third-party defendant is entitled to summary judgment on the grounds set forth in its motion and memorandum, i.e., that the action was terminated by means of a default judgment; that the third-party plaintiff lacks standing by virtue of the assignment; and that the statute of limitations had expired, among others.

(4) The corrected order concludes that GeoVera has waived its defenses relating to the propriety of the third-party complaint, and perhaps other defenses, by making a "general

appearance” and participating in the action. It relies on two cases that pre-date the adoption of the South Carolina Rules of Civil Procedure. However, the adoption of those rules dispensed with the special appearance for challenging jurisdiction, and the pre-adoption cases are no longer controlling. In Smalls v. Weed, 291 S.C. 258, 353 S.E.2d 154 (1987), the defendant had been served shortly before the adoption of the rules, after which the defendant made a special appearance, putting forth four grounds for dismissal: improper service; lack of personal jurisdiction; and two grounds addressing the merits. The South Carolina Court of Appeals held that, by asserting arguments on the merits, which under code pleading could have been raised only through a general appearance, the defendant implicitly acknowledged the jurisdiction of the court. Significantly, the court noted that, under the new rules, although the special appearance had been eliminated, the defendant still would not have prevailed because the grounds addressing the merits must be presented in a responsive pleading.

GeoVera, however, did preserve its defenses by presenting them in its answer, including the following: third-party plaintiff lacks standing to seek the judicial declarations sought in her amended third party complaint; third-party plaintiff is not the real party in interest; there is no judicable controversy appropriate for a declaratory judgment; the action was terminated upon entry of judgment against third-party plaintiff on or about September 11, 2009; third-party plaintiff lacks the capacity to assert the third-party complaint, in that she assigned the right to do so, if any, to Plaintiff; GeoVera has been substantially and unfairly prejudiced by the assertion of the third-party complaint almost four years after the entry of default against third-party plaintiff in this action, in that GeoVera has thereby been deprived of its rights under Rule 14(a), SCRCP; the amended third-party complaint is barred by the doctrine of laches; and the amended third-party complaint is barred by the applicable statute of limitations.

GeoVera has found no South Carolina cases holding that a defendant's participation in the action waives such defenses. On the contrary, in Dunbar v. Vandermore, 295 S.C. 493 (1988), the South Carolina Court of Appeals reversed the Circuit Court's decision to deny a motion to dismiss for lack of personal jurisdiction because the defendant obtained an extension of time to move or file responsive pleadings. In so doing, the Court quoted *Moore's Federal Practice* for the proposition that "Obtaining extensions of time and taking depositions before answering have been held not to constitute a waiver of the defenses of lack of jurisdiction of the person and improper venue." Cases from other jurisdictions support GeoVera's position. See Ayres v. Jacobs & Crumplar, P.A., 99 F.3d 565 568 (3rd Cir. 1996) ("The court properly rejected the plaintiff's argument that the defendants have waived their [service and process] defenses by engaging in discovery and attending scheduling conferences."); Clark v. City of Zebulon, 156 F.R.D. 684, 694 (N.D. Ga. 1993) ("This court concludes that the fact that the City continued to participate in discovery and in the process of moving the case toward trial does not constitute waiver of the defenses."); Toler v. City of Cookeville, 952 S.W.2d 831, 835 (Tenn. Ct. App. 1997) (Once the defense of insufficient service of process has been properly raised in the answer to the complaint, the defendant's participation at depositions in the case or in providing answers to written discovery does not constitute waiver); Ryals v. Hall-Lane Moving & Storage Co., Inc., 122 N.C.App. 242, 247-48, 468 S.E.2d 600, 604 (1996) ("When a defendant promptly alleges a jurisdictional defense as his initial step in an action, he fulfills his obligation to inform the court and his opponent of possible jurisdictional defects" and it does not make any difference if the defendant engages in discovery afterwards.)

(5) The corrected order indicates that the statute of limitations did not begin to run until entry of the default judgment, since the third-party complaint was for indemnity, however,

the denial letters unequivocally deny all coverage, including "any obligation to indemnify . . .," and third-party plaintiff, Tema Brown, was therefore on notice more than three years before the third-party complaint was filed, not only that this suit against her would not be defended, but that, in the event of a judgment, she would not be indemnified. "Under the discovery rule, the statute of limitations begins to run when a cause of action reasonably ought to have been discovered" Prince v. Liberty Life Ins. Co., 390 S.C. 166, 169, 700 S.E.2d 280, 282 (Cl.App. 2010). Ms. Brown brought her third-party complaint as a declaratory judgment action. She was on notice that she could bring a declaratory judgment action when she received the denial letter, denying all coverage under the policy for the claim that had been asserted against her. Because the denial letters unequivocally denied coverage, Ms. Brown was on notice when she received them not only that GeoVera would not provide a defense, but that it would not indemnify.

A similar situation arose in Adamski v. Allstate Ins. Co., 1999 PA Super 241, 738 A.2d 1033 (1999). In that case, Allstate denied coverage and declined to defend Miller in a suit brought against him arising out of an automobile accident. The April 2, 1986 denial letter indicated that the ground was that Miller was not a permissive driver of the insured vehicle. The jury returned a verdict against Miller for \$305,000 and judgment was entered on January 14, 1991. On August 19, 1992, Miller verbally assigned his rights against Allstate to the plaintiffs in the suit, Mr. and Mr. Adamski.

The Adamskis began a garnishment proceeding against Allstate, in which the court ruled that Miller was indeed a permissive user. That ruling was ultimately upheld on appeal, after which Allstate paid the Adamskis the \$50,000 policy limit, plus interest. The Adamskis filed a summons on November 9, 1993, followed on January 17, 1997 by a complaint alleging that

Allstate acted in bad faith by failing to defend, indemnify or otherwise protect Miller's interests. Allstate moved for summary judgment on the ground that the statute of limitations had run and for failure to state a cause of action. Allstate's motion was granted on the ground that the cause of action asserted arose on the date that Allstate denied coverage to Miller – April 2, 1986. On appeal, the Adamskis argued that actions premised on a refusal to defend or indemnify do not arise until termination of the litigation, which was on January 14, 1991, the date judgment was entered. The court observed that there was no factual issue that Allstate's denial of coverage occurred on April 2, 1986; that judgment was entered on January 14, 1991; and that the suit was commenced on November 9, 1993. As in the case at bar, the question was when the cause of action arose. Noting that the Adamskis alleged, among other things, that Allstate wrongfully failed to defend or indemnify Miller, the court said:

In light of [Allstate's] denial of coverage to Miller, which denial was communicated by letter on April 2, 1986, it should have been obvious to all that [Allstate] would not protect, defend, or indemnify Miller.

* * *

Here, [Allstate's] 1986 letter clearly put Miller on notice that he would not be covered, defended or indemnified in existing or future actions under the policy issued by [Allstate] to [the named insured]. [The Adamskis], who stand in Miller's shoes, . . . cannot now avoid an applicable statute of limitations by asserting that the continuing refusal to cover Miller was a separate act of bad faith.

Id., at 1038, 1042-43.

While Adamski involved bad faith claims, the case is nevertheless instructive because the bad faith claims challenged Allstate's refusal not only to defend, but to indemnify, and the statute of limitations on said claim was deemed to begin to run on the date of the denial – not the date of the judgment. *See also Wiseman Oil Co., Inc. v. TIG Ins. Co.*, 878 F.Supp.2d 597 (W.D.Pa. 2012) (holding that the statute of limitations for claims for bad faith denial of coverage

begins to run when 'an insurer clearly and unequivocally puts an insured on notice that he or she will not be covered under a particular policy for a particular occurrence. *Id.*, at 604 (citation omitted.)

In the case at bar, Ms. Brown chose to challenge GeoVera's denial of coverage and refusal to indemnify by means of a declaratory judgment claim, which could have been brought within three years after she received any of the denial letters – the first of which was mailed on September 28, 2006 and, pursuant to the unrebutted presumption afforded under South Carolina law, as discussed in section (6) below, was received by Ms. Brown. Ms. Brown's Answer and Third-Party Complaint was not filed until July 19, 2011 – almost five years later.

The cases that the corrected order relies upon are all distinguishable, as none addresses a situation similar to that presented in the case at bar, i.e., the purported indemnitor, an insurance company, unequivocally denies liability coverage for a judgment that may result from the claim asserted against the insured, and did so years in advance of the ultimate judgment based on that claim. In Ellett Brothers, Inc. v. United States Fid. & Guar. Co., 275 F.3d 384 (4th Cir. 2001), the statute of limitations was not an issue. The insured, Ellett Brothers, sought a declaratory judgment that its insurers were required to defend and indemnify it in connection with four suits that had been brought against it. The issues were (1) whether the summary judgment that had been granted to the insurers sanctioning their denial of a defense should be upheld; and (2) whether the insured should have been allowed to voluntarily dismiss its indemnity claim against the insurers. The court held that the district court did not abuse its discretion in that regard, noting that, because the indemnity claim was not ripe, the insurers would not be irreparably harmed by the voluntary dismissal. Neither the opinion nor the concurring opinion indicates that the statute of limitations was an issue.

The case of First General Services of Charleston, Inc. v. Miller, 314 S.C. 439, 445 S.E.2d 446 (1994) is likewise unhelpful. That case involved an indemnity claim by a contractor against a subcontractor – not an insurer. The court cited a federal case out of Oklahoma for the proposition that the statute of limitations “generally” runs from the time judgment is entered. There was no issue involving an insurer’s unequivocal denial of coverage.

The third case cited, Madigan v. Yballe, 336 Ill. Dec. 522, 920 N.E.2d 1112 (App. Ct. 1st Dist. 2009), is inapposite for the same reasons, i.e., it did not involve an indemnity claim against a liability insurer that had unequivocally denied all coverage years previously.

(6) The corrected order erroneously suggests that it would be improper for this Court to consider the affidavit of Brenda Trawick Smith, not only because “it is apparent” that the letters were returned as “undeliverable,” but also because it is improper for the Court to conduct a factual inquiry. However, according to Ms. Smith’s uncontroverted affidavit, she mailed the denial letter dated September 28, 2006 to Tema Brown by both regular mail and certified mail, return receipt requested. Moreover, her affidavit indicates that, on January 7, 2008, she mailed a second letter, which says that it was “a follow up” to her telephone conversation with Ms. Brown, and with which she enclosed a copy of her original denial letter of September 28, 2006. While GeoVera’s Exhibit G indicates that the July 28, 2005 reservation of rights letter was returned and that the copy of her September 28, 2006 denial letter that was sent by certified mail was also returned, there is no evidence that the copy of that letter that was sent by regular mail was returned as undeliverable. There is a presumption that Ms. Brown received it since, under South Carolina law, such proof of mailing creates a rebuttable presumption of receipt. Weir v. Citicorp Nat’l Servs. Inc., 312 S.C. 511, 516, 435 S.E.2d 864, 868 (1993); see also Bakala v. Bakala, 352 S.C. 612, 625, 576 S.E.2d 156, 163 (2003) (“Evidence of mailing establishes a rebuttable

presumption of receipt"). This presumption also applies to the January 7, 2008 letter, with which a copy of the original September 28, 2006 denial letter was enclosed, according to Ms. Trawick-Smith's affidavit. There is no evidence that this letter was returned as undeliverable.¹ It was incumbent upon Ms. Brown or Plaintiff to come forward with evidence rebutting this presumption no fewer than two days before the hearing. Rule 56(c), SCRCP. No such evidence was submitted, and receipt of the denial letters is therefore presumed.²

Thus, no factual inquiry is necessary nor sought. The party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact. Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991). Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings but must come forward with specific facts establishing a genuine issue for trial. Id. GeoVera has established that Ms. Brown received its denial letters, at the latest, more than three years and eight months before GeoVera was added as Third-Party Defendant. Moreover, counsel for the plaintiff, to whom Ms. Brown assigned her claims on November 4, 2010, and who has been substituted as the real party in interest, was copied with the April 7, 2008 letter reiterating

¹ A third letter, dated April 7, 2008 (Exhibit M) reiterating the denial was sent by certified mail, return receipt requested to Ms. Brown at the address shown on her policy. The return receipt was signed on April 9, 2008 by someone whose first name is "Jeff" and whose last name is illegible. GeoVera has therefore established that no fewer than three denial letters were mailed to Ms. Brown at the address shown on her policy. (References to exhibits are to the exhibits attached to GeoVera's memorandum of law in support of its motion for summary judgment and in opposition to third-party plaintiff's motion for summary judgment.)

² After the moving party meets its initial burden, the "opposing party must, under Rule 56(c), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial.'" Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 354, 559 S.E.2d 327, 335 (Ct.App.2001), quoting Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986)).

the denial of coverage. (Exhibit M) Not only was the assignor, Tema Brown, on notice that coverage had been denied and that she could institute her declaratory judgment action in April 2008, but the assignee – the plaintiff herself – was on notice because her attorney was sent a letter on September 28, 2006 to that effect (Exhibit I) and another of her attorneys was copied with the April 7, 2008 denial letter. (Exhibit M) No affidavit denying receipt of either of those letters has been submitted.

(7) Rule 17, cited in footnote 1 of the corrected order, requires that “a reasonable time” be allowed, after objection, for substitution of the real party in interest before the action may be dismissed. The South Carolina Rules of Civil Procedure are patterned after the Federal Rules of Civil Procedure, and federal cases interpreting the latter are therefore instructive where there is no South Carolina law on point. Gardner v. Newsome Chevrolet-Buick, Inc., 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991). According to *Moore's Federal Practice*:

Some courts have determined that Rule 17(a)(3) should not be applied to allow substitution of the real party in interest in every case. **It would be unreasonable to permit an action filed by a party who knows that he or she is not the real party in interest to toll the statute of limitations.** Therefore, after the limitations period has expired, the substitution provision of Rule 17(a)(3) should apply only when the failure to bring the action originally in the name of the correct party was the result of an “honest and understandable mistake.” **When determination of the correct party to bring an action is not difficult, and when no excusable mistake has been made, these courts rule that substitution will not be allowed and that the suit should be dismissed.**

(emphasis added.) MOORE'S FEDERAL PRACTICE 3D, § 17.12 [1] [a] at p. 17-56.

Our state appellate courts have apparently not yet weighed in on this specific issue; however, in Thomas v. Grayson, 318 S.C. 82, 456 S.E.2d 377 (1995), addressing a certified question from the United States District Court for the District of South Carolina, our Supreme Court held that:

The real party in interest is no longer precluded from being named a plaintiff, after the statute of limitations has run on a claim timely filed by one who lacked the capacity to sue because he was not the real party in interest. Instead a reasonable time must be allowed after objection for ratification of commencement of the action and it has the same effect as if the action had been commenced in the name of the real party in interest. We find that the current Rule 17(a) changes existing State law where the action was brought within the applicable limitations and the real party in interest joined and ratified the action **shortly thereafter** in accordance with the requirements of Rule 17(a).

Id., at 87, 380. (emphasis added.) (internal citation omitted.)

This case, however, does not support third-party plaintiff's position. First, regardless of whether it was third-party plaintiff or plaintiff who initially commenced the third-party complaint, it was not timely, as set forth above. Second, in Thomas, the plaintiff commenced her action within the statute of limitations, but sued in her capacity as personal representative of her husband's estate as established by the Michigan Probate Court. When the defendants claimed that she lacked capacity to sue because she failed to allege her qualification as personal representative in South Carolina, she, after the expiration of the statute of limitations, submitted an authenticated copy of her Michigan appointment to the Charleston County Probate Court and, a month later, moved to amend her complaint to include allegations concerning her appointment as personal representative in South Carolina. As set forth above, the Supreme Court allowed the substitution "where the action was brought within the applicable limitations and the real party in interest joined and ratified the action shortly thereafter in accordance with the requirements of

Rule 17(a)." In the case at bar, the third-party complaint was not commenced within the applicable statute of limitation, nor did plaintiff seek to be substituted as real party in interest "shortly thereafter." On the contrary, no such motion was filed and the corrected order substituting plaintiff as the real party in interest was not entered until March 24, 2015 – more than three years after GeoVera included in its answer that, "On information and belief, Third-

Party Plaintiff is not the real party in interest.” It is respectfully submitted that this is per se an unreasonable period of time, especially considering that plaintiff and her counsel and third-party plaintiff were all aware of the assignment. No steps whatsoever were taken to correct the error, notwithstanding the aforementioned defense, until the issue was addressed in the proposed order. No citation of authority is necessary for the proposition that one who has assigned her cause of action to another cannot then assert the cause of action that she had assigned.

(8) The corrected order erroneously concludes that the special referee found as a fact that the dog in question was not a Pit Bull. The special referee’s order contains about one and a half pages of “Facts.” The only reference therein to the breed of the dog is the statement that, “Ms. Brown also testified that she did not know the breed of the dog, however, she testified that it was not a viscous [sic] dog.” In the “Law” section of the order, the special referee indicated that punitive damages were not warranted and observed that “Ms. Brown testified that the dog was not a viscous [sic] dog and was a mixed breed, but not a pit bull.” First, this statement is not a factual finding that the dog was not a Pit Bull. Rather, it is merely a recitation of Ms. Brown’s testimony, and does not constitute a factual finding. Second, for the purposes of assessing punitive damages, the critical inquiry was whether or not there was reason to believe that the dog may attack, i.e., whether it was vicious – not whether it was a Pit Bull.

Thus, the only reference to the dog’s breed in the Order of Judgment is the reference to Ms. Brown’s testimony at the hearing. GeoVera, however, submitted the emergency room record in which the victim of the dog bite, Travis Milligan, gave a history of having been riding his bike and being bitten by a “pit bull.” The South Carolina Department of Health and Environmental Control Report referred to the dog as a “Pitbull.” The office note of the treating physician indicates that Travis “was attacked by a pit bull dog” Finally, GeoVera submitted the entire

transcript of a recorded statement of Tema Brown taken on May 5, 2005. This Court's corrected order entered March 24, 2015 indicates that, "In a recorded statement . . . the insured was coaxed into saying someone told her the dog was a pitbull"; however, it is respectfully submitted that a review of the transcript of that statement reveals just the opposite. In fact, the questioning could have hardly been less leading:

Q. And do you have any pets?

A. Yes.

Q. Are the current pets that you have, the pets that are being alleged to be involved in this incident?

A. Yes.

Q. All right. Tell me about your pets.

A. He is a American Pitbull. He is not quite a year old yet, maybe - nine months old.

Q. Where did you get him?

A. We bought him.

Q. From a breeder?

A. I'm not sure if he is a breeder or not.

Q. So you bought him from an individual?

A. Yes.

Q. Are there papers?

A. We didn't get papers from the seller, no.

Q. Is this a - as much as a pitbull can be a pure blood, is it a pure blood pitbull as far as you know?

A. I don't know.

Q. Does it look like a pitbull?

A. I don't know.

Q. Explain to me how you don't know if it looks like a pitbull.

A. Because I don't know how a pitbull looks.

Q. Okay. Were you told that it was a pitbull?

A. Yes.

Q. Were you told that there was another mix of the breed involved?

A. No, I wasn't told.

Q. And is it safe to assume that when this dog was sold to you, it was sold as a full blooded pitbull?

A. Yes.

It is submitted that these questions reveal no "coaxing" whatsoever. It is apparent from the questions and answers that Ms. Brown was not familiar with what a Pit Bull looks like and therefore could not confirm that the dog looked like a Pit Bull; however, she could and did confirm that the dog was sold as an Pit Bull. In fact, in response to, "Tell me about your pets," Ms. Brown said, "He is a American Pitbull."

In a footnote, the corrected order indicates that, "The insurer assumes the risk that witnesses change their testimony or that facts evolve that place a claim within the coverage when the insurer prematurely decides that it has no defense obligation." On the contrary, our Supreme Court, in Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965), held that the liability insurer was not bound by the conclusion of the presiding judge after trial that the defendant's acts were "not willful." When the insured, Mr. Sims, sued his insurer, Nationwide,

the trial court held that Nationwide was precluded by the prior order from offering evidence that Mr. Sims's actions were intentional, but the Supreme Court disagreed, as described in GeoVera's memorandum of law on pages 20 and 21. Thus, even if the special referee held that the dog was not a Pit Bull (which is denied), that holding is not binding in this action. Moreover, given the extensive evidence submitted that the dog was in fact a Pit Bull, GeoVera respectfully submits that, at a minimum, there is a genuine issue of material fact on this issue and that summary judgment in favor of plaintiff was therefore inappropriate.

(9) The corrected order erroneously concludes that the issue of the dog's breed was actually "litigated" and that GeoVera is bound by the special referee's purported determination that the dog was a Pit Bull when, in fact, the issue was not litigated nor was there any such finding. The corrected order cites cases from Georgia, California and Pennsylvania as persuasive for the proposition that "an insurer is bound by the underlying trial as to issues and facts actually litigated." Order, p. 8, last para. However, there was no "trial" of the original action. Ms. Brown was in default, and a special referee was appointed to determine damages, after which a default judgment was entered. However, "South Carolina does not allow default judgments to have preclusive effect under the collateral estoppel doctrine because no issues were actually litigated." Kunst v. Loree, 404 S.C. 649, 746 S.E.2d 360 (Ct.App. 2013), *cert. denied* August 21, 2014, quoting from In re Springhart, 450 B.R. 725, 727 (Bankr. S.D. Ohio 2011).

CONCLUSION

In conclusion, GeoVera respectfully submits that the corrected order entered on March 24, 2015 granting Plaintiff's motion for summary judgment and denying GeoVera's motion for summary judgment should be withdrawn and that GeoVera's motion for summary judgment should be granted, on the grounds discussed above, including that (1) in granting plaintiff's and

third-party plaintiff's motion, the Court erroneously ruled that the special referee found as a fact that third-party plaintiff's dog was not a Pit Bull, in that there was no such finding in the Order of Judgment; that, even if the special referee had so ruled, the Court erroneously concluded that (a) the issue had been litigated during the damages hearing before the special referee and (b) the special referee's purported factual finding is binding on GeoVera. Those conclusions are contrary to South Carolina law.

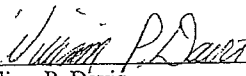
Moreover, GeoVera's motion for summary judgment should be granted, in that the within action was terminated before the third-party complaint was filed; it is implicit in Rule 14 that a third-party complaint is to be filed before the action has been concluded; and this Court, to which this case was referred for all purposes allowed by the rules, has not only the authority, but the obligation, to grant GeoVera's motion for summary judgment under these circumstances. Having assigned "any and all rights and claims for injuries and damages" in the matter on November 4, 2010, third-party plaintiff had no standing to assert the third-party complaint, a fact of which the two Circuit Court judges who granted leave to the defendant to file the third-party complaint were presumably unaware. The lack of standing was raised by GeoVera in its answer, and substituting plaintiff as the real party in interest three years later is per se not within a "reasonable time," as required by Rule 17.

GeoVera submitted uncontroverted evidence that third-party plaintiff received its denial letters more than three years before the third-party complaint was filed. Third-party plaintiff was therefore on notice that GeoVera had denied all coverage under her policy, which necessarily includes indemnification, more than three years before she brought her third-party complaint for declaratory judgment. Having met its initial burden as to summary judgment, it was incumbent upon third-party plaintiff to "do more than simply show there is some metaphysical doubt as to

the material facts” and “come forward with specific facts showing that there is a genuine issue for trial.” Hedgepath v. Am. Tel. & Tel. Co., 348 S.C. 340, 354, 559, S.E.2d 327, 335 (Ct.App. 2001). “The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party’s case.” Harris v. Rose’s Stores, Inc., 315 S.C. 344, 346, 433 S.E.2d 905 (Ct.App. 1993).

It is respectfully submitted that summary judgment in favor of plaintiff or third-party plaintiff essentially sanctions a result that our Supreme Court rejected in Sims v. Nationwide Mut. Ins. Co., 247 S.C. 82, 145 S.E.2d 523 (1965). See also GeoVera’s discussion of Ranta v. The Catholic Mut. Relief Soc. of America, 492 Fed.Appx. 373 (4th Cir. 2012), a federal case arising out of South Carolina, on pages 21 and 22 of GeoVera’s memorandum of law. GeoVera therefore respectfully seeks alteration, amendment and reconsideration of this Court’s corrected order entered on March 24, 2015 for the reasons set forth above.

Undersigned counsel hereby affirms that, given the nature of this motion and the current posture of this case, consultation with opposing counsel would have served no useful purpose.



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April 3, 2015

RECORDED STATEMENT OF TEMA BROWN

1 (Pages 1 to 4)

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS CA NO. 2007-CP-10-3224 COUNTY OF CHARLESTON JANA WRIGHT AS GAL FOR) TRAVIS MILLIGAN,) PLAINTIFF,) VS) TEMA BROWN,) DEFENDANT,) VS) CONSTITUTION STATE) SERVICES AND GEO VERL) SPECIALTY INSURANCE CO.,) DEFENDANTS.) RECORDED STATEMENT OF TEMA BROWN TAKEN: 5/10/05 TIME: 2:40 P.M., EST TAKEN BY: DAN HAWKINS CHIEF NO.: GCGUS040299	Q. And a social security number for identification only. A. 247-59-6661. Q. Married or single? A. Divorced. Q. Your current address? A. 3368 Habitat Boulevard, Johns Island, South Carolina, 29455. Q. And how long have you lived there? A. About five years. Q. And do you have any other people living in the house with you? A. Three children. Q. All right. What are the names and ages of each? A. Laron Brown, L-a-r-o-n, Brown, 15. Charnelle, C-h-a-r-n-e-l-l-a, Brown, 13. Tyra Brown, T-y-r-a, 11. Q. And do you have any pets? A. Yes. Q. Are the current pets that you have, the pets that are being alleged to be involved in this incident? A. Yes. Q. All right. Tell me about your pets.
Page 2 MR. HAWKINS: This is Dan Hawkins and I'm conducting a recorded interview with Tema Brown in regards to a claim being made against her for an alleged dog bite incident. The date today is May 10, 2005, the time is approximately 1:40 p.m. my time, it's 2:40 p.m. South Carolina time where I have contacted Tema on her cell phone, the phone number being 843-478-2935. EXAMINATION BY MR. HAWKINS: Q. Tema, do you realize I'm recording this interview? A. Yes. Q. And do I have your permission to do so? A. Yes. Q. Would you please state your name and spell your last name for me? A. My first name is T's as in Tom, E, M as in Mary; A. My last name is Brown, B-w-r-o-n. Q. B-w-r-o-n? A. B-r-o-w-n. Q. Okay. Where we go. And what is your date of birth? A. June 6th, 1969.	Page 4 A. He is a American Pitbull. He is not quite a year old yet, maybe -- nine months old. Q. Where did you get him? A. We bought him. Q. From a breeder? A. I'm not sure if he's a breeder or not. Q. So you bought him from an individual? A. Yes. Q. Are there papers? A. We didn't get papers from the seller, no. Q. Is this a -- as much as a pitbull can be a pure blood, is it a pure blood pitbull as far as you know? A. I don't know. Q. Does it look like a pitbull? A. I don't know. Q. Explain to me how you don't know if it looks like a pitbull. A. Because I don't know how a pitbull looks. Q. Okay. Were you told that it was a pitbull? A. Yes. Q. Were you told that there was another mix

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RECORDED STATEMENT OF WEMA BROWN

2 (Pages 5 to 8)

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1 of the breed involved? 2 A. No, I wasn't told. 3 Q. And is it safe to assume that when this 4 dog was sold to you, it was sold as a full blooded 5 pitbull? 6 A. Yes. 7 Q. Do you remember the individual's name? 8 Is he in your town? 9 A. Yes. 10 Q. Do you remember the name? 11 A. The name is Jamal Benson. 12 Q. V-i-n-c-e-n-t? 13 A. B-e-n-s-o-n, Benson. 14 Q. And do you have a phone number for 15 Jamal? 16 A. 843-559-5083. 17 Q. Are you friends with Jamal or was this 18 something out of a newspaper? 19 A. Related. 20 Q. All right. So you've had the dog for 21 about nine months. What's the name? 22 A. The dog's name? 23 Q. Yes. 24 A. Jinx. 25 Q. J-i-n-x?	1 Q. All right. So the date of loss here is 2 4/20 of '05. 3 A. Yes. 4 Q. Do you know about what time? 5 A. Approximately about between five and six 6 in the afternoon, I would say. 7 Q. Okay. So around 5:30 p.m.? 8 A. Yeah. 9 Q. And where did it happen? 10 A. At my residence. Well, across the 11 street from my residence. 12 Q. Okay. So it was outside, across the 13 street from your house? 14 A. Yeah. 15 Q. Is Jinx an inside or outside dog? 16 A. Well, when we first got him, we kept him 17 inside the house because he was still a puppy, 18 which he still is. But as he got a little bigger, 19 we kept him outside. 20 Q. Is there a fenced yard? 21 A. Yes. There is a fenced yard on one 22 side, the front part. 23 Q. So it's not completely enclosed? 24 A. No, it's not. 25 Q. So how is he secured outside?
Page 6	Page 8
1 A. Yes. 2 Q. And Jinx is a male? 3 A. Male. 4 Q. In the time that you've owned Jinx, 5 which is, you know, about nine months old, how 6 long have you owned him? 7 A. I'm going to say -- because I got him in 8 February, I'm thinking. 9 Q. So you've only owned him for about three 10 or four months? 11 A. Yeah, I think so. 12 Q. All right. In the time that you have 13 owned Jinx, has he attacked, bitten, or otherwise 14 caused injury to a person in any way that you know 15 of? 16 A. Yes. 17 Q. When? 18 A. On 4/20/05, I believe that's the correct 19 date. 20 Q. Oh. That's this incident. 21 A. Yes, this incident. 22 Q. Okay. Did he do that prior? 23 A. No. 24 Q. Any -- 25 A. Not that I know of.	1 A. On a chain. 2 Q. And what's the chain secured to? 3 A. The chain was secured to a trailer. 4 Q. Like a trailer that you pull behind a 5 car? 6 A. Yes. 7 Q. All right. And was the chain of 8 adequate strength to hold the dog? 9 A. Yes. 10 Q. Okay. Was the dog ever allowed to run 11 loose in the yard? 12 A. Only when we were at home. 13 Q. All right. So on 4/20/05 at around 14 5:30 p.m., obviously, he was loose. 15 A. He was loose. 16 Q. How did he get loose? 17 A. Well, we are unsure about how he got 18 unloose. Because when we got home from work and 19 school that day, he ran up to the car so we 20 automatically knew that he had gotten off the 21 chain or somebody had taken him off the chain. 22 And we realized that he was loose because he ran 23 up to the car. 24 Q. All right. Did he still have his collar 25 on?

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3 (Pages 9 to 12)

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1 A. Yes. He did have his collar on. 2 Q. But the chain was off? 3 A. The chain was off. 4 Q. Did you check the chain? 5 A. No, I didn't check the chain. 6 Q. Was the trailer moved at all? 7 A. No. 8 Q. All right. So the dog was loose. 9 A. Yes. 10 Q. At this point in time when you saw the 11 dog loose, what time was it? 12 A. This was approximately -- probably like 13 at 5:35, 5:40, because we were just getting home, 14 like I said, between five and six o'clock that 15 afternoon. 16 Q. Had he already caused the injury? 17 A. No, he hadn't. 18 Q. All right. So if we've got this claim 19 where he caused the injury around 5:30, is that 20 about the time that you got home? 21 A. Right about that time. Because there 22 was another dog there. I had two dogs at one time 23 and that dog got hit and died. 24 MR. HAWKINS: Okay. We have lost 25 connections. The time now is 1:50 p.m. my	1 Q. During the time that we were gone? 2 A. Oh. No. 3 Q. No, there wasn't? 4 A. No. 5 Q. All right. Whenever we were 6 interrupted, we were discussing that this occurred 7 on 4/20 of '05 at around 5:30 p.m., give or take a 8 little time. 9 A. Yes. 10 Q. You had just returned or returning home 11 at around 5:30 p.m. and the dog was supposed to 12 have been tied to the trailer. 13 A. Yes. 14 Q. The trailer had not moved. 15 A. Right. 16 Q. The dog was still in his collar. 17 A. Yes. 18 Q. And the chain was not on the collar. 19 A. Correct. 20 Q. You also told me previously that you 21 purchased this dog from a Jamal Benson who is a 22 relative. 23 A. Yes. 24 Q. And that it was sold to you as a pure 25 bred pitbull; is that correct?
Page 10	Page 12
1 time and 2:50 p.m. Tema's time. I will be 2 re-contacting her to establish connections 3 and 4 continue the interview. 5 This is Dan Hawkins and I am now 6 continuing the recorded interview with Tema 7 Brown in regards to an alleged dog bite that 8 is being claimed. Whenever we last left the 9 interview, Ms. Brown's phone had -- the 10 battery had died on her cell phone and we 11 were disconnected. The time is now 3:50 p.m. 12 my time. It's 4:50 p.m. her time and we are 13 now re-establishing our contact to continue 14 with the interview. 15 BY MR. HAWKINS: 16 Q. Ms. Brown, do you realize I am 17 recording? 18 A. Yes. 19 Q. And do I have your permission to 20 continue? 21 A. Yes, you do. 22 Q. During the time that we were separated 23 because your phone went dead, was there ever any 24 contact or conversation about this claim? 25 A. Yes.	1 A. Correct. 2 Q. Okay. Now, you pulled in the driveway 3 or were coming home at 5:30. Did the dog come 4 running up to your car? 5 A. Yes. 6 Q. I'll ask again, had the dog already 7 caused an injury or did the injury then occur 8 immediately after? 9 A. Immediately -- well, immediately after. 10 Q. All right. What happened? 11 A. Upon arriving at home that afternoon, I 12 saw that the dog was not on the trailer. He ran 13 up to the car. My children got out of the car to 14 greet the dog. And we had another pet, dog. And 15 that dog also ran up to the car, but that dog 16 accidentally got run over, so -- 17 Q. So right then, that day? 18 A. Right then, that day. Now, prior to us 19 dealing with that dog being ran over and getting 20 him out of the way, Jinx ran across the street to 21 the little boy's -- in the little boy's yard. And 22 the little boy was on his bicycle and attacked him 23 on the leg, or hit him on the leg. 24 Q. All right. The other dog, what kind of 25 dog was that?

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1 A. I have no idea. It was a stray dog. 2 puppy, that we picked up and brought home and 3 nursed. And we had him for about four or five 4 years. 5 Q. All right. And was it hit by a car? 6 A. Yes. I was the one who hit the dog. 7 Q. So you hit the dog as you were pulling 8 in the driveway? 9 A. Yes, I did. 10 Q. Okay. So was the dog immediately 11 deceased? 12 A. About maybe five or ten minutes later, 13 him gasping for air and some other things, he 14 died. 15 Q. And it was while you were attending to 16 that dog that your other dog ran across the 17 street? 18 A. Yes. 19 Q. Did the boy riding his bike do anything 20 to upset Jinx to cause this? 21 A. Not to my knowledge. I didn't see him 22 do anything to upset Jinx at all. 23 Q. And did Jinx then bite him once or did 24 he bite him repeatedly? 25 A. Once.	1 Q. Have they filed suit or is it just a 2 letter? 3 A. Just a letter, I'm assuming. Because 4 the letter stated that for me to get in contact 5 with my home owner's insurance and take this 6 letter to the homeowner's insurance. 7 Q. All right. Do you know if Travis has 8 had any medical treatment? 9 A. That day, the -- she took him to the 10 emergency room. So his mother took -- she took 11 him to the emergency room. And I'm not sure if he 12 had any shots or anything like that, but she did 13 mention something about having an x-ray done. 14 Q. All right. And what hospital was that? 15 A. I believe she said MUSC. It's the 16 Medical University of South Carolina. 17 Q. Do you know if he's had any other 18 medical treatment? 19 A. No, I don't. 20 Q. Do you know if he got any stitches? 21 A. No, I don't. 22 Q. Was your dog up current on its shots? 23 A. He had shots other than rabies. Because 24 at the time when we took him to get shots, he was 25 too young and we was supposed to take him back
Page 14	Page 16
1 Q. And was the boy in the street on his 2 bike or was he in his driveway? 3 A. He was in the driveway when Jinx ran 4 over to him. 5 Q. Did Jinx then return to you? 6 A. After my -- we stopped doing what we 7 were doing with the other dog, we called him or my 8 son went over there to get him and we brought him 9 back over to the yard. 10 Q. Do you know the little boy that got 11 bit? 12 A. He's the next door neighbor, just a 13 neighborhood child that my kids frequently play 14 with. 15 Q. Do you know his name? 16 A. I know his first name. I don't have his 17 last name. 18 Q. What's the first name? 19 A. Travis. 20 Q. Have you been contacted by a legal 21 representative for Travis? 22 A. Yes, I have. 23 Q. So he is now represented by an 24 attorney? 25 A. Yes.	1 within, I think, a couple of weeks, three or four 2 weeks but we never did take him to get shots. 3 Q. So he was too young to get a rabies? 4 A. Yes. He was too young at the time to 5 get rabies. 6 Q. Is he still with you? 7 A. No. He has been removed from the 8 property. 9 Q. Is he still alive? 10 A. Yes, he is. 11 Q. So you gave Jinx away? 12 A. My ex-husband have him. 13 Q. And he is on other property now. He is 14 not on your property, correct? 15 A. No, he's not. 16 Q. Have you seen that child since this 17 incident? 18 A. No, I haven't. 19 Q. So is he not playing anymore with the 20 kids? 21 A. Well, he's not been one of the ones 22 that's really have been outside every day playing 23 with the other children, I guess, because of his 24 mother's work schedule. But when they do get a 25 chance to be outside, they do come out. But I

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RECORDED STATEMENT OF TEMA BROWN

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1 have not seen him since.
 2 Q. So he hasn't been out much lately?
 3 A. No.
 4 Q. You don't have any reason to believe
 5 that it's from this dog incident, do you?
 6 A. Oh, no, not at all.
 7 Q. And we're sure it was Jinx and no other
 8 dog, correct?
 9 A. Correct.
 10 Q. Is there anything else you can add about
 11 what happened?
 12 A. No.
 13 Q. Have you understood all my questions?
 14 A. Yes.
 15 Q. Have your answers all been correct to
 16 the best of your knowledge?
 17 A. Yes.
 18 Q. Then, with your permission, I'm going to
 19 go ahead and turn off the recorder.
 20 A. Thanks.
 21 MR. HAWKINS: The time now is
 22 3:58 p.m. my time, it's 4:58 p.m., Tema's
 23 time.
 24 (End of Recording)
 25

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1 CERTIFICATE OF REPORTER
 2
 3 I, Laura S. DeCillis, Certified Court
 4 Reporter and Notary Public in and for the State of
 5 South Carolina at Large, do hereby certify:
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 9 best of my ability.
 10 I further certify that I am neither
 11 related to nor counsel for any party to the cause
 12 pending or interested in the events thereof.
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 14 Witness my hand, I have hereunto affixed
 15 my official seal this 3rd day of July 2013, at
 16 Columbia, Richland County, South Carolina.
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Laura S. DeCillis,
 Certified Court Reporter
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1 STATE OF SOUTH CAROLINA)
 : IN THE COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2007-CP-10-3224
 3 JANA WRIGHT, AS)
 GUARDIAN AD LITEM FOR)
 4 TRAVIS MILLIGAN,)
)
 5 Plaintiff(s),) HEARING
)
 6 -vs)
)
 7 TEMA BROWN, et al.,)
)
 8 Defendant(s),)
 -----)

9

10

11 Given before The Honorable Judge Mikell Scarborough in
 12 the Charleston County Courthouse, 100 Broad Street, Suite
 13 269, Charleston, South Carolina on Monday, May the 19, 2014,
 14 commencing at 10:30 o'clock a.m.

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1 THE COURT: This is Jana Wright as guardian for
2 Travis Milligan, plaintiff, versus Tema Brown. Looks like
3 December 11th I issued an order to amend the third-party
4 claim to add a GeoVera Specialty Insurance and then December
5 12 there was a consent order dismissing Constitution States
6 Services. Is that also GeoVera dismissed at that time or
7 just Constitution State?

8 MR. EPTING: Just Constitution State.

9 THE COURT: So Ms. Endemann, Mr. Epting for the
10 plaintiffs. Do we have any motions pending today? It's a
11 pre-trial status. Do we have anything we need to cover
12 before we set it for trial?

13 MS. ENDEMANN: Yes, Judge. You've got cross
14 motions for summary judgment. There's a couple other
15 motions pending, but we've sort of agreed that we can put
16 those off and let you hear the summary judgment motions.

17 THE COURT: Okay. And then who's representing
18 who?

19 MR. DAVIS: Your Honor, I'm Bill Davis here for
20 the third-part defendant GeoVera. This is Marilyn Norton
21 with my firm.

22 THE COURT: Y'all are in agreement, it is a
23 question of law?

24 MS. ENDEMANN: Yes, sir.

25 MR. DAVIS: Yes, Your Honor. May it please the

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1 Court. I do agree with Mr. Epting and Ms. Endemann that
2 both sides haven't filed motions for summary judgment. I
3 think we both agree and disagree as to who is entitled to
4 summary judgment, but we agree somebody's entitled to
5 summary judgment. But if the Court would indulge me, and I
6 have to apologize for the length of that memo I just handed
7 up, but this case has been around for a while.

8 THE COURT: Yes.

9 MR. DAVIS: And so I felt it necessary to go
10 through the procedural history for this all to make sense.
11 The dog bite in question happened back in April of 2005.
12 Our insured, Tema Brown, who is the defendant in the case
13 had a homeowners policy with USFG Specialty Insurance
14 Company. That policy excluded liability for a dog bite if
15 the dog was one of a certain type of dog including a Pit
16 Bull. And Pit Bull or any of the other breeds were defined
17 as any breed that's at least 50 percent of that breed.

18 So nine days later a dog bite, a third-party
19 administrator of the claim on behalf of USFG took a recorded
20 statement of the insured, Ms. Brown. And we quote a portion
21 of that recorded statement in our brief, but the bottom line
22 is that she said of course it was a Pit Bull. When asked
23 how she knew that she said she didn't know what a Pit Bull
24 looked like, but she said it was sold to her as a quote,
25 full blooded Pit Bull.

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1 The emergency room records from the young man who was
2 bitten referred to the dog as a Pit Bull. There's a DHEC
3 form that has to be filled out when there's a dog bite that
4 refers to the dog as a Pit Bull. The young man, Travis
5 Milligan's family doctor's records in the history refer to
6 the dog as a Pit Bull.

7 Based on all that after the third party administrator
8 does the investigation the insurance company denied coverage
9 on the ground that it was a Pit Bull. That was in September
10 of 2006. In October of 2007 the lawsuit was brought.
11 January of 2008 the insurance company through a different
12 third-party administrator -- this is where Constitution
13 State comes in -- they reiterated it was denied with a
14 letter to the insured. Then four months later in April of
15 2008 a second letter was sent to the insured reiterating
16 denial. The suit was brought in October, 2007. Default was
17 entered in January of 2008 insurance company having denied
18 coverage. And it was after that entry of default that we
19 have the second letter reiterating the denial.

20 So from the entry of default in January of 2008 until
21 the damages hearing, which took place on June 30, 2009 is
22 about a year and a half. So the dog bite is in 2005.
23 Damages hearing is four years later. And at this damages
24 hearing the defendant, Tema Brown, having said in her
25 recorded statement that it was a Pit Bull, which was

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1 corroborated in the medical records, apparently testified
2 that it was not a Pit Bull.

3 In September, 2009 the case had been deferred by the
4 way, to the Special Master, Tom Wills, who at the damages
5 hearing in September, 2009 entered a default judgment of
6 \$100,229. And the reason we know what the testimony was is
7 that he indicated in his order that Ms. Brown testified that
8 the dog was a quote, mixed breed but not a Pit Bull. He
9 made that observation a couple times in his order.

10 All right. So by the time this damages hearing in
11 September of 2009 we are now almost exactly three years from
12 the original denial, which was on September 28th, 2006.
13 We're over a year later. On November 4, 2010 there was an
14 assignment. Ms. Brown assigned all of her rights against
15 her insurance company to the plaintiff. Now, of course our
16 position is that by the time that happened in November of
17 2010 the statute had expired the year previously.

18 All right. Then months after that in July of 2011 we
19 have a third-party complaint in this case against
20 Constitution States Services, which as I indicated earlier
21 is the third-party administrator or was one of them. And in
22 December, the end of December, 2011 it was amended to add
23 GeoVera. And GeoVera is in there because they were the
24 successor to USFG Specialty. So in other words, they're the
25 insurer basically.

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1 So as I said, Your Honor, our first argument is that
2 the statute of limitations has expired long before this
3 third-party complaint was brought. The claim was denied
4 back in September of 2006. And GeoVera is not sued until
5 December of 2011, over five years later. You know, I
6 mentioned that there were three letters denying coverage, a
7 first one and then two reiterating it. Even if we take the
8 last of those letters it's still three years and three
9 months past the denial. Even then the suit was brought
10 against Constitution State, which is the third-party
11 administrator not the insurer. And so it wasn't until the
12 end of the year that GeoVera was substituted.

13 Now, the suit was brought as a declaratory judgment
14 action, but we've cited law in our memorandum to the effect
15 that the statute of limitations would be the same as though
16 this were say a suit for breach of contract on the insurance
17 policy, because it's a declaratory judgment action arising
18 out of the interpretation of that policy. And so you have a
19 three year statute. And of course, the three year statute
20 begins to run at the time that the insured either knew or
21 through reasonable diligence should have known that she had
22 a cause of action.

23 The other problem for the third-party plaintiff is that
24 the suit was brought -- you know, I mentioned that there was
25 an assignment of all rights to the plaintiff, but the suit

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1 was brought in the name of the assignor, Tema Brown. She's
2 not a real party in interest. She assigned everything
3 unequivocally, all rights against her insurance company, all
4 claims to the plaintiff. If there was a cause of action we
5 submit that there's not because it's barred by the statute,
6 but even if there were the third-party defendant is not the
7 real party in interest, which of course is an absolute
8 essential requirement. If you're not a real party in
9 interest you don't have any standing to bring suit.

10 And we've provided a copy of these documents. There
11 are lots and lots of records in the suit. We tried to pull
12 the ones that we think are particularly relevant to our
13 argument, but you know, in interrogatory answers the
14 third-party plaintiff does contend that Ms. Brown had agreed
15 that the suit could be brought in her name. But there's two
16 problems with that. First of all, the assignment doesn't
17 say that. There's nothing that has been produced in writing
18 to that effect. There's no affidavit from Ms. Brown. But I
19 would submit even if there were it wouldn't matter anyway,
20 because every action according to Rule 17 shall be
21 prosecuted in the name of the real party in interest. You
22 can't get around that.

23 So Ms. Brown is not the real party in interest. As a
24 result of which she has no standing. As I said, that is an
25 essential element of being able to bring a cause of action.

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1 Under South Carolina law you've got to have a personal stake
2 in the subject matter of the suit in order to have standing.
3 Having assigned all her rights to the plaintiff Ms. Brown
4 doesn't have that anymore. And you must be a real party in
5 interest, which she clearly is not. In fact, we cite a case
6 on page 16 of our memorandum, Brock versus Dennis that says
7 once it's determined that the plaintiff has no standing the
8 Court must dismiss the case.

9 Our third ground for summary judgment, Your Honor, is
10 that this case was terminated back in September of 2009 when
11 the Special Master, Tom Wills entered the default judgment
12 order. We cite a case by the name of Drennon (ph) in our
13 memorandum on page 16 that says a default judgment is a
14 final order. And we also cite Professor Flannigan to the
15 effect that a default judgment terminates the case.

16 Now, it's not unusual, as I'm sure Your Honor knows not
17 to find a case right on point on something like this. In
18 South Carolina we just don't have that issue. However, I
19 did find a case out of Arkansas that is very similar. It's
20 the Tomerlin case that's cited on page 17 of our memorandum.
21 And a very similar situation happened in that case. In
22 other words, the case in chief had been resolved against the
23 defendant. And then that defendant became a third-party
24 plaintiff, same situation.

25 And of course, that's done under Rule 14. And the

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1 Court in Arkansas said you can't do that, because it's
2 implicit under Rule 14 that a third-party complaint when
3 filed before the issues are resolved at trial, otherwise
4 Rule 14 says that the third-party defendant has a right when
5 sued to come in and assert any defenses that it has against
6 the plaintiff. He said that provision wouldn't make any
7 sense if you could then bring in the insurance company after
8 everything is over, after the insurance company or any
9 third-party defendant circumstances against the plaintiff
10 once there's a final judgment.

11 And I submit that that makes a lot of sense, that this
12 is not the situation that Rule 14 was designed for. And in
13 fact, we cite some cases in our memorandum that indicate
14 that for that reason, you know, once a case is over and
15 terminated anything that happens after that the Court is
16 without subject matter jurisdiction. And of course, subject
17 matter jurisdiction is something that can be raised at any
18 time, but you know, we submit that this case was over before
19 this third-party complaint was brought. There was no
20 subject matter jurisdiction, and of course there's no
21 personal jurisdiction since there's no subject matter
22 jurisdiction.

23 So Your Honor, we flush that out in the memorandum, but
24 we would submit that for all of those reasons the
25 third-party defendant should be granted summary judgment.

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1 THE COURT: All right. Thank you, Mr. Davis. Ms.
2 Endemann?

3 MS. ENDEMANN: Thank you, Judge. I'd like to take
4 the argument sort of in reverse order here. The first being
5 that the third-party complaint is untimely and prejudicial
6 as final adjudication took place before it was brought.

7 Judge, first, there are not one but two orders from
8 circuit court judges referring this matter for you and
9 specifically giving us permission to file the third-party
10 complaint against GeoVera. Judge Dennis entered an order on
11 January 6th, 2011 and Judge Carrington entered an order on
12 July 14, 2011.

13 So first, Judge, if their argument is that the circuit
14 court didn't have jurisdiction to refer this to you we think
15 that's probably before the circuit court. Second, Judge, in
16 South Carolina the Court has ruled that this issue does not
17 effect subject matter jurisdiction. And that is in Russell
18 versus Wachovia Bank. And I have a copy if you'd like me to
19 hand up to you, Judge. The subject matter jurisdiction is
20 not effected by final adjudication in a case. And as the
21 case discusses the Court's authority to retain jurisdiction
22 over the matter specifically not subject matter
23 jurisdiction.

24 And what we would argue, Judge, is we have two circuit
25 court judges referring this case to you and authorizing us

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1 to bring this. It does not effect subject matter
2 jurisdiction.

3 Further, GeoVera has consented to this Court entering
4 orders in the case as you actually mentioned before we
5 really started arguing there have been consent order
6 dismissing parties, adding parties in. Constitution State
7 was the third party administrator as Mr. Davis pointed out.
8 USFG issued the policy. It was long and torturous trying to
9 figure out who they then assigned the policy to, and it
10 turned up it was GeoVera. We have consent order before you
11 where we subbed in that party, relates back to the time of
12 the original filing.

13 So Judge, we would argue if there is any argument about
14 jurisdiction it's been waived. They've consented to this
15 Court entering orders in the case.

16 Second, as to the issue of the assignment to the
17 plaintiffs in the underlying action by Ms. Brown. First,
18 Judge, we think that Ms. Brown is the real party in
19 interest. She's the insured. There was an assignment, but
20 even if she's not the real party in interest under Rule 17
21 the rule explicitly states that no action shall be dismissed
22 on the ground that it's not prosecuted in the name of the
23 real party in interest. That substitution is the property
24 remedy in that it relates also back to the time of the
25 original filing. So Judge, even if there was an issue with

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1 who the real party in interest is a substitution is the
2 property remedy, not summary judgment and dismissing the
3 claim.

4 Finally, Judge, to get to the statute of limitations
5 argument that was raised. I'd like to talk just really
6 briefly about the notion that this dog is a Pit Bull under
7 the policy and has been excluded for that reason. As Mr.
8 Davis said, the policy exclusion actually states that the
9 dog has to be defined as a vicious dog. The definition of
10 vicious dog in the policy is that it has to have bitten
11 someone prior to the incident in question or the lineage of
12 the dog must be at least 50 percent Pit Bull.

13 Here, as Mr. Davis did state, there was a statement
14 taken about two weeks after the dog bite in question. And
15 Ms. Brown said a lot of things. First, she was asked is the
16 dog an American Pit Bull. And they're asking you where did
17 you get the dog. She says, we got him from a breeder. She
18 says, is he a breeder. Well, I'm not really sure if he's a
19 breeder. Are there papers on the dog? We didn't get papers
20 from the seller, no. Is this as much as a Pit Bull can be a
21 purebred is it a purebred Pit Bull? She says, I don't know.
22 Well, does it look like a Pit Bull? She says, I don't know.
23 They ask, can you explain to me how you don't know if it
24 looks like a Pit Bull? She says because I don't know what a
25 Pit Bull looks like. And then they say well, did someone

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1 tell you it was a Pit Bull? And she says, yes, someone told
2 me it was a Pit Bull.

3 Judge, we would argue that that certainly does not meet
4 the definition in the policy as proving an exclusion which
5 is construed against the insured in favor of coverage. And
6 it's their burden of showing that the exclusion applies.
7 This statement certainly, Judge, we don't think meets that
8 definition of 50 percent of the dog's lineage being a Pit
9 Bull.

10 But in any event, Judge, GeoVera's own documents sort
11 of support our argument. There was a reservation of rights
12 letter written in July of 2005. And the insurance company
13 is discussing their investigation of the dog they think as
14 being an American Pit Bull. First, they talk about this
15 statement that I just read from. And then they talk about
16 other records. All of the other records from DHEC, the
17 medical records that Mr. Davis discussed with you earlier,
18 were actually written before the date of this July, 2005
19 reservation of rights letter.

20 So they had all this information at the time they're
21 writing this letter. And what they say is there are no
22 papers to verify the breed. And they say that there are no
23 vet records to verify the breed. And based on the exclusion
24 and what they found in the records there may be no coverage
25 or indemnity for defense if it can be verified by these

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1 documents that in fact, that Jinks is an American Pit Bull
2 Terrier. To date we have no received anything in writing
3 from the breeder and we have no veterinary records to
4 support the breed allegation. They go on to say, without
5 support, without this support and the coverage issues set
6 forth above we will continue to handle the claim under a
7 full reservation of rights. So knowing all the information
8 that they knew at the time, having this statement, they're
9 saying it's not enough. We're going to defend under
10 reservation of rights. A new TPA comes in and all the
11 sudden we have a reversal in coverage position and a denial.

12 There's some question about whether these denial
13 letters even were received by Ms. Brown. There's an
14 affidavit that's been presented to you by GeoVera that says
15 we sent letters, if they would've come back to us as
16 undeliverable we would have envelopes in our file. Well,
17 Judge, if you look at two of their exhibits and I can point
18 them out to you, Exhibits G and H, the last page of both of
19 those exhibits actually show that the letters were returned
20 as undeliverable.

21 So Judge, there's some question of fact as to whether
22 these letters even were received by Ms. Brown. But in any
23 event, Judge, this is a case about indemnity. We're not
24 suing for a defense cause or their failure to defend or
25 their breach of their duty to defend. What we're suing for

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1 is indemnity under the order entered by Tom Wills, which
2 specifically finds as part of his order that Ms. Brown
3 testified, her son testified that this dog was not a Pit
4 Bull. There's no finding, which is part of Mr. Wills'
5 assessment of whether to award punitive damages or not, that
6 the dog is not a Pit Bull. It was not vicious. And so he's
7 not going to award punitive damages.

8 So what we're seeking, Judge, is indemnity under that
9 July 19, 2000 --

10 THE COURT: Let me stop you on that. So the order
11 of Tom Wills, the Special Referee, was that the dog was not
12 a Pit Bull?

13 MS. ENDEMANN: Not a Pit Bull based on the
14 testimony before him at a hearing.

15 THE COURT: And therefore, did he define vicious
16 or non-vicious or just say he's not a Pit Bull?

17 MS. ENDEMANN: Judge, I think we've got a copy of
18 that order. He says it's a mixed breed, not a Pit Bull.
19 And I think he says it's not vicious, because of that he is
20 going to -- he is not going to award the plaintiff punitive
21 damages. But I can certainly had up a copy of the order.

22 THE COURT: But that part and parcel is rationale
23 for not awarding punitive?

24 MS. ENDEMANN: That's right, Judge. And so what
25 we would say, that order entered by Tom Wills was on

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1 September 11th, 2009. Our third-party complaint was filed
2 on July 19, 2011, so clearly within any three year statute
3 of limitations. And Judge, there's case law in South
4 Carolina that says as to a claim for indemnity the statute
5 of limitations runs from the date that judgment is entered
6 against the defendant. So we are well within the date that
7 judgment was entered against the defendant, less than two
8 years by the time it's filed. And that case, Judge, is
9 First General Services of Charleston versus Miller.

10 THE COURT: All right. So that brings you within
11 the time frame. And you've got a finding of fact as to the
12 nature of this dog. And what about the issue of who's the
13 real party in interest here? Tell me about the assignment
14 and what happened there.

15 MS. ENDEMANN: Judge, there is an assignment that
16 gives the plaintiff in the underlying case, the mother of
17 the child that was bitten by the dog authority to bring the
18 causes of action. And there's some assignment of the
19 proceeds. I think we've also got a copy of that. It was
20 one of the exhibits to Mr. Davis' motion, and rather than
21 re-file all these and re-hand them over we're just relying
22 on those exhibits. It's Exhibit Q.

23 THE COURT: Okay.

24 MS. ENDEMANN: Judge, what we would argue is if
25 the argument here is that we're not the real party in

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1 interest we could simply substitute as the real party in
2 interest. And also, Judge, that eliminates one of the
3 concerns that Mr. Davis addressed about this whole issue
4 about there's an order entered in the case. If the problem
5 is that the third-party defendant can't question or cross
6 the original plaintiff and the original plaintiff is subbed
7 in as a party that should alleviate that concern as well.
8 So we would be willing under Rule 17 to sub in parties if
9 Your Honor agrees that the assignment extinguished Ms.
10 Brown's right to bring a claim in her name.

11 THE COURT: In any event, y'all's position is it's
12 an indemnification claim and therefore it was timely. It
13 was unestablished until the time of the order of Tom Wills,
14 and therefore there's a right to at least bring this claim.
15 That's the basis of your argument, correct?

16 MS. ENDEMANN: Yes, a claim for indemnity and that
17 even if we're talking about the statute running from the
18 time of the letters there's a question of fact as to whether
19 that statute's run. It appears that many of these letters
20 were not even received by Ms. Brown. They were returned as
21 undeliverable and that those envelopes are in the insurance
22 company's file.

23 THE COURT: And your indemnification claim, is
24 that in contract or in common law?

25 MS. ENDEMANN: I think it would be both, Judge.

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1 THE COURT: Thank you.

2 MR. DAVIS: Your Honor, first of all, there were
3 two orders giving them permission to bring a third-party
4 complaint. The Russell versus Wachovia case and would
5 request that we be allowed some additional time after the
6 hearing today to address that. I haven't had a memorandum
7 from them, so I'm not aware of that case. But I would
8 submit that the issues are complication enough in this that
9 maybe more briefing might be in order at least to respond to
10 that.

11 But having said that, I haven't seen that case our
12 position is that those two orders, if the case is final at
13 the time of the default judgment then there was no subject
14 matter jurisdiction to enter those two orders. The case is
15 over. And so as far as our consenting to orders in this
16 case we did consent. Again, I don't have it in front of me.
17 I do remember that we entered into a consent order and
18 Constitution State was the wrong defendant. They're the
19 third-party administrator.

20 THE COURT: Right.

21 MR. DAVIS: And so we did agree to that. And I
22 believe we may have included some language in that order
23 that may indicate that it's not a waiver. Now, as far as
24 the alleged question about the denial letters, we submitted
25 everything that we have about those letters. Some of them

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1 weren't sent certified mail return receipt requested. But
2 also, my affidavit from the lady who sent two of those
3 letters.

4 And again, I don't have that in front of me because I
5 handed up my memorandum, but in her affidavit she indicates
6 at least one of those, maybe both was sent not just
7 certified mail return receipt requested but by regular mail.
8 And of course, under South Carolina law it's sent by regular
9 mail then you offer proof of that, which we did in our
10 affidavit. There is a presumption of receipt. And one of
11 the cases that says that is Simmons versus South Carolina
12 Farm Bureau found at 391 Southeastern 7-560.

13 So not only that, Your Honor, but that initial denial
14 letter was sent to plaintiff's counsel. And so it is the
15 plaintiff who is a real party in interest and who has, if
16 there is a cause of action she has it. So her own lawyer
17 was on notice of this. Even if the letters didn't get to
18 Tema Brown her own lawyer was on notice of this way back in
19 2006.

20 THE COURT: That was in July you said?

21 MR. DAVIS: The original denial letter was in
22 April of 2006 I believe. I'm sorry. September, 2006. And
23 Mr. Baker was actually copied with that letter. I don't
24 think counsel's arguing at this stage that, or maybe they
25 are because this is the basis of their summary judgment

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1 motion so I would like to address the issue that their
2 contention is that it's definitively decided that this was
3 not a Pit Bull.

4 First of all, counsel indicated at the time of
5 reservation of rights letter we had the medical bills and
6 records. That may be true. I don't know. I'd like to go
7 back and look at that. But what is true is that after doing
8 it's investigation the company did deny the coverage about a
9 year after the dog bite and sent notice to Ms. Brown to that
10 effect. Again, whether or not Ms. Brown received the
11 letter, it was mailed to her. There were three letters that
12 went, some by certified mail and regular mail. And so I
13 would submit that there's a presumption of receipt, even if
14 not by Ms. Brown certainly by the plaintiff's attorney.

15 With regard to Mr. Wills', Special Master Wills' order
16 it's provided with our memorandum. And I would submit that
17 there actually was no finding of fact that the dog was a Pit
18 Bull. Twice in the order he indicates that that was Ms.
19 Brown's testimony, but the issue before the Special Master
20 was not whether or not the dog was a Pit Bull, it was
21 damages. It was a damages hearing. And he found damages of
22 over a hundred thousand dollars. He just observed that that
23 was her testimony. And I submit that that order does not
24 indicate that there was a finding of fact to that effect.

25 I do want to address as we did in our memorandum

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1 briefly, Your Honor, this issue that it's third-party
2 plaintiff's position that because GeoVera did not defend Ms.
3 Brown. And that as they contend Special Master Wills found
4 that it was a Pit Bull that we are bound by that.

5 And we cite a case that's pretty much right on point in
6 our memorandum, the Simms case, South Carolina Supreme Court
7 Case where a very similar situation occurred. In that case
8 it was a auto collision. The insurance company contended
9 that it's insured had intentionally run another car off the
10 road in which his girlfriend was with another man. After
11 they stopped and got out with a gun they shot her with his
12 gun. That was the information the insurance company had.
13 The insurance company declined coverage and did not defend.
14 The case actually goes to trial, not default. There was
15 actually a bench trial in which the judge found, he
16 specifically found that the defendant was negligent.

17 So in that case we have, the insurance company's got
18 evidence of an intentional act. There's a finding, an
19 actual finding by the judge that it was negligence, not
20 intentional.

21 In our case we have the insured saying it was a Pit
22 Bull then at the time of the damages hearing saying it's not
23 a Pit Bull, but I would submit no finding to that effect by
24 the Court. The Court in the Simms case said that the same
25 argument was made. Insurance company, you didn't defend so

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1 you're bound by this. The Court said no. There was a
2 conflict of interest in that situation between the insurance
3 company and it's insured. If it had been defending the
4 insured certainly the insurance company could not have taken
5 the position that it was an intentional act. And we cite
6 some pretty strong language that the Court used in that
7 case.

8 THE COURT: What's the full name of that case, do
9 you know?

10 MR. DAVIS: Simms versus I think it's Nationwide.
11 It's cited on page 21 of our memorandum. And the Supreme
12 Court in that case cited a federal case, Farm Bureau Mutual
13 versus Hammer which used some strong language, that a
14 similar situation had arisen in that case. And in that case
15 they cited a New Jersey case where the New Jersey court
16 concluded that any other rule other than the one the Supreme
17 Court had adopted in Simms -- and I'm paraphrasing here --
18 but it would mean that there can be false allegations
19 against the insured that can control coverage in a
20 proceeding in which the insurance company doesn't even
21 appear. And that's not right. That's not appropriate. And
22 I'd submit that that's the situation we have.

23 And we cite a fairly recent case on page, also on 21 of
24 our memorandum, that case arose -- the plaintiff alleged
25 that he had been sexually abused for years by a priest. And

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1 the diocese was insured by the Catholic Mutual Insurance
2 Company which denied coverage for the priest on the ground
3 that it was an intentional act. There was a settlement
4 pretty much with everybody except the priest. But the
5 plaintiff then pursued the priest in court and filed a
6 motion for summary judgment at which the priest took the
7 Fifth Amendment. The result of that summary judgment motion
8 was a judgment for \$100,000,000, but based on negligence,
9 not an intentional act.

10 And again, the plaintiff in that case tried to take the
11 position as Tema Brown is doing in this case that while the
12 insurance company didn't defend the insurer and so you're
13 bound by the finding of the Court that this was negligence.
14 And once again, the Court rejected that argument for the
15 same reason set forth in Simms.

16 Finally, Your Honor had asked whether this was a claim
17 for indemnity or basically under the contract, a contract
18 cause of action. Although we've agreed to hold this in
19 abeyance I would point out the third-party plaintiff has
20 filed a motion to add a bad faith cause of action. And so
21 to the extent that that has an impact on the Court in that
22 regard, that's obviously a whole different ball of wax. If
23 nothing else a bad faith cause of action arises out of tort.
24 But I'm not arguing that motion today.

25 MR. EPTING: Judge, we didn't get a chance to

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1 argue our summary judgment. It's fine with me to deal with
2 it first, but I would ask to be able to address those
3 issues.

4 (Whereupon an off the record discussion took
5 place.)

6 THE COURT: All right. Mr. Epting?

7 MR. EPTING: Judge, just one practical
8 observation. We filed a bad faith claim in order to get the
9 claim filed. This defendant took the position that they
10 didn't have to produce the claim file. We got a claim file.
11 We're not going to pursue a bad faith claim, and so this
12 really is just a legal issue.

13 Here's the query I have of you, Judge. You know in
14 South Carolina the plaintiff, after the plaintiff gets a
15 verdict can sue the insurance company for declaratory
16 judgment. That's the law. So the corollary is that the
17 statute would run against the plaintiff even before he had a
18 judgment. Therefore, every plaintiff should be allowed even
19 before getting a verdict to bring a cause of action against
20 an insurance company for declaratory judgment. That's how
21 you know that the statute doesn't run until after a judgment
22 goes, otherwise you would have twice the number of cases.
23 And we would have effectively become a direct action state.

24 Judge, I'll let you read Tom Wills' order. Tom Wills'
25 order says I'm denying punitive damages because I find this

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1 is not a vicious dog and not a Pit Bull. But let me, Judge,
2 just for a moment -- because I think the issue in this case
3 is not then thoroughly thought about by the South Carolina
4 Supreme Court. And I try, Judge, as I did the last time to
5 tell you where I think things are going just so that you
6 have the whole scope in case it might influence what you do.

7 I suspect this case and this issue is going to wind up
8 in the appellate court because it's an important issue, and
9 it needs to be decided at a policy level. And here's what
10 the question is, Judge, in my mind. I don't think Mr. Davis
11 would disagree that if you don't defend and there's a
12 determination of liability and damages as an insurance
13 company if you're found to have coverage you can't
14 re-litigate that.

15 I don't know that there's any disagreement about that
16 at all. And if there were, Judge, we wouldn't have all
17 these assignments and bad faith claims. I don't think
18 there's a case in the union in which an insurance company
19 who does not defend or refuses to settle and takes a verdict
20 can all the sudden say, well, it's time to litigate
21 liability, time to litigate damages. That's not the way it
22 works.

23 But here's the fine line, Judge. And I believe it's a
24 line that is held very close since just to distinguish the
25 case. The question is intentional act. The question is

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1 what is intentional for purposes of an underlying case at
2 common law. Is it a different question of whether or not
3 under insurance policy this was an intentional act. And so
4 it makes perfect sense that you would allow any coverage
5 defense that the insurance company has to be re-litigated.

6 However, Judge, there is one huge exception, and it's
7 recognized in every state that is clearly heard it. And
8 we'll quote a couple cases to you. In the determination in
9 the underlying case was necessary to the disposition of the
10 underlying case and it decides the issue of coverage you
11 can't re-litigate that issue.

12 In this case, and I think, Judge, you've got a feel for
13 it, and I'm going to digress in just a second. What this
14 case is about is some later slicker adjuster deciding that
15 well, we're going to take a different position, never mind
16 the original adjuster thought that there might be coverage
17 here. And we're going to defend under reservation of
18 rights. And they maybe they talked this woman who doesn't
19 have a clue what a Pit Bull is into saying it was a Pit Bull
20 so they can deny coverage.

21 The point of that is only this, Judge, whatever existed
22 then about was it or wasn't it the die was cast then. At
23 best for the insurance company it was a factual issue, and
24 they elected not to defend it. They just elected to let it
25 go, and it went into default.

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1 What happened, Judge, and back to my original point is
2 it just so happened we asked for punitive damages. This is
3 a bad injury, Judge. We thought we were entitled to
4 punitive damage. Tom Wills denied us punitive damages on
5 the ground that this was not a vicious and not a Pit Bull.
6 And so what happens, Judge, is inadvertently if you will,
7 back-handedly the question of coverage is determined in the
8 underlying case. This is not like an intentional act being
9 one in the common law and a different definition for
10 intentional act in an insurance policy. This is Tom Wills
11 saying I'm just finding this is neither a vicious dog nor a
12 Pit Bull, because we were arguing that this was a horrible
13 dog. And fortunately this dog hadn't bitten anybody before
14 or at the time.

15 So here's Wills on the issue. And I suspect, Judge,
16 you may well ask us to provide orders rather than turning
17 all this stuff up. The general rule of estoppel provides
18 that an insurer takes the position that a complaint
19 potentially effects coverage is not covered under a policy
20 that includes a duty to pay it, may not simply refuse to
21 defend the insured. Rather the insured has two options,
22 defend the suit under reservation of rights or seek a
23 declaratory judgment. If the insurer takes neither of these
24 steps and is found to have wrongfully denied coverage the
25 insurer is estopped from raising policy defenses to

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1 coverage.

2 This is a California case. And I went to the fourth
3 circuit on this, Judge. And in my usual fashion I lost in
4 front of David Norton, who I think I got this right in the
5 same issue of underlying trial and what was covered under
6 the insurance policy. And so Judge Norton says that the
7 underlying trial determined the defense obligation and they
8 had to pay for the defense. But as to the indemnity it was
9 a huge verdict, he found the other way.

10 Well, we go to the fourth circuit. And the fourth
11 circuit finds yes, some issue was determined but it was
12 indemnity, not the defense. And so there's a good bit of
13 case law out on it, but here is a California case, Whit
14 versus Monterey (ph). An insurer who breeches a duty to
15 defend may contest coverage in a subsequent action where the
16 issues upon which coverage depend were not necessarily
17 adjudicated in the underlying action. That in one statement
18 is the law as best I know it. There's no holding in South
19 Carolina that specifically says that.

20 THE COURT: Thank you, sir. Mr. Davis?

21 MR. DAVIS: Just briefly, Your Honor. The first
22 thing I want to do is clear something up. I do want to
23 correct any misapprehension that we have actually not
24 produced the whole claim file.

25 MR. EPTING: I believe that. I don't think we got

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1 it, which is what we intended to do. And so there's no
2 dispute about that.

3 MR. DAVIS: We gave you some correspondence,
4 things where we felt like --

5 MR. EPTING: We don't have any objection by that.

6 MR. DAVIS: Great. And Your Honor, on this
7 question about being bound by what happens in the underlying
8 suit, you know, it's definitely the root of this case. We
9 do disagree based on the Simms case and the Leranta (ph)
10 case that are cited in our memorandum. I think that the
11 Court used very strong language in those cases making it
12 very clear the Court did not approve of the kind of
13 situation that I described happened in both Simms and
14 Leranta. The insurance company denies coverage. The case
15 moves forward and there's some sort of a finding.

16 Like I said, the judge in both cases found there was
17 negligence. And essentially what the Court in these cases
18 we cite is saying is we're not going to tolerate that where
19 the insurance company has grounds to deny coverage, and when
20 it's not participating in the suit then to allow there to be
21 a finding similar to what happened in this case where all
22 evidence indicates that this was a Pit Bull and all of the
23 sudden at the default hearing is not a Pit Bull. The
24 insurance company is not bound by that. It's not fair.
25 They have a conflict of interest as the Court said in these

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1 cases to take any other position if they had been
2 participating.

3 THE COURT: Well, let me just ask that question.
4 Don't they have the right to bring a future action or to
5 defend under a reservation of rights?

6 MR. DAVIS: They do, but by the same token it
7 doesn't mean that they have to.

8 THE COURT: And so if they fail to do so it's your
9 argument that they're not bound by those factual findings?

10 MR. DAVIS: Yes, sir. And I believe that's what
11 Simms says and Leranta case.

12 THE COURT: I'll take a look at that. Here's what
13 I'd like to do. We've been going for a while. Can y'all
14 get me proposed orders within 30 days? I know that you
15 wanted to supplement some of your information. It's a lot
16 to digest and I've got a lot to look at. If y'all can file
17 your memoranda and you've got your own exhibits with the
18 Court they can get to me. Mr. Davis, I can give you this
19 back if you'd like, but I want to make sure I do get that.
20 And my typical rule of thumb is about 30 days for submission
21 and orders if that's sufficient time for you.

22 (Hearing concluded at 11:20 o'clock a.m.)

23

24

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1 STATE OF SOUTH CAROLINA)

2 : C-E-R-T-I-F-I-C-A-T-E

3 COUNTY OF DORCHESTER)

4 I, Stacey L. Scoggan, Court Reporter and Notary Public,
5 certify that I did have The Honorable Mikell Scarborough to
6 appear before me at 10:30 o'clock a.m. on Monday, May 19,
7 2014, at the Charleston County Courthouse, 100 Broad Street,
8 Suite 269, Charleston, South Carolina; that the witness was
9 sworn and cautioned to tell the truth, the pages constitute
10 a true and accurate transcript of the testimony given at
11 that time and place.

12 I further certify that I am not of counsel or kin to
13 any of the parties to this cause of action, nor am I
14 interested in any manner in its outcome.

15 IN WITNESS WHEREOF, I have hereunto set my hand and
16 seal this the 22nd day of July, 2015.

17

18

19

20 _____
Stacey L. Scoggan

21 Notary Public for South Carolina

22 My Commission Expires: February 23, 2021

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Jana Wright, as Guardian ad Litem for
Travis Milligan, a minor over the age
of 14 years,

Plaintiff,

vs. CASE NO. 2007-CP-10-3224

Tema Brown,

Defendant/Third-Party Plaintiff,

vs.

GeoVera Specialty Insurance Co.,

Third-Party Defendant.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 11:07 a.m. on
May 13, 2015 at 100 Broad Street, Charleston,
South Carolina.

COPY

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P R O C E E D I N G S

1
2
3 THE COURT: This is a case captioned Jana
4 Wright versus Tema Brown, and it's Case
5 No. 2007-CP-10-3224. The case before the Court is
6 Tema Brown versus GeoVera Specialty Insurance is
7 really what's before the Court, and this is the
8 Third-Party GeoVera's Motion to Reconsideration and
9 Alter or Amend the Judgment.

10 MR. DAVIS: If it please the Court?

11 THE COURT: Thank you.

12 MR. DAVIS: Bill Davis, Your Honor, here for
13 GeoVera. I appreciate the opportunity to be heard on
14 this Motion to Reconsider, and second of all, I
15 apologize for all the paper I unloaded on both you
16 and Mr. Epting. That was solely in the abundance of
17 caution. I'm probably overly cautious, but I just
18 wanted to ensure that we were complying with the
19 rules.

20 THE COURT: All right, sir.

21 MR. DAVIS: Your Honor will recall that you
22 had suggested or requested proposed orders from each
23 side, and of course signed the proposed order
24 prepared by opposing counsel. In other words, we
25 lost.

4
1 I'm here to obviously urge for
2 reconsideration, and I guess my first argument is --
3 you'll remember that in this case Tema Brown was
4 GeoVera's insured. She brought this third-party
5 complaint against GeoVera and one of their main
6 allegations is that when GeoVera denied coverage and
7 declined to defend her in this lawsuit that it really
8 waived its arguments by not defending her.

9 In fact, that's what the order says, citing
10 Williston on contracts and some cases from Georgia
11 and California and Pennsylvania. As we argued in our
12 memorandum there's actually a South Carolina Supreme
13 Court case that's right on this subject. It's the
14 Sims case that we talked about.

15 It specifically held that there's no waiver,
16 that in a similar situation, which I'll talk about
17 shortly, the insurance company did not waive its
18 position. The order also says that we're bound
19 because this issue was actually litigated. You might
20 remember that Ms. Brown went into default.

21 Tom Wills had a hearing on damages and issued
22 an order. Again, the order says that the issues were
23 actually litigated and we are therefore bound.
24 Again, there's a South Carolina Supreme Court
25 precedent that says that where there's a default

1 judgment it's not actually litigated.

2 Again, we have a case directly -- a South
3 Carolina case directly in opposition to what's in the
4 order. Again, for that proposition cases from
5 Georgia, California, and Pennsylvania are cited.

6 Next, in the order it says that we waived our
7 position on jurisdiction by making a general
8 appearance and participating in the action. There
9 are two cases that are cited in the order and relied
10 on, both of which are preadoption of the South
11 Carolina Rules of Civil Procedure. We cite cases in
12 our memorandum and in our motion. Smalls versus Weed
13 in one of them, and Dunbar versus Vandermore is
14 another. Both are South Carolina cases.

15 What those cases say is that we did away with
16 the special appearance when the rules were adopted,
17 so there's no such thing as a special appearance to
18 contest jurisdiction anymore, and that what we're
19 supposed to do now with the adoption of the rules is
20 you put defenses in your answer.

21 One of these cases that we cited, again a
22 South Carolina case, specifically held that at least
23 by getting an extension there was no waiver of the
24 jurisdictional argument, and we cited a number of
25 cases from other jurisdictions that hold that there's

1 no waiver by engaging in discovery, et cetera.

2 So our position is that what this order
3 essentially does is it allows a situation that our
4 Supreme Court in the Sims case specifically rejected
5 in very strong terms. So I would like to talk just
6 briefly about Sims. Sims was similar in that the
7 insurer had declined to defend. In that case it was
8 at least allegedly a wreck case.

9 The basis of the denial was that -- I guess
10 this was before the intentional act of exclusion had
11 been stricken down at least to the extent of the
12 minimal limits in South Carolina. In fact, I'm sure
13 it must have been. At any rate, the insurance
14 company declined to defend.

15 There was actually a trial in that case, a
16 non-jury trial. Again, the insurance company is
17 not participating. At the conclusion of the trial
18 there's an order entered to the effect that the
19 Defendant was negligent, not willful. Well, then
20 they bring the suit against the insurer, and of
21 course, are pointing to that order saying, well, the
22 case was tried. There was a finding of evidence.
23 You're bound by that. The insurance company
24 introduced evidence that this wasn't negligence at
25 all. What this Defendant had done was intentionally

1 crashed into the car, got out and shot the Plaintiff.

2 Again, while there may be cases from other
3 jurisdictions that say that the insurance company is
4 bound in that situation, South Carolina is not one of
5 them. The trial court that entered this order and
6 actually directed a verdict -- there was the order in
7 the first case, and then the trial court directed a
8 verdict to that effect in the second case against
9 Nationwide.

10 The Supreme Court reversed and said that --
11 I'm not going to read the whole thing, but briefly,
12 it said that it is obvious that the finding of fact
13 or the judgment against the insured does not extend
14 to matters outside the scope of the insurance
15 contract. The insurance company is neither obligated
16 to defend nor bound by the findings of the Court if
17 the claim against the insured is not covered by the
18 policy.

19 It goes on to use even stronger language than
20 that indicating that they weren't going to tolerate a
21 situation like this where there's evidence to the
22 contrary. Just because the insurance company denies
23 coverage, which is their right, then there's a
24 resolution of the claim in chief that is clearly
25 contrary to the evidence that the insurance company

1 is not bound by that.

2 There's another case, too. It's a Federal
3 case, but it arises out of South Carolina.

4 THE COURT: Well, before you leave that let's
5 talk about that for a second. What are they getting
6 at? What is the policy reason that -- why is that
7 the law then and still today?

8 MR. DAVIS: Well, I think the reasoning,
9 Your Honor, is that an insurance company should have
10 the right when it has evidence that there's no
11 coverage to be able to deny coverage. Now,
12 obviously, that can be contested by the insured, but
13 what I submit that the Supreme Court was saying in
14 this case is that while that may be true we're not
15 going to allow a situation where -- because the
16 insurance company declines to defend, exercises its
17 right to deny coverage, that they will be bound
18 necessarily by an order finding -- that makes a
19 finding that would mean that there's coverage when
20 that very well may not be the case.

21 I will submit that that's exactly what is the
22 situation that we have here where -- in fact, I would
23 submit that it's an even worse situation here because
24 at least in the Sims case there was an actual trial.
25 In this case Ms. Brown went into default. There was

1 no trial.

2 Tom Wills just had a hearing to determine
3 damages. I will also submit that his order -- there
4 is no finding that the dog was not a pit bull anyway.
5 His order is clearly broken down into facts and law.
6 There was no finding in the fact situation. He's
7 just looking to determine damages, and he makes the
8 comment that Ms. Brown kept testifying that the dog
9 was not a pit bull. That is contrary to a great deal
10 of evidence that we noted in our memoranda that --
11 the DHEC records, the emergency room records, the
12 doctor's records.

13 Again, that's the law of South Carolina. I
14 submit that that's what happened in this case
15 essentially. Again, I think the situation was even
16 worse in this case because there was only a default
17 judgment. Again, as I said, there's -- the Kunst
18 case, here in South Carolina specifically says that a
19 default judgment is not litigation such that it would
20 be binding.

21 Another similar case is the Federal case that
22 I mentioned that came out of South Carolina where a
23 victim of sexual abuse at a Catholic church sued the
24 diocese and the priest alleging sexual abuse. The
25 diocese settled out. The insurance company, Catholic

1 Mutual Insurance Company denied coverage apparently
2 because it was an intentional act, but -- similar
3 scenario here. They declined to defend, and the
4 Court grants -- the diocese is out. So the Court
5 grants summary judgment against the priest and enters
6 a judgment of \$100 million against the priest based
7 on negligence.

8 Then came the declaratory judgment action
9 against the insurance company. It was moved to
10 Federal court. The insurance company moved for
11 summary judgment on the ground that there was no
12 occurrence. In other words, this was an intentional
13 thing. The Court -- the Plaintiff as in this case
14 and as in Sims said, no, you chose not to defend so
15 you waive that. The Court disagreed and said, no.
16 There's no collateral estoppel. That's inappropriate
17 here.

18 Again, both of these cases are pretty close to
19 the situation that we have. Both are out of South
20 Carolina, but neither is mentioned in this order. As
21 I said the order -- we respectfully disagree that
22 there was any finding that the dog was a pit bull. I
23 submit that what Mr. Wills was doing was in
24 evaluating whether or not there was summary judgment
25 he was evaluating whether or not the dog was vicious.

1 Whether it was a pit bull or not is irrelevant to
2 damages. It's certainly very relevant in our case.

3 Again, we cited a lot of evidence that
4 indicates that the dog was indeed a pit bull. In
5 fact, I would submit that it's telling that when her
6 statement was taken, her recorded statement,
7 Ms. Brown when asked, tell me about your pets said,
8 he is an American pit bull. I'm no expert on dogs
9 but I do believe that the correct name for a pit bull
10 is American Staffordshire pit bull terrier. She got
11 that from somewhere. Most people don't call it an
12 American pit bull.

13 She said, that's the way it was sold to her,
14 although admittedly she did say she didn't really
15 know what a pit bull looks like. At any rate, we
16 submit that there was no such finding. I'll skip
17 ahead here. Some of this is grounds we've already
18 covered, Your Honor, so I'll just skip ahead here.

19 On the statute of limitations question, the
20 order indicates that it does not begin to run until
21 entry of default judgment. Because this was a
22 third-party complaint for indemnity. Now, actually
23 the third-party complaint is for a declaratory
24 judgment, but I would argue that more important than
25 that is that the denial letters that were sent are

1 very unequivocal. They deny all coverage, and I
2 would submit that they put Ms. Brown on notice way
3 back when they were sent years ago that she's got no
4 coverage. So she knows at that point that she's got
5 no coverage.

6 Not only won't there be any defense, but there
7 won't be any indemnity. So you know, I think under
8 the discovery rules the statute of limitations began
9 to run then. Now, I haven't been able to find the
10 South Carolina case right on point, but we did find
11 the Adamski case that's mentioned in our brief, which
12 is a similar situation except there instead of a
13 declaratory judgment the suit was for bad faith.

14 Nevertheless, the insurer was challenged both
15 because of its refusal to defend and indemnify. What
16 the Court said was, that in light of the insurance
17 company's denial of coverage it should have been
18 obvious to all that the insurance company would not
19 protect, defend, or indemnify the insured. I submit
20 that that's the situation we have here.

21 The other issue that I want to raise with you
22 with regard to statute of limitations is that the
23 order indicates that it's apparent that the letters
24 were returned -- the denial letters and such were
25 returned as undeliverable. It would be inappropriate

1 to make a factual inquiry in that respect.

2 Your Honor, I would submit that a review of
3 that affidavit -- I admit it's a little confusing
4 because there were a lot of letters sent. In an
5 abundance of caution the insurance company would send
6 them both regular mail and certified mail. It's
7 true -- I'll just go through it. The denial letter
8 was dated September 28, 2006, and in the affidavit we
9 include that it was mailed in the regular course of
10 business by regular mail and certified mail. Then
11 about a year and three months later a second letter
12 is mailed January 7, 2008, specifically saying it was
13 a follow-up to a telephone conversation with
14 Ms. Brown and the adjuster actually enclosed a copy
15 of that first denial letter with that one. Then
16 there was a reservation of rights letter that was
17 returned, and one of the certified mail letters was
18 returned. There's no evidence that the denial letter
19 that was sent by regular mail was ever returned.

20 Under South Carolina law when we produce an
21 affidavit showing that this letter was mailed regular
22 mail, properly addressed, that raises a presumption
23 of receipt. So I would submit that with that
24 affidavit we proved that Ms. Brown got the denial
25 letter way back in 2006. So the statute of

1 limitations had expired long before this third-party
2 complaint was brought.

3 Now, admittedly it is a rebuttable presumption
4 of receipt, but to kind of rebut the statement in the
5 order that it would be inappropriate to make a
6 factual inquiry I submit that this is exactly how a
7 summary judgment is supposed to work. You submit an
8 affidavit with your motion, and then it's up to you
9 to decide -- if that affidavit indicates a fact, and
10 if it's disputed then it's incumbent upon opposition
11 to come forward with an affidavit, for example, if
12 Ms. Brown says I never received it or some other
13 evidence that it was not received.

14 I would submit that that fact is established,
15 and because it's established, the statute of
16 limitations applies or began to run from the date of
17 receipt. So there's really no factual inquiry that's
18 necessary. Under the rules regarding summary
19 judgment, once the motion is made and supported, I
20 think the cases say something like you can't rest on
21 what's in the pleadings. You've got to come forward
22 and do something. On this issue that didn't happen.

23 Finally -- there are a number of issues, Your
24 Honor. I do want to just hit on one more and direct
25 the Court's attention to our other arguments because

1 there are many. On the issue of real party in
2 interest, one of our arguments was that this
3 third-party complaint was asserted by Ms. Brown -- in
4 the record it shows that Ms. Brown had already
5 assigned her right to bring that action to the
6 Plaintiff, yet it was brought in her name.

7 Rule 17 of the South Carolina Rules of Civil
8 Procedure says that -- what the orders says of course
9 is that the Plaintiff is therefore substituted as the
10 real party in interest, but Rule 17 says that that's
11 got to be a reasonable time. That's got to happen at
12 a reasonable time after objection, and I submit that
13 that didn't happen here.

14 We cite a South Carolina Supreme Court case,
15 Thomas versus Grayson in which the Court talked about
16 this and said that -- what happened there was -- in
17 that case the suit had actually been brought within
18 the applicable statute of limitations, but the
19 Plaintiff was a personal representative in Michigan,
20 but she hadn't actually become a personal
21 representative of South Carolina. That had to
22 happen.

23 So once that was called to her attention or
24 her lawyer's attention in the answer presumably, they
25 went and corrected that as the Court said shortly

1 thereafter. The Court approved that specifically
2 using the words, shortly thereafter. Again, the rule
3 says, within a reasonable time.

4 In our case we raised this issue in our answer
5 way back years ago. The Third-Party Plaintiff was
6 not a real party in interest, but there was never any
7 Motion to Substitute the Plaintiff. In fact, the
8 first time that this was really raised was in the
9 proposed order which was ultimately entered on
10 March 11th of this year which, of course, was years
11 after we filed our answer.

12 And finally, Your Honor, we submit that under
13 the law that we cited in our memorandum that included
14 the Drennan versus Brown case, and we also quoted
15 from Professor Flanagan that when the default
16 judgment was entered that actually terminated this
17 case, that it was a final order, and the case was
18 over.

19 So we submit that for all the reasons that
20 I've already argued and those in our memorandum that
21 we would be entitled to summary judgment or at the
22 very least Ms. Brown or the Plaintiff would not be
23 entitled to summary judgment. Again, we submit that
24 we have lots of South Carolina law in our favor on
25 this and just would respectfully ask that the Court

1 reconsider.

2 THE COURT: Thank you, Mr. Davis. Mr. Epting?

3 MR. EPTING: Judge, I don't intend to be very
4 long. I have to say that Mr. Davis is one of the
5 more detailed defense lawyers, but Judge, he keeps
6 talking about Sims, and I'm going to take them more
7 or less in the order that he raised them. He talks
8 about how Sims is applicable, and Judge, he cherry
9 picks the words out of Sims.

10 I'm going to read to you from Sims because he
11 is right. Sims is a South Carolina case, and it says
12 exactly what you said in your order. Here are the
13 facts, Judge. There's a trial, and it's a passing
14 case. And the insurance company wants to deny
15 coverage because the fellow is telling his girlfriend
16 to slow down and she won't, so he drives the car off
17 the road. He gets out and shoots her.

18 So the Plaintiff in the case against the
19 insurance company is saying, well, you're bound. It
20 was just a simple negligence case. Well, it was. It
21 was a passing case. The insurance company's position
22 was, we certainly didn't litigate whether or not your
23 getting out of the car and shooting her was an
24 intentional act because it didn't have anything to do
25 with the underlying case.

1 So here's what Sims says, Judge. Those are
2 the facts, but here's what Sims says. It is
3 precisely what you say in your order. Appellant
4 concedes that the general rule where an insurance
5 company has noticed in an opportunity to defend an
6 action against its insured the company is bound by
7 pertinent material facts established against its
8 insured whether it, the insurance company, appears in
9 the defense of the action or not.

10 The case goes on, Judge, to cite the
11 restatement. It is stated that this rule is binding
12 only as to issues relevant to the proceeding and that
13 the judgment against the indemnity does not decide
14 issues as to the existence and the extent of the duty
15 to indemnify, and that in a subsequent action the
16 indemnitor may show that the circumstances under
17 which it was required to indemnify do not exist.

18 So the issue here, Judge, is purely this. You
19 asked Mr. Davis this question. So are you telling me
20 that if you don't defend -- the case is tried and
21 your insured is found liable on liability that you
22 get to relitigate all that? He said, yeah. The
23 answer is no because in the underlying case the
24 question of liability was necessary in the
25 determination, and therefore the insurance company

1 can't relitigate that and say, well, we have no duty
2 to indemnify because there is no claim against us.
3 Well, the answer is wrong.

4 The claim was established in the underlying
5 case because it was necessary in the underlying case.
6 So that is the law, and that's what you held. So
7 here's Mr. Davis' argument, Judge, about Tom Wills'
8 order, and there were a couple of things, and I think
9 it was just a bad choice of words, Judge. It
10 essentially would say, default/default judgment.
11 This is not a default judgment. There was a default.

12 The case was tried on actual and punitive
13 damages. The Plaintiff requested punitive damages,
14 so Tom Wills rules: In this case I find punitive
15 damages are not warranted. Ms. Brown testified that
16 the dog was not a vicious dog and was a mixed breed
17 but not a pit bull.

18 So he essentially denies punitive damages, and
19 the reason he does it is there is nothing to give
20 anybody notice that this was a dangerous dog. It's
21 not a dangerous dog breed, and it hadn't expressed
22 any dangerousness previously. Mr. Davis is saying,
23 Judge, well, that's just what Ms. Brown testified to.
24 That's not what Tom Wills held.

25 Well, Judge, I bet if I were in here saying,

1 Judge, Tom Wills didn't deny punitive damages. I get
2 to try punitive damages again. I have a feeling he
3 would say, oh, no, you don't because he says you're
4 not entitled to it, and the reason is it wasn't a pit
5 bull nor was it a dangerous breed. So it's a real
6 simple proposition as far as I know. It's the law
7 according to Williston. It's the law in all the
8 jurisdictions. It is relevant. That's what the
9 Supreme Court in Sims says, that it is relevant and
10 pertinent to the underlying case. Then you having
11 decided not to show up and defend? Too bad.

12 THE COURT: Doesn't that get to the policy
13 reasons for doing that?

14 MR. EPTING: Sure, Judge. If the insurance
15 company can just relitigate everything including
16 whether or not their insured ran the stoplight, why
17 defend anything? Judge, let me turn to the statute
18 of limitations argument. Mr. Davis, of course, moved
19 for summary judgment himself on the basis of the
20 statute of limitations. We moved for summary
21 judgment on the statute of limitations. The one
22 thing that Mr. Davis did not address at all, Judge,
23 was our ground for why the statute had not run. He
24 actually advances in his Motion to Reconsider for the
25 first time that indeed under his Motion for Summary

1 Judgement there would have been a factual issue
2 because you can recall, Judge, all these letters that
3 he's talking about were returned.

4 You may recall, also, Judge, that the first
5 adjuster on this case found there was coverage, and
6 until there was a determination by a veterinarian or
7 something like that that this was in fact under the
8 policy a pit bull there was coverage. Now, that has
9 nothing to do with our ground, Judge. Our ground
10 was, this is a case of contractual indemnity. So the
11 whole notion, Judge, of discovery and when a wrong is
12 discovered is not the appropriate statute for
13 contractual indemnity.

14 As held, Judge, in First General Services
15 versus Miller, Supreme Court of South Carolina, 1994,
16 as to indemnity the statute of limitations runs from
17 the time judgement is entered against the Defendant
18 citing a case Choate versus United States. Choate
19 versus United States is a contractual indemnity case.
20 If you think about it, Judge, it makes sense.

21 Why have litigation over what you're owed when
22 you don't know what you're owed? That's the whole
23 rule.

24 THE COURT: It wouldn't arise until there is,
25 in fact, something to indemnify against it, right?

1 MR. EPTING: That's it. And that's what -- I
2 think, Judge, we cite the restatement of judgments
3 and on and on and on and that's what Your Honor held.
4 This real party in interest, Judge, they objected to
5 it. We said at the time they objected, well, Judge,
6 if they want and believe it's the other party then
7 put them in. So the relief, Judge, that they
8 requested, they got it. You gave it to them.

9 I don't think they can complain about it,
10 number one. Number two, Rule 17 could not be
11 clearer. It relates back to when the original action
12 was filed so this claim is somewhere. It was here at
13 one time and there another. We're going to play a
14 game with you. Never mind that you owe somebody.

15 Bill, you didn't argue your series of grounds
16 related to this Court and the dog issue. He had a --
17 sorry, Judge. I was having a momentary blank out.
18 Bill has a theory that because the third-party
19 complaint was started more than ten days after the
20 judgment was entered in the underlying case of Wright
21 versus Milligan, that no court had jurisdiction to do
22 anything, and he cites a case called Russell.

23 Well, if you look at the Russell case, Judge,
24 Russell is a case that is concerned with when does a
25 trial Court's authority to deal with a trial and a

1 judgment end? What is requested in that case, Judge,
2 are sanctions. So the Court holds that because Rules
3 52 and 59 say that you've got ten days to do this,
4 then if you don't do it within ten days, then it's
5 too late and from that he extrapolates everything in
6 that case. Nothing more can happen. Well, if that
7 were the case, Judge, I would guess 10 percent of
8 this Court's docket wouldn't exist in supplemental
9 proceedings.

10 In Russell, Judge, once again the case he
11 cites, it says nothing about the ten days, which is a
12 time limit, has anything to do with subject matter
13 jurisdiction or the Court's subsequent ability to
14 deal with the case. So Judge, in this case of course
15 Judge Dennis and Judge Harrington both entered orders
16 sending it here, and while I believe you have
17 jurisdiction to do almost anything. I think one of
18 them is probably not to reverse a circuit judge and
19 no motion has been made before them to say that this
20 third-party complaint is improper. They specifically
21 allowed it. They allowed it as timely, and so we
22 went forward.

23 So I believe, Judge, he states a lot of
24 grounds, but on close inspection, just like this
25 whole statute of limitations, we heard all about

1 letters and we heard all about that. It's really
2 simple. It's an indemnity suit, and the South
3 Carolina Supreme Court says, time of judgment. So I
4 think the order we provided the Court is right on the
5 money, and it would be a pleasure to sustain this
6 court on appeal.

7 THE COURT: All right.

8 MR. EPTING: Thank you, sir.

9 THE COURT: Thank you. Mr. Davis?

10 MR. DAVIS: Just briefly, Your Honor. Again,
11 I defer -- it's been briefed by both sides in the
12 orders and otherwise. I would obviously take issue
13 with Mr. Epting. The Sims case is so important. I
14 do refer the Court to it because what they did -- the
15 Court quoted from another older case called Farm
16 Bureau Mutual versus Hammer. It's a federal case, a
17 fourth circuit case. That's where that language I
18 was reading from earlier came from.

19 I submit that it's very clear that the Court
20 is disapproving of the very thing that happened in
21 this case in strong terms, some of which I didn't
22 even read. The Ranta case, again a Federal case out
23 of South Carolina, same situation. I submit that
24 it's clear what the Court is saying in both of these
25 cases. What is being disapproved of is what happened

1 here. On the question of the orders, it is true that
2 there were two consent orders entered, and it's true
3 that because GeoVera does not defend -- they were not
4 present to have their side of the story told. I
5 would point out that --

6 THE COURT: Isn't that part of the problem
7 when you don't show up?

8 MR. DAVIS: Well, again, Your Honor, under the
9 law of South Carolina -- that is certainly their
10 argument, that if you don't defend then you're bound
11 by whatever happens, but I submit that that is not
12 the case. These cases that we cite say --

13 THE COURT: They seem to distinguish -- they
14 seem to distinguish between what's relevant and
15 adjudicated versus what's not. This is really -- I
16 think it's hard to make an indemnification claim; is
17 it not?

18 MR. DAVIS: It was a declaratory judgment
19 action in which they do seek indemnification, yes,
20 sir.

21 THE COURT: So the underlying case has been
22 decided, so now we're here to decide whether or not
23 there is a right to indemnify, correct? Isn't that
24 what this case is really all about?

25 MR. DAVIS: True, Your Honor, but the question

1 of whether there is a right to indemnification is
2 partly based on -- is obviously based on the
3 underlying facts, and I strenuously disagree that
4 we're bound by the facts. There weren't any facts
5 that were relevant to this that were found by
6 Mr. Wills.

7 THE COURT: That sort of gets to the heart of
8 the whole matter; does it not?

9 MR. DAVIS: It does.

10 THE COURT: I'll tell you what I'm going to
11 do. I'm going to take it under advisement. I'm
12 going to reread Sims and the cases that you've cited,
13 and I'll give you-all an answer. It will be my plan
14 to give you-all an answer within 15 days. Okay?

15 MR. DAVIS: Thank you, sir.

16 MR. EPTING: Thank you, Judge.

17 (The proceedings were concluded at 11:52 a.m.)
18
19
20
21
22
23
24
25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 8th day of July, 2015 at
13 Charleston, Charleston County, South Carolina.
14

15
16 

17 Christine A. Smith
18 Notary Public
19 My Commission Expires
20 May 12, 2021
21
22
23
24
25

AFFIDAVIT OF SERVICE

State of SOUTH CAROLINA

County of CHARLESTON

Common Pleas Court

Case Number: 07-CP-10-3224

Plaintiff:
JANA WRIGHT, as Guardian ad Litem for TRAVIS MILLIGAN, a minor
over the age of 14 years

vs.

Defendant:
TEMA BROWN

For:
MAYBANK LAW FIRM
102 Wappoo Creek Dr.,
Suite 2a
Charleston, SC 29422

FILED
2007 NOV 28 PM 2:03
JULIE L. ARMSTRONG
CLERK OF COURT
BY _____

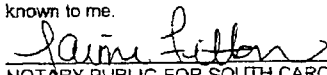
Received by FALCON EXPRESS SERVICES, LLC to be served on TEMA BROWN, 3388 HABITAT BLVD.,
JOHNS ISLAND, SC 29455.

I, Matthew Krueger, being duly sworn, depose and say that on the 19th day of November, 2007 at 1:30 pm, I:

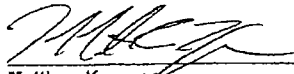
Individually Served the within named person with a true copy of this SUMMONS AND COMPLAINT with the date
and hour endorsed thereon by me, pursuant to State Statutes.

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 19th day
of November, 2007 by the affiant who is personally
known to me.


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 5-19-2016


Matthew Krueger
Process Server

FALCON EXPRESS SERVICES, LLC
P.O. Box 874
Charleston, SC 29402-0874
(843) 577-9696

Our Job Serial Number: 2007002050

BARRY L. BAKER
ATTORNEY AND COUNSELLOR AT LAW
ONE CARRIAGE LANE, BLDG. H
POST OFFICE BOX 31265
CHARLESTON, SOUTH CAROLINA 29417-1265

TELEPHONE: 843-766-9007

FAX: 843-766-1295

April 29, 2005

Mr. & Mrs. Levoone Brown
3368 Habitat Boulevard
Johns Island, SC 29455

Re: Travis Milligan, a minor

Dear Mr. & Mrs. Brown:

This is to advise that I have been retained to represent the above individual for injuries he suffered on April 20, 2005, when he was bitten by your dog.

Please turn this letter over to the agent who handles your homeowner's insurance and have them contact me so that we can work out an amicable settlement of this matter.

With kind regards, I am,

Yours Truly,


Barry L. Baker

BIB/psv

cc: Ms. Jana Wright
(parent & guardian of Travis Milligan, a minor)

PAGE 01

GUEST

86/28/2005 08:21 843671537

July 28, 2005

VIA CERTIFIED MAIL RETURN RECEIPT NUMBER 70042510000008731570

Terna Brown
3368 Habitat Blvd.
Johns Island, SC 29455

Re: Claim #: GCGUS040299
Policy #: GH20051152
Insured: Terna Brown
Claimant: Travis Milligan
Date of Loss: 4/20/05

Dear Ms. Brown:

NCA Group (NCA) is the Third Party Administrator for USF&G Specialty Insurance Company (USF&G). As such, the claim involving injuries to Travis Milligan has been assigned to us for investigation and handling. You have a Homeowners Insurance Policy with USF&G written under policy number GH20051152. The coverage form is an HO 00 03 (10-00) with effective dates of 12/23/04-12/23/05.

We are in receipt of a claim for injuries resulting from a dog bite involving your dog Jinx and the claimant, Travis Milligan. As I understand the incident, Jinx is an American Pit Bull Terrier that was supposed to be secured to a trailer by a chain. On the date of the incident Jinx somehow got loose. When you returned home from work there was an accident with your other dog in the driveway. While tending to that dog, Jinx ran after Travis who was riding his bike and the bite occurred. Travis was taken to the hospital but the extent of treatment is unknown.

So that you are aware of the sections of the policy that may have an effect on coverage, we direct your attention to your Homeowners Policy form and specifically to the DEFINITIONS on page 1, SECTION II - LIABILITY COVERAGES on page 16 and the SECTION II - EXCLUSIONS also beginning on page 16. The policy also contains a Master Endorsement written under US 04 42 (02-03). The pertinent sections of the policy and endorsement read, in part, as follows:

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the declarations page and the spouse, if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

Page 2
7/28/05
Brown cont'd

2. "Bodily Injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.
5. "Insured" means:
 - a. You and residents of your household who are:
 - (1) Your relatives; or
 - (2) Other persons under the age of 21 and in the care of any person named above;
 - b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of
 - (1) 24 and relative; or
 - (2) 21 and in your care or the care of a person described as a. (1) above; or
 - c. Under Section II:
 - (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of an "business" or without consent of the owner; or
 - (2) With respect to a "motor vehicle" to which this policy applies:
 - (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (b) Other persons using the vehicle on an "Insured location" with your consent.

Under both section I and II, when the word an immediately precedes the word "Insured", the words an "Insured" together mean one or more "Insured's".

6. Insured location" means:
 - a. The "residence premises";
 - b. The part of other premises, other structures and grounds used by you as a residence and:
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
 - c. Any premises used by you in connection with a premises in a. and b. above;
 - d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
 - e. Vacant land, other than farm land, owned by or rented to an "insured";

Page 3
7/28/05
Brown cont'd

- f. Land owned by or rented to an "insured" on which a one of two family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or
- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

11. "Residence premises" means:

- a. the one family dwelling where you reside;
- b. The two, three or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside; and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

SECTION H - LIABILITY COVERAGES

COVERAGE E - Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to the limit of liability for the damages for which the "insured" is legally liable. Damages include prejudgment interest awarded against the "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

COVERAGE F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury." Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage

Page 4
7/28/05
Brown cont'd

does not apply to you or regular residents of your household except "residence employees." As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location," if the "bodily injury":
 - a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
 - b. Is caused by the activities of an "insured";
 - c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
 - d. Is caused by an Animal owned by or in the care of an "insured."

Now refer to the Master Endorsement, form US0442, 02-03:

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Fraud)
FORM US 64 42 02-03

DEFINITIONS

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION II - EXCLUSIONS

The following exclusions are added to E.
Coverage E - Personal Liability And
Coverage F - Medical Payments to Others:

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- (1) "vicious canine";
- (2) Staffordshire bull Terrier;
- (3) American Pit Bull Terrier
- (4) Rottweiler; or
- (5) Doberman Pinscher

Page 5
7/28/05
Brown cont'd

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 50% of that breed.

Based upon our investigation, Jinx is an American Pit Bull Terrier that was purchased from a relative. There are no papers to verify the breed but your relative, Jamal Vinson, has verbally verified that the parents of Jinx are full-blooded American Pit Bull Terriers. Based upon the above cited exclusion, there may be no coverage for indemnity or defense if it can be verified that Jinx is, in fact, an American Pit Bull Terrier.

To date we have not received anything in writing from Mr. Vinson and we have no Veterinary records to support the breed allegation. Without this support and the coverage issues set forth above, we will continue to handle this claim under a full reservation of rights.

Due to these issues and others that may arise, any investigation made or action taken by NCA, USF&G or other representatives of the Insurers on this claim is done with a full reservation of rights under the policy. It is done with the understanding that any investigation, adjustment or defense of the claim or action by ourselves or other representatives of NCA or USF&G will not constitute a waiver of any rights the Insurance Company has under the policy.

Should you have any information that has any bearing on this investigation or coverage, we invite you to submit this information to us. Be assured that any information will be given due consideration by both NCA and USF&G.

In the event that suit is filed and served on you, copies of the lawsuit must be forwarded to us immediately for review to determine if coverage will be afforded under the policy. Receipt of said suit or other documentation is not a waiver of any of the rights afforded by the policy written under policy number GH20051152.

Since Mr. Vinson has shown no sign of cooperating with the signing of an affidavit about his dogs, please make every attempt possible to get the name of a Veterinarian in the area that has treated his dogs in the past. We will need to get the records on both of his dogs to verify the breed of your dog. If Animal Control or the Police were contacted about this incident with Travis Milligan, please provide the name and phone number of the Animal Control office and a report number if you have one. I will proceed to obtain a copy of that report. In addition, we ask that you provide a photo of Jinx if you have one.

Page 6
7/28/05
Brown cont'd

If you have any questions, please feel free to contact me at 636-825-8389.

Sincerely,

Stan Hawkins, CPCU
Authorized Representative of USF&G Specialty Insurance Co.
1417 Cedar Bluff Dr.
Ballwin, MO 63021
1-636-825-8389

025T E280 0000 0752 4000

NCA GROUP

Adjusting & Underwriting Services
1060 Mallard Center Commons, Suite 220
Mallard, Florida 32751

CERTIFIED MAIL

7004 2510 0000 0873 1570



0050

29454

U.S. POSTAGE
MANCHESTER, NH
JUL 21 2005
\$4.60
0001 02.01

USF & g Daily

RETURN RECEIPT
REQUESTED

UNC

Tema Brown
3368 Habitat Blvd.
Johns Island, SC 29455

NAME

R-105

NIXTE 294 1 34 09/20/05

RETURN TO SENDER
NO MAIL RECEIPTABLE
UNABLE TO FORWARD

BCI 32751748170 *0215-00088-28-41

29455409205130981

**SENDER: COMPLETE THIS SECTION**

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return this card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Tema Brown
3368 Habitat Blvd.
Johns Island, SC
29455

2. Article Number

(Transfer from service label)

7004 2510 0000 0873 1570

PS Form 3811, February 2004

Domestic Return Receipt

10295-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from Item 1?

If YES, enter delivery address below:

☐ Yes☐ No

3. Service Type

☒ Certified Mail☐ Express Mail☐ Registered☐ Return Receipt for Merchandise☐ Insured Mail☐ O.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes



Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32812-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2006

Tema Brown
3368 Habinal Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Tema Brown
Claim Number: GOCLOS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GE20051152 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jim, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jim.

The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jim is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Brenda Trimwick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Heath Insurance Inc.

Certified Mail Provides

- Assured receipt
 - Assured delivery for your workplace
 - Assured delivery by the Postal Service for two years
- Important Reminders:**
- Certified Mail may ONLY be combined with First-Class Mail or Priority Mail.
 - Certified Mail is not available for any other international mail.
 - NO INSURANCE COVERAGE IS PROVIDED with Certified Mail. For additional, please consider Insured or Registered Mail.
 - For an additional fee, a Return Receipt may be requested to provide proof of delivery. To obtain Return Receipt Service, please complete and attach a Return Receipt (PS Form 3800) to the article and affix the postage to cover the fee. Evidence and Service (Return Receipt) is not available for a duplicate return receipt, a third-class item or a Certified Mail receipt is required.
 - For an additional fee, delivery may be restricted to the addressee or addressee's authorized agent. Advise the clerk or mark the envelope with the endorsement "Restricted Delivery".
 - If a postmark on the Certified Mail receipt is obtained, please present the article at the post office for postmarking. It is prohibited on the Certified Mail receipt to not record, destroy and alter label with postage and mark.
- IMPORTANT:** Since this receipt and process is not available as inquiry, Internet access to delivery information is not available on mail addressed to APOs and FPOs.

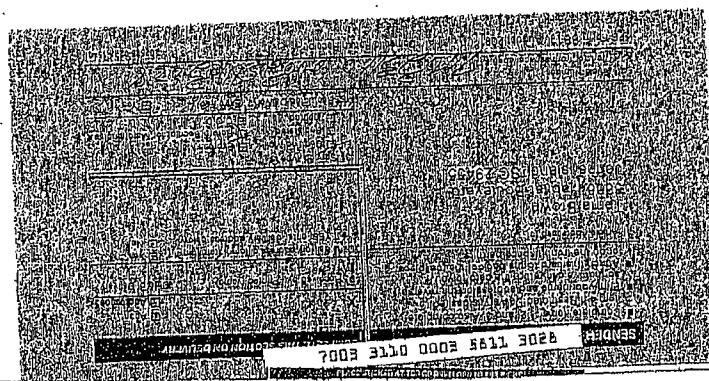
U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only - No Insurance or Signature Required)

OFFICIAL USE

Postage	\$	Postmark Date
Collection Fee		
Return Receipt Fee (Indemnity Fee - \$3.00)		
Registered Mail Fee (Indemnity Fee - \$3.00)		
Mail Package & Fees	\$	

Amount to
 Payable to:
 or PO Box No.
 City, State, ZIP

Anna Brown



Constitution State Services

P.O. Box 715
Orlando, FL 32802-0715

POSTNET



7003 5110 0003 5511 3028



UNITED STATES POSTAGE
02 1M \$04.64
0004218407 SEP 20 2008
MAILED FROM ZIP CODE 32814

Tema Brown
3308 Habitat Blvd
Johns Island, SC 29455

MINUTE 0.2-06
10 17

NEXIE 034 1 09 10/20/08
RETURN TO SENDER
UNDELIVERED
UNABLE TO FORWARD
001 00000071513 1401-00000-00-00
2945537113 PDY
000000715

Constitution State Services

Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2006

Barry Baker, Attorney At Law
P O Box 31265
Charleston, SC 29417-1256

Account: Tema Brown
Claim Number: GCGLUS040299
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Mr. Baker:

This letter is to acknowledge the receipt of the demand package dated September 7, 2006.

The insurance policy issued to Tema Brown contained exclusion for vicious dogs. By Ms. Brown's own admission, the dog involved in the altercation with your client was an American Pit Bull Terrier. The breed, American Pit Bull Terrier, is specifically excluded in the policy issued by USF&G Specialty Insurance Company.

Therefore, USF&G Specialty Insurance Company will not respond to your client's claim for damages.

Tema Brown has been advised that coverage is not afforded in this matter.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573

Constitution State Services
Terence Youngblood
Suite 15-396
11250 Old St. Augustine Road
Jacksonville, FL 32257
Telephone: (904) 260-2956
FAX: (904) 260-9428

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

04/07/08

Ms. Tema Brown
3368 Habitat Blvd
Johns Island SC 29455

RE:
Account: Tema Brown
Policy Number: GCGLUS040299 (Effective 12/23/04 to 12/23/05)
Insurer: USF & G Specialty Insurance Company
CLAIM NUMBER: CGLUS040299
PLANTIFF: Jana Wright, as Guardian ad Litem for Travis
Milligan, a minor filed in the State of South Carolina,
County of Charleston, in the Court of Common Pleas
Case No.: 07-CP-10-3224
Date of Loss: 04/20/05

Dear Ms. Brown:

Constitution States Services was notified by the attorney representing Ms. Wright of a lawsuit that was filed and a default that was taken in the above mention case.

As a follow up to our previous correspondence, USF & G Specialty Insurance Company has no duty to defend and/or any obligation to indemnify you in this matter. Based upon our investigation, the dog involved in this lawsuit was an American Pit Bull breed.

Your policy contains Master Endorsement US 04 43 (07-05), which includes a specific exclusion for "Vicious Dogs":

"Bodily injury" or "property Damage" arising out of the actions of any canine, owned by or in the care, custody or control of any "insured", that is a :

- a. "Vicious Canine",
- b. Staffordshire Bull Terrier,
- c. American Pit Bull Terrier
- d. Rottweiler
- e. Doberman Pinscher, or
- f. Chow Chow

We will consider a canine to be a Stafford Bull Terrier, American Pit Bull Terrier, Rottweiler, Doberman Pinscher, or Chow Chow if its lineage contains part of that breed.

Consequently, USF & G Specialty Insurance Company has no duty to defend and/or any obligation to indemnify you in this matter under the policy. If you have received any additional information you believe could cause USF & G Specialty Insurance Company to change its coverage position, please forward it for our review and consideration.

This correspondence is not intended to be, nor shall it be construed as an exhaustive listing or discussion of policy terms, conditions, exclusion or endorsements, facts or circumstances, or principles of insurance law which may further provide a basis to preclude coverage under USF & G Specialty Insurance Company policy in this matter. USF & G Specialty Insurance Company reserves the right to supplement its declination should information, not currently known to USF & G Specialty Insurance Company indicate the applicability of additional grounds. We refer you to the specific insurance policy for a comprehensive review of coverage, including policy terms, conditions, exclusions, and endorsements.

If there are any questions regarding USF & G Specialty Insurance Company position in this matter, please feel free to contact me at (904) 260-2956.

Sincerely,

Terence Youngblood
Senior Technical Specialist

Cc:
Maybank Law Firm
Amanda Maybank
102 Wappoo Creek Drive, suite 2A
Charleston SC 29422

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Animals Owned or Kept by an Insured, Unfenced Pools, Bodies of Water, Concealment or Fraud)
FORM HO 00 06 ONLY

DEFINITIONS

The following definitions are added:

"Vicious canine" means a canine, regardless of the breed, that any "insured" knows or should have known has attacked, bitten, or otherwise caused "bodily injury" to any person.

"Animal Owned or Kept by an Insured" means any domestic or wild animal owned by an "insured" or in their care, custody or control:

- a. "Vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler;
- e. Doberman Pinscher; or
- f. Chow Chow

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, Doberman Pinscher, or Chow Chow if its lineage contains part of that breed.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage C - ~~Personal Property~~, 4. Property Not Covered:

Mobile homes, or their contents, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of the actions of any canine, owned by or in the care, custody or control of any "insured", that is a:

Animals Owned or Kept by an Insured

"Bodily injury" or "property damage" arising out of the actions of any "animal owned or kept by an insured". This exclusion does not apply to domestic animals not commonly considered livestock, such as dogs and cats kept as pets, that are owned by or in the care, custody or control of an "insured", and not otherwise excluded under this policy.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

Bodies of Water

"Bodily Injury" or "property damage" arising out of any "insured's" ownership or control of any natural or man-made body of water, including but not limited to:

- a. Ponds
- b. Lakes
- c. Streams

- d. Pools
- e. Swamps; and
- f. Creeks

This exclusion does not apply to swimming pools which are not otherwise excluded under this policy.

SECTION II - CONDITIONS

J. Concealment Or Fraud is deleted.

SECTIONS I AND II - CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "insured", their agent, or their broker:

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

ORLANDO FL 328

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
■ Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>[Signature]</i> ☐ Agent ☒ Addressee	
1. Article Addressed to: <i>Mt Tema Bohawn</i> <i>3368 Habitat Blvd</i> <i>Johns Island SC</i> <i>29455</i>		B. Received by (Printed Name) <i>Tema Bohawn</i>	
2. Article Number: (Transfer from service label) <i>7003 2260 0003 7880 9762</i>		C. Date of Delivery	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		D. Is delivery address different from Item 1? ☐ Yes ☐ No If YES, enter delivery address below:	
4. Restricted Delivery? (Extra Fee) ☐ Yes ☐ No			

PS Form 3811, February 2004 Domestic Return Receipt 102595-02-44-1540

U.S. Postal Service

CERTIFIED MAIL RECEIPT
(Domestic Mail Only) Insurance Coverage Provided

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage	\$	<i>4/9/08</i> Postmark Here <i>ARM 628</i>
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Sent to *Tema Bohawn*

Street Apt. No. or PO Box No.

City, State, ZIP+4

PS Form 3811, January 2002 See notes on back of form

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

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TRAVELERS INSURANCE COMPANY
P O BOX 4969
ORLANDO FLORIDA 32802

Youngblood *A8M9628*

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 2007-CP-10-3224
	)	
JANA WRIGHT, as Guardian	)	
ad Litem for TRAVIS	)	
MILLIGAN, a minor over	)	
the age of 14 years	)	
	)	
Plaintiff,	)	
	)	ASSIGNMENT
vs.	)	
	)	
TEMA BROWN,	)	
	)	
Defendant.	)	
	)	

WHEREAS, on April 20, 2005, Tema Brown was insured by Constitutional State Services, when a dog in her care and custody, and bit and caused injury, to Travis Milligan, a minor;

WHEREAS, Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years, has obtained a judgment against Tema Brown as a result of the dog bite in the amount of \$150,229;

WHEREAS, her insurer has refused to defend or indemnify Tema Brown for the judgment;

NOW THEREFORE, the parties agree as follows:

1. Tema Brown does and hereby assigns any and all rights and claims for injuries and damages of whatsoever kind sustained by her on account of her insurer's failure to defend and provide coverage in the suit brought by Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years.
2. Tema Brown agrees to cooperate with counsel for Jana Wright, as Guardian ad Litem for Travis Milligan, a minor over the age of 14 years, in the collection and litigation against her insurer for the failure to defend and provide coverage for the aforesaid judgment.
3. Tema Brown agrees to waive any and all rights to any proceeds recovered by Jana Wright, as Guardian ad Litem for Travis Milligan, from

Brown's insurer for its failure to defend and indemnify in the above lawsuit as well as any and all rights for any bad faith action brought against said insurer.

Tema Brown 11/4/10
Tema Brown

Angela Jones 11/4/10
Witness

11/11/2008 11:48 8437661295

BARRY BAKER ATTY

PAGE 03/22

Insured

Coverage is provided under this policy for the residence located at:

TEMA BROWN

3388 HABITAT BLVD
JOHNS ISLAND

SC 29455-7118

3388 HABITAT BLVD
JOHNS ISLAND

SC 29455

Mail To: Insured

THIS IS A TRUE
AND CERTIFIED COPY

Producer Name & Address #111289
843-766-6316

TEMA BROWN

CLIFF HEATH INSURANCE, INC.
1780 SAVANNAH HIGHWAY
P O BOX 30388
CHARLESTON

3388 HABITAT BLVD
JOHNS ISLAND

SC 29455

SC 29407

USF&G Specialty Insurance Company

RENEWAL DECLARATIONS

GH20051162	12 Months	12/23/04	12/23/08 12:01 AM Standard Time at the Insured Premises.

Insurance is provided only with respect to those specific limits of liability applicable thereto:

Section I		
A - Dwelling	\$	50,000
B - Other Structures	\$	9,000
C - Personal Property	\$	63,000
D - Loss of Use	\$	18,000
Section II		
E - Personal Liability	\$	300,000
F - Medical Payments to Others	\$	2,000

Premium	\$	878.00
Inspection Fee	\$	0.00
Policy Fee	\$	75.00
State Tax	\$	57.18
Total Policy Amount	\$	1,010.18

\$	1800.00

\$	1000.00

Forms and endorsements made part of this policy at time of issuance:

CLIL-180 07-02 HO-00-03 10-00 HO-01-29 09-01
HO-04-65 10-00 HO-04-77 10-00 HO-04-90 10-00
HO-04-96 10-00 HOPRIV 04-03 US-01-09 04-03
US-03-55 04-03 US-03-80 02-03 US-04-35 02-03
US-04-42 02-03 US-04-91 02-03 US-05-01 02-03
US-82-01 02-03

"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 is not afforded guaranty fund protection."

Authorized Agent:
Robert L. Lowery
Hull & Company (Mid-Atlantic), Inc.
14120 Ballantyne Corporate Place, Suite 525
Charlotte, NC 28277-2747
Surplus Lines Agent; #223641951

Countersigned by:

Robert L. Lowery

Countersigned at: CHARLOTTE, NC DATE: 12/23/04

THIS DECLARATION PAGE, WITH POLICY PROVISIONS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THE ABOVE NUMBERED HOMEOWNERS POLICY.

FSCRND-010204

TO REPORT ANY CLAIM, CALL 1.800.631.6478. 24 HOURS A DAY.

Insured

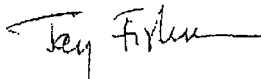
11/11/2008 11:40 8437661295

BARRY BAKER ATTY

PAGE 04/22

IN WITNESS WHEREOF, the Company has caused the facsimile signatures of its President and Secretary to be affixed hereto, and has caused this policy to be signed on the Declarations Page by an authorized representative of the Company.

USF&G Specialty Insurance Company



Jay Fishman
President



Bruce Backberg
Secretary

HOMEOWNERS
HO 01 38 08 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS - SOUTH CAROLINA

SECTION I - CONDITIONS

G. Suit Against Us is deleted and replaced by the following:

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within three years after the date of loss.

The following condition is added to all forms except HO 00 04 and HO 00 06:

S. Valuation Clause

With respect to the perils of fire and lightning, we agree that the limit of liability stated in Coverage A of the Declaration of this policy is the value of the building described. This valuation is established for insurance purposes only.

SECTIONS I AND II - CONDITIONS

C. Cancellation

Paragraph 2. is deleted and replaced by the following:

2. We may cancel this policy only for the reasons stated below, by written notification to you and, if any, your insurance agent of the date cancellation takes effect and the precise reason for cancellation. This cancellation notice may be delivered or mailed to you and your agent at the mailing addresses shown in the Declarations or the last known addresses. Proof of mailing will be sufficient proof of notice.

a. When you have not paid the premium, we may cancel at any time by letting you and your agent know at least 10 days before the date cancellation takes effect.

b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you and your agent know at least 30 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more at any time if it is renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue this policy;

(2) If the risk has changed substantially since the policy was issued, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing this policy;

(3) In the event of a substantial breach of a contractual duty, condition or warranty; or

(4) If we lose our reinsurance covering all or a significant portion of this policy, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of this state. Cancellation for these reasons is subject to approval by the Insurance Commissioner.

This can be done by letting you and your agent know at least 30 days before the date cancellation takes effect.

D. Nonrenewal is deleted and replaced by the following:

D. Nonrenewal

We may elect not to renew this policy. We may do so by written notification to you and your agent at least 30 days before:

1. The expiration date of the policy, for a policy written for a term of one year or less; or

2. The anniversary date of the policy, for a policy written for a term of more than one year or for an indefinite term, provided that we did not collect additional premium to guarantee renewal.

The nonrenewal notice, together with the precise reason for nonrenewal, may be delivered or mailed to you and your agent at the mailing addresses shown in the Declarations or the last known addresses.

All other provisions of this policy apply.

POLICY NUMBER:

HOMEOWNERS
HO 04 65 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERAGE C INCREASED SPECIAL LIMITS OF LIABILITY**SCHEDULE¹****SECTION I - PROPERTY COVERAGES****COVERAGE C - PERSONAL PROPERTY****3. Special Limits Of Liability**

The special limits of liability are increased as noted below:

Property	Increase in Limit Of Liability	Total Limit Of Liability
a. Money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.		
b. Securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps.		
e. Jewelry, watches, furs, precious and semiprecious stones for loss by theft, but not more than \$1,000 for any one article.	\$1,000	\$2,600
f. Firearms and related equipment for loss by theft.		
g. Silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware for loss by theft.		
j. Electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		
k. Electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.		

All other provisions of this policy apply.

¹Entries may be left blank if shown elsewhere in this policy for this coverage.

POLICY NUMBER:

HOMEOWNERS
HO 04 77 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ORDINANCE OR LAW
INCREASED AMOUNT OF COVERAGE**

SCHEDULE*

New Total Percentage Amount: 25%

*Entry may be left blank if shown elsewhere in this policy for this coverage.

**SECTION I - PROPERTY COVERAGES
ADDITIONAL COVERAGES**

11. Ordinance Or Law

The total limit of liability that applies:

a. To Coverage A, or

b. For Form HO 00 04, to Building Additions And Alterations;

is increased from 10% to the percentage amount shown in the Schedule above.

This is Additional Coverage 10, in Form HO 00 06.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 80 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL PROPERTY REPLACEMENT COST LOSS SETTLEMENT

A. Eligible Property

1. Covered losses to the following property are settled at replacement cost at the time of the loss;
 - a. Coverage C; and
 - b. If covered in this policy:
 - (1) Awnings, outdoor antennas and outdoor equipment; and
 - (2) Carpeting and household appliances, whether or not attached to buildings.
2. This method of loss settlement will also apply to the following articles or classes of property if they are separately described and specifically insured in this policy and not subject to agreed value loss settlement:
 - a. Jewelry;
 - b. Furs and garments:
 - (1) Trimmed with fur; or
 - (2) Consisting principally of fur;
 - c. Cameras, projection machines, films and related articles of equipment;
 - d. Musical equipment and related articles of equipment;
 - e. Silverware, silver-plated ware, goldware, gold-plated ware and pewterware, but excluding:
 - (1) Pens or pencils;
 - (2) Flasks;
 - (2) Smoking implements; or
 - (3) Jewelry; and
 - f. Golfer's equipment meaning golf clubs, golf clothing and golf equipment.

Personal Property Replacement Cost loss settlement will not apply to other classes of property separately described and specifically insured.

B. Ineligible Property

Property listed below is not eligible for replacement cost loss settlement. Any loss will be settled at actual cash value at the time of loss but not more than the amount required to repair or replace.

1. Antiques, fine arts, paintings and similar articles of rarity or antiquity which cannot be replaced.
 2. Memorabilia, souvenirs, collectors items and similar articles whose age or history contribute to their value.
 3. Articles not maintained in good or workable condition.
 4. Articles that are outdated or obsolete and are stored or not being used.
- C. Replacement Cost Loss Settlement Condition
- The following loss settlement condition applies to all property described in A. above:
1. We will pay no more than the least of the following amounts:
 - a. Replacement cost at the time of loss without deduction for depreciation;
 - b. The full cost of repair at the time of loss;
 - c. The limit of liability that applies to Coverage C, if applicable;
 - d. Any applicable special limits of liability stated in this policy; or
 - e. For loss to any item described in A.2.a. - f. above, the limit of liability that applies to the item.
 2. If the cost to repair or replace the property described in A. above is more than \$500, we will pay no more than the actual cash value for the loss until the actual repair or replacement is complete.
 3. You may make a claim for loss on an actual cash value basis and then make claim for any additional liability in accordance with this endorsement provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 04 96 10 00

THIS ENDORSEMENT DOES NOT CONSTITUTE A REDUCTION OF COVERAGE.

**NO SECTION II – LIABILITY COVERAGES FOR
HOME DAY CARE BUSINESS
LIMITED SECTION I – PROPERTY COVERAGES FOR
HOME DAY CARE BUSINESS**

- A. "Business", as defined in the policy, means:
1. A trade, profession or occupation engaged in on a full-time, part-time, or occasional basis; or
 2. Any other activity engaged in for money or other compensation, except the following:
 - a. One or more activities:
 - (1) Not described in b. through d. below; and
 - (2) For which no "insured" receives more than \$2000 in total compensation for the 12 months before the beginning of the policy period;
 - b. Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - c. Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - d. The rendering of home day care services to a relative of an "insured".
- B. If an "insured" regularly provides home day care services to a person or persons other than "insureds" as their trade, profession or occupation, that service is a "business".
- C. If home day care service is not a given "insured's" trade, profession or occupation but is an activity:
1. That an "insured" engages in for money or other compensation; and
 2. From which an "insured" receives more than \$2,000 in total/combined compensation from it and any other activity for the 12 months before the beginning of the policy period;
- the home day care service and other activity will be considered a "business".
- D. With respect to C. above, home day care service is only an example of an activity engaged in for money that may be a "business". Any single activity or combination of activities:
1. Described in A.2. above, and
 2. Engaged in for money by a single "insured";
- may be considered a "business" if the \$2000 threshold is exceeded.
- E. With respect to A. through D. above, coverage does not apply to or is limited with respect to home day care service which is a "business". For example, this policy:
1. Does not provide:
 - a. Section II coverages. This is because a "business" of an "insured" is excluded under E.2. of Section II – Exclusions;
 - b. Coverage, under Section I, for other structures from which any "business" is conducted; and
 2. Limits Section I coverage, under Coverage C – Special Limits of Liability, for "business" property:
 - a. On the "residence premises" for the home day care "business" to \$2,500. This is because Category h. (e. in Form HO 00 08) imposes that limit on "business" property on the "residence premises";
 - b. Away from the "residence premises" for the home day care "business" to \$500. This is because Category i. (f. in Form HO 00 08) imposes that limit on "business" property away from the "residence premises". Category i. does not apply to property described in Categories j. and k. (g. and h. respectively in Form HO 00 08).

HOPRIV (04-03)

USF&G Specialty Insurance Company's Privacy Policy

Thank you for selecting USF&G Specialty Insurance Company as your homeowner's insurer. At USF&G Specialty Insurance Company, a member of The St. Paul Companies, we recognize that privacy is important to you. That is why we are committed to protecting your privacy through the adoption of the following privacy principles:

Collection of Information

We collect, retain and use information about you, including members of your household, only where we believe that it will help or is necessary to provide you products and services or otherwise conduct our business. We collect nonpublic personal financial information about you from the following sources:

- Information we receive from you or through your agent or broker on applications or other forms;
- Information we receive from or about you in the process of adjusting claims;
- Information about your coverages and loss activity with other carriers; and
- Information we receive from a consumer reporting agency.

Such information includes identifying information such as your name, address, and social security number; financial information such as your income, payment history or credit history; and, under certain circumstances, health information such as information about an illness, disability or injury. It could also include information on claims with other insurance companies and us and the condition and maintenance of your property.

Any information obtained from a report prepared by an insurance-support organization may be retained by the insurance support organization and disclosed to other persons.

Disclosure of Information

We usually do not disclose nonpublic personal information about you without your consent. However, in some circumstances we may disclose information to others without your prior authorization:

- Information from your application or other forms, such as your name, address and social security number;
- Information about your transactions with us, our affiliates or others, such as your policy coverage, premiums and payment history; and
- Information about your claim history.

We do not disclose any personal information about you to anyone unless allowed by law. We may disclose personal information about you to:

- State insurance departments, for their regulation of our business;

HOPRIV (04-03)

Page 1 of 2

HOPRIV (04-03)

- Other government authorities;
- Our agents and brokers as necessary to conduct our business;
- Organizations that perform underwriting and claims investigations;
- Another insurance company to which you have applied for a policy or submitted a claim;
- Insurance support agencies, law enforcement agencies and our reinsurers; and
- Any other third party, as permitted or required by law.

Most importantly, USF&G Specialty Insurance Company does not and will not disclose or sell your nonpublic personal information to anyone for marketing purposes.

Confidentiality and Security

We restrict access to nonpublic personal information about you to those who need it to serve your insurance needs and to maintain and improve customer service. We maintain physical, electronic, and procedural safeguards that comply with federal and state laws and regulations to guard your nonpublic personal information.

Your Right to Access and Correct Information

Upon your written request, we will send you a copy of relevant information we have about you in connection with your application for coverage. Please address your request to Government Affairs, The St. Paul Companies, Inc., Mail Code 514C, 385 Washington Street, St. Paul, MN 55102. If you feel that our information is incorrect, let us know and we will review it. If we agree, we will correct our files. If we do not agree, you may file a short statement of dispute with us. This statement will be included with any information disclosure we make in the future, or sent to anyone you designate who may have received such information in the past two years, or as otherwise required by law.

Disclosure and Protection of Former Customers' Information

We may disclose all the personal information we have collected, as described above. However, even if you no longer have a customer relationship with us, we will continue to follow our privacy policies and practices to protect your information.

Changes in Privacy Policy

We may choose to modify our policy regarding the treatment of personal information at any time. Before we do so, we will notify you and provide an updated notice.

HOPRIV (04-03)

Page 2 of 2

US 01 08 (04-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

USF&G SPECIALTY INSURANCE COMPANY SPECIAL PROVISIONS

DEFINITIONS

The definition of "occurrence" is replaced by the following:

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

Assault and battery is not an "occurrence", whether or not committed by or at the direction of an "insured".

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A:

Asbestos or Lead

Asbestos or Lead means the presence or effects of any form of asbestos or lead.

SECTION II - EXCLUSIONS

The following exclusions are added to E. Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Asbestos or Lead

- a. "Bodily injury" arising out of the absorption, ingestion, or inhalation of, or prolonged exposure to, any form of asbestos or lead;
- b. "Property damage" arising out of any form of asbestos or lead; or
- c. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way

respond to, or assess the effects of, any form of asbestos or lead.

Because asbestos and lead are pollutants, this exclusion applies in addition to the Pollution Exclusion and any other pollution-related exclusion made a part of this policy.

Assault or Battery

"Bodily injury" or "property damage" arising out of assault or battery, whether or not committed by or at the direction of an "insured".

Pollution

- a. "Bodily injury" or "property damage" arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of pollutants at, on, in or from any "insured location"; or
- b. Any loss, cost, or expense arising out of any request, demand, order, or statutory or regulatory requirement that any "insured" test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of, pollutants.

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

This exclusion does not apply to "bodily injury" or "property damage" caused by heat, smoke, or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it is intended to be.

Punitive or Exemplary Damages

Punitive or exemplary damages, or any costs or interest attributable to such damages.

US 01 09 (04-03)

SECTIONS I AND II - CONDITIONS

The following condition is added:

Service of Suit

If we fail to pay any amount claimed to be due under this policy and you sue us, we will, at your request, submit to the jurisdiction of a court of competent jurisdiction within the United States. Service of process in such suit may be made on General Counsel, Legal Services Department, The St. Paul, 385 Washington Street, St. Paul, Minnesota 55102, or his or her representative. Service of process in such suit may also be made on the Superintendent, Commissioner, or Director of Insurance for the state in which the suit is being filed, if the law so provides. We designate that appropriate officer, or that officer's successor, to mail a copy of the papers to us.

For the State of California, we authorize Lori Castaneda, 2730 Gateway Oaks Drive, Suite 100, Sacramento, California 95833, to be served and to mail us the papers.

Nothing in this condition constitutes a waiver of our right to bring an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another court as permitted by law.

All other provisions of this policy apply.

US-03-55 (04-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED SMOG, RUST, MOLD, ROT, OR BACTERIA COVERAGE AND
LIMITED SEEPAGE OR LEAKAGE COVERAGE
FORM HO 00 03 ONLY**

DEFINITIONS

The following definitions are added:

"Bacteria" means any type or form of bacterium, or any mycotoxin, spore, scent, or byproduct produced or released by such bacterium.

"Mold or other fungi" means:

- a. Any type or form of mold or mildew;
- b. Any other type or form of fungus; or
- c. Any mycotoxin, spore, scent, or byproduct produced or released by such mold, mildew, or other fungus.

"Per policy period seepage or leakage combined total sublimit" means the \$1,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by or resulting from water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more; and
- b. covered "bodily injury" or "property damage" arising out of water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more.

This combined total \$1,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, or the number of "occurrences" or claims made. This sublimit is included in, but does not increase, the maximum limits of liability

under Sections I and II of your policy as shown on the declarations page.

"Per policy period mold combined total sublimit" means the \$5,000 limit of liability that applies to the combined total of all of the following which occur during any one policy period:

- a. covered loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from any Peril Insured Against; and
- b. covered "bodily injury" or "property damage" arising out of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

This combined total \$5,000 sublimit is the most we'll pay regardless of the number or type of coverages that may apply, the number of premises insured under this policy, the number of persons injured or whose property is damaged, the number of "occurrences" or claims made, or the number or type of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" that caused the loss, injury, or damage. This sublimit is included in, but does not increase, the maximum limits of liability under Sections I and II of your policy as shown on the declarations page.

SECTION I - PROPERTY COVERAGES

The first paragraph of D. Coverage D - Loss of Use is replaced by the following:

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

However, loss of use covered under these three coverages caused by:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject

US-03-55 (04-03)

to the "per policy period mold combined total sublimit"; and

- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

The following is added to E. Additional Coverages:

Seepage or Leakage

We insure for direct physical loss to property described in Coverages A and B caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more. However, such coverage is subject to the "per policy period seepage or leakage combined total sublimit".

SECTION I - PERILS INSURED AGAINST

Paragraphs 2.c.(5) and 2.c.(6)(c) of A. Coverage A - Dwelling And Coverage B - Other Structures are deleted.

The following is added to B. Coverage C - Personal Property:

Seepage or Leakage

This peril means the seepage or leakage of water or steam, or the presence or condensation of humidity, moisture, or vapor, above the surface of the ground.

However, loss caused by:

- a. water or steam that seeps or leaks; or
- b. the presence or condensation of humidity, moisture, or vapor that occurs;

above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

US-03-55 (04-03)

USF&G Specialty Insurance Company

Page 2 of 2

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A.:

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria"

Smog, Rust Or Other Corrosion, "Mold Or Other Fungi", Wet Or Dry Rot, Or "Bacteria" means the presence, growth, proliferation, spread or any activity of smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria".

Loss caused by smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" resulting from a Peril Insured Against is covered. However, such loss is subject to the "per policy period mold combined total sublimit".

SECTION II - CONDITIONS

The following is added to A. Limit of Liability:

However, our liability under Coverages E and F for any covered "bodily injury" or "property damage" arising out of:

- a. smog, rust or other corrosion, "mold or other fungi", wet or dry rot, or "bacteria" is subject to the "per policy period mold combined total sublimit"; and
- b. water or steam that seeps or leaks, or the presence or condensation of humidity, moisture, or vapor that occurs, above the surface of the ground over a period of 14 days or more is subject to the "per policy period seepage or leakage combined total sublimit".

Paragraph B. Severability of Insurance is replaced by the following:

This insurance applies separately to each "insured" except with respect to the "per policy period mold combined total sublimit" and the "per policy period seepage or leakage combined total sublimit". This condition will not increase our limit of liability for any one "occurrence".

All other provisions of this policy apply.

US 03 80 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR HAZARD AND BIOCHEMICAL RELEASE FROM TERRORISM EXCLUSIONS

SECTION I - EXCLUSIONS

The following exclusion is added to Paragraph A:

Biochemical Release From Terrorism

Biochemical Release From Terrorism means the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. Intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. Involves, or appears to a reasonable person was intended to involve, release of any such substances.

SECTION I - CONDITIONS

If this endorsement is attached to Form HO 00 03 or HO 00 06, Paragraph M.3 is replaced by the following:

If this endorsement is attached to Form HO 00 04, Paragraph L.3 is replaced by the following:

3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard. Direct loss by fire resulting from the nuclear hazard is covered to the extent required by law.

SECTION II - EXCLUSIONS

The following exclusion is added to Paragraph E:

Biochemical Release From Terrorism

"Bodily injury" or "property damage" arising out of or in connection with the direct or indirect release of germs, disease or other contagions, contaminants, pathogens, or poisons by any individual or group that releases such items by committing, or threatening to commit, an act of force violence or danger against any persons, organizations, or property that:

- a. Intimidates or coerces, or appears to a reasonable person was intended to intimidate or coerce, any government authority, any civilian population or any segment of any civilian population;
- b. Disrupts, or appears to a reasonable person was intended to disrupt, any segment of the economy; or
- c. Involves, or appears to a reasonable person was intended to involve, release of any such substances.

All other provisions of this policy apply.

US-04.35 (02-03)

LOSS ASSESSMENT COVERAGE

1. Additional Insurance - Residence-
Premises

We will pay up to a total of \$5,000 for all
assessments covered under:

- a. Section I Additional Coverage E.7.
Loss Assessment (Additional
Coverage D.7. in Form HO 00 06);
or
 - b. Section II - Additional Coverage D.
Loss Assessment; or
 - c. Both a. and b. above;
- arising out of a single loss.

2. Special Limit

We will not pay more than \$1,000 of
your assessment that results from a
deductible in the policy of insurance
purchased by a corporation or
association of property owners.

3. Section II - Exclusions

Section II - Exclusion F.1.a. does
not apply to this coverage.

All other provisions of this policy apply.

US 04 42 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MASTER ENDORSEMENT
(Mobile Homes, Vicious Dogs, Unfenced Pools, Concealment or Fraud)
FORM HO 00 03 ONLY

DEFINITIONS

The definition of "residence premises" is replaced by the following:

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three, or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

However, "residence premises" does not include mobile homes, whether or not they are permanently affixed to a foundation.

The following definition is added:

"Vicious canine" means a canine of any breed which any "insured" knows has attacked, bitten, or has otherwise caused "bodily injury" to any person.

SECTION I - PROPERTY COVERAGES

The following is added to Coverage C - Personal Property, 4. Property Not Covered:

Mobile homes, or their contents, whether or not permanently affixed to a foundation.

SECTION I - CONDITIONS

Q. Concealment Or Fraud is deleted.

SECTION II - EXCLUSIONS

The following exclusions are added to E, Coverage E - Personal Liability And Coverage F - Medical Payments to Others:

Mobile Homes

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use, or control of any mobile home. This exclusion applies whether or not the mobile home is permanently affixed to a foundation.

Vicious Dogs

"Bodily injury" or "property damage" arising out of any canine owned by or in the care of any "insured" that is a:

- a. "vicious canine";
- b. Staffordshire Bull Terrier;
- c. American Pit Bull Terrier;
- d. Rottweiler; or
- e. Doberman Pinscher.

We will consider a canine to be a Staffordshire Bull Terrier, American Pit Bull Terrier, Rottweiler, or Doberman Pinscher if its lineage contains at least 60% of that breed.

Unfenced Pools

"Bodily injury" arising out of any "insured's" ownership or control of a swimming pool which is not enclosed, fenced, or otherwise safeguarded as required by any applicable ordinance or law.

SECTION II - CONDITIONS

J. Concealment Or Fraud is deleted.

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US 04 42 (02-03)

SECTIONS I AND II - CONDITIONS

The following condition is added:

Concealment or Fraud

The entire policy will be voidable at our option if, regardless of whether related to a loss, any "Insured", their agent, or their broker;

1. intentionally conceals or misrepresents any material fact or circumstance;
2. engages in fraudulent conduct; or
3. makes false statements;

relating to the insurance provided under any part of this policy.

We will consider all information provided, or that should have been provided, on the on-line application for this policy to be material.

All other provisions of this policy apply.

US 04 42 (02-03)

USF&G Specialty Insurance Company

Page 2 of 2

US 04 91 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INFLATION GUARD

SECTION I - CONDITIONS

The following condition is added:

Inflation Guard

For each policy period, we will re-evaluate the cost index we use to determine the approximate replacement cost of the dwelling and structures covered under Coverage A. This may result in an increase in the amount of premium you are charged and an increase in the limits of liability for Coverages A, B, C, and D.

Any adjustment in premium resulting from the application of the adjusted cost index will be made based on the premium rates used by us at the time of the change.

All other provisions of this policy apply.

US 05 01 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PREMIUM PAYMENT AND REFUND WAIVER

SECTIONS I AND II - CONDITIONS

The following condition is added:

Premium Payment and Refund Waiver

We will waive your payment to us of additional premium due on this policy which is \$5.00 or less, and we will not send to you return premium due on this policy which is \$5.00 or less.

All other provisions of this policy apply.

US 82 01 (02-03)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REPLACEMENT COST PROTECTION - UP TO 125%**SECTION I - CONDITIONS**

The following condition is added:

Replacement Cost Protection

If you have:

1. Allowed us to adjust the limit of liability for Coverage A and the premium in accordance with:
 - a. The property evaluations we make; and
 - b. Any increases in inflation;
2. Notified us, within 30 days of completion, of any alterations to the dwelling covered under Coverage A which increase the dwelling's replacement cost by 5% or more; and
3. Elected to repair or replace the dwelling covered under Coverage A after it is damaged;

We will:

4. Increase the limit of liability for Coverage A to equal the dwelling's current replacement cost, up to a maximum of 125% of the limit of liability for Coverage A. If the amount of loss to the dwelling is more than the limit of liability shown in the Declarations;
5. Increase, by the same percentage applied to Coverage A, the limits of liability for Coverages B, C, and D. However, we will do this only if the Coverage A limit of liability is increased under paragraph 4, above as a result of a Coverage A loss; and
6. Adjust the premium from the time of loss for the remainder of the policy term based on the increased limits of liability.

If you comply with paragraphs 1, 2, and 3 of the Replacement Cost Protection condition, Section I Condition C., Loss Settlement paragraph 2, is replaced by the following:

2. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - a. We will pay not more than the least of the following amounts:
 - (1) The limit of liability that applies to the building, adjusted as provided in paragraphs 4 and 5 of the Replacement Cost Protection condition;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete.
- c. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

HOMEOWNERS
HO 00 03 10 00

HOMEOWNERS 3 - SPECIAL FORM

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

A. In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the Company providing this insurance.

B. In addition, certain words and phrases are defined as follows:

1. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in b. below, mean the following:

a. Liability for "bodily injury" or "property damage" arising out of the:

- (1) Ownership of such vehicle or craft by an "insured";
- (2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- (3) Entrustment of such vehicle or craft by an "insured" to any person;
- (4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
- (5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

b. For the purpose of this definition:

- (1) Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;
- (2) Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
- (3) Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and
- (4) Motor vehicle means a "motor vehicle" as defined in 7. below.

2. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.

3. "Business" means:

a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or

b. Any other activity engaged in for money or other compensation, except the following:

- (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
- (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
- (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
- (4) The rendering of home day care services to a relative of an "insured".

4. "Employee" means an employee of an "insured", or an employee leased to an "insured" by a labor leasing firm under an agreement between an "insured" and the labor leasing firm, whose duties are other than those performed by a "residence employee".

5. "Insured" means:

a. You and residents of your household who are:

- (1) Your relatives; or
- (2) Other persons under the age of 21 and in the care of any person named above;

b. A student enrolled in school full time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:

- (1) 24 and your relative; or
- (2) 21 and in your care or the care of a person described in a.(1) above; or

c. Under Section II:

- (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in a. or b. above. "Insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner; or
- (2) With respect to a "motor vehicle" to which this policy applies:
 - (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
 - (b) Other persons using the vehicle on an "insured location" with your consent.

Under both Sections I and II, when the word an immediately precedes the word "insured", the words an "insured" together mean one or more "insureds".

6. "insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence; and
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
- f. Land owned by or rented to an "insured" on which a one, two, three or four family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or

- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.

7. "Motor vehicle" means:

- a. A self-propelled land or amphibious vehicle; or
- b. Any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in a. above.

8. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:

- a. "Bodily injury"; or
- b. "Property damage".

9. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.

10. "Residence employee" means:

- a. An employee of an "insured", or an employee leased to an "insured" by a labor leasing firm, under an agreement between an "insured" and the labor leasing firm, whose duties are related to the maintenance or use of the "residence premises", including household or domestic services; or
- b. One who performs similar duties elsewhere not related to the "business" of an "insured".

A "residence employee" does not include a temporary employee who is furnished to an "insured" to substitute for a permanent "residence employee" on leave or to meet seasonal or short-term workload conditions.

11. "Residence premises" means:

- a. The one family dwelling where you reside;
- b. The two, three or four family dwelling where you reside in at least one of the family units; or
- c. That part of any other building where you reside;

and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

DEDUCTIBLE

Unless otherwise noted in this policy, the following deductible provision applies:

Subject to the policy limits that apply, we will pay only that part of the total of all loss payable under Section I that exceeds the deductible amount shown in the Declarations.

SECTION I - PROPERTY COVERAGES**A. Coverage A - Dwelling****1. We cover:**

- a. The dwelling on the "residence premises" shown in the Declarations, including structures attached to the dwelling; and
- b. Materials and supplies located on or next to the "residence premises" used to construct, alter or repair the dwelling or other structures on the "residence premises".

2. We do not cover land, including land on which the dwelling is located.**B. Coverage B - Other Structures**

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

2. We do not cover:

- a. Land, including land on which the other structures are located;
- b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
- c. Other structures from which any "business" is conducted; or
- d. Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

3. The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

C. Coverage C - Personal Property**1. Covered Property**

We cover personal property owned or used by an "insured" while it is anywhere in the world. After a loss and at your request, we will cover personal property owned by:

- a. Others while the property is on the part of the "residence premises" occupied by an "insured"; or
- b. A guest or a "residence employee", while the property is in any residence occupied by an "insured".

2. Limit For Property At Other Residences

Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises", is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater. However, this limitation does not apply to personal property:

- a. Moved from the "residence premises" because it is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
- b. In a newly acquired principal residence for 30 days from the time you begin to move the property there.

3. Special Limits Of Liability

The special limit for each category shown below is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.

- a. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.
- b. \$1,600 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the information from the lost or damaged material.

- c. \$1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.
- d. \$1,500 on trailers or semitrailers not used with watercraft of all types.
- e. \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
- f. \$2,500 for loss by theft of firearms and related equipment.
- g. \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
- h. \$2,500 on property, on the "residence premises", used primarily for "business" purposes.
- i. \$500 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus and other property described in Categories j. and k. below.
- j. \$1,500 on electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category j.
- k. \$1,500 on electronic apparatus and accessories used primarily for "business" while away from the "residence premises" and not in or upon a "motor vehicle". The apparatus must be equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described in this Category k.

4. Property Not Covered

We do not cover:

- a. Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;

b. Animals, birds or fish;

c. "Motor vehicles".

(1) This includes:

- (a) Their accessories, equipment and parts; or
- (b) Electronic apparatus and accessories designed to be operated solely by power from the electrical system of the "motor vehicle". Accessories include antennas, tapes, wires, records, discs or other media that can be used with any apparatus described above.

The exclusion of property described in (a) and (b) above applies only while such property is in or upon the "motor vehicle".

(2) We do cover "motor vehicles" not required to be registered for use on public roads or property which are:

- (a) Used solely to service an "insured's" residence; or
- (b) Designed to assist the handicapped;
- d. Aircraft meaning any contrivance used or designed for flight including any parts whether or not attached to the aircraft.
We do cover model or hobby aircraft not used or designed to carry people or cargo;
- e. Hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
- f. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";
- g. Property in an apartment regularly rented or held for rental to others by an "insured", except as provided in E.10. Landlord's Furnishings under Section 1 - Property Coverages;
- h. Property rented or held for rental to others off the "residence premises";
- i. "Business" data, including such data stored in:
 - (1) Books of account, drawings or other paper records; or
 - (2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;

j. Credit cards, electronic fund transfer cards or access devices used solely for deposit, withdrawal or transfer of funds except as provided in E.S. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages; or

k. Water or steam.

D. Coverage D - Loss Of Use

The limit of liability for Coverage D is the total limit for the coverages in 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use below.

1. Additional Living Expense

If a loss covered under Section I makes that part of the "residence premises" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

2. Fair Rental Value

If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest time required to repair or replace such premises.

3. Civil Authority Prohibits Use

If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against, we cover the loss as provided in 1. Additional Living Expense and 2. Fair Rental Value above for no more than two weeks.

4. Loss Or Expense Not Covered

We do not cover loss or expense due to cancellation of a lease or agreement.

The periods of time under 1. Additional Living Expense, 2. Fair Rental Value and 3. Civil Authority Prohibits Use above are not limited by expiration of this policy.

E. Additional Coverages

1. Debris Removal

a. We will pay your reasonable expense for the removal of:

(1) Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or

(2) Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit is available for such expense.

b. We will also pay your reasonable expense, up to \$1,000, for the removal from the "residence premises" of:

(1) Your tree(s) felled by the peril of Wind-storm or Fall or Weight of Ice, Snow or Sleet; or

(2) A neighbor's tree(s) felled by a Peril Insured Against under Coverage C; provided the tree(s):

(3) Damage(s) a covered structure; or

(4) Does not damage a covered structure, but

(a) Block(s) a driveway on the "residence premises" which prevent(s) a "motor vehicle", that is registered for use on public roads or property, from entering or leaving the "residence premises"; or

(b) Block(s) a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

The \$1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than \$500 of this limit will be paid for the removal of any one tree.

This coverage is additional insurance.

2. Reasonable Repairs

a. We will pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by a Peril Insured Against from further damage.

b. If the measures taken involve repair to other damaged property, we will only pay if that property is covered under this policy and the damage is caused by a Peril Insured Against. This coverage does not:

(1) increase the limit of liability that applies to the covered property; or

(2) Relieve you of your duties, in case of a loss to covered property, described in B.4, under Section I - Conditions.

3. Trees, Shrubs And Other Plants

We cover trees, shrubs, plants or lawns, on the "residence premises", for loss caused by the following Perils Insured Against:

a. Fire or Lightning;

b. Explosion;

c. Riot or Civil Commotion;

d. Aircraft;

e. Vehicles not owned or operated by a resident of the "residence premises";

f. Vandalism or Malicious Mischief; or

g. Theft.

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be paid for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

This coverage is additional insurance.

4. Fire Department Service Charge

We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. Property Removed

We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed.

This coverage does not change the limit of liability that applies to the property being removed.

6. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money

a. We will pay up to \$500 for:

(1) The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;

(2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;

(3) Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and

(4) Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

This coverage is additional insurance. No deductible applies to this coverage.

b. We do not cover:

(1) Use of a credit card, electronic fund transfer card or access device:

(a) By a resident of your household;

(b) By a person who has been entrusted with either type of card or access device; or

(c) If an "insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or

(2) Loss arising out of "business" use or dishonesty of an "insured".

c. If the coverage in a. above applies, the following defense provisions also apply:

(1) We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.

(2) If a suit is brought against an "insured" for liability under a.(1) or (2) above, we will provide a defense at our expense by counsel of our choice.

(3) We have the option to defend at our expense an "insured" or an "insured's" bank against any suit for the enforcement of payment under a.(3) above.

7. Loss Assessment

- a. We will pay up to \$1,000 for your share of loss assessment charged during the policy period against you, as owner or tenant of the "residence premises", by a corporation or association of property owners. The assessment must be made as a result of direct loss to property, owned by all members collectively, of the type that would be covered by this policy if owned by you, caused by a Peril Insured Against under Coverage A, other than:

- (1) Earthquake; or
- (2) Land shock waves or tremors before, during or after a volcanic eruption.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will only apply one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

- b. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

- c. Paragraph P. Policy Period under Section I - Conditions does not apply to this coverage.

This coverage is additional insurance.

8. Collapse

- a. With respect to this Additional Coverage:

- (1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
- (2) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.
- (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.
- (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

- b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:

- (1) The Perils Insured Against named under Coverage C;
- (2) Decay that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse;
- (3) Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an "insured" prior to collapse;
- (4) Weight of contents, equipment, animals or people;
- (5) Weight of rain which collects on a roof; or
- (6) Use of defective material or methods in construction, remodeling or renovation. If the collapse occurs during the course of the construction, remodeling or renovation.

- c. Loss to an awning, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under b.(2) through (6) above, unless the loss is a direct result of the collapse of a building or any part of a building.

- d. This coverage does not increase the limit of liability that applies to the damaged covered property.

9. Glass Or Safety Glazing Material

- a. We cover:

- (1) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;
- (2) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and
- (3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

- (1) To covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or
- (2) On the "residence premises" if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property.

10. Landlord's Furnishings

We will pay up to \$2,500 for your appliances, carpeting and other household furnishings, in each apartment on the "residence premises" regularly rented or held for rental to others by an "insured", for loss caused by a Peril Insured Against in Coverage C, other than Theft.

This limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishings involved in the loss.

This coverage does not increase the limit of liability applying to the damaged property.

11. Ordinance Or Law

a. You may use up to 10% of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:

- (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
- (2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or
- (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.

b. You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a. above.

c. We do not cover:

- (1) The loss in value to any covered building or other structure due to the requirements of any ordinance or law; or
- (2) The costs to comply with any ordinance or law which 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 in or on any covered building or other structure.

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

This coverage is additional insurance.

12. Grave Markers

We will pay up to \$5,000 for grave markers, including mausoleums, on or away from the "residence premises" for loss caused by a Peril Insured Against under Coverage C.

This coverage does not increase the limits of liability that apply to the damaged covered property.

SECTION I - PERILS INSURED AGAINST

A. Coverage A - Dwelling And Coverage B - Other Structures

1. We insure against risk of direct physical loss to property described in Coverages A and B.
2. We do not insure, however, for loss:
 - a. Excluded under Section I - Exclusions;
 - b. Involving collapse, except as provided in E.8. Collapse under Section I - Property Coverages; or
 - c. Caused by:

- (1) Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This provision does not apply if you have used reasonable care to:

- (a) Maintain heat in the building; or

(b) Shut off the water supply and drain all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

For purposes of this provision a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

(2) Freezing, thawing, pressure or weight of water or ice; whether driven by wind or not, to a:

(a) Fence, pavement, patio or swimming pool;

(b) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of a building, or other structure;

(c) Retaining wall or bulkhead that does not support all or part of a building or other structure; or

(d) Pier, wharf or dock;

(3) Theft in or to a dwelling under construction; or of materials and supplies for use in the construction until the dwelling is finished and occupied;

(4) Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

(5) Mold, fungus or wet rot. However, we do insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure. If such loss results from the accidental discharge or overflow of water or steam from within:

(a) A plumbing, heating, air conditioning or automatic fire protective sprinkler system, or a household appliance, on the "residence premises"; or

(b) A storm drain, or water, steam or sewer pipes, off the "residence premises".

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment; or

(6) Any of the following:

(a) Wear and tear, marring, deterioration;

(b) Mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;

(c) Smog, rust or other corrosion, or dry rot;

(d) Smoke from agricultural smudging or industrial operations;

(e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C.

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

(f) Settling, shrinking, bulging or expansion, including resultant cracking, of bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;

(g) Birds, vermin, rodents, or insects; or

(h) Animals owned or kept by an "insured".

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage A or B resulting from an accidental discharge or overflow of water or steam from within a:

(i) Storm drain, or water, steam or sewer pipe, off the "residence premises"; or

- (ii) Plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the "residence premises". This includes the cost to tear out and replace any part of a building, or other structure, on the "residence premises", but only when necessary to repair the system or appliance. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building on the "residence premises".

We do not cover loss to the system or appliance from which this water or steam escaped.

For purposes of this provision, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, down spout or similar fixtures or equipment.

Section 1 - Exclusion A.3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under c.(5) and (6) above.

Under 2.b. and c. above, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

B. Coverage C - Personal Property

We insure for direct physical loss to the property described in Coverage C caused by any of the following perils unless the loss is excluded in Section 1 - Exclusions.

1. Fire Or Lightning
2. Windstorm Or Hail

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

3. Explosion
4. Riot Or Civil Commotion
5. Aircraft

This peril includes self-propelled missiles and spacecraft.

6. Vehicles

7. Smoke

This peril means sudden and accidental damage from smoke, including the emission or puffback of smoke, soot, fumes or vapors from a boiler, furnace or related equipment.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism Or Malicious Mischief

9. Theft

- a. This peril includes attempted theft and loss of property from a known place when it is likely that the property has been stolen.

- b. This peril does not include loss caused by theft:

- (1) Committed by an "insured";
- (2) In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
- (3) From that part of a "residence premises" rented by an "insured" to someone other than another "insured"; or
- (4) That occurs off the "residence premises" of:
 - (a) Trailers, semitrailers and campers;
 - (b) Watercraft of all types, and their furnishings, equipment and outboard engines or motors; or
 - (c) Property while at any other residence owned by, rented to, or occupied by an "insured", except while an "insured" is temporarily living there. Property of an "insured" who is a student is covered while at the residence the student occupies to attend school as long as the student has been there at any time during the 60 days immediately before the loss.

10. Falling Objects

This peril does not include loss to property contained in a building unless the roof or an outside wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. Weight Of Ice, Snow Or Sleet

This peril means weight of ice, snow or sleet which causes damage to property contained in a building.

12. Accidental Discharge Or Overflow Of Water Or Steam

a. This peril means accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance.

b. This peril does not include loss:

- (1) To the system or appliance from which the water or steam escaped;
- (2) Caused by or resulting from freezing except as provided in Peril Insured Against 14. Freezing;
- (3) On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises"; or
- (4) Caused by mold, fungus or wet rot unless hidden within the walls or ceilings or beneath the floors or above the ceilings of a structure.

c. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

d. Section 1 - Exclusion A.3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. Sudden And Accidental Tearing Apart, Cracking, Burning Or Bulging

This peril means sudden and accidental tearing apart, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

We do not cover loss caused by or resulting from freezing under this peril.

14. Freezing

a. This peril means freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance but only if you have used reasonable care to:

- (1) Maintain heat in the building; or
- (2) Shut-off-the-water-supply-and-drain-all systems and appliances of water.

However, if the building is protected by an automatic fire protective sprinkler system, you must use reasonable care to continue the water supply and maintain heat in the building for coverage to apply.

b. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

15. Sudden And Accidental Damage From Artificially Generated Electrical Current

This peril does not include loss to tubes, transistors, electronic components or circuitry that are a part of appliances, fixtures, computers, home entertainment units or other types of electronic apparatus.

16. Volcanic Eruption

This peril does not include loss caused by earthquake, land shock waves or tremors.

SECTION 1 - EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

1. Ordinance Or Law

Ordinance Or Law means any ordinance or law:

a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion A.1.a. does not apply to the amount of coverage that may be provided for in E.11. Ordinance Or Law under Section 1 - Property Coverages;

b. The requirements of which result in a loss in value to property; or

c. Requiring 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.

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

This Exclusion A.1. applies whether or not the property has been physically damaged.

2. Earth Movement

Earth Movement means:

a. Earthquake, including land shock waves or tremors before, during or after a volcanic eruption;

- b. Landslide, mudslide or mudflow;
 - c. Subsidence or sinkhole; or
 - d. Any other earth movement including earth sinking, rising or shifting;
- caused by or resulting from human or animal forces or any act of nature unless direct loss by fire or explosion ensues and then we will pay only for the ensuing loss.

This Exclusion A.2. does not apply to loss by theft.

3. Water Damage

Water Damage means:

- a. Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- b. Water or water-borne material which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment; or
- c. Water or water-borne material below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure;

caused by or resulting from human or animal forces or any act of nature.

Direct loss by fire, explosion or theft resulting from water damage is covered.

4. Power Failure

Power Failure means the failure of power or other utility service if the failure takes place off the "residence premises". But if the failure results in a loss, from a Peril Insured Against on the "residence premises", we will pay for the loss caused by that peril.

5. Neglect

Neglect means neglect of an "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

6. War

War includes the following and any consequence of any of the following:

- a. Undeclared war, civil war, insurrection, rebellion or revolution;
- b. Warlike act by a military force or military personnel; or
- c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

7. Nuclear Hazard

This Exclusion A.7. pertains to Nuclear Hazard to the extent set forth in M. Nuclear Hazard Clause under Section I - Conditions.

8. Intentional Loss

Intentional Loss means any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no "insured" is entitled to coverage, even "insureds" who did not commit or conspire to commit the act causing the loss.

9. Governmental Action

Governmental Action means the destruction, confiscation or seizure of property described in Coverage A, B or C by order of any governmental or public authority.

This exclusion does not apply to such acts ordered by any governmental or public authority that are taken at the time of a fire to prevent its spread. If the loss caused by fire would be covered under this policy.

B. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not precluded by any other provision in this policy is covered.

1. Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in A. above to produce the loss.
2. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
3. Faulty, inadequate or defective:
 - a. Planning, zoning, development, surveying, siting;
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c. Materials used in repair, construction, renovation or remodeling; or
 - d. Maintenance;
 of part or all of any property whether on or off the "residence premises".

SECTION I - CONDITIONS**A. Insurable Interest And Limit Of Liability**

Even if more than one person has an insurable interest in the property covered, we will not be liable in any one loss:

1. To an "insured" for more than the amount of such "insured's" interest at the time of loss; or
2. For more than the applicable limit of liability.

B. Duties After Loss

In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either:

1. Give prompt notice to us or our agent;
2. Notify the police in case of loss by theft;
3. Notify the credit card or electronic fund transfer card or access device company in case of loss as provided for in E.B. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages;
4. Protect the property from further damage. If repairs to the property are required, you must:
 - a. Make reasonable and necessary repairs to protect the property; and
 - b. Keep an accurate record of repair expenses;
5. Cooperate with us in the investigation of a claim;
6. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
7. As often as we reasonably require:
 - a. Show the damaged property;
 - b. Provide us with records and documents we request and permit us to make copies; and
 - c. Submit to examination under oath, while not in the presence of another "insured", and sign the same;
8. Send to us, within 60 days after our request, your signed, sworn proof-of-loss which sets forth, to the best of your knowledge and belief:
 - a. The time and cause of loss;
 - b. The interests of all "insureds" and all others in the property involved and all liens on the property;
 - c. Other insurance which may cover the loss;

- d. Changes in title or occupancy of the property during the term of the policy;
- e. Specifications of damaged buildings and detailed repair estimates;
- f. The inventory of damaged personal property described in 8. above;
- g. Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- h. Evidence or affidavit that supports a claim under E.B. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money under Section I - Property Coverages, stating the amount and cause of loss.

C. Loss Settlement

In this Condition C., the terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in E.11. Ordinance Or Law under Section I - Property Coverages. Covered property losses are settled as follows:

1. Property of the following types:
 - a. Personal property;
 - b. Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings;
 - c. Structures that are not buildings; and
 - d. Grave markers, including mausoleums;
 at actual cash value at the time of loss but not more than the amount required to repair or replace.
2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:
 - a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of any deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (1) The limit of liability under this policy that applies to the building;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

If the building is rebuilt at a new premises, the cost described in (2) above is limited to the cost which would have been incurred if the building had been built at the original premises.

- b. If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:

- (1) The actual cash value of that part of the building damaged; or
- (2) That proportion of the cost to repair or replace, after application of any deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

- c. To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:

- (1) Excavations, footings, foundations, piers, or any other structures or devices that support all or part of the building, which are below the undersurface of the lowest basement floor;
- (2) Those supports described in (1) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
- (3) Underground flues, pipes, wiring and drains.

- d. We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss as noted in 2.a. and b. above.

However, if the cost to repair or replace the damage is both:

- (1) Less than 5% of the amount of insurance in this policy on the building; and
- (2) Less than \$2,500;

we will settle the loss as noted in 2.a. and b. above whether or not actual repair or replacement is complete.

- e. You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You may then make claim for any additional liability according to the provisions of this Condition C. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

D. Loss To A Pair Or Set

In case of loss to a pair or set we may elect to:

1. Repair or replace any part to restore the pair or set to its value before the loss; or
2. Pay the difference between actual cash value of the property before and after the loss.

E. Appraisal

If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent and impartial appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

1. Pay its own appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

F. Other Insurance And Service Agreement

If a loss covered by this policy is also covered by:

1. Other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or
2. A service agreement, this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

G. Suit Against Us

No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within two years after the date of loss.

H. Our Option

If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with material or property of like kind and quality.

I. Loss Payment

We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:

1. Reach an agreement with you;
2. There is an entry of a final judgment; or
3. There is a filing of an appraisal award with us.

J. Abandonment Of Property

We need not accept any property abandoned by an "insured".

K. Mortgage Clause

1. If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.
2. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - c. Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Paragraphs E, Appraisal, G, Suit Against Us and I, Loss Payment under Section I - Conditions also apply to the mortgagee.
3. If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.
4. If we pay the mortgagee for any loss and deny payment to you:
 - a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

5. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

L. No Benefit To Bailee

We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

M. Nuclear Hazard Clause

1. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
2. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against.
3. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

N. Recovered Property

If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

O. Volcanic Eruption Period

One or more volcanic eruptions that occur within a 72 hour period will be considered as one volcanic eruption.

P. Policy Period

This policy applies only to loss which occurs during the policy period.

Q. Concealment Or Fraud

We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:

1. Intentionally concealed or misrepresented any material fact or circumstance;

2. Engaged in fraudulent conduct; or
3. Made false statements;
relating to this insurance.

R. Loss Payable Clause

If the Declarations show a loss payee for certain listed insured personal property, the definition of "insured" is changed to include that loss payee with respect to that property.

If we decide to cancel or not renew this policy, that loss payee will be notified in writing.

SECTION II - LIABILITY COVERAGES

A. Coverage E - Personal Liability

If a claim is made or a suit is brought against an "insured" for damages because of "bodily injury" or "property damage" caused by an "occurrence" to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the "occurrence" has been exhausted by payment of a judgment or settlement.

B. Coverage F - Medical Payments To Others

We will pay the necessary medical expenses that are incurred or medically ascertained within three years from the date of an accident causing "bodily injury". Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to you or regular residents of your household except "residence employees". As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
2. To a person off the "insured location", if the "bodily injury":
 - a. Arises out of a condition on the "insured location" or the ways immediately adjoining;
 - b. Is caused by the activities of an "insured";
 - c. Is caused by a "residence employee" in the course of the "residence employee's" employment by an "insured"; or
 - d. Is caused by an animal owned by or in the care of an "insured".

SECTION II - EXCLUSIONS

A. "Motor Vehicle Liability"

1. Coverages E and F do not apply to any "motor vehicle liability" if, at the time and place of an "occurrence", the involved "motor vehicle":
 - a. Is registered for use on public roads or property;
 - b. Is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be used at the place of the "occurrence"; or
 - c. Is being:
 - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
 - (2) Rented to others;
 - (3) Used to carry persons or cargo for a charge; or
 - (4) Used for any "business" purpose except for a motorized golf cart while on a golfing facility.
2. If Exclusion A.1. does not apply, there is still no coverage for "motor vehicle liability" unless the "motor vehicle" is:
 - a. In dead storage on an "insured location";
 - b. Used solely to service an "insured's" residence;
 - c. Designed to assist the handicapped and, at the time of an "occurrence", it is:
 - (1) Being used to assist a handicapped person; or
 - (2) Parked on an "insured location";
 - d. Designed for recreational use off public roads and:
 - (1) Not owned by an "insured"; or
 - (2) Owned by an "insured" provided the "occurrence" takes place on an "insured location" as defined in Definitions B. b.a., b., d., e, or h.; or
 - e. A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:
 - (1) A golfing facility and is parked or stored there, or being used by an "insured" to:
 - (a) Play the game of golf or for other recreational or leisure activity allowed by the facility;

(b) Travel to or from an area where "motor vehicles" or golf carts are parked or stored; or

(c) Cross public roads at designated points to access other parts of the golfing facility; or

(2) A private residential community, including its public roads upon which a motorized golf cart can legally travel, which is subject to the authority of a property owners association and contains an "insured's" residence.

B. "Watercraft Liability"

1. Coverages E and F do not apply to any "watercraft liability" if, at the time of an "occurrence", the involved watercraft is being:

a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;

b. Rented to others;

c. Used to carry persons or cargo for a charge; or

d. Used for any "business" purpose.

2. If Exclusion B.1. does not apply, there is still no coverage for "watercraft liability" unless, at the time of the "occurrence", the watercraft:

a. Is stored;

b. Is a sailing vessel, with or without auxiliary power, that is:

(1) Less than 26 feet in overall length; or

(2) 26 feet or more in overall length and not owned by or rented to an "insured"; or

c. Is not a sailing vessel and is powered by:

(1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:

(a) 50 horsepower or less and not owned by an "insured"; or

(b) More than 50 horsepower and not owned by or rented to an "insured"; or

(2) One or more outboard engines or motors with:

(a) 25 total horsepower or less;

(b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";

(c) More than 26 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period; or

(d) More than 26 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:

(i) You declare them at policy inception; or

(ii) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

The coverages in (c) and (d) above apply for the policy period.

Horsepower means the maximum power rating assigned to the engine or motor by the manufacturer.

C. "Aircraft Liability"

This policy does not cover "aircraft liability".

D. "Hovercraft Liability"

This policy does not cover "hovercraft liability".

E. Coverage E - Personal Liability And Coverage F - Medical Payments To Others

Coverages E and F do not apply to the following:

1. Expected Or Intended Injury

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

a. Is of a different kind, quality or degree than initially expected or intended; or

b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.

However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

2. "Business"

a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

b. This Exclusion E.2. does not apply to:

(1) The rental or holding for rental of an "insured location";

- (a) On an occasional basis if used only as a residence;
- (b) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (c) In part, as an office, school, studio or private garage; and
- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

3. Professional Services

"Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;

4. "Insured's" Premises Not An "Insured Location"

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

- a. Owned by an "insured";
 - b. Rented to an "insured"; or
 - c. Rented to others by an "insured";
- that is not an "insured location";

5. War

"Bodily injury" or "property damage" caused directly or indirectly by war, including the following and any consequence of any of the following:

- a. Undeclared war; civil war, insurrection, rebellion or revolution;
- b. Warlike act by a military force or military personnel; or
- c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental;

6. Communicable Disease

"Bodily injury" or "property damage" which arises out of the transmission of a communicable disease by an "insured";

7. Sexual Molestation, Corporal Punishment Or Physical Or Mental Abuse

"Bodily injury" or "property damage" arising out of sexual molestation, corporal punishment or physical or mental abuse; or

8. Controlled Substance

"Bodily injury" or "property damage" arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

Exclusions A. "Motor Vehicle Liability", B. "Watercraft Liability", C. "Aircraft Liability", D. "Hovercraft Liability" and E.4. "Insured's" Premises Not An "Insured Location" do not apply to "bodily injury" to a "residence employee" arising out of and in the course of the "residence employee's" employment by an "insured".

F. Coverage E - Personal Liability

Coverage E does not apply to:

1. Liability:

- a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in D. Loss Assessment under Section II - Additional Coverages;

- b. Under any contract or agreement entered into by an "insured". However, this exclusion does not apply to written contracts:

(1) That directly relate to the ownership, maintenance or use of an "insured location"; or

(2) Where the liability of others is assumed by you prior to an "occurrence"; unless excluded in a. above or elsewhere in this policy;

- 2. "Property damage" to property owned by an "insured". This includes costs or expenses incurred by an "insured" or others to repair, replace, enhance, restore or maintain such property to prevent injury to a person or damage to property of others, whether on or away from an "insured location";

- 3. "Property damage" to property rented to, occupied or used by or in the care of an "insured". This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

- 4. "Bodily injury" to any person eligible to receive any benefits voluntarily provided or required to be provided by an "insured" under any:

- a. Workers' compensation law;

b. Non-occupational disability law; or

c. Occupational disease law;

5. "Bodily injury" or "property damage" for which an "insured" under this policy:

a. is also an insured under a nuclear energy liability policy issued by the:

(1) Nuclear Energy Liability Insurance Association;

(2) Mutual Atomic Energy Liability Underwriters;

(3) Nuclear Insurance Association of Canada;

or any of their successors; or

b. Would be an insured under such a policy but for the exhaustion of its limit of liability; or

6. "Bodily injury" to you or an "insured" as defined under Definitions 5.a. or b.

This exclusion also applies to any claim made or suit brought against you or an "insured";

a. To repay; or

b. Share damages with;

another person who may be obligated to pay damages because of "bodily injury" to an "insured".

G. Coverage F - Medical Payments To Others

Coverage F does not apply to "bodily injury":

1. To a "residence employee" if the "bodily injury";

a. Occurs off the "insured location"; and

b. Does not arise out of or in the course of the "residence employee's" employment by an "insured";

2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:

a. Workers' compensation law;

b. Non-occupational disability law; or

c. Occupational disease law;

3. From any:

a. Nuclear reaction;

b. Nuclear radiation; or

c. Radioactive contamination;

-all-whether controlled or uncontrolled or however caused; or

d. Any consequence of any of these; or

4. To any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

A. Claim Expenses

We pay:

1. Expenses we incur and costs taxed against an "insured" in any suit we defend;

2. Premiums on bonds required in a suit we defend, but not for bond amounts more than the Coverage E limit of liability. We need not apply for or furnish any bond;

3. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$250 per day, for assisting us in the investigation or defense of a claim or suit; and

4. Interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.

B. First Aid Expenses

We will pay expenses for first aid to others incurred by an "insured" for "bodily injury" covered under this policy. We will not pay for first aid to an "insured".

C. Damage To Property Of Others

1. We will pay, at replacement cost, up to \$1,000 per "occurrence" for "property damage" to property of others caused by an "insured".

2. We will not pay for "property damage";

a. To the extent of any amount recoverable under Section I;

b. Caused intentionally by an "insured" who is 13 years of age or older;

c. To property owned by an "insured";

d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or

e. Arising out of:

(1) A "business" engaged in by an "insured";

(2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or

(3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

This exclusion e.(3) does not apply to a "motor vehicle" that

- (a) is designed for recreational use off public roads;
- (b) is not owned by an "insured"; and
- (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

D. Loss Assessment

1. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:
 - a. "Bodily injury" or "property damage" not excluded from coverage under Section II - Exclusions; or
 - b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - (1) is elected by the members of a corporation or association of property owners; and
 - (2) Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.
2. Paragraph 1. Policy Period under Section II - Conditions does not apply to this Loss Assessment Coverage.
3. Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:
 - a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or
 - b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.
4. We do not cover assessments charged against you or a corporation or association of property owners by any governmental body.

SECTION II - CONDITIONS

A. Limit Of Liability

Our total liability under Coverage E for all damages resulting from any one "occurrence" will not be more than the Coverage E limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".

Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage F limit of liability shown in the Declarations.

B. Severability Of Insurance

This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".

C. Duties After "Occurrence"

In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:

1. Give written notice to us or our agent as soon as is practical, which sets forth:
 - a. The identity of the policy and the "named insured" shown in the Declarations;
 - b. Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - c. Names and addresses of any claimants and witnesses;
2. Cooperate with us in the investigation, settlement or defense of any claim or suit;
3. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
4. At our request, help us:
 - a. To make settlement;
 - b. To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";

- c. With the conduct of suits and attend hearings and trials; and
- d. To secure and give evidence and obtain the attendance of witnesses;
- 5. With respect to C. Damage To Property Of Others under Section II - Additional Coverages, submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in an "insured's" control;
- 6. No "insured" shall, except at such "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury".
- D. Duties Of An Injured Person - Coverage F - Medical Payments To Others.
 - 1. The injured person or someone acting for the injured person will:
 - a. Give us written proof of claim, under oath if required, as soon as is practical; and
 - b. Authorize us to obtain copies of medical reports and records.
 - 2. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.
- E. Payment Of Claim - Coverage F - Medical Payments To Others

Payment under this coverage is not an admission of liability by an "insured" or us.
- F. Suit Against Us
 - 1. No action can be brought against us unless there has been full compliance with all of the terms under this Section II.
 - 2. No one will have the right to join us as a party to any action against an "insured".
 - 3. Also, no action with respect to Coverage E can be brought against us until the obligation of such "insured" has been determined by final judgment or agreement signed by us.
- G. Bankruptcy Of An "insured"

Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.
- H. Other Insurance

This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.
- I. Policy Period

This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

J. Concealment Or Fraud

We do not provide coverage to an "insured" who, whether before or after a loss, has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;
 - 2. Engaged in fraudulent conduct; or
 - 3. Made false statements;
- relating to this insurance.

SECTIONS I AND II - CONDITIONS

A. Liberalization Clause

If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.

This Liberalization Clause does not apply to changes implemented with a general program revision that includes both broadenings and restrictions in coverage, whether that general program revision is implemented through introduction of:

- 1. A subsequent edition of this policy; or
- 2. An amendatory endorsement.

B. Waiver Or Change Of Policy Provisions

A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.

C. Cancellation

- 1. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
- 2. We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing will be sufficient proof of notice.
 - a. When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
 - b. When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

c. When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:

(1) If there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or

(2) If the risk has changed substantially since the policy was issued.

This can be done by letting you know at least 30 days before the date cancellation takes effect.

d. When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know at least 30 days before the date cancellation takes effect.

3. When this policy is canceled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.

4. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

D. Nonrenewal

We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.

E. Assignment

Assignment of this policy will not be valid unless we give our written consent.

F. Subrogation

An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

Subrogation does not apply to Coverage F or Paragraph C. Damage To Property Of Others under Section II - Additional Coverages.

G. Death

If any person named in the Declarations or the spouse, if a resident of the same household, dies, the following apply:

1. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death; and

2. "insured" includes:

a. An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and

b. With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.



MUSC
MEDICAL UNIVERSITY
OF SOUTH CAROLINA

"TRIAGE"

Children's Hospital
Children's Emergency Services
Patient Care Record

Page 1 of 3

Form Origination Date: 1/05

Version: 1

Version Date: 1/06

DATE 4/20/05 TRIAGE TIME 2047

ARRIVAL MODE: ☒ Walk ☐ Carried ☐ WC/Stroller ☐ EMS

☐ RESUSCITATION ☐ EMERGENCY ☐ URGENT ☒ LESS URGENT ☐ NON URGENT

VITALS: BP 100/60 mmHg Pulse 88 BPM RR 14 O₂ Sat 98 % Temp 98 °C WEIGHT 58.1 Kg HEIGHT cm

PAIN: SCORE Location Character Provoked by

CHIEF COMPLAINT: riding bike and a pit bull bit him

ASSESSMENT: gump dressing to Galt noted

PMH
PRIMARY MD Sea Island Clinic Johns

MEDICATIONS ☐ NONE
Immunizations LTD ☒ Y ☐ N
Isid ? pills for sinus infections

LMP NPO since
ALLERGIES ☒ NKDA

PULMONARY	CARDIO/CIRCULATION	NEURO
☐ Y ☒ N SOB ☐ Cough	Capillary Refill ☐ < 2 sec ☐ > 2 sec	☒ Alert
☐ R ☐ L Clear ☐ Retracting	Skin Temp ☐ Normal ☐ Warm ☐ Cool ☐ Hot	☐ Responds to Verbal
☐ R ☐ L Coarse ☐ Flaring	Skin Color ☒ Normal ☐ Pale ☐ Cyanotic ☐ Jaundiced	☐ Responds to Pain
☐ R ☐ L Wheezes ☐ Grunting		☐ Unresponsive
☐ R ☐ L Diminished ☐ Stridor		☐ Hx loss of consciousness
☐ Y ☐ N Upper Airway Congestion		☐ Y ☐ N At baseline

G	GI	INFANT	Activity Level	Hydration
☒ Denies	☒ Denies	☒ N/A		
Abdomen	☐ Dysuria	Crying Quality	☐ Playful/smiling	Mucous Membranes
☐ Nausea ☐ Vomiting x <u> </u>	☐ Hematuria	☐ Normal	☐ Appropriate	☐ Moist ☐ Dry
☐ Soft ☐ Tender	☐ Clapper Rash	☐ Whimpering / Weak Cry	☐ Quiet/sleeping	Tears ☐ Y ☐ N
☐ Distended ☐ Rigid	☐ Discharge	☐ Moaning	☐ Fussy	Fontanelles ☐ Flat
Bowel Function	# Wet Diapers	☐ High-pitched cry		☐ Sunken
☐ Normal	☐ Normal	☐ Y ☐ N Consolable		☐ Bulging
☐ Diarrhea x <u> </u>	☐ Decreased			
☐ Constipation	☐ Increased			
Last Bowel Movement <u> </u>				

TRIAGE SIGNATURE

AMC Galt

pedsednursing

LP 600002 2/05



MUSC
MEDICAL UNIVERSITY
OF SOUTH CAROLINA

M 740203
MILLIGAN TRAVIS
12/03/1991 B/H
P842379463

4/20/05
A

PEDIATRIC
EMERGENCY MEDICINE ENCOUNTER

Time Seen: 9:40 AM/PM	Historian: Patient - Mom	
Chief Complaint: Dog Bite		
History of the present illness: 13yo Bm was riding bike & pit bull bit him about 1-2 hours ago. Dog belongs to neighbor; neighbor reports that dog is UTD w/ all Vaccinations. Treated typically & alcohol		
Past medical history: (illness, operations, injuries, treatments, birth history) Seasonal allergies		
Family medical history: None noted		
Current medications: Unknown allergy Rx		
Allergies: NKDA		
Social history: Does family/Patient have: ☒ Ability to carry out needed care ☒ Safe/Reasonable environment ☒ Ability to obtain medication Other:		
Primary Care Provider: Sea Island Clinic		
Immunization Status ☒ Up to Date ☐ Unknown		
Source of Information: ☒ Patient History ☐ Patient Immunization Card		
Review of Systems ☒ = Normal ☐ = Abnormal Blank = Not examined or reviewed		
Constitutional ☒	GI ☐	Allergic/Immunologic ☐
Eyes ☐	GU ☐	Hematologic/Lymphatic ☐
Ears, nose, mouth, throat ☐	Musculoskeletal ☐	Endocrine ☐
Cardiovascular ☒	Skin ☐ dog bite, ☒ allergy	Psychiatric ☐
Respiratory ☒	Neurological ☐	
ROS Abnormal Findings:		

OTC 804480 1 of 2 Rev. 1/03

Patient: MILLIGAN, TRAVIS A

MRN: 740203

Encounter: 842379463

Page 1 of 2

MUSC41 OF 71



Animal Incident / Rabies Investigation Report
Bureau of Environmental Health

Date: 4/20/05 Time: 2:05 AM/PM County: Charleston Request/File No.: _____
Received From: _____ Phone: _____
Received By: _____ Investigating Sanitarian(s): _____
Victim Information:
Victim: Travis Milligan Date of Incident: 4/20/05
Age: 13 Weight: _____ Sex: M Phone (Home): 7168-1568 (Work): 792-0996
Parent/Guardian (if Minor): Jana Wright U.M.A.
Address (If Not a Street Address, Give Directions): 3273 Habert Bldg
Johns Island S.C. 29455
Physician: Dr. Jennifer Braden Office Phone: 792-1269 - must be pediatric
Describe Circumstances, Severity and Location of Wound: (Provoked) ☐ (Unprovoked) ☒ Child riding
bike past dog; dog bit ☒ hind calf

Animal Information
Type: Pitbull ☒ Pet ☐ Stray ☐ Wild ☐ Breed: Pitbull Color: Brown Sex: _____ Size: _____
Owner: Tina Brown Phone (Home): _____ (Work): _____
Address (If Not a Street Address, Give Directions): across the street (directly)
bridge and burgundy shutters
Location and Condition of Animal at Time of Incident: yard - Road
Current Location of Animal: owner Tina Brown

Action Taken
Animal Quarantined: ☐ No ☐ Yes Date Notice of Quarantine Issued: _____ Copy Attached: ☐
Victim Notified: ☐ No ☐ Yes Date: _____ How? _____
Dates Visited: _____ Date Released: _____ Victim Notified: ☐ No ☐ Yes How? _____
Current Vaccination: ☐ No ☐ Yes Official Notice Issued: ☐ No ☐ Yes
Date: _____ Tag No: _____ Vet: _____ Type: ☐ 1 year ☐ 3 year
Date Head Sent to Lab: _____ Sender: _____ Lab Results: _____ Attached: ☐ Submittal ☐ Results ☐
Date Victim Notified: _____ How? _____ Date Owner Notified: _____ How? _____ PEP Given: ☐
Supervisor Reviews: _____ Report Completed: _____
(Dates and Initials) (Date and Initials)
Other Comments: _____

RECORD ADDITIONAL INFORMATION ON THE BACK

DHEC 1784 (06/2000)

FAX 202-7050

phone 202-7020

OFFICE NOTE

June 20, 2005

MILLIGAN, TRAVIS

Travis Milligan is a very pleasant thirteen years old boy who sustained severe injuries when he was attacked by a pit bull dog on May 20, 2005. The patient was riding his bicycle and the dog attacked the patient's left lower leg. The canine incisors penetrated and became impaled into the patient's left lower leg avulsing full thickness tissue at the lateral margin of the injury in addition to producing several long wide linear lacerations. His injuries required emergency transfer to the trauma center. Since a large segment of skin was actually torn from his lower leg, no suturing could be performed. The wounds were allowed to heal by marginal epithelialization. The wide, open area was not skin grafted possibly because of the danger of the infection. Since the wounds are allowed to heal by marginal epithelialization, the resultant scarring is extremely wide. The large area of skin avulsion has now left an open wound which has been gradually epithelializing. There is still a central deep crater of full thickness tissue loss. Eventually, reconstructive surgery will be required to help remove a major portion of this unstable scar. If reconstructive surgery is not performed, this area of scarring will be doomed to recurrent breakdown from even slight blunt excoriation. It is extremely unstable. The skin is not durable. It may be possible to stage resect this area. The patient, however, may require thicker more durable tissues such as thick split thickness or full thickness skin grafting to replace this unstable scar. Although some improvement in function can be expected, the scarring should be considered permanent and it will always be unsightly with pigmentation differential. The dependent leg swelling will persist for quite some time. Muscle fasciculations from the crush component of the injury may also persist. The open wound is dressed with antibiotic ointment and a sterile covering. A return appointment is given to him.



Peter C. de Vito, M.D., F.A.C.S.

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO.: 2007-CP-10-3224

JANA WRIGHT, as Guardian ad Litem)
Litem for TRAVIS MILLIGAN, a minor)
over the age of 14 years,)

Plaintiff,)

v.)

TEMA BROWN,)

Defendant/Third-Party Plaintiff,)

v.)

GeoVera Specialty Insurance Co.)

Third-Party Defendant.)

STATE OF FLORIDA)

COUNTY OF ORANGE)

AFFIDAVIT OF
BRENDA TRAWICK-SMITH

COMES NOW BEFORE ME, Brenda Trawick-Smith, who, being first duly sworn,
deposes and says that:

1. I am over the age of twenty-one years;
2. I am currently employed as Senior Technical Specialist for The Travelers Indemnity Company (hereinafter "Travelers") in Orlando, Florida.
3. I have been employed by Travelers for approximately thirty-nine (39) years.
4. Constitution State Services was at all times pertinent hereto, and continues to be, the third-party administrator arm of Travelers.

5. In my capacity as Senior Technical Specialist for Travelers, I am one of the persons with responsibility for and familiarity with Constitution State Services' records concerning the aforementioned claim, including those attached as exhibits hereto.

6. At all times pertinent to the facts set forth in this affidavit, USF&G Specialty Insurance Company was under the umbrella of Travelers insurance companies.

7. In my capacity as Senior Technical Specialist for Travelers, I was assigned and handled a claim of a USF&G Specialty Insurance Company insured named Tema Brown, which claim had been asserted on behalf of Travis Milligan, a minor, as a result of a dog bite alleged to have occurred on April 20, 2005.

8. In connection with my handling of the aforementioned claim and in the ordinary course of business at Travelers, I wrote a letter on September 28, 2006 to Tema Brown at the address shown on her policy (Exhibit A).

9. The document attached hereto as Exhibit A is a true and correct copy of the aforementioned letter, two copies of which I put in the outgoing mail at Travelers in accordance with its normal and usual business practices and procedures concerning such matters, with one copy of said letter being mailed by certified mail, return receipt requested, and the other being mailed by regular U.S. mail.

10. In the event that the aforementioned letter (Exhibit A) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters; but neither the letter nor the envelopes were returned to me or to my file as undeliverable.

11. On January 7, 2008, I mailed another letter, a true and correct copy of which is attached hereto as Exhibit B, by regular U.S. mail to Tema Brown at the address shown on her policy. Enclosed with my letter of January 7, 2008 (Exhibit B) was a copy of my letter of September 28, 2006 (Exhibit A).

12. In the event that the aforementioned letter (Exhibit B) had been returned as undeliverable, it would have been directed to my file for the claim in question in accordance with Travelers' normal and usual business practices and procedures concerning such matters, but neither the letter nor the envelope was returned to me or to my file as undeliverable.

13. At all times pertinent to the matters contained in this affidavit, it was the regular practice of Travelers and Constitution State Services to prepare and generate records such as and including those attached hereto as Exhibits A and B, and said documents were prepared at or near the times of the transactions and matters described and depicted therein, and they are kept in the normal course of business at Travelers.

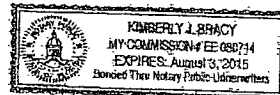
Brenda Trawick-Smith
Brenda Trawick-Smith

SWORN to and subscribed before me,

this 16th day of MAY, 2014.

Kimberly J. Bracy
Notary Public for the State of Florida

My Commission Expires: 8-3-15



Continental State Services

Commercial Lines Claims Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

September 28, 2005

Tema Brown
3368 Habitat Blvd
Johns Island, SC 29455

CERTIFIED RETURN RECEIPT REQUESTED

Account: Tema Brown
Claim Number: GCGUS040209
Date of Loss: 4-20-05
Claimant: Travis Milligan, a minor

Dear Ms. Brown:

This letter is a follow up to the letter of July 28, 2005 advising you of the possibility that there may not be any liability coverage under the homeowner's policy issued by USF&G Specialty Insurance Company under the policy number of GH20051153 for the incident involving Travis Milligan.

The incident that gives rise to this claim took place on 4-20-05. You advised that your dog, Jinx, was an American Pit Bull Terrier. Travis Milligan sustained injuries when he was bitten by Jinx.

The policy issued to you has a specific exclusion for "Vicious Dogs". Under the terms of the policy, an American Pit Bull Terrier is considered a vicious dog. Therefore, based on your representation that Jinx is an American Pit Bull Terrier, we will not provide liability coverage for any events of 4-20-05.

If you have any questions or comments, please feel free to contact me at the number shown above.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573

CC: Cliff Health Insurance Inc.





Commercial Lines Claim Department
P.O. Box 4960
Orlando, FL 32802-4960
(407) 388-2573
FAX: (877) 266-1419

January 7, 2008

Mrs. Tema Brown
3368 Habitat Blvd.
Johns Island, SC 29455

Account: Tema Brown
Claim Number: GOGU09040299
Date of Loss: 04/26/2005
Claimant: Travis Milligan

Dear Ms. Brown:

This letter will serve as a follow up to our telephone conversation.

I have enclosed correspondence that was previously sent to you explaining why coverage was not afforded under the policy issued to you by CSR&S under policy number GR26051152.

Sincerely,

Brenda Trawick-Smith
Sr. Technical Specialist
407-388-2573



ANSWER: Third-Party Plaintiff is not in possession of any documents evidencing an investigation of any state or local agency or law enforcement agency and does not believe these documents exist.

7. Any and all documents evidencing assignments by, from, or to any of the parties in this action of or concerning any claims, causes of action, or other rights or matters relating to this action or the facts and circumstances out of which it arose.

ANSWER: The assignment dated November 4, 2010 is enclosed.

8. Any and all releases, covenants, settlement agreements or other agreements or contracts between or among any of the parties to this action, excluding the insurance contract attached as Exhibit C to the amended third-party complaint, relating to the within action and the facts and circumstances out of which it arises, or any of them.

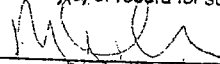
ANSWER: The assignment dated November 4, 2010 is enclosed.

9. Any and all documents concerning the dog at issue in this case, including, but not limited to, vaccination records, pet licenses, registration records, pedigree information, and veterinarian records and reports.

ANSWER: As this third-party complaint is filed pursuant to the assignment dated November 4, 2010, Plaintiff is not in possession of documents responsive to this request.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).



On this 4 day of April, 2014 at
_____, South Carolina
On this 4 day of April, 2014
Charleston, South Carolina

ANDREW K. EPTING, JR., LLC



Andrew K. Epting Jr., Esq.
Michelle N. Endemann, Esq.
46A State Street, Charleston, SC 29401
P: 843.377.1871
F: 843.377.1310

ANSWER: Ms. Brown has a judgment against her in the amount of \$100,229.00, attorneys' fees, and interest at the legal rate.

8. List the names and addresses of all expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case, and provide a summary of the opinions which the expert is expected to give and a statement of the facts relied upon by the expert in reaching each opinion.

ANSWER: Third-Party Plaintiff has not yet retained an expert in this case.

9. Set forth the nature of any and all assignments by, from, or to any of the parties in this action of or concerning any claims, causes of action, or other rights or matters relating to this action or the facts and circumstances out of which it arose.

ANSWER: On November 4, 2010, Tema Brown and Jana Wright as Guardian ad Litem for the minor child Travis Milligan entered into an agreement whereby Ms. Brown assigned her claims against her insurer for the insurer's failure to defend and indemnify Ms. Brown for the judgment against her in the amount of \$100,229.00 and her insurer's bad faith. Ms. Brown further agreed to waiver her right to the proceeds, if any, recovered by Ms. Wright and allow this action to proceed in her name.

10. Set forth any and all releases, covenants, settlement agreements or other agreements or contracts between or among any of the parties to this action, excluding the insurance contract attached as Exhibit C to the Amended Third-Party Complaint, relating to the within action and the facts and circumstances out of which it arises, or any of them.

ANSWER: See Response to Paragraph 9 above.

11. List names and addresses of all persons who have owned and/or cared for the dog at issue in this case, including the current owner, and the time periods for which the dog was under each individual owner's care.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Mikell R. Scarborough
Charleston County Master-In-Equity

Case No.: 2007-CP-10-3224
Appellate Case No.: 2015-001383

RECEIVED
JUL 01 2016
SC Court of Appeals

Jana Wright, as Guardian ad Litem for Travis M., a
minor over the age of 14 years. Plaintiff,

v.

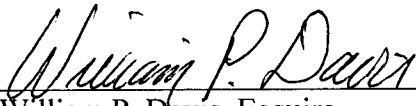
Tema Brown. Respondent,

v.

GeoVera Specialty Insurance Co. Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.


William P. Davis, Esquire
Baker, Ravenel & Bender, L.L.P.
Post Office Box 8057
Columbia, South Carolina 29202
Phone: (803) 799-9091; Fax: (803) 779-3423
E-Mail: wdavis@brblegal.com
Attorney for Appellant

June 29, 2016