

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

James R. Barber III, Circuit Court Judge
Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP-23-03422

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SC Court of Appeals

Three Blind Mice, LLC
d/b/a The Blind Horse Saloon Respondent

v.

Colony Insurance Company Appellant

RECORD ON APPEAL

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FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE PAUL B. WICKENSIMMER
2015 NOV 24 PM 4:26 CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

ORDER

This matter comes before the Court on cross motions for summary judgment. At issue is whether a comprehensive general liability policy issued by Colony Insurance Company (Colony) to Three Blind Mice, LLC doing business as The Blind Horse Saloon (Three Blind Mice) provides coverage for an incident involving Katherine Frost on the premises of The Blind Horse Saloon. It is the determination of this Court that coverage was available under that policy and that Colony not only breached its contract of insurance in denying coverage but acted in bad faith in doing so.

GENERAL PRINCIPLES OF CONSTRUCTION

When called upon to determine whether coverage is afforded under a policy, a Court is required to compare the allegations of the underlying Complaint with the policy language. Shelby Mut. Ins. Co. v. Askins, 307 S.C. 81, 41 S.E.2d 855 (Ct. Apps. 1992). If the alleged facts of the underlying Complaint fall within the coverage provisions of the policy, the insurer must not only indemnify for any settlement of a loss, but under most liability policies must provide a defense to the insured.

Most insurance policies begin with a broad proposition of coverage and then narrow that broad statement of coverage through specific exclusions. While these exclusions are to be interpreted according to their plain, ordinary and popular meanings, they are to be narrowly construed in favor of coverage. Horry County v. Insurance Reserve Fund, 344 S.C. 493, 544 S.E.2d 637 (Ct. Apps. 2001), Diamond State Ins. Co. v. Homestead Industries, Inc., 318 S.C. 231, 456 S.E.2d 912 (1995). If the intention of the parties is clear, then a court may not torture the meaning of the policy language to extend or defeat coverage. Torrington Co. v. Aetna Casualty and Sur. Co., 264 S.C. 636, 216 S.E.2d 547 (1975). On the other hand, where the language of a policy is ambiguous, a court is to construe the policy in favor of coverage for the insured. BLG Enterprises, Inc. v. First Financial Ins. Co., 328 S.C. 374, 491 S.E.2d 695 (Ct. Apps. 1997).

With these general rules of construction in mind, a consideration of the specific underlying facts and the provisions of the Colony policy will be undertaken.

UNDERLYING FACTS

According to the Complaint, Katherine Frost and her husband Bobby Frost, were attending a Halloween party on October 29, 2011 at The Blind Horse Saloon. Katherine Frost was engaged in conversation with several friends who were standing near a boxing machine. She was inadvertently struck by an unknown individual who had attempted to strike the punching bag of the boxing machine, missed and instead hit Katherine Frost in the lower back. As a result, Katherine Frost sustained serious bodily injuries, requiring hospitalization. In their Complaint, Katherine Frost and Bobby Frost alleged that Three Blind Mice was negligent in maintaining an unreasonably dangerous product on its premises, failing to guard against

permitting invitees into the zone of danger surrounding the boxing machine, and in failing to warn of the danger associated with the use of the boxing machine.

COLONY POLICY PROVISIONS

Pursuant to the terms of the policy issued by Colony to Three Blind Mice, Colony agreed to

pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. [Colony] will have the right and duty to defend the insured against any "suit" seeking those damages. However, [Colony] will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply.

The policy goes on to provide that

[t]his insurance applies to "bodily injury" or "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory".

The term "occurrence" is defined to mean

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

The policy also provides that coverage does not apply to certain matters set forth as exclusions.

Colony contends that coverage is precluded by the following exclusion:

Assault, Battery or Assault and Battery

This insurance does not apply to damages or expenses due to "bodily injury" or "property damage" or "personal and advertising injury" arising out of or resulting from:

- (1) "Assault", "Battery" or "Assault and Battery" committed by any person;
- (2) The failure to suppress or prevent "Assault", "Battery" or "Assault and Battery";
- (3) The failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- (4) The failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- (5) "Assault", "Battery" or "Assault and Battery" arising out of the negligent hiring, supervision, or training of any person;
- (6) The use of force to protect persons or property whether or not the "bodily injury" or "property damage" or "personal and advertising injury" was intended from the standpoint of the insured or committed by or at the direction of the insured.

The policy goes on to define the terms "assault", "battery" and "assault and battery" as follows:

"Assault" means:

- a. an act creating an apprehension in another of immediate harmful or offensive contact, or

b. an attempt to commit a "Battery".

"Battery" means an act which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

Colony also relies upon the following exclusion:

ATHLETIC OR SPORT PARTICIPANTS EXCLUSION

This insurance does not apply to "bodily injury" to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.

APPLICATION OF EXCLUSION FOR BATTERY

Colony argues that its exclusion of coverage for bodily injury caused by a battery is unambiguous, clear and explicit and acts to preclude coverage for the claims asserted by Katherine and Bobby Frost. In making this assertion, Colony argues that the definition of a battery applies to both "intentional" and "unintentional" acts. The definition of battery, as set forth in the Colony policy, does not, however, specifically provide that it applies to both "intentional" and "unintentional" acts. In fact, the word "act", as used in the exclusion is left undefined. Where a policy does not specifically define a term, the term is to be defined according to the usual understanding of the term's significance to an ordinary person. State Farm Fire and Cas. Co. v. Barrett, 340 S.C. 1, 530 S.E.2d 132 (Ct. App. 2000) (the term "accident" which was used in the definition of an "occurrence" was defined according to its usual meaning, based upon outside sources). Whether the term "act", as used in the definition of "battery", includes both "intentional" and "unintentional" acts depends upon how the term

“battery” is used in the ordinary sense. Most authorities view a “battery” as an intentional act. See, e.g., Longshore v. Saber Security Services, Inc., 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005); Hendricks v. Southern Bell Tel. & Tel. Co., 193 Ga. App. 264, 387 S.E.2d 593 (1989); Brett v. Hayes, 142 N.C. App. 190, 541 S.E.2d 761 (2001); Restatement (2d) Torts §18; W. Prosser, Law of Torts §9 (4th ed. 1971).

Colony nonetheless argues that it is inappropriate to utilize common law definitions where a contractual definition has been utilized. See Yarborough v. Phoenix Mut. Life Ins. Co., 266 S.C. 584, 225 S.E.2d 344 (1976). Colony is correct in that a court should read a policy as a whole, considering the context and subject matter of the policy in an effort to discern the parties’ intention before declaring a term to be ambiguous. Id. This does not, however, avail Colony. If the policy issued by Colony is considered as a whole, it is clear that coverage should nonetheless have been extended to Three Blind Mice. Three Blind Mice purchased a policy which was to provide coverage to it for bodily injury caused by an “occurrence”, which would include an accident or unintentional act. (Pursuant to her Complaint, Katherine Frost sustained bodily injury at the Blind Horse Saloon and alleged that it was caused by an inadvertent act.) This broad proposition of coverage is then limited by listed exclusions. One exclusion utilized by Colony is for intentionally caused injuries or damages. This exclusion fits with the general coverage for unintentional acts. However, it is limited to the standpoint of the insured. The “assault and battery” exclusion relied upon by Colony expands on the exclusion for intentional acts since it is not limited to being from the standpoint of the insured. When construed to apply only to intentional acts, the “assault and battery” exclusion also fits within the general framework with coverage for unintentional acts but not for intentional acts.

The definition proposed by Colony, however, not only expands the exclusion for "assault and battery" beyond the standpoint of the insured, it also precludes coverage for "unintentional" acts. Since coverage for "unintentional" acts is the essence of what was to be covered by the policy, Colony's interpretation expanding its exclusion to "unintentional" acts would create a contradiction. This contradiction must be resolved in favor of coverage and therefore the "assault and battery" exclusion must be limited to intentional acts.

In fact, if Colony's expansive definition were to be utilized it would have the effect of excluding coverage for virtually every type of tort which might cause injury. Pursuant to its argument, any accidental injury, including one caused by a customer tripping over the leg of a chair, would not be covered. Where an insurance policy contains an internal inconsistency created by an exclusion which purports to ban coverage for claims arising out of the very operation sought to be insured, the policy is rendered ambiguous, requiring that it be construed in favor of coverage. BLG Enterprises, Inc. v. First Financial Inc. Co., 328 S.C. 374, 491 S.E.2d 695 (Ct. App. 1997).

Instead of complying with the general rule that a court is to consider the entire contract between the parties to determine the meaning of that contract's provisions, Colony has focused solely upon the language set forth in the definition of "battery". Yet the meaning of a particular word or phrase is not to be determined by considering the word by itself. Yarborough v. Phoenix Mut. Life Ins. Co., supra; 13 Appleman Insurance Law and Practice §7383 (1976). Instead the meaning of a particular word or phrase is to be determined by reading the policy as a whole and considering the context and subject matter of that insurance policy. Nor is a court to rewrite a contract by inserting words or phrases to make complete a particular idea that is otherwise lacking. Colony's approach would have this Court insert the phrase "intentional or

unintentional". If Colony had wished to include such a phrase, it could have done so as it apparently has done with other policies issued by it. See Brooklyn Bridge, Inc. v. South Carolina Ins. Co., 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992). The failure to include this additional language in the policy itself creates an ambiguity, which must be construed in favor of Three Blind Mice.

Because the "assault and battery" exclusion, if construed as argued by Colony, tends to create an ambiguity, and because the exclusion itself is to be narrowly construed, it is the determination of this Court that the exclusion does not act to preclude coverage for Three Blind Mice.

APPLICATION FOR EXCLUSION FOR
ATHLETIC OR SPORTS PARTICIPANTS

Colony also seeks to preclude coverage under the exclusion for athletic participants. It argues that any person who is injured as a result of a sport or athletic event cannot recover under the policy issued to Three Blind Mice, even if the injured person did not actually participate in the event leading to their injury. However, the policy clearly provides that the exclusion is applicable to sports participants. Colony's approach would once again require the insertion of words or phrase which would expand the exclusion to not only sports participants but also bystanders who are inadvertently injured as a result of the athletic activity. Since this Court is precluded from rewriting the policy for Colony, the exclusion is at best ambiguous. Since exclusions are to be narrowly construed in favor of cover and since all ambiguities are likewise construed in favor of coverage, Colony's position simply cannot be adopted. Instead, the exclusion is clearly inapplicable on its face.

ASSESSMENT OF LIABILITY

Three Blind Mice instituted the present litigation against Colony, asserting actions for breach of contract and bad faith denial of coverage.

As noted previously, it is the determination of this Court that Colony's denial of coverage based upon the application of exclusions for Assault and Battery and Damages Arising Out of Participation in an Athletic Event was inappropriate. Because the policy issued by Colony to Three Blind Mice required Colony to provide a defense in case of litigation and indemnification in case of settlement of judgment and because Colony failed to provide either a defense or indemnification, it has clearly breached its contract with Three Blind Mice.

The action for bad faith is based in tort. When an insured enters into an insurance contract, he does not do so seeking profit, but instead seeks security and peace of mind against a calamity. Because this bargained-for peace of mind and security are the principle benefits for the insured, courts have imposed special obligations upon an insurer in the investigation and resolution of claims and litigation. A.D. Windt, Insurance Claims and Disputes §9.26 (5th ed). These special obligations include the good faith processing of claims with due regard for the insured who has imposed a confidence in the insurer, thereby creating a quasi-fiduciary relationship. See Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). This gives rise to an implied covenant of good faith and fair dealing existent in every policy of insurance. See Peterson v. West American Ins. Co., 336 S.C. 89, 518 S.E.2d 608 (Ct. App. 1999). A cause of action for the bad faith refusal to pay benefits under a policy of insurance exists upon proof of

- 1) a mutually binding contract of insurance;
- 2) a refusal by the insurer to pay benefits due under the contract;

- 3) a refusal to pay based upon the insurer's bad faith or unreasonable action in breach of the implied covenant of good faith;
- 4) damages to the insured.

Hansen ex rel. Hansen v. United Services Automobile Association, 350 S.C. 62, 565 S.E.2d 114 (Ct. App. 2002). Based upon the undisputed facts submitted to this Court, it is clear that there was a mutually binding contract of insurance, that Colony refused to make payment on the claim submitted by Three Blind Mice and that Three Blind Mice was damaged when it was required to retain its attorneys at its expense and to pay its portion of the settlement of the underlying action.

Colony asserts that it should not be held in bad faith for its refusal to pay since its actions were not unreasonable. Generally, an insurer acts in bad faith when there is no reasonable basis to support its decision. BMW of North America, LLC v. Complete Auto Recon Services, Inc., 399 S.C. 444, 731 S.E.2d 902 (Ct. App. 2012). In this case, Colony was presented with a Complaint which asserted that the personal injury was the result of an inadvertent act. This assertion clearly fell within coverage for an occurrence which caused bodily injury, unless there was an applicable exclusion. Colony attempted to assert that its assault and battery exclusion precluded coverage for inadvertent acts which caused injury even though the exclusion did not specifically state that it was applicable to inadvertent acts and even though exclusions are to be narrowly construed in favor of coverage. Under the circumstance, there was no reasonable basis for application of this exclusion.

Colony also attempted to rely upon its exclusion for damages arising out of an athletic event. Again, there is no reasonable basis for application of this exclusion since it clearly applies only to athletic or sports participants who are injured. Katherine Frost was neither participating in the game which was the source of her injury nor observing those who were using it. Colony's

best argument only raises an ambiguity with regard to this exclusion, which would require this Court to construe the ambiguity in favor of coverage.

In light of the fact that Colony had no reasonable basis for asserting the exclusions it relied upon to deny coverage, it is clear that it has violated the covenant of good faith and fair dealing and is subject to damages for bad faith.

DAMAGES

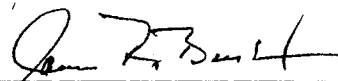
Under its policy with Three Blind Mice, Colony was required to not only indemnify its insured for losses incurred in payment of a judgment or settlement, but also to pay defense costs and fees associated with any litigation. In this instance, because Colony wrongfully refused to provide coverage, Three Blind Mice was forced to retain an attorney and to pay its portion of the settlement reached in the underlying matter. Moreover, Colony forced Three Blind Mice to undertake the present action in order to enforce its rights under the Colony policy, causing Three Blind Mice to incur further attorney fees and costs.

In the case of a breach of contract, a plaintiff is entitled to recover the equivalent of the performance of the contract. The plaintiff would be entitled to recover all damages as may reasonably be supposed to have been in the contemplation of the parties at the time the contract was made. Hutson v. Continental Assurance Co., 269 S.C. 322, 237 S.E.2d 375 (1977). Clearly the attorney fees incurred in the defense of the underlying action and the settlement payment made to resolve that action are recoverable. Each of these items of damage are subject to interest at the legal rate of interest set forth in section 34-31-20, S.C. Code (1976, as amended).

Normally, attorney fees are not recoverable in the absence of a contract or statute. While the attorney fees incurred in defense of the underlying action are the subject of a contractual duty, the attorney fees incurred in pursuit of declaratory actions are controlled by case law. In

the case of insurance disputes, South Carolina has recognized that in fairness to an insured who has been wrongfully denied coverage by an insurer, attorney fees are recoverable as an element of damages. See Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978). As a result, where an insurer, by virtue of a declination of coverage or defense under a reservation of rights, unreasonably forces an insured to defend himself in the underlying liability action or a declaratory action, or to institute a declaratory action to enforce his rights under a policy, there is a right to recover attorney fees. Id.; Gordon Gallup Realtors, Inc. v. The Cincinnati Ins. Co., 274 S.C. 468, 265 S.E.2d 38 (1980). Three Blind Mice is therefore entitled to recover attorney fees and costs incurred in conjunction with this litigation. However, these fees and costs shall not be subject to the assessment of interest inasmuch as payment was not demandable at the time the claims which are the subject of this litigation arose. Babb v. Rothrock, 310 S.C. 350, 426 S.E.2d 789 (1993).

It is therefore the decision of this Court that the motion for summary judgment on the part of Three Blind Mice shall be granted and the motion for summary judgment submitted by Colony denied. Counsel for Three Blind Mice shall submit to the Court affidavits setting forth the attorney fees and litigation costs incurred on behalf of Three Blind Mice. Counsel for Colony shall have the right to review the submitted attorney fees and costs and to register any objections to any fee or charge they feel are unreasonable or unwarranted. If the parties cannot agree as to the amount of attorney fees and costs, the plaintiff will move before the Court for a hearing for approval of such fees and costs. Once attorney fees and costs are established, the Court will also determine what amount, if any, of interest chargeable on those fees and costs incurred with regard to the defense and resolution of the underlying action by Katherine and Bobby Frost. It shall thereafter render a final judgment.



Judge James B. Barber III
Thirteenth Judicial Circuit

NOVEMBER 18, 2015
Columbia, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No. 2014-CP-23-3422
	)	
THREE BLIND MICE, LLC, d/b/a	)	
THE BLIND HORSE SALOON,	)	
	)	
Plaintiff,	)	
	)	
V.	)	ORDER
	)	
COLONY INSURANCE COMPANY,	)	
	)	
Defendant	)	
	)	

This is an action for breach of contract and bad faith denial of insurance coverage. The parties submitted to the Court cross-motions for summary judgment. The Court, in an interlocutory order dated November 18, 2015 and filed on November 25, 2015, granted summary judgment to Three Blind Mice, LLC, on both the breach of contract and bad faith causes of action. Thereafter, the attorneys for Three Blind Mice, LLC, submitted to the attorneys representing Colony Insurance Company documentation regarding the fees, costs and expenses incurred, settlement amount paid, and interest to be applied, all of which totaled \$110,897.07.

The Court now enters judgment in favor of Three Blind Mice, LLC, in the amount of \$110,897.07 against Colony Insurance Company. The Court finds that the amount of this award is reasonable.

Colony Insurance Company shall have the right to file an appeal regarding the Court's determination of liability as to both the breach of contract and bad faith causes of action within thirty (30) days after receipt of written notice of entry of the final Judgment entered by the Court in this action, in accordance with the South Carolina Rules of Appellate Procedure.

Judge, Thirteenth Judicial Circuit

Date:

Greenville, South Carolina



Greenville Common Pleas

Case Caption: Three Blind Mice LLC , plaintiff, et al vs. Colony Insurance Company , defendant, et al
Case Number: 2014CP2303422
Type: Order/Judgment

So Ordered

s/Letitia H. Verdin, SC Judge 2162

STATE OF SOUTH CAROLINA,
COUNTY OF GREENVILLE

FILED - CLERK OF THE COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

Three Blind Mice, LLC, d/b/a The Blind
Horse Saloon,

Plaintiff,)

SUMMONS

2014 JUN 19 PM 3 07

vs.)

FILE NO. 2014-CP-23-03422

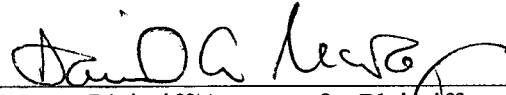
Colony Insurance Company,)

Defendant.)

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Greenville, South Carolina


Plaintiff/Attorney for Plaintiff

Dated: June 19, 2014

Address: David L. Moore, Jr. (S.C. Bar No. 4050)
Nexsen Pruet, LLC
P.O. Drawer 10648
Greenville, SC 29603
(864) 370-2211

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO. 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

**COMPLAINT
(Jury Trial)**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUN 19 PM 3 07

Three Blind Mice, LLC d/b/a The Blind Horse Saloon, complaining of Colony Insurance Company, would show unto the Court and jury as follows:

PARTIES

1. Three Blind Mice, LLC is a limited liability company organized and doing business in Greenville County, South Carolina, as The Blind Horse Saloon.

2. Colony Insurance Company is, on information and belief, a corporation organized and existing under the laws of a state other than South Carolina. It is actively involved in conducting business as an insurance company, including the writing and issuance of insurance policies throughout South Carolina, including Greenville County.

FACTUAL BACKGROUND

3. In order to protect itself from liability associated with the operation of The Blind Horse Saloon, as well as associated defense litigation costs, Three Blind Mice, LLC sought insurance coverage through Colony Insurance Company. Colony Insurance Company issued a comprehensive general liability policy to Three Blind Mice, LLC designated as Policy No.

GL3812749. For purposes of this litigation, this insurance policy was issued for a term lasting from December 14, 2010, to December 14, 2011.

4. On May 15, 2012, Katherine and Bobby Frost filed suit with the Greenville County Clerk of Court against Three Blind Mice, LLC d/b/a The Blind Horse Saloon, as well as other defendants, for injuries sustained directly by Katherine Frost and vicariously by Bobby Frost on October 29, 2011, as a result of Katherine Frost being inadvertently struck by another patron of The Blind Horse Saloon while that patron was utilizing an amusement boxing machine. The Blind Horse Saloon was accused of negligence in maintaining a product which was unreasonably dangerous on its premises in failing to place guards to preclude patrons from a zone of danger around the boxing machine and in failing to warn its patrons of the danger associated with the boxing machine, among other theories of liability.

5. Three Blind Mice, LLC tendered the defense of that legal action instituted by Katherine and Bobby Frost to Colony Insurance Company on July 12, 2012, having previously placed the insurer on notice of the potential claim on December 5, 2011.

6. Colony Insurance Company declined to provide a defense to Three Blind Mice, LLC on August 1, 2012, and specifically declined coverage at that time on the following bases:

- (a) Damages arising out or arising from a "battery" or "assault and battery" are excluded;
- (b) Coverage is excluded for bodily injury to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport; and

- (c) Coverage is limited to bodily injury caused by an offense arising out of or in the course of business described in the policy, namely that of a nightclub or bar.

7. After Colony Insurance declined to provide coverage or a defense to Three Blind Mice, LLC d/b/a The Blind Horse Saloon, Three Blind Mice, LLC retained counsel to represent it and defend it against the assertions of Katherine and Bobby Frost as set forth in their Complaint filed with the Clerk of Court for Greenville County, South Carolina, designated as 2012-CP-23-3249.

8. After engaging in extensive written discovery and depositions, all parties to the litigation instituted by Katherine and Bobby Frost were able to settle the asserted claims for damages for a total of Thirty-One Thousand Dollars (\$31,000.00), of which Three Blind Mice, LLC was required to pay Ten Thousand Dollars (\$10,000.00).

9. As a result of the settlement reached in the action instituted by Katherine and Bobby Frost, Brady Distributing Co. d/b/a New Vemco Music Co. has asserted a claim against Three Blind Mice, LLC d/b/a The Blind Horse Saloon, asserting its right to contractual indemnification for its portion of the settlement reached with Katherine and Bobby Frost (\$10,000.00), attorney's fees and costs.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

10. Those allegations set forth hereinabove, not inconsistent herewith, are incorporated herein as if set forth fully.

11. At all times pertinent hereto, Three Blind Mice, LLC paid all insurance premiums for the coverage to be provided by the Colony Insurance Company Comprehensive General Liability Policy and fulfilled all duties and obligations of it under the terms and conditions of that

policy.

12. In exchange for the premiums paid by Three Blind Mice, LLC, Colony Insurance Company was to provide a defense to its insured arising from a suit seeking damages for bodily injury or property damage caused by an "occurrence."

13. The term "occurrence" is a defined term under the Colony Insurance Company policy which includes "accidents."

14. The event leading to Katherine Frost being struck by a patron was, according to the allegations filed by the Frosts, inadvertent and therefore an "accident."

15. The Colony Insurance Company policy has been amended to apply to bodily injury and property damage caused by or resulting from the ownership, maintenance or use of the premises described in the endorsement, or caused by or resulting from the operation of a nightclub/bar at the premises named.

16. The incident giving rise to the suit filed by Katherine and Bobby Front occurred at 1035 Lowndes Hill Road in Greenville, South Carolina, the location of The Blind Horse Saloon, and allegedly arose out of the use of an amusement boxing machine, placed on the premises for the entertainment of patrons of The Blind Horse Saloon, which, as part of its business, not only serves alcohol to its patrons, but also provides various other types of entertainment, including the amusement boxing machine in issue.

17. The Colony Insurance Comprehensive General Liability Policy also contained certain exclusions to its general obligation to provide liability insurance coverage, including exclusions for damages arising out of "battery" and "assault and battery," as well as those damages arising out of the participation in a sport or athletic activity. The Colony Insurance Company relied upon these exclusions to deny coverage in this instance.

18. In their Complaint, Katherine and Bobby Frost alleged that their injuries were the result of an inadvertent act of another patron rather than an intentional act to touch or harm her, thereby rendered the event an "occurrence" rather than a "battery."

19. In their Complaint, Katherine and Bobby Frost also alleged that her physical injury was caused by the inadvertent act of a patron negligently swinging at the punching bag of an amusement boxing machine located on the premises of The Blind Horse Saloon. Since this accident did not occur as a result of Katherine Frost's participation in an athletic or sporting event, Colony Insurance Company's exclusion for damages arising out of the participation or practicing in an athletic contest, exhibition, activity, game or sport would not be applicable.

20. Because Colony Insurance Company denied coverage to Three Blind Mice, LLC on the applicability of its exclusion for damages arising out of a battery or participation in a sporting or athletic event, as well as its policy provision mandating that any damage arise out of the operation of a bar or nightclub, the provisions of which are inapplicable to this claim, Colony Insurance Company has breached its policy of insurance with Three Blind Mice, LLC.

21. The breach of this insurance policy with Three Blind Mice, LLC by Colony Insurance Company has caused the Plaintiff to undertake the defense of the claims asserted by Katherine and Bobby Frost, resulting in the expenditure of money for attorney's fees, costs and associated expenses, as well as the payment of a reasonable settlement of the claims asserted by Bobby and Katherine Frost. This Plaintiff is informed and believes that it is entitled to judgment against Colony Insurance Company for those attorney's fees, costs and expenses which it has incurred, as well as reimbursement of the payment of the reasonable settlement reached in the action instituted by Katherine and Bobby Frost, with interest. Moreover, to the extent that Three Blind Mice, LLC is responsible for any claim for indemnification asserted by Brady Distributing

Co. d/b/a New Vemco Music Co., Three Blind Mice would assert that any such responsibility would be covered by the policy of insurance issued to it by Colony Insurance Company.

FOR A SECOND CAUSE OF ACTION
(BAD FAITH)

22. Those allegations set forth hereinabove, not inconsistent herewith, are incorporated herein as if set forth fully.

23. Colony Insurance Company, by and through its authorized agents and employees, has acted in bad faith through its negligent, grossly negligent, reckless, willful and wanton acts as specified herein:

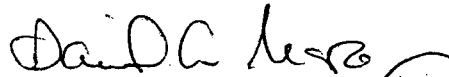
- (a) In failing to properly investigate the claims asserted against its insured to properly determine the application of policy exclusions and limitations;
- (b) In failing to properly investigate the claims asserted against its insured to determine if those claims fell within the coverage provided by the insured's policy;
- (c) In failing to provide its insured with a defense of the claims asserted against it when those claims fell within the parameters of the insuring agreement;
- (d) In exposing its insured to damages which should have been covered by the policy indemnification provisions; and
- (e) In causing its insured to incur attorney's fees and litigation costs which were to be paid under the insuring agreement, as well as those monies necessary to pay a reasonable settlement of the claims asserted.
- (f) In exposing it to claims for contractual indemnification by failing to properly undertake the defense of this matter

24. As a direct and proximate result of the acts and delicts of Colony Insurance Company, Three Blind Mice, LLC has been damaged, including, but not limited to, incurred attorney's fees, litigation costs and expenses, costs for indemnification of the settlement reached, and potential damage to the Plaintiff's business reputation, as well as exposure for indemnification to Brady Distributing Co. d/b/a New Vemco Music Co.

25. Three Blind Mice, LLC is informed and believes that it is entitled to judgment against Colony Insurance Company for losses and damages caused by its bad faith actions in an amount to be determined by a jury for both actual and punitive damages.

WHEREFORE, Three Blind Mice, LLC, having fully complained of Colony Insurance Company, would pray that it be granted judgment for both actual and punitive damages, together with such other and further relief as the Court deems just and proper.

Respectfully submitted,



David L. Moore, Jr. (S.C. Bar No. 4050)
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
(864) 370-2211
Attorneys for Plaintiff

June 19, 2014
Greenville, South Carolina

COUNTY OF GREENVILLE

Three Blind Mice, LLC d/b/a The Blind Horse
SaloonFILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL T. WICKENSIMER

Plaintiff(s)

2014 JUN 19 PM 3 07

2014-CP-23-03422

vs.

Colony Insurance Company

Defendant(s)

Submitted By: David L. Moore, Jr.

SC Bar #: 4050

Address: Nexsen Pruet, LLC

Telephone #: (864) 370-2211

P.O. Drawer 10648, Greenville, SC 29603

Fax #: (864) 282-1177

Other:

E-mail: DMoore@nexsenpruet.com

NOTE: The coversheet 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 coversheet 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. ☐ NON-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. (Proof of ADR/Exemption 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)
Previous Notice of Intent Case #
20 ____-CP-_____
☐ 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) | 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)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature:

Date: June 19, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a THE
BLIND HORSE SALOON,

Plaintiff,

v.

COLONY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff

v.

BRADY DISTRIBUTING CO. d/b/a NEW
VEMCO MUSIC CO.

Third-Party Defendant.

DEFENDANT'S ANSWER TO
PLAINTIFF'S COMPLAINT,
COUNTERCLAIM AND THIRD PARTY
COMPLAINT FOR DECLARATORY
JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
14 SEP 2 AM 9 24

COMES NOW Defendant Colony Insurance Company, by and through its attorneys, reserving its right to move for dismissal pursuant to South Carolina Rule of Civil Procedure 12 and to file other dispositive motions and answers Plaintiff's Complaint by denying each and every allegation unless specifically admitted and further states as follows:

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

PARTIES

1. The allegations contained in Paragraph 1 are admitted.
2. The allegations contained in Paragraph 2 are denied.

FACTUAL BACKGROUND

3. It is admitted that Colony Insurance Company issued Commercial General Liability Policy No. GL3812749 to Three Blind Mice, Inc. d/b/a Blind Horse Saloon for a coverage period of December 14, 2010, to December 14, 2011. Except as expressly admitted, all of the other allegations of Paragraph 3 are denied for lack of information to form a belief as to the truth thereof.

4. The allegations of Paragraph 4 are admitted upon information and belief and in strict reliance on the Frost legal pleadings presented to Colony by its Insured.

5. It is admitted that the Insured's agent placed Colony on notice of the potential claim on or about December 5, 2011 and that Three Blind Mice, LLC tendered the defense of the suit instituted by the Frosts to Colony on July 12, 2012.

6. It is admitted that Colony issued a written denial of coverage on August 1, 2012. Colony's grounds for denying coverage were specifically set forth in said letter the terms of which speak for themselves. The allegations of Paragraph 6 are otherwise admitted.

7. The allegations contained in Paragraph 7 are admitted upon information and belief.

8. The allegations contained in Paragraph 8 are denied for lack of sufficient information to form a belief as to the truth thereof.

9. The allegations contained in Paragraph 9 are denied for lack of sufficient information to form a belief as to the truth thereof.

FOR A FIRST CAUSE OF ACTION
(BREACH OF CONTRACT)

10. Defendant's responses to the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

11. The allegations contained in Paragraph 11 are denied.

12. It is admitted that in exchange for premiums paid Colony was to undertake certain obligations pursuant to the Colony's policy. Otherwise the allegations in Paragraph 12 are denied.

13. It is admitted in Paragraph 13 that the term "occurrence" is a defined term in the policy. Said policy language speaks for itself.

14. The allegations contained in Paragraph 14 are denied for lack of sufficient information to form a belief as to the truth thereof.

15. The language of the policy speaks for itself. Otherwise, Paragraph 15 is denied.

16. It is admitted upon information and belief that the incident giving rise to the suit filed by Katherine and Bobby Frost occurred on the business premises of Colony's insured and that the incident allegedly arose out of the use of a boxing machine being operated on the premises. It is further admitted that The Blind Horse Saloon's scheduled business description

was that of "night club/bar". Except as expressly admitted, the allegations of Paragraph 16 are denied for lack of sufficient information to form a belief as to the truth thereof.

17. The language of the policy and the written denial of coverage speak for themselves. The allegations contained in Paragraph 17 are otherwise admitted.

18. The allegations of the Complaint of Katherine and Bobby Frost are contained in a legal pleading and speak for themselves. It is admitted that in their complaint Katherine and Bobby Frost alleged that their injuries were the result of an "inadvertent" act of another patron. Except as expressly admitted, the allegations of Paragraph 18 are denied.

19. The allegations of the Complaint of Katherine and Bobby Frost are contained in a legal pleading and speak for themselves. The allegations of Paragraph 19 are otherwise denied.

20. The allegations contained in Paragraph 20 are denied.

21. The allegations contained in Paragraph 21 are denied.

FOR A SECOND CAUSE OF ACTION
(BAD FAITH)

22. Defendant's responses to the preceding paragraphs are hereby incorporated by reference as if fully set forth herein.

23. The allegations of Paragraph 23 including each and every subpart are denied.

24. The allegations contained in Paragraph 24 are denied.

25. The allegations contained in Paragraph 25 are denied.

SECOND DEFENSE

The Complaint fails to set forth sufficient facts to constitute a cause of action and, therefore, should be dismissed pursuant to the South Carolina Rule of Civil Procedure 12(b)(6).

THIRD DEFENSE

Colony claims as a defense to all allegations arising out of purported "bad faith" the court's requested ruling that Colony does not have insurance coverage for the claims of Katherine and Bobby Frost.

FOURTH DEFENSE

Colony claims as a defense that Plaintiffs' claims are barred because Three Blind Mice,

LLC knew or should have known that Colony's policy of insurance contained exclusions for assault and battery coverage and the operation of games or sports.

FIFTH DEFENSE

Colony claims as a defense that its insured had no liability to Plaintiffs in the underlying tort action.

SIXTH DEFENSE

Colony claims as a defense that Plaintiffs' claim for punitive damages is in violation of the United States Constitution and the South Carolina State Constitution, as well as the holding of *State Farm Mutual Automobile Insurance Company v. Campbell*, 538 U.S. 408, 123 S.Ct., 1513, 155 L.Ed.2d 585 (2003), and the cases upon which it is based.

SEVENTH DEFENSE

Colony claims as a defense that, pursuant to *Cooper Industries, Inc. v. Leatherman Tool Group, Inc.*, 522 U.S. 424, 121 S.Ct. 1678 (2001), if punitive damages are recoverable, which has been expressly denied herein, the amount of punitive damages "[are] not really a fact tried by the jury" therefore Plaintiffs' request for punitive damages "to be determined by the jury" violates the United States Constitution.

EIGHTH DEFENSE

The claim may be barred by the Plaintiff's failure to reduce or mitigate its damages as required by law.

NINTH DEFENSE

The claim may be barred by the Plaintiff's misrepresentations of material fact as contained in the application for insurance and supplemental application for insurance submitted to Colony and relied on by Colony in agreeing to issue insurance to Plaintiff.

COUNTERCLAIM AND THIRD PARTY COMPLAINT
FOR DECLARATORY JUDGMENT

Plaintiff, Colony Insurance Company, hereby alleges as follows:

1. Colony Insurance Company is a corporation organized and existing under the laws of Virginia and has its principal place of business in Richmond, Virginia. Colony is authorized to do business and does business in the State of South Carolina.

2. Upon information and belief, Three Blind Mice, LLC (Colony's "insured") is a limited liability company organized and doing business in Greenville County, South Carolina.

3. Upon information and belief, Brady Distributing Company d/b/a New Vemco Music Company ("Brady") is a North Carolina corporation doing business in Greenville County, South Carolina.

4. Colony issued Commercial General Liability Insurance Policy No. GL3812749 to Three Blind Mice, LLC d/b/a The Blind Horse Saloon with effective dates of December 14, 2010 to December 14, 2011, a copy of which is attached hereto as Exhibit A and incorporated by reference herein (the Policy).

5. On or about May 15, 2012, Katherine and Bobby Frost filed suit against Colony's insured for personal injuries sustained on October 29, 2011, while patronizing The Blind Horse Saloon (Frost Lawsuit). The Frosts alleged that Katherine was injured when she was inadvertently struck in the back by a patron utilizing an amusement boxing machine. Colony's insured tendered the Frost Lawsuit to Colony demanding a defense and indemnity from Colony.

6. The Frost Lawsuit set forth that Katherine Frost's personal injuries and Bobby Frost's loss of consortium were caused by a battery to her person as defined by the Policy.

7. The Frost Lawsuit set forth that the Frosts' injuries occurred as the result of the insured's operation of a game or sport, to wit, an amusement boxing machine on the business premises.

8. Based on the allegations made in the Frost Lawsuit and its independent investigation, Colony issued a Denial of Coverage letter dated August 1, 2012. The Denial of Coverage letter is attached as Exhibit B and incorporated by reference herein.

9. The Policy contains exclusions related to personal injuries resulting from battery and the operation of games or sports. The Policy further limits coverage to a scheduled business description of "night club/bar".

10. Colony brings this action pursuant to the South Carolina Declaratory Judgment Act, South Carolina Code Sections 15-53-10, *et seq.* (SUPP. 2004).

11. All parties herein have acted within the state or done business within the state such that they are subject to the personal jurisdiction of this Court.

12. This court has subject matter jurisdiction over this matter.

13. Three Blind Mice, LLC alleges that it has fully settled all claims of the Frosts. Colony's insured further alleges that it may be liable to Brady Distributing Company on a theory of contractual indemnity and that Colony's policy of insurance would apply to said claim.

14. All necessary and proper parties have been named herein.

15. The Policy specifically excludes coverage for bodily injury arising out of or resulting from:

- (1) "Assault", "Battery" or "Assault and Battery" committed by any person;
- (2) The failure to suppress or prevent "Assault", "Battery" or "Assault and Battery";
- (3) The failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery"; and
- (4) The failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery".

16. The Policy defines "Battery" to mean "an act which brings about harmful or offensive contact to another or anything connected to another." The policy does not define "Battery" as an intentional act.

17. The Policy further excludes coverage for bodily injury to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport and limits coverage to the specific business activity of running a night club/ bar.

18. The foregoing exclusions are enforceable in the State of South Carolina.

19. Colony is entitled to a declaration that its Policy excludes coverage to the Frosts, Three Blind Mice, Inc., and Brady Distributing Co.

WHEREFORE, having answered the Complaint of the Plaintiff and having made claim for declaratory relief, Colony Insurance Company prays that the Court:

- (1) issue a declaration that its policy excludes coverage to Three Blind Mice, LLC and Brady Distributing Co.;

- (2) dismiss the Complaint of the Plaintiff; and
- (3) award Colony its costs in filing and defending this action.

MARTINEAU KING, PLLC



Elizabeth A. Martineau
S.C. State Bar No. 78732
P.O. Box 31188
Charlotte, NC 28231
Telephone (704) 247-8520
Facsimile (704) 247-8582
Attorneys for Defendant/Third-Party
Plaintiff Colony Insurance Company

L. Kristin King
N.C. State Bar No. 17889
P.O. Box 31188
Charlotte, NC 28231
Phone: 704 247-8520
Fax: 704 247-8582
Attorneys for Defendant/Third-Party Plaintiff
Colony Insurance Company
Pro Hac Vice Admission Pending

Charlotte, North Carolina
August 28, 2014

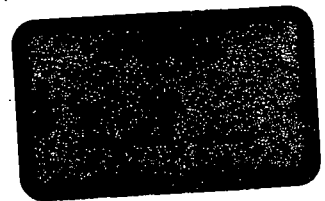
To: VAPolicies <VAPolicies@colonyspecialty.com>
From: Judy Thompson <Jthompson@mfic.com>
Date: Mon, 20 Dec 2010 14:49:37 -0500
Subject: GL3812749 BLIND HORSE SALOON

Drawer: SC
FileNo: GL3812749

Attached is policy, tria form, worksheet and supplemental application.

- This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

-



12/15/2009 09:07 AM

TERRITORY _____ / GROUP _____
PDQ 9413

[illegible]

Date: 11/23/2010 Time: 12:21 PM To: (183971) @ 10645270443,51

POLICYHOLDER DISCLOSURE NOTICE OF TERRORISM INSURANCE COVERAGE

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, as defined in Section 102(f) of the Act. The term "act of terrorism" means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURER'S LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

PLEASE ALSO BE AWARE THAT YOUR POLICY DOES NOT PROVIDE COVERAGE FOR ACTS OF TERRORISM THAT ARE NOT CERTIFIED BY THE SECRETARY OF THE TREASURY.

Acceptance or Rejection of Terrorism Insurance Coverage

You must accept or reject this insurance coverage for losses arising out of acts of terrorism, as defined in Section 102(f) of the Act, before the effective date of this policy. Your coverage cannot be bound unless our representative has received this form signed by you on behalf of all insureds with all premiums due.

☐ **Coverage acceptance:**

I hereby elect to purchase coverage for certified acts of terrorism, as defined in Section 102(f) of the Act for a prospective annual premium of \$____. I understand that I will not have coverage for losses resulting from any non-certified acts of terrorism.

OR

☒ **Coverage rejection:**

I hereby decline to purchase coverage for certified acts of terrorism, as defined in Section 102(f) of the Act. I understand that I will not have coverage for any losses arising from either certified or non-certified acts of terrorism.

* Brenda White
Policyholder/Applicant's Signature.
Must be person authorized to sign for all insureds.

* Brenda White
Print Name

Blind Horse Saloon
Named Insured

12/14/10
Date

Colony Insurance Company
Insurance Company

Policy Number

Submission Number

Producer Number

Producer Name

Street Address

City, State, Zip

The producer shown above is the wholesale insurance broker your insurance agent used to place your insurance coverage with us. Please discuss this Disclosure with your agent before signing.

COMMON POLICY DECLARATIONS

Colony Insurance Company8720 Stony Point Parkway, Suite 300
Richmond, VA 23235

Underwritten By Colony Management Services, Inc.

POLICY NUMBER

GL3812749 M&D

RENEWAL OF

GL3812350

PDQ CODE

94B

1. NAMED INSURED and MAILING ADDRESS:THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON
1035 LOWMEDES HILL ROAD
GREENVILLE

SC 29607

PRODUCER: 39002Market Finders
1200 WOODRUFF RD STE G-14, MEROVAN CTR
GREENVILLE SC 29607**2. POLICY PERIOD:** From 12/14/2010 to 12/14/2011 12:01 A.M. Standard Time at your Mailing Address above.IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE
AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.**3. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS
PREMIUM MAY BE SUBJECT TO ADJUSTMENT.**

COVERAGE PARTS		PREMIUM
Commercial General Liability	THE COVERAGE PROVIDED BY THIS POLICY MAY NOT BE AS REQUESTED ON THE APPLICATION. IT IS YOUR RESPONSIBILITY TO CHECK AND CONFIRM THAT THIS POLICY DOES PROVIDE COVERAGE AS QUOTED AND AGREED UPON. IF THERE IS ANY DISCREPANCY PLEASE CONTACT US IMMEDIATELY.	\$ 6,227.00
Liquor Liability		\$ NOT COVERED
Commercial Property		\$ NOT COVERED
Commercial Crime		\$ NOT COVERED
Commercial Inland Marine		\$ NOT COVERED
Commercial Farm and Ranch		\$ NOT COVERED
Owners And Contractors Protective		\$ NOT COVERED
Coverage for Certified Acts of Terrorism Rejected; Exclusion Attached. (Per Policyholder Disclosure TRIA2002Notice attached.)		\$ NOT COVERED
TOTAL		\$ 6,227.00
		\$
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*		\$ 150.00
		\$ 255.08
		\$ 127.54
		\$
		\$
		\$
		\$

Premium shown is payable at inception.

Total Policy Premium: \$ 6,759.62

4. FORMS APPLICABLE TO ALL COVERAGE PARTS:

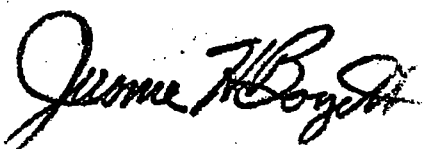
See Schedule of Forms and Endorsements - U001

5. BUSINESS DESCRIPTION: NIGHT CLUB/BAR

JT

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

(NO FLAT CANCELLATION)

Countersigned: 12/20/10
DateBy: 
Authorized Representative

DCJ6550 (07/05)

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Company



Market Finders
1200 WOODRUFF RD STE G-14, MEROVAN CTR
GREENVILLE SC 29607
Agent Code: 39002

SURPLUS LINES BROKER DATA

Insured: THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON

Policy Number: GL 3812749

Risk State: SC

(Risk State is defined as the primary location where the premium is attributable and the Surplus Line taxes are paid.)

Is this risk outside your State of domicile? ☐ YES ☒ NO

Taxes are being paid to the state(s) of: SOUTH CAROLINA

Name of Filing Broker JEROME BOYETT

SL License Number 240970

Address P O BOX 6549

LOUISVILLE KY 40206

Phone Number 800-626-5660

Is this a non-resident license? ☒ YES ☐ NO

Is the Broker indicated making a "Courtesy Filing" on your behalf? ☐ YES ☐ NO

If this is a multi-state policy and there is MORE than ONE broker involved, please indicate additional brokers below:

Name of Filing Broker (2) _____

SL License Number _____

Premium Paid _____

Address _____

Phone Number _____

Name of Filing Broker (3) _____

SL License Number _____

Premium Paid _____

Address _____

Phone Number _____

**** MULTI-STATE RISKS:** Please consult the applicable state Insurance Departments for advice regarding placement and tax payment of multi-state surplus lines policies.

THREE BLIND MICE, INC. DBA
Insured: BLIND HORSE SALOON

Policy Number: GL3812749

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

NUMBER	TITLE
PJCG (09-09)	COMMON POLICY JACKET
PJCIC FL (09-09)	COMMON POLICY JACKET
DCJ6550 (07-05)	COMMON POLICY DECLARATIONS
U001 (10-04)	SCHEDULE OF FORMS AND ENDORSEMENTS
FORMS APPLICABLE - POLICY COMMON FORMS	
U002 (09-04)	MINIMUM POLICY PREMIUM
U094 (07-02)	SERVICE OF SUIT
UCG2175 (01-08)	EXCL-CERT. ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM
IL0017 (11-98)	COMMON POLICY CONDITIONS
IL0021 (04-98)	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
FORMS APPLICABLE - COMMERCIAL GENERAL LIABILITY	
DCJ6553 (07-02)	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
U003 (07-02)	HAZARDOUS MATERIALS EXCLUSION
U004 (07-07)	MISCELLANEOUS EXCLUSIONS ENDORSEMENT
U006 (07-07)	ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION
U007 (07-02)	OPEN ROOF COVERAGE LIMITATION
U016 (07-02)	ATHLETIC OR SPORT PARTICIPANTS EXCLUSION
U018 (11-06)	COMMUNICABLE DISEASE EXCLUSION
U042 (07-02)	ANIMAL LIABILITY EXCLUSION
U046 (09-04)	LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT
U048 (09-04)	EMPLOYMENT-RELATED PRACTICES EXCLUSION
U070 (03-08)	DEDUCTIBLE LIABILITY INSURANCE
U087 (07-02)	TOTAL LIQUOR LIABILITY EXCLUSION
U147 (07-02)	WEAPONS EXCLUSION
U155 (07-08)	ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION
U159 (07-02)	LIMITATION OF COVERAGE TO BUSINESS DESCRIPTION
CG0001 (12-04)	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG0067 (03-05)	EXCLUSION - VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX
CG2139 (10-93)	CONTRACTUAL LIABILITY LIMITATION
CG2167 (12-04)	FUNGI OR BACTERIA EXCLUSION
CG2407 (01-96)	PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED
FORMS APPLICABLE - STATE SPECIFIC	
UIL0249 (09-07)	SOUTH CAROLINA CHANGES - CANCELLATION AND NONRENEWAL

Important notice: See the actual policy forms attached for the full title, terms and conditions.

U001 (10/04)

Company

Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM POLICY PREMIUM

The following additional policy Conditions supercede any other policy conditions as regards the "minimum earned premium" for this policy:

Minimum Earned Premium

This policy is subject to a "minimum earned premium". "Minimum earned premium" means the premium that is calculated as follows:

1. The total policy premium as shown in the policy Declarations, plus
2. Any premium adjustment by endorsements, plus
3. Any additional premium developed by audit.

Audits and Minimum Earned Premium

Audits will not reduce the "minimum earned premium". The due date for audit premiums is the date shown as the due date on the bill.

Cancellation and Minimum Earned Premium

1. If you cancel this policy, the return premium will be 90% of the pro rata balance of any remaining unearned premium but no less than 25 % of the "minimum earned premium".
2. If we cancel the policy for any reason, other than for non-payment of premium, the "minimum earned premium" shall not apply. We will return to you the pro rata amount of the unearned premium.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

This Coverage Part consists of this Declarations Form, the Common Policy Conditions, the Commercial General Liability Form and the Endorsements indicated as applicable. (See "COMMON POLICY DECLARATIONS" for Items 1 and 2)

POLICY NO. GL3812749

NAMED INSURED THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON

3. LIMITS OF INSURANCE

General Aggregate Limit (Other Than Products - Completed Operations)	\$ 2,000,000	
Products Completed Operations Aggregate Limit	\$ 2,000,000	
Personal & Advertising Injury Limit	\$ 1,000,000	
Each Occurrence Limit	\$ 1,000,000	
Damage To Premises Rented To You Limit	\$ 100,000	Any One Premises
Medical Expense Limit	\$ 5,000	Any One Person

RETROACTIVE DATE (CG 00 02 only) - Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown below.

Retroactive Date: NONE (Enter Date or "None" if no Retroactive Date applies.)

Location of All Premises You Own, Rent or Occupy (Same as Item 1 unless shown below):
1035 LOWNDES HILL ROAD GREENVILLE SC 29607

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE	ADVANCE PREMIUM	
				PR / CO	ALL OTHER
BAR	16817	R 900,000	6.92	INCLUDED	6,227

4. FORMS / ENDORSEMENTS APPLICABLE:

SEE SCHEDULE OF FORMS AND ENDORSEMENTS - FORM U001

**TOTAL PREMIUM
FOR THIS
COVERAGE PART**

\$ 6,227.00

5. FORM OF BUSINESS: ☐ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (Other than Partnership or Joint Venture) ☒ Corporation

Audit Period: Annual unless otherwise stated:

DCJ6553 (07-02)

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Company

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE OF PREMISES OR PROJECTS:
NIGHT CLUB/BAR LOCATED AT 1035 LOWNDES HILL ROAD, GREENVILLE SC 29607
(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of or resulting from:

- (1) The ownership, maintenance or use of the premises shown in the Schedule; or
- (2) The project shown in the Schedule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Coverage	Amount and Basis of Deductible	
	PER CLAIM	or PER OCCURRENCE
Bodily Injury Liability OR	\$ NOT APPLICABLE	\$ NOT APPLICABLE
Property Damage Liability OR	\$ NOT APPLICABLE	\$ NOT APPLICABLE
Bodily Injury Liability and/or Property Damage Liability Combined	\$500	\$ NOT APPLICABLE

A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.

B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage";
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined; or
- d. Under Supplementary Payments-Coverage A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage", person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage";
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined; or
 - d. Under Supplementary Payments-Coverage A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
- C. The terms of this insurance, including those with respect to:
- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
 - 2. Your duties in the event of an "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.
- D. We, at our sole election and option, may either:
- 1. Pay any part of or all of the deductible amount to effect settlement of any claim or suit, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
 - 2. Simultaneously upon receipt of notice of any claim or at any time thereafter, request you pay or deposit with us all or any part of the deductible amount, to be held and applied by us as herein provided.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITATION OF COVERAGE
TO
BUSINESS DESCRIPTION**

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

BUSINESS DESCRIPTION: NIGHT CLUB/BAR

A. SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

(4) The "bodily injury" or "property damage" is caused by or results from the business described in the Schedule.

B. SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

This insurance applies to "personal and advertising injury" caused by an offense in the course of the business described in the Schedule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 24 07 01 96

PRODUCTS/ COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement effective 12/14/2010 12:01 A.M. standard time	Policy No. GL3812749
Named Insured THREE BLIND MICE, INC. DBA BLIND HORSE SALOON	Countersigned by

(Authorized Representative)

SCHEDULE

Description of Premises and Operations:

NIGHT CLUB/BAR

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

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf.

Paragraph a. of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

05/27/2010 09:38 AM



RESTAURANT/TAVERN/BAR PDQ
GENERAL LIABILITY SUPPLEMENTAL APPLICATION

Agency Name BLIND HORSE SALOON Applicant's Web Site Address Blind-horse.com
Applicant Name: _____ Date: _____

GENERAL INFORMATION

Receipts: 600,000.00
Food: \$ _____
Liquor: \$ _____
Other: \$ _____
Total: \$ _____

Seating Capacity: 4
Operating Hours: 7:00-2AM Wed, Fri, Sat
Square footage of building: 10,000
Yrs in business at this location: 15

Type of Establishment - Check all that apply

- | | |
|---|--|
| ☐ Bar | ☐ On premises catering (% of sales _____) |
| ☐ Sport's Bar | ☐ Off premises catering (% of sales _____) |
| ☐ Tableside Cooking | ☐ Open Bar/Beque Pils |
| ☐ Tavern | ☐ Raw seafood served. If yes, percentage of sales _____ |
| ☒ Restaurant | ☐ Rental of facilities to others (# times per year _____) |
| ☐ Nightclub or Private Club | ☐ Food Delivery |
| ☐ Bring your own liquor facility (BYOB) | |
| ☐ After hours establishment (Prohibited) | ☐ Other _____ |
| ☐ Happy Hours for drink specials | |
| ☐ Teen Dance Club (Prohibited) | |

Retailer recommendation:

Yes ☐ No ☒ Has the retail agent visited the risk and recommends it for coverage?

Liquor Liability

Yes ☐ No ☒ Is applicant requesting liquor liability? If yes, please complete liquor supplemental application.

Applicant Information

Yes ☒ No ☐ Are owners active in the business? Number years experience 40
Yes ☐ No ☐ Does the applicant own the building?
Yes ☐ No ☐ Does the applicant lease the building from others?
Yes ☐ No ☒ Has applicant filed bankruptcy (Chapter 7, 11 or 13) or is applicant in receivership (prohibited)?
Yes ☐ No ☒ Has applicant's insurance been cancelled or non-renewed in the past year for non compliance of recommendations? If "Yes", provide details: _____

General Information

Yes ☒ No ☐ Is establishment currently open for business?
Yes ☐ No ☐ Are there any apartments in the building? If so, how many _____
Yes ☐ No ☐ Is there a history of moldiness or rigness?
Yes ☐ No ☒ Is property is for sale?
Yes ☐ No ☒ Is property vacant, foreclosed or undergoing renovation? If "Yes", provide details: _____

94B, 94C, 94D

1 of 2

2005

Restaurant-Bar-Tavern.tif

05/27/2010 09:38 AM

Cooking Exposure: Complete if Property coverage is requested:

- Yes ☐ No ☐ An automatic fire extinguishing system protects hoods, ducts, grease filters and cooking areas including deep fat fryers.
- Yes ☐ No ☐ The fire extinguishing system has a manual release located outside the kitchen.
- Yes ☐ No ☐ Exhaust filters, ducts and hoods are cleaned by a professional cleaning service quarterly and inspected annually.
- Yes ☐ No ☐ Cooking equipment has an automatic fuel shutoff.
- Yes ☐ No ☐ Deep fat fryers have a temperature limit with automatic shutoff.
- Yes ☐ No ☐ Deep fat fryers are separated from any cooking surface by at least an 18-inch, non-combustible barrier.
- Yes ☐ No ☐ Is there any open flame cooking?
- Yes ☐ No ☐ Is there proper disposal of trash and smoking materials?

Safety:

- Yes ☐ No ☒ Is property in deteriorated condition?
- Yes ☐ No ☐ Is there an adequate number of fire extinguishers on premises with current service tags?
- Yes ☐ No ☐ Does building have emergency lighting?
- Yes ☐ No ☐ Is building located on a wharf, pier, beach, dock or pilings?
- Yes ☐ No ☐ Are steps and rails in good repair with adequate lighting?
- Yes ☐ No ☐ Are there any firearms on premises?
- Yes ☐ No ☐ Does insured employ bouncers?
- Yes ☐ No ☐ Does insured employ ID checkers?
- Yes ☐ No ☐ Does insured employ or subcontract armed security? If "yes" please provide details: _____

Entertainment:

- Yes ☐ No ☐ Is there a dance floor? If yes, what is the square footage _____
- Yes ☐ No ☐ Are there bands? If yes, type of music? _____
- Yes ☐ No ☐ Are there DJs? If yes, type of music? _____
- Yes ☐ No ☐ Are there pool tables? If yes, how many _____
- Yes ☐ No ☒ Does insured employ dancers?
- Yes ☐ No ☐ Any mechanical bulls or other patron participating activities? If "Yes", Prohibited
- Yes ☐ No ☒ Is there a playroom or playground for children? If "Yes", Prohibited
- Yes ☐ No ☐ Is there any other entertainment? If so, describe _____

Parking:

- Yes ☒ No ☐ Is parking lot under applicant's control?
- Yes ☐ No ☒ Is valet parking provided by your employees? If "Yes", Prohibited
- Yes ☐ No ☒ Is valet parking subcontracted to others? If yes, does the subcontractor must provide certificates of insurance evidencing both auto liability and garage keepers legal liability (GKL)? _____

Losses:

Describe all losses in the past 3 years: N/A

Have there been any incidents involving Assault & Battery in the past three years? If yes, explain _____

I hereby certify that all information is accurate to the best of my knowledge:

Applicant Signature: Brenda White

Producer: _____

Date: 12/14/10

Date: _____

94B, 94C, 94D

2 of 2

2005

Restaurant-Bar-Tavern, LLC

To: VAPolicies <VAPolicies@colonyspecialty.com>
From: Michelle Carr <Mcarr@mfic.com>
Date: Thu, 30 Dec 2010 16:33:17 -0500
Subject: GL3812749 BLIND HORSE SALOON

Drawer: SC
FileNo: GL3812749

PLEASE SEE THE ATTACHED NEEDED ACORD APPLICATIONS FOR THE
ABOVE
ACCT FOR YOUR FILE. THE POLICY WAS PREVIOUSLY SENT TO YOU W/
OUT THIS
INFORMATION.

THANKS, MICHELLE

MARKET FINDERS INS. CORP.
864-675-0170
864-675-0176 FAX

This email has been scanned by the MessageLabs Email Security System.
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COMMERCIAL INSURANCE APPLICATION

APPLICANT INFORMATION SECTION

 DATE (MM/DD/YYYY)
 12/27/2010

 AGENCY
 Herlong Bates Burnett Insurance, Inc.
 28 Global Drive, Suite 102

Greenville SC 29607

 CONTACT
 NAME
 PHONE (864) 527-0424
 FAX (864) 527-0443
 E-MAIL
 ADDRESS
 CODE: HERL00 SUB-CODE:
 AGENCY CUSTOMER ID: 1461

CARRIER

Market Finders

COMPANY POLICY OR PROGRAM NAME

NAC CODE

PROGRAM CODE

 POLICY NUMBER
 GL3654765

 UNDERWRITER
 ROGER BOGGS

 UNDERWRITER OFFICE
 GREENVILLE SC

STATUS OF TRANSACTION

QUOTE

X BOUND (Give Date and/or Attach Copy)

CHANGE

CANCEL

ISSUE POLICY

RENEW

DATE

TIME

AM

PM

SECTIONS ATTACHED

INDICATE SECTIONS ATTACHED		PREMIUM																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																																															</
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ATTACHMENTS

ADDITIONAL INTEREST	PREMIUM PAYMENT SUPPLEMENT
ADDITIONAL PREMISES	PROFESSIONAL LIABILITY SUPPLEMENT
APARTMENT BUILDING SUPPLEMENT	RESTAURANT / TAVERN SUPPLEMENT
CONDO ASSN BYLAWS (for D&O Coverage only)	STATEMENT / SCHEDULE OF VALUES
CONTRACTORS SUPPLEMENT	STATE SUPPLEMENT (if applicable)
COVERAGES SCHEDULE	VACANT BUILDING SUPPLEMENT
DRIVER INFORMATION SCHEDULE	VEHICLE SCHEDULE
INTERNATIONAL LIABILITY EXPOSURE SUPPLEMENT	
INTERNATIONAL PROPERTY EXPOSURE SUPPLEMENT	
LOSS SUMMARY	

POLICY INFORMATION

PROPOSED EFF DATE	PROPOSED EXP DATE	BILLING PLAN	PAYMENT PLAN	METHOD OF PAYMENT	AUDIT	DEPOSIT	MONTHLY PREMIUM	POLICY PREMIUM
12/14/2010	12/14/2011	DIRECT X AGENCY				\$	\$	\$ 7151.82

APPLICANT INFORMATION

 NAME (First Named Insured) AND MAILING ADDRESS (including ZIP+4)
 BLIND HORSE SALOON
 1035 LOWMEDES HILL ROAD
 GREENVILLE SC 29607

GL CODE SIC NAICS FIRM OR SOC SEC #

BUSINESS PHONE #

WEBSITE ADDRESS

X CORPORATION

JOINT VENTURE

NOT FOR PROFIT ORG

SUBCHAPTER "S" CORPORATION

INDIVIDUAL

NO. OF MEMBERS AND MANAGERS

PARTNERSHIP

TRUST

NAME (Other Named Insured) AND MAILING ADDRESS (including ZIP+4)

GL CODE SIC NAICS FIRM OR SOC SEC #

BUSINESS PHONE #

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SUBCHAPTER "S" CORPORATION

INDIVIDUAL

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PARTNERSHIP

TRUST

Page 1 of 4

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ACORD 125 (2009/08)

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AGENCY CUSTOMER ID: 1461

CONTACT INFORMATION

CONTACT TYPE:		CONTACT NAME: MR. JOHN PAUL	
CONTACT NAME: MR. JOHN PAUL		SECONDARY PHONE # ☐ HOME ☐ BUS ☐ CELL	
PRIMARY PHONE # ☐ HOME ☐ BUS ☐ CELL		PRIMARY PHONE # ☐ HOME ☐ BUS ☐ CELL	
(864) 288-8607		(864) 288-8607	
PRIMARY E-MAIL ADDRESS:		SECONDARY E-MAIL ADDRESS:	
SECONDARY E-MAIL ADDRESS:		SECONDARY E-MAIL ADDRESS:	

PREMISES INFORMATION (Attach ACORD 823 for Additional Premises)

LOC #	STREET	1035 Lowndes Hill Road	CITY LIMITS	INTEREST	# FULL TIME EMPL	ANNUAL REVENUES: \$
1			INSIDE	OWNER	0	OCCUPIED AREA: SQ FT
BLD #	CITY: Greenville	STATE: SC	OUTSIDE	TENANT	# PART TIME EMPL	OPEN TO PUBLIC AREA: SQ FT
1	COUNTY:	ZIP: 29607			0	TOTAL BUILDING AREA: SQ FT
DESCRIPTION OF OPERATIONS: Night club w/ dance floor						ANY AREA LEASED TO OTHERS? Y / N
LOC #	STREET		CITY LIMITS	INTEREST	# FULL TIME EMPL	ANNUAL REVENUES: \$
0			INSIDE	OWNER	0	OCCUPIED AREA: SQ FT
BLD #	CITY:	STATE:	OUTSIDE	TENANT	# PART TIME EMPL	OPEN TO PUBLIC AREA: SQ FT
0	COUNTY:	ZIP:			0	TOTAL BUILDING AREA: SQ FT
DESCRIPTION OF OPERATIONS:						ANY AREA LEASED TO OTHERS? Y / N
LOC #	STREET		CITY LIMITS	INTEREST	# FULL TIME EMPL	ANNUAL REVENUES: \$
0			INSIDE	OWNER	0	OCCUPIED AREA: SQ FT
BLD #	CITY:	STATE:	OUTSIDE	TENANT	# PART TIME EMPL	OPEN TO PUBLIC AREA: SQ FT
0	COUNTY:	ZIP:			0	TOTAL BUILDING AREA: SQ FT
DESCRIPTION OF OPERATIONS:						ANY AREA LEASED TO OTHERS? Y / N
LOC #	STREET		CITY LIMITS	INTEREST	# FULL TIME EMPL	ANNUAL REVENUES: \$
0			INSIDE	OWNER	0	OCCUPIED AREA: SQ FT
BLD #	CITY:	STATE:	OUTSIDE	TENANT	# PART TIME EMPL	OPEN TO PUBLIC AREA: SQ FT
0	COUNTY:	ZIP:			0	TOTAL BUILDING AREA: SQ FT
DESCRIPTION OF OPERATIONS:						ANY AREA LEASED TO OTHERS? Y / N

NATURE OF BUSINESS

APARTMENTS	CONTRACTOR	MANUFACTURING	RESTAURANT	SERVICE	DATE BUSINESS STARTED (MM/DD/YYYY)
CONDOMINIUMS	INSTITUTIONAL	OFFICE	RETAIL	WHOLESALE	12/14/1995
DESCRIPTION OF PRIMARY OPERATIONS					
NIGHT CLUB					
INSTALLATION, SERVICE OR REPAIR WORK					
OFF PREMISES INSTALLATION, SERVICE OR REPAIR WORK					
RETAIL STORES OR SERVICE OPERATIONS % OF TOTAL SALES: 0.00%					
DESCRIPTION OF OPERATIONS OF OTHER NAMED INSUREDS					

ADDITIONAL INTEREST (Not all fields apply to all scenarios - provide only the necessary data) Attach ACORD 45 for more Additional Interests

INTEREST	NAME AND ADDRESS	RANK	EVIDENCE	CERTIFICATE	POLICY	SEND BILL	INTEREST IN ITEM NUMBER
ADDITIONAL INSURED							LOCATION: 0 BUILDING: 0
BREACH OF WARRANTY							VEHICLE: 0 BOAT: 0
CO-OWNER							AIRCRAFT: 0
EMPLOYEE AS LESSOR							ITEM CLASS: 0
LEASEBACK OWNER							ITEM DESCRIPTION
LIENHOLDER							
LOSS PAYEE							
MORTGAGEE							
OWNER							
REGISTRANT							
TRUSTEE							
REFERENCE / LOAN #:			INTEREST END DATE:				FAX (A/C, No):
LIEN AMOUNT:			PHONE (A/C, No, Ext):				
				E-MAIL ADDRESS:			
REASON FOR INTEREST:							

ACORD 125 (2009/08)

AGENCY CUSTOMER ID: 1461

GENERAL INFORMATION

EXPLAIN ALL "YES" RESPONSES

1a. IS THE APPLICANT A SUBSIDIARY OF ANOTHER ENTITY?

PARENT COMPANY NAME

RELATIONSHIP DESCRIPTION

% OWNED
0.00Y/N
N

1b. DOES THE APPLICANT HAVE ANY SUBSIDIARIES?

SUBSIDIARY COMPANY NAME

RELATIONSHIP DESCRIPTION

% OWNED
0.00Y/N
N

2. IS A FORMAL SAFETY PROGRAM IN OPERATION?

☐ SAFETY MANUAL
☐ SAFETY POSITION☐ MONTHLY MEETINGS
☐ OSHA☐Y/N
N

3. ANY EXPOSURE TO FLAMMABLES, EXPLOSIVES, CHEMICALS?

Y/N
N

4. ANY OTHER INSURANCE WITH THIS COMPANY? (List policy numbers)

LINE OF BUSINESS

POLICY NUMBER

LINE OF BUSINESS

POLICY NUMBER

Y/N
N

5. ANY POLICY OR COVERAGE DECLINED, CANCELLED OR NON-RENEWED DURING THE PRIOR THREE (3) YEARS FOR ANY PREMISES OR OPERATIONS? (Missouri Applicants - Do not answer this question)

☐ NON-PAYMENT
☐ NON-RENEWAL☐ AGENT NO LONGER REPRESENTS CARRIER☐ UNDERWRITING☐ CONDITION CORRECTED (Describe):☐Y/N
N

6. ANY PAST LOSSES OR CLAIMS RELATING TO SEXUAL ABUSE OR MOLESTATION ALLEGATIONS, DISCRIMINATION OR NEGLIGENT HIRING?

Y/N
N7. DURING THE LAST FIVE YEARS (TEN IN RI), HAS ANY APPLICANT BEEN INDICTED FOR OR CONVICTED OF ANY DEGREE OF THE CRIME OF FRAUD, BRIBERY, ARSON OR ANY OTHER ARSON-RELATED CRIME IN CONNECTION WITH THIS OR ANY OTHER PROPERTY?
(In RI, this question must be answered by any applicant for property insurance. Failure to disclose the existence of an arson conviction is a misdemeanor punishable by a sentence of up to one year of imprisonment).Y/N
N

8. ANY UNCORRECTED FIRE AND/OR SAFETY CODE VIOLATIONS?

OCCURRENCE
DATE

EXPLANATION

RESOLUTION

RESOLUTION
DATEY/N
N

9. HAS APPLICANT HAD A FORECLOSURE, REPOSSESSION, BANKRUPTCY OR FILED FOR BANKRUPTCY DURING THE LAST FIVE (5) YEARS?

OCCURRENCE
DATE

EXPLANATION

RESOLUTION

RESOLUTION
DATEY/N
N

10. HAS APPLICANT HAD A JUDGEMENT OR LIEN DURING THE LAST FIVE (5) YEARS?

OCCURRENCE
DATE

EXPLANATION

RESOLUTION

RESOLUTION
DATEY/N
N

11. HAS BUSINESS BEEN PLACED IN A TRUST?

NAME OF TRUST

Y/N
N12. ANY FOREIGN OPERATIONS, FOREIGN PRODUCTS DISTRIBUTED IN USA, OR US PRODUCTS SOLD/DISTRIBUTED IN FOREIGN COUNTRIES?
(If "YES", attach ACORD 815 for Liability Exposure and/or ACORD 816 for Property Exposure)Y/N
N

13. DOES APPLICANT HAVE OTHER BUSINESS VENTURES FOR WHICH COVERAGE IS NOT REQUESTED?

REMARKS / PROCESSING INSTRUCTIONS (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

ADDITIONAL NAMED INSURED(S)				DATE (MM/DD/YY) DEC 27 2010	
PRODUCER		PHONE		(864) 527-0424	
Herlong Bates Burnett Insurance, Inc.		28 Global Drive, Suite 102		Greenville SC 29607	
FAX:		(864) 527-0443			
CODE		SUB CODE:			
AGENCY CUSTOMER ID:		1461			
APPLICANT (FIRST NAMED INSURED)		BLIND HORSE SALOON			
EFFECTIVE DATE		EXPIRATION DATE		CO/PLAN	
DEC 14 2010		DEC 14 2011		Market Finders	
POLICY NUMBER:		GL3654765			
ACCOUNT NUMBER:		GL3654765			
NAME & ADDRESS		DESCRIPTION:			
PHONE:		FAX:			
TYPE OF INTEREST:		PROFESSIONAL		LESSOR	
LOCATION:					

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CONTRACTORS		YES	NO	EXPLAIN ALL "YES" RESPONSES (For Past or Present Operations)		YES	NO
EXPLAIN ALL "YES" RESPONSES (For Past or Present Operations)							
1	DOES APPLICANT DRAW PLANS, DESIGNS, OR SPECIFICATIONS FOR OTHERS?			4.	DO YOUR SUBCONTRACTORS CARRY COVERAGES OR LIMITS LESS THAN YOURS?		
2	DO ANY OPERATIONS INCLUDE BLASTING OR UTILIZE OR STORE EXPLOSIVE MATERIAL?			5.	ARE SUBCONTRACTORS ALLOWED TO WORK WITHOUT PROVIDING YOU WITH A CERTIFICATE OF INSURANCE?		
3	DO ANY OPERATIONS INCLUDE EXCAVATION, TUNNELING, UNDERGROUND WORK OR EARTH MOVING?			6.	DOES APPLICANT LEASE EQUIPMENT TO OTHERS WITH OR WITHOUT OPERATORS?		
REMARKS/DESCRIBE THE TYPE OF WORK SUBCONTRACTED		\$ PAID TO SUB-CONTRACTORS:		% WORK SUBCONTRACTED:		# OF FULL-TIME STAFF:	

PRODUCTS/COMPLETED OPERATIONS						
PRODUCTS	ANNUAL GROSS SALES	# OF UNITS	TIME IN MARKET	EXPECTED LIFE	INTENDED USE	PRINCIPAL COMPONENTS

EXPLAIN ALL "YES" RESPONSES (For any past or present product or operations)		YES	NO	EXPLAIN ALL "YES" RESPONSES (For any past or present product or operations)		YES	NO
1	DOES APPLICANT INSTALL, SERVICE, OR DEMONSTRATE PRODUCTS?		X	6	PRODUCTS RECALLED, DISCONTINUED, CHANGED?		X
2	FOREIGN PRODUCTS SOLD, DISTRIBUTED, USED AS COMPONENTS?		X	7	PRODUCTS OF OTHERS SOLD OR RE-PACKED UNDER APPLICANT LABEL?		X
3	RESEARCH AND DEVELOPMENT CONDUCTED OR NEW PRODUCTS PLANNED?		X	8	PRODUCTS UNDER LABEL OF OTHERS?		X
4	GUARANTEES, WARRANTIES, HOLD HARMLESS AGREEMENTS?		X	9	VENDORS COVERAGE REQUIRED?		X
5	PRODUCTS RELATED TO AIRCRAFT/SPACE INDUSTRY?		X	10	DOES ANY NAMED INSURED SELL TO OTHER NAMED INSUREDS?		X
PLEASE ATTACH LITERATURE, BROCHURES, LABELS, WARNINGS, ETC.							

ADDITIONAL INTEREST/CERTIFICATE RECIPIENT		ACORD 45 attached for additional names		INTEREST IN ITEM NUMBER	
INTEREST	RANK	NAME & ADDRESS	REFERENCE #	CERTIFICATE REQUIRED	LOCATION: BUILDING: VEHICLE: BOAT: SCHEDULED ITEM NUMBER: OTHER:
☐ ADDITIONAL INSURED					
☐ LOSS PAYEE					
☐ MORTGAGEE					
☐ LIENHOLDER					
☐ EMPLOYEE AS LESSOR					
ITEM DESCRIPTION:					

GENERAL INFORMATION		YES	NO	EXPLAIN ALL "YES" RESPONSES (For all Past or Present Operations)		YES	NO
EXPLAIN ALL "YES" RESPONSES (For all Past or Present Operations)							
1.	ANY MEDICAL FACILITIES PROVIDED OR MEDICAL PROFESSIONALS EMPLOYED OR CONTRACTED?		X	12.	ANY STRUCTURAL ALTERATIONS CONTEMPLATED?		X
2.	ANY EXPOSURE TO RADIOACTIVE/NUCLEAR MATERIALS?		X	13.	ANY DEMOLITION EXPOSURE CONTEMPLATED?		X
3.	DO I HAVE PAST, PRESENT OR DISCONTINUED OPERATIONS INVOLVE(D) STORING, TREATING, DISCHARGING, APPLYING, DISPOSING, OR TRANSPORTING OF HAZARDOUS MATERIAL? (e.g. landfills, wastes, fuel tanks, etc)		X	14.	HAS APPLICANT BEEN ACTIVE IN OR IS CURRENTLY ACTIVE IN JOINT VENTURES?		X
4.	ANY OPERATIONS SOLD, ACQUIRED, OR DISCONTINUED IN LAST 5 YEARS?		X	15.	DO YOU LEASE EMPLOYEES TO OR FROM OTHER EMPLOYERS?		X
5.	MACHINERY OR EQUIPMENT LOANED OR RENTED TO OTHERS?		X	16.	IS THERE A LABOR INTERCHANGE WITH ANY OTHER BUSINESS OR SUBSIDIARIES?		X
6.	ANY WATERCRAFT, DOCKS, FLOATS OWNED, HIRED OR LEASED?		X	17.	ARE ANY DAY CARE FACILITIES OPERATED OR CONTROLLED?		X
7.	ANY PARKING FACILITIES OWNED/RENTED?		X	18.	HAVE ANY CRIMES OCCURRED OR BEEN ATTEMPTED ON YOUR PREMISES WITHIN THE LAST THREE YEARS?		X
8.	IS A FEE CHARGED FOR PARKING?		X	19.	IS THERE A FORMAL, WRITTEN SAFETY AND SECURITY POLICY IN EFFECT?		X
9.	RECREATION FACILITIES PROVIDED?		X	20.	DOES THE BUSINESSES' PROMOTIONAL LITERATURE MAKE ANY REPRESENTATIONS ABOUT THE SAFETY OR SECURITY OF THE PREMISES?		X
10.	IS THERE A SWIMMING POOL ON PREMISES?		X				
11.	SPORTING OR SOCIAL EVENTS SPONSORED?		X				
REMARKS:							
ANY PERSON KNOWINGLY AND WITH INTENT TO DEFRAUD ANY INSURANCE COMPANY OR ANOTHER PERSON FILES AN APPLICATION FOR INSURANCE OR STATEMENT OF CLAIM CONTAINING ANY MATERIALLY FALSE INFORMATION, OR CONCEALS FOR THE PURPOSE OF MISLEADING INFORMATION CONCERNING ANY FACT MATERIAL THERETO, COMMITS A FRAUDULENT ACT, WHICH IS A CRIME AND SUBJECTS THE PERSON TO CRIMINAL AND (NY: SUBSTANTIAL) CIVIL PENALTIES. (NOT APPLICABLE IN CO, HI, NE, OH, OK, OR or VT; IN DC, LA, ME, TN and VA, INSURANCE BENEFITS MAY ALSO BE DENIED)							

ACORD 126 2004/03

ATTACH TO APPLICANT INFORMATION SECTION

Rowe, Kelly

From: Michelle Carr [Mcarr@mfic.com]
Sent: Wednesday, October 05, 2011 12:25 PM
To: Rowe, Kelly
Subject: N/R NOTICE FOR: THREE BLIND MICE, INC. DBA BLIND HORSE SALOON GL3812749
Attachments: _1005122302_001.tif

HI KELLY,

PLEASE SEE THE ATTACHED FOR THE ABOVE ACCT, PER YOUR REQUEST.

THANKS, MICHELLE

Michelle Carr

Office Manager
Market Finders Insurance Corp.
(864) 675-0170 phone
(864) 675-0176 fax
(800) 444-4129 watts

This email has been scanned by the MessageLabs Email Security System.
For more information please visit <http://www.messagelabs.com/email>

NOTICE OF CANCELLATION, NONRENEWAL OR CHANGE IN POLICY COVERAGE
(South Carolina)

NAME AND ADDRESS OF INSURANCE COMPANY: Colony Insurance Company
C/O Market Finders Insurance Corp
P O Box 6549
Louisville KY 40206

KIND OF POLICY: Commercial General Liability	
POLICY/APPLICATION/BINDER NO.: GL3812749 Typist DD	
EFFECTIVE DATE OF NOTICE: 12/14/2011 12:01 AM (DATE) (HOUR-STANDARD TIME AT THE ADDRESS OF THE INSURED)	
DATE OF MAILING: 10/4/2011	
NAME AND ADDRESS OF AGENT/BROKER: HERLONG BATES BURNETT INS INC 28 GLOBAL DRIVE SUITE 102 GREENVILLE SC 29607	

NAME AND ADDRESS OF INSURED: THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON
1035 LOWMEDES HILL ROAD
GREENVILLE SC 29607

(Applicable item marked "X")

Cancellation	☐ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that your insurance will cease at and from the hour and date mentioned above. See the "Important Notices" section for other information that may apply.
	☐ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that your insurance will cease at and from the hour and date mentioned above for the reason(s) stated in the "Important Notices" section. See the "Important Notices" section for other information that may apply.
Premium Adjustment	☐ Unearned premium will be returned to you in accordance with applicable state law and the terms of this policy.
	☐ Enclosed is \$ _____, being the amount of premium at pro rata for the unexpired term of this policy.
	☐ A bill for the premium earned to the time of cancellation will be forwarded in due course.
	☐ Other: _____
Nonrenewal	☐ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed. See the "Important Notices" section for other information that may apply.
	☒ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that the above mentioned policy will expire effective at and from the hour and date mentioned above and the policy will NOT be renewed for the reason(s) stated in the "Important Notices" section. See the "Important Notices" section for other information that may apply.
Change in Policy Coverage	☐ You are hereby notified in accordance with the terms and conditions of the above mentioned policy, and in accordance with law, that coverage(s) applying to the above noted policy will be changed as follows, effective on the date indicated above: _____ _____ _____ See the "Important Notices" section for other information that may apply.
	☒ Reason(s) for cancellation, nonrenewal or change(s) (reason(s) stated only if above marked item indicates such): DUE TO COMPANY NO LONGER WRITING THIS CLASS OF BUSINESS
Important Notices	

☐ **IMPORTANT NOTICE:** Within fifteen days of this notice, you or your attorney may request in writing that the Director review this action to determine whether the insurer has complied with South Carolina laws in cancelling or nonrenewing your policy. If this insurer has failed to comply with the cancellation or nonrenewal laws, the Director may require that your policy be reinstated. However, the Director is prohibited from making underwriting judgments. If this insurer has complied with the cancellation or nonrenewal laws, the Director does not have the authority to overturn this action.

The South Carolina Department of Insurance provides a buyer's guide regarding property insurance shopping and availability as well as information on other insurance. You may contact the South Carolina Department of Insurance at 300 Arbor Lake Drive, Suite 1200, Columbia, SC 29223 - P.O. Box 100105, Columbia, South Carolina 29202-3105; Phone: (803) 737-6180 - Toll Free: (800) 768-3467 - Fax: (803) 737-6231.

☐ **Replacement Insurance Information:** If you are unable to obtain replacement coverage from another insurance company, you may be eligible for insurance through the organization designated in this notice. For further information, please contact your agent or broker or the following organization:

☐ **Consumer Report:** In compliance with the Fair Credit Reporting Act (Public Law 91-508) and the Consumer Credit Reform Act of 1996, you are hereby informed that the action taken above is being taken wholly or partly because of information contained in a consumer report from the following consumer reporting agency:

(Name) _____ (Phone Number) _____
(Address) _____

Please see additional information for a disclosure of your rights under this federal law.

NOTICE OF CANCELLATION, NONRENEWAL OR CHANGE IN POLICY COVERAGE
(South Carolina)

NAME AND . Colony Insurance Company
ADDRESS C/O Market Finders Insurance Corp
OF INSURANCE P O Box 6549
COMPANY Louisville KY 40206

NAME AND . THREE BLIND MICE, INC. DBA
ADDRESS BLIND HORSE SALOON
OF INSURED 1035 LOWNDES HILL ROAD
GREENVILLE SC 29607

KIND OF POLICY:	
Commercial General Liability	
POLICY/APPLICATION/BINDER NO.: GL3812749 Typist: DD	
EFFECTIVE DATE OF NOTICE:	
12/14/2011 (DATE)	12:01 AM (HOUR-STANDARD TIME AT THE ADDRESS OF THE INSURED)
DATE OF MAILING: 10/4/2011	
NAME AND ADDRESS OF AGENT/BROKER:	
HERLONG BATES BURNETT INS INC	
28 GLOBAL DRIVE	
SUITE 102	
GREENVILLE	SC 29607

Additional Information regarding your rights under the Consumer Credit Reform Act

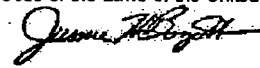
Pursuant to the Consumer Credit Reform Act of 1996, effective September 30, 1997, you are informed that:

The consumer reporting agency identified on this form did not make any decisions regarding the stated insurance policy. Therefore, the consumer reporting agency would not be able to provide you with the specific reasons why the insurance company is taking the present action.

You have the right to obtain within 60 days of the receipt of this notice a free copy of your consumer report from the consumer reporting agency which has been identified on this form.

You have the right to dispute inaccurate information by contacting the consumer reporting agency directly. Once you have directly notified the consumer reporting agency of your dispute, the agency must, within a reasonable period of time reinvestigate and record the current status of the disputed information. If after reinvestigation, such information is found to be inaccurate or unverifiable, such information must be promptly deleted from your records. If the reinvestigation does not resolve the dispute, you may file a brief statement setting forth the nature of the dispute with the consumer reporting agency. Your filed statement will then be included or summarized in any subsequent consumer report containing the information in question.

For complete information regarding the Federal Consumer Credit Protection Law please refer to The Code of the Laws of the United States of America, Title 15, Chapter 41, Subchapter III, (15 U.S.C. §1681 et seq.).



AUTHORIZED REPRESENTATIVE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:**

Assault, Battery or Assault and Battery

This insurance does not apply to damages or expenses due to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from:

- (1) "Assault", "Battery" or "Assault and Battery" committed by any person;
- (2) The failure to suppress or prevent "Assault", "Battery" or "Assault and Battery" by any person;
- (3) The failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- (4) The failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- (5) "Assault", "Battery" or "Assault and Battery" arising out of the negligent hiring, supervision, or training of any person;
- (6) The use of any force to protect persons or property whether or not the "bodily injury" or "property damage" or "personal and advertising injury" was intended from the standpoint of the insured or committed by or at the direction of the insured.

- B. SECTION V – DEFINITIONS is amended and the following is added:**

"Assault" means:

- a. an act creating an apprehension in another of immediate harmful or offensive contact, or
- b. an attempt to commit a "Battery".

"Battery" means an act which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.



COLONY SPECIALTY

Member Argo Group

August 1, 2012

REGULAR MAIL AND CERTIFIED MAIL RECEIPT REQUESTED

Three Blind Mice, Inc. dba
Blind Horse Saloon
1035 Lowndes Hill Road
Greenville, SC 29607

David L. Moore, Esq
Nexsen, Pruet
55 East Camperdown Way, Suite 400
Greenville, SC 29601

Re: Insured: Three Blind Mice, Inc. dba Blind Horse Saloon
Policy: GL3812749
Claim #: 208563
Loss Date: 10/29/11

Claimant: Katherine Frost
UNAIC#: 39993
Dear Policyholder and Mr. Moore:

We are writing on behalf of Colony Insurance Company (hereinafter referred to as "Colony") to acknowledge receipt of the above referenced lawsuit, which has been tendered to Colony for defense and indemnification under the Policy No. GL3812749 issued to Colony's named insured Three Blind Mice, Inc. dba Blind Horse Saloon. Colony has reviewed the information currently available against the coverage provided. We must advise that based on the current information available, we find no coverage to Three Blind Mice, Inc. dba Blind Horse Saloon under the Commercial General Liability policy issued by Colony.

FACTUAL BACKGROUND AND ALLEGATIONS

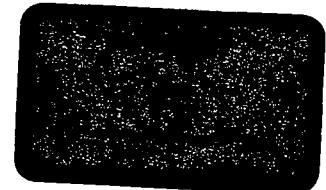
On December 5, 2011 Colony received a General Liability Notice of Occurrence/Claim completed by Herlong Bates Burnett Insurance, Inc. indicating that a customer was punched by another customer who missed a punching bag while playing a game. We conducted a complete investigation including a scene investigation, statements from the claimant as well as independent witnesses. A coverage disclaimer was issued on February 14, 2012.

On July 12, 2012 we received correspondence from David L. Moore, on behalf of his client Three Blind Mice, LLC, which included a copy of the Complaint filed by Katherine and Bobby Frost. The complaint is for injuries and damages arising out of the October 29, 2011 incident

Argonaut Insurance Company, Argonaut Midwest Insurance Company, Argonaut Specialty Insurance Company, Colony Insurance Company, Colony National Insurance Company, Colony Specialty Insurance Company

P.O. Box 469012
San Antonio, TX 78246

T 800.577.6614
F 804.560.4834



Claim No.:
August 1, 2012
Page 2

and alleges negligence and gross negligence against Three Blind Mice for maintaining a product on their premises that was unreasonably dangerous and failure to warn.

DENIAL OF COVERAGE

Before Colony Insurance Company has an obligation to pay any damages in this claim, the damages must:

- 1) fall within coverage provided; and
- 2) meet the conditions and definitions of the policy, and
- 3) not fall within any exclusion(s) contained in the policy.

This letter is to serve as a denial of coverage and/or defense under the Policy and/or applicable laws. The "COVERAGE" section below provides a more detailed explanation of the basis for this denial of coverage letter.

COVERAGE

Colony issued a Commercial General Liability policy to Three Blind Mice, Inc. dba Blind Horse Saloon under Policy Number GL3812749, with effective dates of December 14, 2010 to December 14, 2011. The policy contains a general liability limit in the amount of \$1,000,000, with a \$500 per claim deductible.

The basic coverage form of the policy is **CG 0001 (12 04) Commercial General Liability Coverage Form**.

Your policy's **CG 0001 (12 04) Commercial General Liability Coverage Form** and applicable endorsements contain certain exclusions and conditions of coverage. First we refer you to the Insuring Agreement, which states:

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. INSURING AGREEMENT

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any occurrence and settle any claim or "suit" that may result. . But:

Claim No.:
August 1, 2012
Page 3

- (1) The amount we will pay for damages is limited as described in Section III - Limits of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS – COVERAGES A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

Our investigation reveals that the claimant was standing a few feet away from the punching bag game when another customer punched at the bag and on his follow-through he hit the claimant in the back. Clearly this incident involves "battery." Your policy does not provide coverage for injury or damages that arise out of an assault or battery. Your policy includes the **Assault, Battery or Assault and Battery Exclusion, U006 (07 07)**, which states the following:

ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART:

Section I – Coverages, Coverage A Bodily Injury and Property Damage Liability, 2. Exclusions and Section I – Coverages, Coverage B Personal and Advertising Injury Liability, 2. Exclusions is amended and the following is added:

Assault, Battery or Assault and Battery

Claim No.:
August 1, 2012
Page 4

This insurance does not apply to damages or expenses due to "bodily injury", or "property damage" or "personal and advertising injury" arising out of or resulting from:

- (1) "Assault", "Battery" or "Assault and Battery" committed by any person;
- (2) The failure to suppress or prevent "Assault", "Battery" or "Assault and Battery";
- (3) The failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- (4) The failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- (5) "Assault", "Battery" or "Assault and Battery" arising out of the negligent hiring, supervision or training of any person;
- (6) The use of force to protect persons or property whether or not "bodily injury" or "property damage" or "personal and advertising injury" was intended from the standpoint of the insured or committed by or at the direction of the insured.

Section V – Definitions is amended and the following is added:

"Assault" means:

- a. an act creating an apprehension in another of immediate harmful or offensive contact, or
- b. an attempt to commit a "Battery";

"Battery" means an act which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

In addition, our investigation reveals that the incident involved a punching bag game. Your policy includes the Athletic or Sport Participants Exclusion which is also applicable. I refer you to the U016 (07-02) which states the following:

ATHLETIC OR SPORT PARTICIPANTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Claim No.:
August 1, 2012
Page 5

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended and the following added:

Athletic or Sport Participants

This insurance does not apply to "bodily injury" to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.

Your policy contains specific policy language which limits the coverage to a scheduled business description, night club/bar. The plaintiff was injured as a result of being punched by another customer. The incident does not arise out of the business of running a night club/bar. The policy only covers claims caused by or resulting from the business described in the Schedule. I refer you to the following endorsement U159-0702:

**LIMITATION OF COVERAGE
TO
BUSINESS DESCRIPTION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

BUSINESS DESCRIPTION: Night club/bar

A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

(4) The "bodily injury" or "property damage" is caused by or results from the business described in the Schedule.

B. SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

This insurance applies to "personal and advertising injury" caused by an offense in the course of the business described in the Schedule.

In summary, we do not believe Colony's policy applies to any aspect of this loss. It is important that you review this matter with your personal counsel to ensure your interests are protected. We are willing to investigate any other information you feel is relevant to possible coverage under the policy.

Claim No.:
August 1, 2012
Page 6

This letter is in no way intended to limit or restrict Colony from relying upon or asserting other facts, grounds and policy provisions that are or may become applicable and available to it in support of a denial of coverage. The failure of this letter to reference other provisions of the policy or other principles of law is not intended to waive any such right and/or defenses Colony may have under the policy and applicable law, and Colony expressly reserves its rights to assert any and all such defenses to coverage.

This letter involves contract interpretation. If you or your legal representative have any questions or disagree with Colony's position on coverage, please contact the undersigned at the phone number listed below. If you are aware of, or in the future if you obtain additional information that may bear on any of the information or positions set forth in this letter, or if you disagree with the statements contained in this letter, please let us know and we will again review this matter.

If you receive any suit or other correspondence regarding this incident, please forward them immediately to Colony at either the fax, e-mail, or postal address below so that we may review them with regard to our position on coverage. It is important that we receive any such paperwork promptly.

FAX: 804-560-4834
MAIL: P O Box 469012, San Antonio, TX 78246
E-MAIL: claimreporting@colonyspecialty.com

Sincerely,

Stephanie Doyle

Colony Insurance Company
Stephanie Doyle, CCLA
Sr. Claims Examiner

cc: Market Finders
1200 Woodruff Road, Suite G-14
Merovan Center
Greenville, SC 29607

Herlong Bates Burnett Insurance, Inc.
28 Global Drive, Suite 102
Greenville, SC 29607

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF THE COURT
GREENVILLE CO. S.C.
PAUL D. WICKENS
CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant/Third-Party Plaintiff,

vs.

BRADY DISTRIBUTING CO., d/b/a NEW
VEMCO MUSIC CO.,

Third-Party Defendant.

2014 SEP 4 AM 8 44

**REPLY TO
COUNTERCLAIM**

Three Blind Mice, LLC., d/b/a The Blind Horse Saloon, would reply to the Counterclaim submitted by Colony Insurance Company and show unto the Court and jury as follows:

1. The allegations of paragraphs 1 and 2 of the Counterclaim are admitted.
2. The Plaintiff would admit, on information and belief, the allegations of paragraph 3 of the Counterclaim.
3. The allegations of paragraphs 4 and 5 of the Counterclaim are admitted.
4. In responding to paragraph 6 of the Counterclaim, the Plaintiff would assert that the Complaint filed by Bobby and Katherine Frost alleged that their injuries and damages were a proximate result of the inadvertent act of an unknown patron of The Blind Horse Saloon, who struck Katherine Frost in the back while using an amusement boxing machine. The term "battery" as defined in the Colony Insurance policy is ambiguous as to whether the act excluded

must be an intentional act, as the term "battery" normally is defined. Since this ambiguity is to be construed against Colony Insurance Company, the Plaintiff would deny that the act described by the Frosts in their Complaint falls within the term "battery" as used in the Colony Insurance Company policy issued to the Plaintiff. The remaining allegations of paragraph 6 of the Counterclaim are denied.

5. In responding to paragraph 7 of the Counterclaim, the Plaintiff would deny that the injuries which Bobby and Katherine Frost contended were caused by an unknown patron at The Blind Horse Saloon were the result of the Plaintiff's operation of a game or sport. Instead, the injuries complained of resulted when Katherine Frost, who was not practicing for or making use of the amusement boxing machine, was struck in the back. The remaining allegations of paragraph 7 of the Counterclaim are denied.

6. The Plaintiff would admit that Colony Insurance Company issued a letter denying coverage to the Plaintiff on August 1, 2012, as shown in Exhibit B attached to its Answer, Counterclaim, and Third-Party Complaint.

7. In responding to paragraph 9 of the Counterclaim, the Plaintiff would admit that the Colony Insurance policy includes an exclusion for injuries resulting from a "battery." The policy is, however, ambiguous as to whether the term "battery" is limited to intentional acts, as the term is normally defined, or includes a broader scope for both intentional and unintentional acts caused by harmful or offensive contact to another. The Plaintiff would further note that if the more expansive definition of "battery" is utilized, that more expansive definition has the effect of precluding all coverage for bodily injury caused by an occurrence which the policy purports to provide and for which the Plaintiff duly paid the premium. In further responding to paragraph 9 of the Counterclaim, the Plaintiff would admit that the Colony Insurance policy

includes an exclusion for injuries to a person who is practicing for or participating in any activity, game or sport. However, neither Bobby Frost nor Katherine Frost were engaged in the use of the amusement boxing machine and the exclusion is ambiguous as to whether it is directed toward the injured person participating or using the game, or is directed toward anyone using the game who causes harm in doing so. The Plaintiff, in answering paragraph 9 of the Counterclaim, would acknowledge that the Colony Insurance Company policy is limited to occurrences caused by events arising out of the Plaintiff's business as a nightclub or bar, which would include the use of amusement games at its facilities. The remaining allegations of paragraph 9 of the Counterclaim are denied.

8. The Plaintiff would acknowledge that the Counterclaim is brought pursuant to the South Carolina Declaratory Judgment Act, as set forth in Sections 15-53-10, *et seq.* However, since Colony Insurance Company denied coverage for this occurrence, there is no justiciable controversy upon which a declaratory judgment might be based. As a result, Colony Insurance Company has waived its right to seek a declaratory action.

9. Paragraphs 11 and 12 of the Counterclaim are admitted. However, the Plaintiff would deny that Brady Distributing Co. d/b/a New Vemco Music Co. is a necessary or proper party to this action.

10. In responding to paragraph 13 of the Counterclaim, the Plaintiff would acknowledge that the claims of Bobby and Katherine Frost had been settled by all named defendants to their action through mediation. The Plaintiff would admit that Brady Distributing Co. has asserted a right to contractual indemnification against it. To the extent any liability exists on the part of the Plaintiff to Brady Distributing Co., the Plaintiff would assert that there is coverage under the Colony Insurance Company policy and that it is entitled to payment by way

of reimbursement for any amount owed to Brady Distributing Co.. The remaining allegations of paragraphs 13 of the Counterclaim are denied.

11. The allegations of paragraph 14 of the Counterclaim are admitted.

12. This Plaintiff would admit paragraphs 15 and 16 as written. The Plaintiff would note, however, that the definitions of "assault," "battery" and "assault and battery" fail to specify whether those definitions apply only to intention acts, as those acts are usually defined, or to a broader scope, including both intentional and unintentional. Because this ambiguity must be construed against Colony Insurance Company, those definitions should be limited only to intentional acts. Moreover, if the broader definition is used, it has the effect of eliminating all coverage for personal injury contrary to the general provisions of the policy which provide such coverage.

13. This Plaintiff would admit paragraph 17 as written. The Plaintiff would also note, however, that the exclusion for bodily injury to a person participating in a sport or game is inapplicable since Katherine Frost was not making use of the amusement box machine when she was injured. The limitation of coverage to operations occurring at a bar or nightclub is also inapplicable since the occurrence complained of, in fact, occurred on the premises while it was being operated as a bar or nightclub.

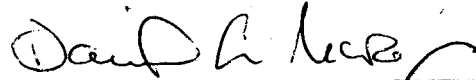
14. In responding to paragraph 18 of the Counterclaim, the Plaintiff would assert that the exclusions concerning injuries arising out of athletic or sport participation, injuries caused by an assault or battery, or the limitation of coverage to occurrences taking place as a result of using the premises as a nightclub or bar, as set forth in the Colony Insurance Company policy, are not applicable to the particular circumstances of this case, although there may be circumstances,

irrelevant hereto, where those provisions might be enforceable. The remaining allegations of paragraph 18 of the Counterclaim are denied.

15. The allegations of paragraph 19 of the Counterclaim are denied.

16. The remaining allegations of the Counterclaim as set forth in the Answer, Counterclaim and Third-Party Complaint of Colony Insurance Company, not hereinabove expressly admitted, modified or explained, are denied.

WHEREFORE, having replied to the Counterclaim of Colony Insurance Company, Three Blind Mice, LLC, d/b/a The Blind Horse Saloon, would pray that the Counterclaim be dismissed with costs, that it be granted judgment upon its Complaint, that it be granted attorneys' fees and costs related to this Counterclaim, and that it be granted such other and further relief as the Court may deem just and proper.



David L. Moore, Jr. (S.C. Bar No. 4050)
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, SC 29603-0648
(864) 370-2211
Attorneys for Plaintiff

September 2, 2014
Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant,

**DEFENDANT COLONY INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
JUL 21 9 32 AM '14
MICHELLE C. CUMMER

COMES NOW Defendant Colony Insurance Company, by and through counsel and pursuant to South Carolina Rule of Civil Procedure 56, and hereby moves the Court to enter summary judgment in its favor on all issues in this action, on the grounds that there are no genuine issues of material fact and that Colony is entitled to judgment in its favor as a matter of law.

Specifically, Colony requests a declaration that Commercial General Liability Insurance Policy No. GL3812749 issued by Colony to Three Blind Mice, Inc. dba Blind Horse Saloon, with effective dates of December 14, 2010 to December 14, 2011 (the Policy), does not provide coverage for the claims asserted in the lawsuit filed by Katherine and Bobby Frost captioned *Katherine Frost and Bobby Frost v. Knockout Vending Worldwide, LLC*, et al., Civil Action No. 2012-CP-23-3249 (the Frost Lawsuit), arising out of an incident that occurred on October 30, 2011, during which it is alleged that Katherine Frost sustained personal injuries when she was struck by a patron who was attempting to make use of a boxing machine in the Blind Horse Saloon. The specific grounds for this motion are that coverage is not afforded under the Policy

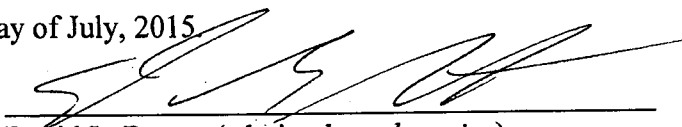
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for the claims asserted in the Frost Lawsuit based upon the application of: (1) the "Assault, Battery or Assault and Battery Exclusion" endorsement to the Policy; (2) the "Athletic or Sport Participants Exclusion" endorsement to the Policy; and/or (3) the "Limitation of Coverage to Business Description" endorsement to the Policy.

In support of its motion, Colony relies on the pleadings, including the Stipulation of Facts with a copy of the Complaint in the Frost Lawsuit and a certified copy of the Policy attached thereto, as well as such additional materials as may be properly filed or presented to the Court for hearing.

WHEREFORE, Defendant Colony Insurance Company respectfully requests that the Court grant its Motion for Summary Judgment and declare that Commercial General Liability Insurance Policy No. GL3812749 issued by Colony to Three Blind Mice, Inc. dba Blind Horse Saloon, with effective dates of December 14, 2010 to December 14, 2011, does not provide coverage for the claims asserted in the Frost Lawsuit.

This the 24th day of July, 2015.



David L. Brown (admitted *pro hac vice*)
David G. Harris II S.C. (State Bar No. 101951)
Goldberg Segalla LLP
800 Green Valley Road, Suite 302
Greensboro, NC 27408
Telephone: (336) 419-4900
Email: dbrown@goldbergsegalla.com
dharris@goldbergsegalla.com

Eric K. Englebardt (S.C. State Bar No. 12892)
Turner, Padget, Graham & Laney, P.A.
P. O. Box 1509
Greenville, South Carolina 29602
Telephone: (864) 552-4624
Email: eenglebardt@turnerpadget.com

Attorneys for Defendant Colony Insurance Company

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

**MOTION FOR
SUMMARY JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSINGER
2015 AUG 6 PM 10 30

TO: COLONY INSURANCE COMPANY and its attorneys, DAVID L. BROWN, ESQ.,
DAVID G. HARRIS, II, ESQ., and ERIC ENGLEBARDT, ESQ.

YOU WILL PLEASE TAKE NOTICE that the undersigned attorneys, on behalf of the Plaintiff, will move before the Court at such time and place as the Court may hereinafter direct, for an order granting summary judgment pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. This motion is based upon the pleadings which have been filed in this matter, the certified copy of the insurance policy issued to Three Blind Mice, LLC, the Complaint filed by Katherine and Bobby Frost in the underlying action against Three Blind Mice, LLC, Responses to Requests for Admission, and the Plaintiff's Brief in support of its Motion for Summary Judgment, all of which demonstrate that Colony Insurance Company has in breach of its contract with Three Blind Mice, LLC, and in bad faith denied coverage to Three Blind Mice, LLC, with regard to the civil action instituted by Katherine and Bobby Frost.

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Attorneys for Plaintiff

August 4, 2015

Greenville, South Carolina

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

**BRIEF IN SUPPORT OF
MOTION FOR
SUMMARY JUDGMENT**

BACKGROUND

On October 30, 2011, Katherine Frost, while attending a Halloween party at The Blind Horse Saloon, was struck by an unknown patron who was using a boxing machine located on the premises. The boxing machine was a coin-operated amusement device which allowed a customer to strike a punching bag to measure his or her strength. In this instance, the unknown patron apparently swung wildly, struck Katherine Frost and caused her injury.

Katherine Frost and her husband, Bobby Frost, thereafter submitted a claim for damages, and, when negotiations proved unfruitful, filed suit. Three Blind Mice, LLC, which owns and operates The Blind Horse Saloon, submitted the claim and Complaint to Colony Insurance Company (hereinafter Colony), which provided liability insurance coverage to Three Blind Mice, LLC. Colony declined coverage on both occasions. (Exhibits 1 and 2.)

After litigation was initiated, mandatory mediation was engaged in. Three Blind Mice, LLC agreed to contribute \$10,000 toward the settlement reached. Three Blind Mice, LLC has filed this action for breach of contract and bad faith denial of coverage from Colony, seeking to

recover its portion of the settlement payment, attorneys' fees, litigation costs and expenses. Colony has in turn filed a counterclaim, seeking a declaration that it properly denied coverage in this instance based upon the defenses set forth in its letters denying coverage.

ANALYSIS / LIABILITY

Under South Carolina law, the obligation of a liability insurer to defend and indemnify is typically determined by the allegations of the Complaint against the insured. Manufacturers and Merchants Mut. Ins. Co. v. Harvey, 330 SC 152, 498 S.E.2d 222 (Ct. App. 1998). (Although this general principle has recently been expanded to allow coverage through the consideration of facts outside the allegations of the Complaint, which are known to the insurer, City of Hartsville v. South Carolina Municipal Ins. & Risk Financing Fund, 382 S.C. 525, 677 S.E.2d 574 (2009), this expansion of the general principle has no application in this matter since there were no known facts outside the allegations of the Complaint which would affect coverage.)

In their Complaint, Katherine and Bobby Frost alleged that she was inadvertently struck by an unknown individual using the boxing machine. (Complaint, ¶ 14.) (Exhibit 3.) Additionally, the Frosts asserted that The Blind Horse Saloon was negligent in maintaining the boxing machine on its premises, failing to place guards or establish a safety zone around the machine, and in failing to warn of the potential damages presented from use of the boxing machine. (Complaint, ¶ 30.)

The Colony policy provides that the insurer will pay those sums which The Blind Horse Saloon is obligated to pay as damages for bodily injury caused by an "occurrence." An "occurrence" is defined by the policy to include an "accident." Although the term "accident" is not defined, the South Carolina Supreme Court, in Green v. United Ins. Co. of America, 254 S.C. 202, 174 S.E.2d 400 (1970), defined the term to mean "[a]n unexpected happening or event,

which occurs by chance and usually suddenly, with harmful result, not intended or designed by the person suffering the harm or hurt.” Clearly, the act causing harm to Katherine Frost was unexpected and sudden, occurring by chance due to where she was standing and therefore meets the policy definition of an “occurrence.” Moreover, there is no evidence that the unknown patron intended to cause the injury. See, Goethe v. New York Life Ins Co., 183 S.C. 199, 190 S.E.2d 451 (1937) (an “accident” is an effect which the actor did not intend to produce and cannot be charged with the design of producing). Based upon these definitions, the event by which Katherine Frost was injured constitutes an “occurrence.” Since there was an “occurrence” which caused bodily injury, there would normally be coverage under the insurance policy, unless there was an applicable exclusion precluding coverage.

EXCLUSION FOR INJURY CAUSED BY ASSAULT AND BATTERY

Colony contends that its exclusion of coverage for bodily injury caused by an “assault and battery” is applicable. Colony utilized ISO form U006-0707 (Exhibit 4) to exclude coverage for an injury caused by an assault and battery. Pursuant to form U006-0707, an “assault” is defined to include “an act creating apprehension in another of immediate harmful or offensive contact.” Since Katherine Frost was unaware that the unknown patron had swung wildly before he hit her, this definition does not apply. Form U006-0707 also defines an “assault” as “an attempt to commit a ‘battery’.” This definition obviously depends on whether a “battery” exists. The term “battery” is defined by the policy to mean “an act which brings about harmful or offensive contact to another or anything connected to another.” Colony contends that this definition of “battery” includes both intentional and unintentional acts.

However, a review of the definition of “battery” set forth in the Colony policy reveals that there is no indication of whether the exclusion is to apply to both intentional and

unintentional acts or simply to intentional acts. Most definitions of “assault and battery” would indicate that it is intentional act. See, e.g., Longshore v. Saber Security Services, Inc., 365 S.C. 554, 619 S.E.2d 5 (Ct. App. 2005); Hendricks v. Southern Bell Tel. & Tel. Co., 193 Ga. App. 264, 387 S.E.2d 593 (1989); Brett v. Hayes, 142 N.C. App., 190, 541 S.E.2d 761 (2001). Please note that the Alabama Supreme Court has defined a “battery” as a successful assault, consisting of an injury actually done to another in an angry, revengeful, rude or insolent manner. Acceptance Ins. Co. v. Brown, 832 S.2d 1 (Ala. 2001). The Alabama Court went on to state that the wrong presented by a battery consists not in the touching of another but in the manner or spirit in which it was done. Id. Likewise, the Restatement (2d) Torts § 18 (2005) provides that one commits a battery only if “he acts intending to cause a harmful or offensive contact with the person of the other or a third person.” Where the act lacks the intent to cause harmful or offensive contact, there is no battery, although there may be negligence. See, W. Prosser, Laws of Torts § 9 (4th ed. 1971).

Even if there is authority indicating that intent is not an essential element of an assault and battery, see, Mellen v. Lane, 377 S.C. 261, 659 S.E.2d 236 (Ct. App. 2008), those cases appear to rely upon the existence of reasonable fear of bodily harm caused by a defendant’s conduct which eliminates the necessity of an intentional battery. However, in this case it is clear that there was no assault. As a result, the battery must be an intentional act in the absence of an assault. In fact, Mellen v. Lane, supra, defines a “battery” as “the unlawful touching or striking of another by the aggressor himself or by any substance put in motion by him, done with the intention of bringing about a harmful or offensive contact which is not legally consented to by the other, and not otherwise privileged.” (Emphasis added.)

Even if there are definitions of “battery” which are broad enough to include unintentional acts, the mere fact that different courts have construed the term differently is some indication of an ambiguity. Greenville County v. Insurance Reserve Fund, 313 S.C. 546, 443 S.E.2d 552 (1994). As noted by the Court in Brooklyn Bridge, Inc. v. South Carolina Ins. Co., 309 S.C. 141, 420 S.E.2d 511 (Ct. App. 1992), if an insurer intends to limit an exclusion to a particular circumstance, it can specifically provide for that limitation by the addition of words which would make the exclusion clear and unambiguous. Likewise, if Colony had wanted to expand the definition of “battery” to include both intended and unintentional acts, it could have done so with the addition of words to that effect. In ISO forms U006-0511 (Exhibit 5), U233-0511 (Exhibit 6), and U233A-0511 (Exhibit 7), each of which has been used by Colony (see responses to Requests for Admission, Exhibit 8), the term “battery” was specifically defined to include both intentional and unintentional acts. Obviously, if the language was more specific in those forms, similar language broadening the scope of what constitutes a “battery” could be utilized in this policy. Without the broadening language, an ambiguity is created.

Under South Carolina law, if an insurance policy is ambiguous or capable of two reasonable interpretations, the construction of that policy which is most favorable to the insured will be adopted. Greenville County v. Insurance Reserve Fund, 311 S.C. 169, 427 S.E.2d 913 (Ct. App. 1993); see also, Smith v. Commissioners of Public Works of City of Charleston, 312 S.C. 460, 441 S.E.2d 331 (Ct. App. 1994); Ward v. West Oil Co., Inc., 379 S.C. 225, 665 S.E.2d 618 (Ct. App. 2008) (an “ambiguous agreement” is one capable of being understood in more ways than one; one which is obscure in meaning through indefiniteness of expression; or one which contains words which have a double meaning). In this case the definition of “battery” is

clearly ambiguous since it does not distinctly indicate whether it is limited to intentional acts or includes both intentional and unintentional acts.

In addition to requiring that ambiguous provisions be construed against the insurer, South Carolina law also requires that policy exclusions be interpreted narrowly and to the benefit of the insured. Horry County v. Insurance Reserve Fund, 344 S.C. 493, 544 S.E.2d 637 (Ct. App. 2001). In this case the narrow interpretation would require the term "battery" be limited to intentional acts.

Finally, where an insurance policy contains an internal inconsistency created by an exclusion which purports to bar coverage for claims arising out of the very operation sought to be insured, the policy is rendered ambiguous, requiring that it be construed in favor of coverage. BLG Enterprises, Inc. v. First Financial Ins. Co., 328 S.C. 374, 491 S.E.2d 695 (Ct. App. 1997). Based upon the position taken by Colony, an unintentional act which creates harmful contact with a third party constitutes a "battery" which is not covered. However, the only means by which bodily injury can be created and covered is through an unintended contact or touching, whether direct or indirect. An unintentional act is essentially an accident which constitutes an "occurrence." In other words, by broadly interpreting the term "battery" to include unintentional acts which cause bodily harm, the Colony exclusion acts to preclude all coverage for bodily injury damages. Yet, as is clear from a review of the policy, this is the type of damage which the policy was intended to cover and for which a premium was paid. The broad interpretation of this exclusion allows Colony to take away what it has purportedly sold to Three Blind Mice, LLC.

Based upon the above reasoning, the broad interpretation of the "assault and battery" exclusion should be rejected since the exclusion can be reasonably interpreted in more than one manner (and is therefore ambiguous), because exclusions are to be narrowly interpreted and

because exclusions which are so broad as to eliminate the very coverage being purchased are considered ambiguous. As noted, all ambiguous insurance policy provisions are to be construed in favor of the insured, thereby rendering the "assault and battery" exclusion only applicable to intentional acts. If this is the correct interpretation of the Colony policy, then there would be coverage for Three Blind Mice, LLC since the injury to Katherine Frost was caused by a negligent, unintentional act of a patron. The alleged negligence of Three Blind Mice, LLC would have been an outgrowth or result of this preliminary act. As such, there would be coverage for any negligent act since it constitutes an "occurrence."

**EXCLUSION FOR DAMAGES ARISING OUT OF
PARTICIPATION IN ATHLETIC EVENT**

Colony also denied coverage to Three Blind Mice based upon an exclusion for damages arising out of participation in an athletic or sporting event. The policy specifically provides as follows:

ATHLETIC OR SPORT PARTICIPANTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SECTION I – COVERAGES, COVERAGE A BODILY INJURY
AND PROPERTY DAMAGE LIABILITY,

2. Exclusions is amended and the following added:

ATHLETIC OR SPORT PARTICIPANTS

This insurance does not apply to "bodily injury" to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.

While there may be some question of whether utilizing a boxing machine actually constitutes participating in an athletic or sports event, there is no question that the exclusion only

applies to those who actually participate in the event. It should first be noted that the endorsement is clearly labelled as an "athletic or sport participants exclusion" (emphasis added). Secondly, when interpreting a similar clause, courts of other jurisdictions have held that the insurer must prove that the injured person was practicing for or participating in the contest or exhibition at the time of the injury. See, e.g., Jefferson Ins. Co. of New York v. Sea World of Florida, Inc., 586 So.2d 95 (Fla. 1991); Garcia v. St. Bernard Parish School Bd., 576 So.2d 975 (La. 1991). As a result, coverage might be excluded for the individual who negligently swung at the boxing bag and struck Katherine Frost since he was utilizing the machine. However, Katherine Frost, who was merely standing in the vicinity of the machine when she was struck and not engaging or participating in an athletic or sports event, would not fall within the ambit of the exclusion.

Moreover, as written, the exclusion is ambiguous as to whether it applies only to an athletic injury or damage, the athletic participant or more broadly to any bystander who might be injured by one participating in the sports event. Since exclusions are to be narrowly construed in favor of coverage, the narrower interpretation of the exclusion language should be utilized, making the exclusion inapplicable to the circumstances of the underlying case. Language broadening the effect of the exclusion could have been utilized by Colony. Its failure to include broader language should not now lead to an interpretation in its favor.

**EXCLUSION FOR DAMAGES NOT RESULTING FROM
DESCRIBED BUSINESS ACTIVITIES**

Finally, in its denial letter of May 15, 2012, Colony took the position that there was no coverage for the accident of October 30, 2011, since coverage was limited to matters resulting from the described business, namely a nightclub and bar. The scope of activities included in the night club business is left undefined by the policy. However, it is clear that the allegations set

forth in the underlying Complaint concern the operation of The Blind Horse Saloon: maintaining the interactive boxing machine on its premises, failing to protect customers by placing guards around the boxing machine, and failing to warn customers of the nightclub of damages inherent in the use of the boxing machine. With each specification of negligence, Bobby and Katherine Frost contended that The Blind Horse Saloon failed to protect its customers while they were properly on the premises of the nightclub. As a result, the allegations fall squarely within the operation of that business. Consequently, Katherine Frost's injuries were therefore allegedly caused by or resulted from that business. Note should also be taken of another endorsement to the Colony policy which provides that coverage is available for "bodily injury" arising out of or resulting from the ownership, maintenance and use of the premises (Limitation of Coverage to Designated Premises or Project, U046-0904). (See Colony Insurance policy, Exhibit 9.) When this endorsement is read with the endorsement (U159-0705) (Limitation of Coverage to Business Description), it is clear that there is coverage for any injury or damage resulting from the operation and use of the described premises as a nightclub (as opposed to some other type of activity or business). In the instant matter, the injuries sustained by Katherine Frost were allegedly a proximate result of negligence of Three Blind Mice in its operation of its nightclub. The Blind Horse Saloon did not, according to the Complaint filed by Bobby and Katherine Frost, simply serve as a venue for where the accident occurred. (By way of analogy, if a vehicle simply serves as the location of where someone is shot with no connecting relationship to the criminal act, there is no coverage under an automobile liability policy; on the other hand, if one is injured while the vehicle is being operated, there is clearly coverage under the automobile liability policy. See Wausau Underwriters Ins. Co. v. Howser, 309 SC 269, 422 S.E.2d 106 (1992).)

DAMAGES

Because Colony refused to provide Three Blind Mice, LLC a defense of the action instituted by Katherine and Bobby Frost, Three Blind Mice, LLC was forced to retain attorneys to defend it. As a result of Colony's denial of coverage, Three Blind Mice, LLC, acting in its best interest, entered into a release with Katherine and Bobby Frost settling their claims for damages arising out of the occurrence of October 30, 2009. In order to enforce its rights under the policy issued to it by Colony, Three Blind Mice, LLC also incurred attorneys' fees and litigation costs. Each of these costs and expenses are damages which could have been avoided if Colony had properly undertaken the defense of the litigation instituted by Katherine and Bobby Frost. The refusal by Colony to undertake that defense constitutes a breach of the insurance policy (breach of contract) for which damages are recoverable. In addition, because there was no reasonable basis for the denial of coverages, Three Blind Mice, LLC is entitled to recover damages for the tort of bad faith by Colony.

In the case of a breach of contract, a plaintiff is entitled to recover the equivalent of the performance of the contract. Only such damages as may reasonably be supposed to have been in the contemplation of both parties at the time the contract was made may be collected. Hutson v. Continental Assurance Co., 269 S.C. 322, 237 S.E.2d 375 (1977). On the other hand, with a tort, damages are awarded in order to place the injured party in the position he would have been if the wrong had not been committed. Damages may be recovered for all injuries which flow from the wrongful act, whether or not those damages could have been anticipated or contemplated at the time the contract was entered into. Id.

Normally, attorney fees are not recoverable in the absence of a contract or statute. However, South Carolina, in the case of insurance disputes, has recognized that in fairness to a

wronged insured, he or she should be permitted to recover attorney fees as an element of damages. See Hegler v. Gulf Ins. Co., 270 S.C. 548, 243 S.E.2d 443 (1978). As a result, where an insurer, by virtue of a declination of coverage or defending under a reservation of rights, unreasonably forces an insured to defend itself in the underlying liability action or a declaratory judgment action or undertake a declaratory judgment action to enforce his or her rights under a policy, the Court has recognized the right to recover attorney fees. See Hegler v. Gulf Ins. Co., supra; Gordon-Gallup Realtors, Inc. v. The Cincinnati Ins. Co., 274 S.C. 468, 265 S.E.2d 38 (1980). In Hegler v. Gulf Ins. Co., supra, the Court recognized that where an insurer refuses to defend, it is liable for the payment of attorney fees incurred by the insured in the defense of the underlying action should the insurer's refusal prove to be incorrect. This is a matter of contract since the insurer has agreed as part of its obligation under the policy to provide a defense. The Hegler case also provides that if an insurer issues a reservation of rights letter and thereafter institutes a declaratory judgment action, the attorney fees incurred by an insured in successfully defending that action are the responsibility of the insurer. The Court found that there was no material difference in legal effect between an outright refusal to defend and undertaking the defense under a reservation of rights until the declaratory judgment action is prosecuted to resolve the question of coverage. In either event, the insured is required to employ an attorney to either defend in the underlying action or to force the insurer to provide a defense through the declaratory judgment action. In both instances, attorney fees are incurred because the insurer has wrongfully disclaimed any obligation to defend. Likewise, as was true in the instant case, where the insurer refuses to provide a defense by declining coverage, thereby forcing the insured not only to defend itself in the underlying action, but also to institute suit to enforce its rights under

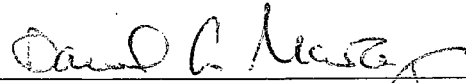
the policy, attorney fees are to be awarded for pursuing the action against the insurer. Gordon-Gallup Realtors, Inc. v. The Cincinnati Ins. Co., supra.

Additionally, where the refusal to defend has no reasonable basis, the insurer may be guilty of bad faith. Because bad faith is a tort, the wronged party is entitled to recover for all injuries and damages which flow from the wrongful act. These damages would include attorneys' fees and litigation costs associated with litigation to enforce the insurer's responsibility under its contract. See Brant v. Standard Ins. Co., 210 Cal. Rptr. 211, 693 P.2d 796 (1985) (when an insurer's tortious conduct reasonably compels the insured to retain an attorney to obtain benefits due under a policy, it follows that an insurer should be liable for the litigation expenses since it is an economic loss proximately caused by the tortious conduct).

CONCLUSION

Colony, as the insurer for Three Blind Mice, LLC, was obligated to sacrifice its interests in favor of its insured with regard to the investigation, evaluation and resolutions of claims against its insured which fell within the parameters of its policy. See Tyger River Pine Co. v. Maryland Cas. Co., 170 SC 286, 170 S.E. 346 (1938). Instead, Colony, in bad faith and in pursuit of its own interests, undertook a course of action which left Three Blind Mice, LLC without the protection it purchased by obtaining an insurance policy. Instead of filing a declaratory judgment action to resolve the issues of coverage it created, while at least providing its insured a defense, Colony denied coverage outright, not once, but twice. The actions of Colony constitute not only a breach of contract, but bad faith on its part, entitling Three Blind Mice, LLC the right to recover not only for the monetary amount paid to settle the underlying case, but also attorneys' fees, costs and interest.

September 15, 2015
Greenville, SC



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EXHIBIT 5

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ASSAULT, BATTERY OR ASSAULT AND BATTERY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions** are amended to include the following:

Assault, Battery or Assault and Battery

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- (1) "Assault", "Battery" or "Assault and Battery" caused, directly or indirectly, by you, any insured, any person, any entity, or by any means whatsoever;
- (2) the failure to suppress or prevent "Assault", "Battery" or "Assault and Battery" by you, any insured, any person, any entity, or by any means whatsoever;
- (3) the failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- (4) the failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- (5) "Assault", "Battery" or "Assault and Battery" arising out of the negligent employment, investigation, hiring, supervision, training, or retention of any person;
- (6) the use of any force to protect persons or property whether or not the "bodily injury", "property damage" or "personal and advertising injury" was intended from the standpoint of you, any insured, or any person, or committed by or at the direction of you, any insured or any person;
- (7) the failure to render or secure medical treatment or care necessitated by any "Assault", "Battery" or "Assault and Battery"; or
- (8) death, including any allegations of wrongful death, arising out of items (1) through (7) listed above.

- B. The **DEFINITIONS** Section is amended to include the following:

"Assault" means:

- a. an intentional or unintentional act, including but not limited to sexual abuse, sexual assault, intimidation, sexual harassment, verbal abuse, or any threatened harmful or offensive contact between two or more persons creating an apprehension in another of immediate harmful or offensive contact; or
- b. an attempt to commit a "Battery".

"Battery" means an intentional or unintentional act, including but not limited to sexual abuse, sexual battery, sexual molestation, or any actual harmful or offensive contact between two or more persons which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EXHIBIT 6

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSAULT, BATTERY OR ASSAULT AND BATTERY COVERAGE LIMITATION INCLUDING EXPENSES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION III – LIMITS OF INSURANCE is amended to include the following:

The most we will pay under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY** for claims and/or "suits" made against you, any insured, any person, any entity or by any means whatsoever resulting from:

- a. "Assault", "Battery" or "Assault and Battery" caused, directly or indirectly, by you, any insured, any person, any entity or by any means whatsoever;
- b. the failure to suppress or prevent "Assault", "Battery" or "Assault and Battery" by you, any insured, any person, any entity or by any means whatsoever;
- c. the failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- d. the failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- e. "Assault", "Battery" or "Assault and Battery" resulting from the negligent employment, investigation, hiring, supervision, training or retention of any person;
- f. the use of any force to protect persons or property whether or not the "bodily injury", "property damage" or "personal and advertising injury" was intended from the standpoint of you, any insured or any person or committed by or at the direction of you, any insured or any person;
- g. the failure to render or secure medical treatment or care necessitated by any "Assault", "Battery" or "Assault and Battery"; or
- h. death, including allegations of wrongful death, resulting from items a. through g. listed above.

and to which this insurance applies is shown below for this coverage:

\$50,000 Each Occurrence / \$100,000 Aggregate

The Each Occurrence Limit is the most we will pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" sustained and expenses incurred in the defense and adjustment of claims and/or "suits" asserted in any one claim and/or "suit". All claims for damages made by one or more persons because of any one act or series of acts of "Assault", "Battery" or "Assault and Battery" shall be deemed to be one claim.

The Aggregate Limit is the most, subject to the Each Occurrence Limit, we will pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" sustained and expenses incurred in the defense and adjustment of claims and/or "suits" regardless of how many persons assert claims or "suits" against you, any insured or any person.

The Each Occurrence and Aggregate Limits described above are the most we will pay regardless of the number of insureds. These Limits of Insurance are subject to and not in addition to the General Aggregate Limit shown in the Declarations of the policy. Payments under these Limits of Insurance are part of and erode the policy General Aggregate Limit of Insurance shown in the Declarations.

B. For the purposes of the Limits of Insurance provided under this endorsement:

1. any actual or threatened "Assault", "Battery" or "Assault and Battery" that is included under this endorsement shall not be considered to fall within the definition of "Assault", "Battery" or "Assault and Battery" found in any Sexual Abuse or Molestation Exclusion that may be a part of this policy; or
2. for any coverage for actual or threatened "Assault", "Battery" or "Assault and Battery" that may also be considered as covered under a Sexual Abuse or Molestation Limitation Endorsement made a part of this policy, such coverage will be limited to the highest limit applicable. This single highest limit will be the most we will pay for any one claim for any covered actual or threatened "Assault", "Battery" or "Assault and Battery".

C. The **DEFINITIONS** Section is amended to include the following:

"Assault" means:

- a. an intentional or unintentional act, including but not limited to sexual abuse, sexual assault, intimidation, sexual harassment, verbal abuse, or any threatened harmful or offensive contact between two or more persons creating an apprehension in another of immediate harmful or offensive contact; or
- b. an attempt to commit a "Battery".

"Battery" means an intentional or unintentional act, including but not limited to sexual abuse, sexual battery, sexual molestation, or any actual harmful or offensive contact between two or more persons which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EXHIBIT 7

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSAULT, BATTERY OR ASSAULT AND BATTERY COVERAGE LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION III – LIMITS OF INSURANCE is amended to include the following:

The most we will pay under **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, and **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY** for claims and/or "suits" made against you, any insured, any person, any entity or by any means whatsoever resulting from:

- a. "Assault", "Battery" or "Assault and Battery" caused, directly or indirectly, by you, any insured, any person, any entity or any by means whatsoever;
 - b. the failure to suppress or prevent "Assault", "Battery" or "Assault and Battery" by you, any insured, any person, any entity or any by means whatsoever;
 - c. the failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
 - d. the failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
 - e. "Assault", "Battery" or "Assault and Battery" resulting from the negligent employment, investigation, hiring, supervision, training or retention of any person;
 - f. the use of any force to protect persons or property whether or not the "bodily injury", "property damage" or "personal and advertising injury" was intended from the standpoint of you, any insured or any person, or committed by or at the direction of you, any insured or any person;
 - g. the failure to render or secure medical treatment or care necessitated by any "Assault", "Battery" or "Assault and Battery"; or
 - h. death, including any allegations of wrongful death, resulting from items a. through g. listed above.
- and to which this insurance applies is shown below for this coverage:

\$50,000 Each Occurrence / \$100,000 Aggregate

The Each Occurrence Limit is the most we will pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" sustained in any one claim and/or "suit". All claims for damages made by one or more persons because of any one act or series of acts of "Assault", "Battery" or "Assault and Battery" shall be deemed to be one claim.

The Aggregate Limit is the most, subject to the Each Occurrence Limit, we will pay as damages because of "bodily injury", "property damage" or "personal and advertising injury" sustained in a claim and/or "suit" regardless of how many persons assert claims and/or "suits" against you, any insured or any person.

The Each Occurrence and Aggregate Limits described above are the most we will pay regardless of the number of insureds. These Limits of Insurance are subject to and not in addition to the General Aggregate Limit shown in the Declarations of the policy. Payments under these Limits of Insurance are part of and erode the policy General Aggregate Limit of Insurance shown in the Declarations.

B. For the purposes of the Limits of Insurance provided under this endorsement:

1. any actual or threatened "Assault", "Battery" or "Assault and Battery" that is included under this endorsement shall not be considered to fall within the definition of "Assault", "Battery" or "Assault and Battery" found in any Sexual Abuse or Molestation Exclusion that may be a part of this policy; or
2. for any coverage for actual or threatened "Assault", "Battery" or "Assault and Battery" that may also be considered as covered under a Sexual Abuse or Molestation Limitation Endorsement made a part of this policy, such coverage will be limited to the highest limit applicable. This single highest limit will be the most we will pay for any one claim for any covered actual or threatened "Assault", "Battery" or "Assault and Battery".

C. The **DEFINITIONS** Section is amended to include the following:

"Assault" means:

- a. an intentional or unintentional act, including but not limited to sexual abuse, sexual assault, intimidation, sexual harassment, verbal abuse, and any threatened harmful or offensive contact between two or more persons creating an apprehension in another of immediate harmful or offensive contact; or
- b. an attempt to commit a "Battery".

"Battery" means an intentional or unintentional act, including but not limited to sexual abuse, sexual battery, sexual molestation, or any actual harmful or offensive contact between two or more persons which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

EXHIBIT 8

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
13th JUDICIAL DISTRICT
CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

**DEFENDANT COLONY INSURANCE
COMPANY'S RESPONSE TO
PLAINTIFF'S REQUESTS FOR
ADMISSION**

COMES NOW Defendant Colony Insurance Company, by and through its attorneys, and pursuant to South Carolina Rule of Civil Procedure 36, and hereby responds to Plaintiff's Requests for Admission as follows:

1. Three Blind Mice, LLC is the owner of The Blind Horse Saloon, which is located in Greenville, South Carolina.

RESPONSE:

Admitted.

2. The Blind Horse Saloon is a nightclub and bar which, in addition to serving food and beverages to customers, provides various types of entertainment.

RESPONSE:

With respect to Request for Admission No. 2, it is admitted that The Blind Horse Saloon is a nightclub and bar which, in addition to serving beverages to customers, provides various types of entertainment. It is specifically denied that The Blind Horse Saloon serves food to customers.

3. Three Blind Mice carries liability insurance coverage through Colony Insurance Company under a Commercial General Liability Insurance Policy designated as Policy No. GL3812749, with effective dates from December 14, 2010, to December 14, 2011.

RESPONSE:

Request for Admission No. 3 is denied as stated; however, it is admitted that Colony Insurance Company issued a Commercial General Liability Insurance Policy designated as Policy No. GL3812749, with effective dates from December 14, 2010 to December 14, 2011, to "Three Blind Mice, Inc. dba Blind Horse Saloon."

4. Exhibit "A" attached hereto is a copy of the Complaint filed by Katherine and Bobby Frost against The Blind Horse Saloon, among others.

RESPONSE:

Request for Admission No. 4 is denied as stated; however, it is admitted that Exhibit "A" is a copy of the Complaint filed by Katherine and Bobby Frost against Three Blind Mice, LLC d/b/a The Blind Horse Saloon.

5. According to their Complaint, on October 29, 2011, Katherine and Bobby Frost attended a Halloween costume contest held at The Blind Horse Saloon.

RESPONSE:

Admitted.

6. According to the Complaint subsequently filed by Katherine and Bobby Frost against Three Blind Mice, Katherine Frost, while standing adjacent to a boxing machine located in The Blind Horse Saloon, was inadvertently struck by a patron making use of that machine.

RESPONSE:

Request for Admission No. 6 is denied as stated; however, it is admitted that it is alleged in the Complaint filed by Katherine and Bobby Frost against Three Blind Mice, LLC, that an unknown individual who had been using a punching bag boxing machine located in The Blind Horse Saloon had missed the punching bag he had been attempting to strike as part of the machine's use, inadvertently striking Katherine Frost in the back as she was standing in the vicinity.

7. According to the Complaint of Katherine and Bobby Frost, as a result of being struck on October 30, 2011, while at The Blind Horse Saloon, Katherine Frost sustained injuries in the nature of internal bleeding and a liver contusion.

RESPONSE:

Admitted.

8. Upon receiving notice of a claim for damages from Katherine Frost and Bobby Frost with regard to the incident of October 30, 2011, Three Blind Mice submitted a claim to Colony Insurance Company for further handling pursuant to the terms and conditions of the policy issued by Colony Insurance Company to Three Blind Mice, LLC. Coverage was denied by Colony Insurance Company on February 14, 2012.

RESPONSE:

Request for Admission No. 8 is denied as stated; however, it is admitted that Three Blind Mice, Inc. submitted a claim for damages from Katherine and Bobby Frost with regard to the incident of October 30, 2011, to Colony Insurance Company for further handling pursuant to the terms and conditions of Commercial General Liability Insurance Policy No. GL3812749, with effective dates from December 14, 2010 to December 14, 2011, issued by Colony Insurance Company to "Three Blind Mice, Inc. dba Blind Horse Saloon." Furthermore, it is admitted that on February 14, 2012, Colony Insurance Company denied coverage to Three Blind Mice, Inc. with regard to claims submitted by Katherine and Bobby Frost.

9. Exhibit "B" attached hereto is a copy of the February 14, 2012 letter from Colony Insurance Company to Three Blind Mice, LLC denying coverage for the claims asserted by Katherine and Bobby Frost for injuries occurring on October 30, 2011.

RESPONSE:

Request for Admission No. 9 is denied as stated; however, it is admitted that Exhibit "B" is a copy of the February 14, 2012, letter from Colony Insurance Company to Three Blind Mice, Inc. denying coverage for claims asserted by Katherine and Bobby Frost for injuries occurring on October 30, 2011.

10. After being served with the Complaint of Katherine and Bobby Frost, dated May 11, 2012, Three Blind Mice notified Colony Insurance Company of the legal action. Colony Insurance Company again denied coverage.

RESPONSE:

Admitted.

11. Exhibit "C" attached hereto is a copy of the August 1, 2012 letter from Colony Insurance Company to Three Blind Mice, LLC denying coverage for liability and damages arising out of the allegations set forth in the Complaint filed by Katherine and Bobby Frost.

RESPONSE:

Request for Admission No. 11 is denied as stated; however, it is admitted that Exhibit "C" is a copy of the August 1, 2012, letter from Colony Insurance Company to Three Blind Mice, Inc. denying coverage for liability and damages arising out of the allegations set forth in the Complaint filed by Katherine and Bobby Frost.

12. The insurance policy issued to Three Blind Mice, LLC by Colony Insurance Company is an occurrence-based policy which requires Colony Insurance Company to provide a defense and to pay those sums of damages because of "bodily injury" or "property damage" to which the insurance applies.

RESPONSE:

Request for Admission No. 12 is denied as stated; however, it is admitted that Commercial General Liability Insurance Policy No. GL3812749, with effective dates from December 14, 2010, to December 14, 2011, issued by Colony Insurance Company to "Three Blind Mice, Inc. dba Blind Horse Saloon" is an occurrence-based policy which requires Colony Insurance Company to provide a defense and to pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which the insurance applies. The Policy is best evidence of the coverage available.

13. The injuries which Katherine Frost has alleged in her Complaint that she sustained on October 30, 2011, while a patron at The Blind Horse Saloon, when she was inadvertently struck by a patron, constitute "bodily injury" as that term is defined by the Colony Insurance Company policy issued to Three Blind Mice, LLC.

RESPONSE:

Request for Admission No. 13 is denied as stated; however, it is admitted that the injuries which Katherine Frost has alleged in her Complaint that she sustained on October 30, 2011, while a patron at The Blind Horse Saloon, when she was inadvertently struck by a patron, constitute "bodily injury" as that term is defined by Commercial General Liability Insurance Policy No. GL3812749 issued by Colony Insurance Company to "Three Blind Mice, Inc. dba Blind Horse Saloon." However, the Policy is the best evidence of the coverage available, and coverage is not available for the Complaint due to the "Assault, Battery or Assault and Battery Exclusion" endorsement, the "Athletic or Sports Participants Exclusion" endorsement, and the "Limitation of Coverage to Business Description" endorsement.

14. The Complaint filed by Katherine and Bobby Frost alleged that Three Blind Mice, LLC was negligent in maintaining an unreasonably dangerous production on its premises, failing to place safeguards around the boxing machine, and failing to warn of the potential danger presented by the use of the boxing machine, and failing to warn of the potential damage presented by the use of the boxing machine.

RESPONSE:

Request for Admission No. 14 is denied as stated; however, it is admitted that the Complaint filed by Katherine and Bobby Frost alleged that Three Blind Mice, LLC was negligent in maintaining a product that was unreasonably dangerous for its location in the Blind Horse's premises, failing to place any guards and/or a safe zone in which patrons/invitees of its establishment were safe from harm from the boxing machine, and failing to warn invitees of the danger inherent in the use of the boxing machine.

15. In its denial letters of February 14, 2012, and August 1, 2012, Colony Insurance Company asserted that coverage for the claims asserted by the Frosts against Three Blind Mice, LLC were excluded by policy provisions concerning "assault and battery," "athletic or sports participants," and the "limitation of coverage to business description."

RESPONSE:

Admitted.

16. The exclusion for assault and battery, as set forth in the Colony Insurance Company policy issued to Three Blind Mice, LLC, does not indicate whether an "assault," "battery," or "assault and battery" as those terms are used in the policy include both intentional and unintentional acts.

RESPONSE:

Denied.

17. Colony Insurance Company utilizes ISO Forms U006 0511, U233 0511, and U233A 0511, and other policies issues. These forms define "assault," "battery," and "assault and battery" as including both intentional and unintentional acts.

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being vague and ambiguous as to what is meant by "Colony Insurance Company utilizes ISO Forms U006 0511, U233 0511, and U233A 0511, and other policies issues." Colony further objects that this request is not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Insurance Policy No. GL3812749 issued by Colony Insurance Company to "Three Blind Mice, Inc. dba Blind Horse Saloon" provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Forms identified in this Request are not included as part of the Policy, and so the language of policy forms which are not part of the Policy are not relevant to this coverage action. Otherwise, denied.

18. During the mediation of the legal action instituted by Katherine and Bobby Frost, Three Blind Mice, LLC contributed \$10,000 toward settlement.

RESPONSE:

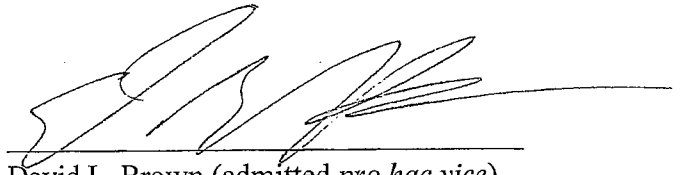
After reasonable inquiry, Colony Insurance Company does not have sufficient information to admit or deny this request. Although Plaintiff Three Blind Mice, LLC has alleged that it was required to pay \$10,000 toward settlement of the legal action instituted by Katherine and Bobby Frost, Colony Insurance Company does not have knowledge as to whether Three Blind Mice, LLC contributed \$10,000 toward settlement.

19. In addition to its contribution toward settlement of the claims asserted by Katherine and Bobby Frost, Three Blind Mice, LLC has incurred attorneys' fees and litigation costs.

RESPONSE:

After reasonable inquiry, Colony Insurance Company does not have sufficient information to admit or deny this request. Although Plaintiff Three Blind Mice, LLC has alleged that it was required to undertake the defense of the claims asserted by Katherine and Bobby Frost, resulting in the expenditure of money for attorneys' fees, costs, and associated expenses, Colony Insurance Company does not have knowledge as to whether Three Blind Mice, LLC made such expenditures.

This the 22nd day of July, 2015.



David L. Brown (admitted *pro hac vice*)

N.C. State Bar No. 18942

David G. Harris II

S.C. State Bar No. 101951

GOLDBERG SEGALLA LLP

800 Green Valley Road; Suite 302

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-and-

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Attorneys for Defendant Colony Insurance Co.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
13th JUDICIAL DISTRICT
CIVIL ACTION NO.: 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

v.

COLONY INSURANCE COMPANY,

Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant Colony Insurance Company's Response to Plaintiff's Requests for Admission was duly served on all parties by mailing a copy of said document in an envelope with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office Department as follows:

David L. Moore, Jr.
Nexsen Pruet, LLC
Post Office Drawer 10648
Greenville, SC 29603

This 22nd day of July, 2015.



David L. Brown (N.C. State Bar No. 18942)
David G. Harris II (S.C. State Bar No. 101951)
GOLDBERG SEGALLA LLP
800 Green Valley Road; Suite 302
Greensboro, NC 27408
Telephone: (336) 419-4900

-and-

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TURNER PADGET GRAHAM & LANEY P.A.
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Greenville, SC 29602
Telephone: (864) 552-4624

Attorneys for Defendant Colony Insurance Company

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
13th JUDICIAL DISTRICT
CIVIL ACTION NO. 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant,

**DEFENDANT COLONY INSURANCE
COMPANY'S
RESPONSE TO SUPPLEMENTAL
REQUESTS FOR ADMISSION**

COMES NOW Defendant Colony Insurance Company, by and through its attorneys, and pursuant to South Carolina Rule of Civil Procedure 36, and hereby responds to Plaintiff's Supplemental Requests for Admission as follows:

1. Colony Insurance Company utilizes Insurance Service Office (ISO) forms in a number of the insurance policies it issues.

RESPONSE:

Colony Insurance Company objects to Request No. 1 as being vague and ambiguous as to what is meant by "utilizes Insurance Service Office (ISO) forms in a number of the insurance policies it issues." Colony Insurance Company further objects that this Request is not limited in time or in scope, and is not relevant to the subject matter made the basis of this lawsuit. Subject to and without waiving the foregoing objections, Colony Insurance Company admits that it has issued policies to insureds which contain forms drafted by ISO. Otherwise, denied.

2. Colony Insurance Company utilized ISO Form U006-0707, which sets forth an exclusion for "bodily injury," "property damage" and "personal and advertising injury" arising out of an "assault," "battery" or "assault and battery" in the policy issued to Three Blind Mice, LLC, which is the subject of this litigation.

RESPONSE:

Colony Insurance Company objects to Request No. 1 as being vague and ambiguous as to what is meant by "utilized ISO Form U006-0707." Colony Insurance Company further objects to this Request to the extent it attempts to paraphrase what U006-0707 says, as the Form speaks for itself. Colony Insurance Company admits that Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon included U006-0707. Otherwise, denied.

3. A copy of ISO Form U006-0707 is attached as Exhibit "A."

RESPONSE:

Admitted.

4. Colony Insurance Company has utilized ISO Forms U006-0511, U233-0511 and U233A-0511 in some of the insurance policies it has issued.

RESPONSE:

OBJECTION. Colony Insurance Company objects to Request No. 1 as being vague and ambiguous as to what is meant by "utilized ISO Forms U006-0511, U233-0511 and U233A-0511 in some of the insurance policies it has issued." Colony Insurance Company further objects that this Request is not limited in time or in scope, and is not relevant to the subject matter made the basis of this lawsuit. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth

in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Forms identified in this Request are not included as part of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Subject to and without waiving the foregoing objections, Colony Insurance Company has issued policies to insureds which contain these forms.

5. A copy of ISO Form U-006-0511 is attached as Exhibit "B."

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Form identified in this Request is not included as part of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Subject to and without waiving the foregoing objections, admitted.

6. A copy of ISO Form U233-0511 is attached as Exhibit "C."

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Form identified in this Request is not included as part of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Subject to and without waiving the foregoing objections, admitted.

7. A copy of ISO Form U233A-0511 is attached as Exhibit "D."

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Form identified in this Request is not included as part

of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Subject to and without waiving the foregoing objections, admitted.

8. In ISO Forms U006-0511, U23-0511 and U233A-0511, the term "assault" is defined to include both intentional and unintentional acts.

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Forms identified in this Request are not included as part of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Subject to and without waiving the foregoing objections, admitted.

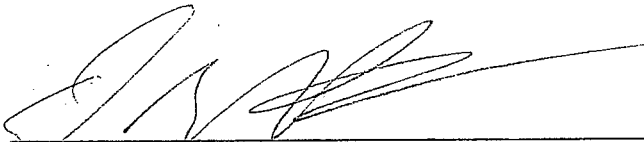
9. In ISO Forms U006-0511, U233-0511 and U233A-0511 the term "battery" is defined to include both intentional and unintentional acts.

RESPONSE:

OBJECTION. Colony Insurance Company objects to this Request as being not relevant to the subject matter involved in the present action. This insurance coverage action seeks a legal determination as to whether the plain language of Commercial General

Liability Policy No. GL3812749, effective December 14, 2010, to December 14, 2011, issued to Three Blind Mice, Inc. DBA Blind Horse Saloon provides coverage for the claims set forth in the Complaint filed by Katherine Frost and Bobby Frost against Three Blind Mice, LLC arising out of an incident that is alleged to have occurred on October 30, 2011, at The Blind Horse Saloon. The ISO Forms identified in this Request are not included as part of the insurance policy at issue, and so the language of policy forms which are not part of the policy are not relevant to this coverage action. Colony Insurance Company further objects to this Request to the extent it attempts to paraphrase what these Forms say, as the Forms speak for themselves. Subject to and without waiving the foregoing objections, admitted.

This the 1st day of September, 2015.



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Attorneys for Defendant Colony Insurance Company

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
13th JUDICIAL DISTRICT
CIVIL ACTION NO.: 2014-CP-23-03422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

v.

COLONY INSURANCE COMPANY,

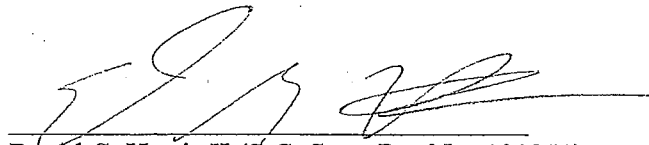
Defendant.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Defendant Colony Insurance Company's Response to Plaintiff's Supplemental Requests for Admission was duly served on all parties by mailing a copy of said document in an envelope with proper postage attached and deposited in an official depository under the exclusive care and custody of the United States Post Office Department as follows:

David L. Moore, Jr.
Nexsen Pruet, LLC
Post Office Drawer 10648
Greenville, SC 29603

This the 1st day of September, 2015.



David G. Harris II (S.C. State Bar No. 101951)

GOLDBERG SEGALLA LLP

800 Green Valley Road, Suite 302

Greensboro, NC 27408

Telephone: (336) 419-4900

Attorney for Defendant Colony Insurance Company

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C. IN THE COURT OF COMMON PLEAS
PAUL B. WICKENSIMER
COUNTY OF GREENVILLE CIVIL ACTION NO. 2014-CP-23-03422
2015 SEP 21 AM 9 11

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant,

**MEMORANDUM OF LAW IN SUPPORT OF
DEFENDANT COLONY INSURANCE COMPANY'S
MOTION FOR SUMMARY JUDGMENT**

COMES NOW Defendant Colony Insurance Company, by and through counsel and pursuant to South Carolina Rule of Civil Procedure 56, and serves this Memorandum of Law in support of its Motion for Summary Judgment against Plaintiff Three Blind Mice, LLC d/b/a The Blind Horse Saloon on the grounds that there are no genuine issues of material fact and that Colony is entitled to judgment in its favor as a matter of law.

INTRODUCTION

The core of the dispute between the parties to this insurance coverage action is whether Three Blind Mice is entitled to coverage under a commercial general liability insurance policy issued by Colony to Three Blind Mice for claims that were asserted against Three Blind Mice by a patron who sustained injuries while in a bar owned by Three Blind Mice known as The Blind Horse Saloon. The patron was injured when she was hit by another customer who was attempting to strike a boxing machine in the bar. After the patron filed suit against Three Blind Mice for injuries sustained during the incident, Colony informed Three Blind Mice that coverage was not available for the claims asserted against Three Blind Mice based upon

the allegations in the complaint and the application of the plain and unambiguous terms of the "Assault, Battery or Assault and Battery Exclusion" as well as the "Athletic or Sport Participants Exclusion" in the Policy. Three Blind Mice subsequently settled the claims asserted against it in the underlying lawsuit for \$10,000, and now seeks reimbursement from Colony for the defense costs incurred and for the settlement payment made to resolve the claims.

Under South Carolina law, an insurer's duty to defend claims asserted against its insured is determined based upon the allegations of the complaint in the underlying lawsuit. *Shelby Mut. Ins. Co. v. Askins*, 307 S.C. 81, 88, 413 S.E.2d 855, 859 (S.C. Ct. App. 1992). To determine whether coverage is afforded to an insured under a liability policy, the court must compare the complaint in the underlying action with the plain language of the policy to determine whether the complaint alleges facts that bring the action within the coverage of the policy. *See e.g. Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 456 S.E.2d 912 (S.C. 1995) (holding that insurance policies are subject to the general rules of contract construction, and so when a policy is unambiguous and explicit, it must be construed according to its plain terms). Accordingly, the issue before this Court is whether Colony properly denied coverage based upon the allegations in the complaint in the underlying lawsuit as compared with the plain terms of the Policy issued by Colony to Three Blind Mice.

It is alleged in the complaint in the underlying lawsuit that the plaintiff was hit by an unknown individual who was attempting to strike a boxing machine. The Policy includes an "Assault, Battery or Assault and Battery Exclusion" which expressly excludes coverage for claims arising out of or resulting from a "battery." Significantly, the Policy defines the term "battery" as "an act which brings about harmful or offensive contact to another or anything connected to another." Based upon the allegations in the underlying complaint and the plain

language in the "Assault, Battery or Assault and Battery Exclusion," the claims asserted against Three Blind Mice are not covered under the Policy because such claims arose out of a "battery" as that term is specifically defined by the Policy. Therefore, Colony properly denied coverage to Three Blind Mice under the Policy for the claims asserted against Three Blind Mice in the underlying lawsuit.

The Policy also includes an "Athletic or Sport Participants Exclusion," which excludes coverage for claims for "'bodily injury' to any person arising out of or resulting from practicing or participating in any athletic contest, exhibition, activity, game or sport." It is specifically alleged in the underlying lawsuit that the plaintiff was injured when she was struck by an individual who was using a punching bag boxing machine. Accordingly, based upon the allegations in the underlying lawsuit and the plain and unambiguous terms of the "Athletic or Sport Participants Exclusion" in the Policy, Colony also properly denied coverage for the claims in the underlying lawsuit pursuant to the terms of the "Athletic or Sport Participants Exclusion" in the Policy.

Because the claims asserted against Three Blind Mice in the underlying lawsuit are excluded from coverage under the plain and unambiguous terms of the Policy, this Court should hold as a matter of law that Three Blind Mice was not entitled to coverage under the Policy for such claims, and grant summary judgment in favor of Colony in this action.

STATEMENT OF FACTS

The undisputed facts upon which both parties have moved for summary judgment in the present matter are as follows: Colony issued Commercial General Liability Insurance Policy No. GL3812749 to "Three Blind Mice, Inc. dba Blind Horse Saloon," with effective dates

of December 14, 2010, to December 14, 2011 (the Policy).¹ Three Blind Mice is the owner of The Blind Horse Saloon, which is located in Greenville, South Carolina.² On May 15, 2012, Katherine and Bobby Frost filed a lawsuit against Three Blind Mice captioned *Katherine Frost and Bobby Frost v. Three Blind Mice, LLC*, et al., Civil Action No. 2012-CP-23-3249 (the Frost Lawsuit),³ in the Court of Common Pleas, Greenville County, South Carolina. In the Frost Lawsuit, it was alleged that Katherine Frost sustained personal injuries while patronizing The Blind Horse Saloon on October 30, 2011, when she was hit by another patron who was attempting to make use of a boxing machine in the bar. It is specifically alleged that “an unknown individual who had been using a punching bag boxing machine had missed the punching bag he had been attempting to strike as part of the machine’s use, inadvertently striking [Katherine Frost] in the back.” (Frost Complaint, ¶ 14)

Based upon the allegations in the Frost Lawsuit and the plain terms of the Policy, no coverage is available under the Policy for the claims asserted against Three Blind Mice in the Frost Lawsuit. Specifically, coverage is not available for the claims based upon the application of the plain and unambiguous terms of the “Assault, Battery or Assault and Battery Exclusion” in the Policy which expressly bars coverage for claims arising out of or resulting from a “battery.” “Battery” is defined by the Policy as “an act which brings about harmful or offensive contact to another or anything connected to another.” Additionally, coverage is not available for the claims asserted against Three Blind Mice in the Frost Lawsuit based upon the application of the terms of the “Athletic or Sport Participants Exclusion”

¹ A certified copy of the Policy is attached hereto as Exhibit 1.

² Defendant Colony Insurance Company’s Response to Plaintiff’s Requests for Admission are attached hereto as Exhibit 2.

³ A true and accurate copy of the Complaint filed by the Frosts against Three Blind Mice is attached hereto as Exhibit 3.

in the Policy which bars coverage for claims for “bodily injury” to any person arising out of or resulting from practicing or participating in any athletic contest, exhibition, activity, game or sport.” After being notified that coverage was not available under the Policy, Three Blind Mice settled the claims asserted against it in the Frost Lawsuit for \$10,000. (Compl. ¶ 8)

LEGAL ARGUMENT

I. GENERAL PRINCIPLES GOVERNING SUMMARY JUDGMENT.

Under South Carolina Rule of Civil Procedure 56(c), a grant of summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *BMW of N. Am., LLC v. Complete Auto Recon Servs.*, 399 S.C. 444, 450, 731 S.E.2d 902, 905–06 (S.C. Ct. App. 2012). As such, a trial court may properly grant summary judgment 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 the moving party is entitled to a judgment as a matter of law.” S.C. R. Civ. P. 56(c); *see also Tupper v. Dorchester County*, 326 S.C. 318, 487 S.E.2d 187 (S.C. 1997).

Furthermore, “[w]here a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous.” *Dabbs v. Cincinnati Ins. Co.*, 293 S.C. 234, 236, 359 S.E.2d 521, 522 (S.C. Ct. App. 1987) (affirming summary judgment in favor of the insurer in a breach of contract action filed by the insured where the policy was clear and unambiguous) (citing *First-Citizens Bank & Trust Co. v. Conway Nat’l Bank*, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (S.C. Ct. App. 1984)). Accordingly, when the basis of a civil action is to determine whether coverage exists under an unambiguous insurance policy, the action is the proper subject

for a motion for summary judgment. *Crossmann Communities of N.C., Inc. v. Harleysville Mut. Ins. Co.*, 395 S.C. 40, 717 S.E.2d 589 (S.C. 2011).

II. THE “ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION” BARS COVERAGE UNDER THE POLICY.

Insurance policies are subject to the general rules of contract construction. *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 456 S.E.2d 912 (S.C. 1995). As such, when a policy is unambiguous, clear, and explicit, it must be construed according to the terms the parties have used. *Fritz-Pontiac-Cadillac-Buick v. Goforth*, 312 S.C. 315, 440 S.E.2d 367 (S.C. 1994). The court’s duty is “limited to the interpretation of the contract made by the parties themselves ‘regardless of its wisdom or folly, apparent unreasonableness, or failure [of the parties] to guard their interests carefully.’” *Goforth*, at 378, 373 S.E.2d at 587.

“Although exclusions in an insurance policy are construed against the insurer, insurers have the right to limit their liability and to impose conditions on their obligations provided they are not in contravention of public policy or a statutory prohibition.” *B.L.G. Enter. v. First Fin. Ins. Co.*, 334 S.C. 529, 535–36, 514 S.E.2d 327, 330 (S.C. 1999) (internal citations omitted); *see also Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 377 S.E.2d 569 (S.C. 1989); *Rhame v. Nat’l Grange Mut. Ins. Co.*, 238 S.C. 539, 121 S.E.2d 94 (S.C. 1961). Courts are not permitted to torture the meaning of language used by the parties in order to extend coverage expressly excluded by the terms of the policy. *Torrington Co. v. Aetna Cas. & Sur. Co.*, 264 S.C. 636, 216 S.E.2d 547 (S.C. 1975).

Based upon these general rules of construction, South Carolina courts have routinely applied “assault and battery” exclusions to bar coverage for claims arising out of a “battery.” *See e.g. Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 474, 438 S.E.2d 275, 277 (S.C. Ct. App. 1993) (reversing the trial court and holding that the “assault and battery”

exclusionary clause unambiguously applied to bar coverage for negligence claims against the insured because such claims arose out of an assault or battery within the exclusion); *see also St. Paul Reinsurance Co. v. Riviello*, 296 Fed. Appx. 377, 380 (4th Cir. S.C. 2008) (holding that the “assault and battery” exclusion unambiguously applied to bar coverage such that the insurer did not have a duty to defend or indemnify the insured); *Founders Ins. Co. v. Barn Club, Inc.*, 2012 U.S. Dist. LEXIS 158034, *8 (D.S.C. Nov. 2, 2012) (holding that an “assault and battery” exclusion barred coverage for negligent security claims); *USF Ins. Co. v. D&J Enters.*, 2010 U.S. Dist. LEXIS 55123, *10, 2010 WL 2232211 (D.S.C. June 3, 2010) (holding that claims arising out of an alleged accidental shooting were excluded under an “assault and battery” exclusion). These courts have interpreted such exclusionary provisions to bar all claims arising from an assault or battery, whether or not the claims are rooted in the actual assault or battery, and regardless of whether the claims are couched in terms of negligence or otherwise. *Id.*

The “Assault, Battery, or Assault and Battery Exclusion” in the Policy at issue provides, in relevant part, as follows:

Assault, Battery or Assault and Battery

This insurance does not apply to damages or expenses due to “bodily injury”, “property damage” or “personal and advertising injury” arising out of or resulting from:

- (1) “Assault”, “Battery” or “Assault and Battery” committed by any person;
- (2) The failure to suppress or prevent “Assault”, “Battery” or “Assault and Battery” by any person;
- (3) The failure to provide an environment safe from “Assault”, “Battery” or “Assault and Battery”;
- (4) The failure to warn of the dangers of the environment which could contribute to “Assault”, “Battery” or “Assault and Battery”;

* * *

"Battery" means an act which brings about harmful or offensive contact to another or anything connected to another.

(Certified Policy, Ex. 1, p. 17).

In the present action, it is undisputed that the claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit arose out of or resulted from "bodily injury" sustained by Katherine Frost when an unknown individual who had been using a boxing machine missed the punching bag and struck Katherine Frost. (Frost Complaint, ¶¶ 14 and 17). Each of the specific allegations of negligence asserted against Three Blind Mice in the Frost Lawsuit is expressly excluded under the terms of the "Assault, Battery, or Assault and Battery Exclusion" in the Policy. It is alleged in the Frost Lawsuit that Three Blind Mice: (1) maintained a product that was unreasonably dangerous for its location; (2) failed to place any guards and/or a safe zone in which patrons/invitees of its establishment were safe from harm from the boxing machine that is the subject of this suit; and (3) failed to warn invitees of the danger inherent in the use of the boxing machine. (Frost Complaint, ¶ 30). The Policy's "Assault, Battery or Assault and Battery Exclusion" not only bars coverage for claims arising out of or resulting from a "battery" committed by any person, but also specifically bars coverage for claims arising out of or resulting from the failure to provide an environment safe from "battery" or to warn of the dangers of the environment which could contribute to a "battery."

Furthermore, it is clear that the conduct alleged in the Frost Lawsuit that resulted in Katherine Frost's injuries constitutes a "battery" as that term is defined by the Policy. It is alleged in the Frost Lawsuit that Katherine Frost was injured when an unknown individual struck her when he was attempting to strike a punching bag machine. The Policy specifically defines a "battery" as "an act which brings about harmful or offensive contact to another." An insurer's obligation under a policy is defined by the terms of the policy itself, and so policy

definitions must be enforced as written. *See e.g. S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 519, 548 S.E.2d 880, 883 (S.C. Ct. App. 2001); *MGC Mgmt. of Charleston, Inc. v. Kinghorn Ins. Agency*, 336 S.C. 542, 548, 520 S.E.2d 820, 823 (S.C. Ct. App. 1999). Based upon the allegations in the underlying complaint and the plain language of the Policy, the claims against Three Blind Mice in the Frost Lawsuit arose out of a "battery" as that term is specifically defined by the Policy ("an act which brought about harmful or offensive contact to another"). Therefore, coverage is excluded under the "Assault, Battery or Assault and Battery Exclusion" in the Policy.

It is anticipated that Three Blind Mice will argue that the person who hit Katherine Frost did not intend to bring about harmful or offensive contact with her and that the exclusion would therefore not apply if this Court would simply use the common law definition of "battery" (which includes an element of intent to harm) and ignore the policy definition of "battery" (which does not include an element of intent to harm). However, assuming *arguendo* that use of the common law definition of "battery" would lead to a different result, South Carolina courts have a long history of applying the express terms of insurance policies in order to determine the scope of coverage afforded. *See Spartan Iron & Metal Corp. v. Liberty Ins. Corp.*, 6 Fed. Appx. 176, 178 (4th Cir. S.C. 2001) ("To adopt a common law definition here where the policies provide a contractual definition would be at odds with South Carolina law."). In the present matter, the Policy specifically defines the term "battery" as "an act that brings about harmful or offensive contact with another"—without any requirement that the person act with the intent to bring about such harmful or offensive contact—and so the conduct alleged in the Frost Lawsuit clearly falls within the Policy's definition of such term.

Accordingly, the “bodily injury” claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit arose out of or resulted from a “battery,” which is expressly excluded from coverage under the plain terms of the “Assault, Battery or Assault and Battery Exclusion” in the Policy. Therefore, under the “comparison test” applied by South Carolina courts to determine whether an insurer has a duty to defend, this Court should find as a matter of law that Three Blind Mice was not entitled to coverage under the Policy for the claims asserted in the Frost Lawsuit, and should grant summary judgment in favor of Colony on the Breach of Contract and Bad Faith causes of action asserted by Three Blind Mice against Colony.

III. THE “ATHLETIC OR SPORT PARTICIPANTS EXCLUSION” BARS COVERAGE UNDER THE POLICY.

The “Athletic or Sport Participants Exclusion” in the Policy provides as follows:

Athletic or Sport Participants

This insurance does not apply to “bodily injury” to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.

(Certified Policy, Exhibit 1, p. 19).

Based upon this plain and unambiguous language in the “Athletic or Sport Participants Exclusion,” the Policy “does not apply to ‘bodily injury’ to any person arising out of or resulting from practicing for or participating in any athletic contest, . . . activity, [or] game.” *Id.* (emphasis added) It is undisputed that the claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit arise out of or result from the unknown individual participating in an athletic activity or game (the punching bag boxing machine). (Frost Complaint, ¶¶ 14 and 17) Accordingly, such claims are excluded by the plain terms of the “Athletic or Sport Participants Exclusion.” Therefore, on this separate and independent ground, this Court should grant summary judgment in favor of Colony, and hold as a matter of law that Three Blind Mice is not entitled to coverage under the Policy for the claims asserted in the Frost Lawsuit, and grant

summary judgment in favor of Colony on the Breach of Contract and Bad Faith causes of action asserted by Three Blind Mice against Colony in this action.

IV. THE BAD FAITH CLAIM AGAINST COLONY FAILS AS A MATTER OF LAW.

The Complaint also asserts a cause of action for Bad Faith and seeks punitive damages against Colony based upon the allegation that Colony improperly failed to provide a defense or indemnity to Three Blind Mice in the Frost Lawsuit. (Frost Complaint, ¶ 23) However, as outlined *supra* Sections II and III, the Policy does not provide coverage for the claims asserted in the Frost Lawsuit based upon the application of the plain and unambiguous terms of the "Assault, Battery or Assault and Battery Exclusion" as well as the "Athletic or Sport Participants Exclusion."

Where an insurer has a reasonable ground for contesting a claim, there is no bad faith. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 645, 594 S.E.2d 455, 462 (S.C. 2004). As such, if it is determined that coverage is not afforded under the insurance policy for the claims at issue, there can be no bad faith in denying the claim. *BMW of N. Am., LLC v. Complete Auto Recon Servs.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (S.C. Ct. App. 2012) (holding that the insurer could not have acted in bad faith in denying the purported additional insured's claim for coverage because no coverage existed under its policy for such claim). In the present matter, Three Blind Mice is not entitled to coverage under the Policy for the claims in the Frost Lawsuit for the reasons set forth *supra* Sections II and III. Therefore, the cause of action for Bad Faith asserted by Three Blind Mice against Colony in the present matter fails as a matter of law.

Additionally, even if this Court were to find coverage under the Policy for the claims asserted against Three Blind Mice in the Frost Lawsuit, the cause of action for Bad Faith

still fails as a matter of law because Three Blind Mice has failed to come forward with any evidence to support such a cause of action against Colony in this matter. South Carolina courts have held that the elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance are: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer's bad faith or unreasonable action in handling the claim (i.e. no reasonable ground for contesting a claim); (4) causing damage to the insured. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396-97 (S.C. 1992).

Furthermore, in order to recover punitive damages for an insurer's alleged bad faith in the handling of a claim, the plaintiff must also prove that the insurer's actions were willful or in reckless disregard of the insured's rights. *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (S.C. 1983); *see also BP Oil Co. v. Federated Mut. Ins. Co.*, 329 S.C. 631, 642, 496 S.E.2d 35, 41 (S.C. Ct. App. 1998) (holding that the trial court properly denied the insured's claim for punitive damages where the insurer's conduct was not willful or reckless); *Am. Fire & Cas. Co. v. Johnson*, 332 S.C. 307, 311, 504 S.E.2d 356, 358 (S.C. Ct. App. 1998) ("Bad faith is a knowing failure on the part of the insurer to exercise an honest and informed judgment in processing a claim.") (*citing* 16A Appleman, Insurance Law and Practice Compensatory and Punitive Damages § 8878.25 (1981)); *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (S.C. 1992). The plaintiff may not merely rely on the bare allegations of the complaint to establish triable issues of fact with respect to the cause of action for bad faith claims handling and a request for punitive damages. S.C. R. Civ. P. 56(e).

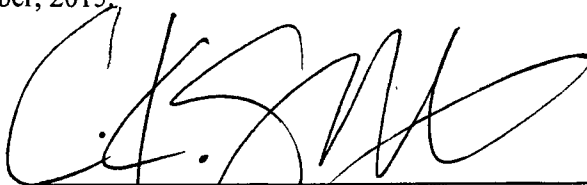
In the present case, Colony has an honest disagreement with Three Blind Mice as to whether coverage is available under the Policy. Colony's coverage positions have been well-grounded and timely communicated. Three Blind Mice has not come forward with any evidence that Colony had no reasonable ground for contesting the claim or that Colony's actions were willful or in reckless disregard of the insured's rights. Therefore, this Court should grant summary judgment in favor of Colony on the Bad Faith cause of action.

CONCLUSION

Insurance policies are subject to the general rules of contract construction, and therefore, must be construed according to the terms the parties have used. As such, insurers have the right to limit their liability through the use of exclusionary provisions and defined terms to bar coverage for certain types of risks, and these provisions must be applied pursuant to their plain and unambiguous terms. In the present matter, the Policy issued by Colony to Three Blind Mice includes two independent exclusionary provisions that bar coverage for the claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit. First, the claims asserted against Three Blind Mice in the Frost Lawsuit are not covered under the Policy because the plain and unambiguous terms of the "Assault, Battery or Assault and Battery Exclusion" bar coverage under the Policy for such claims. Second, the claims asserted against Three Blind Mice in the Frost Lawsuit are not covered under the Policy because the plain and unambiguous terms of the "Athletic or Sport Participants Exclusion" bars such coverage. Therefore, this Court should hold as a matter of law that Three Blind Mice is not entitled to coverage under the Policy for the claims asserted in the Frost Lawsuit, and grant summary judgment in favor of Colony on the Breach of Contract cause of action asserted by Three Blind Mice against Colony.

As to the cause of action for Bad Faith asserted by Three Blind Mice against Colony, this Court should grant summary judgment in favor of Colony because coverage is not afforded under the Policy for the claims asserted against Three Blind Mice in the Frost Lawsuit, and therefore, the cause of action for Bad Faith asserted by Three Blind Mice against Colony fails as a matter of law. Additionally, this Court should grant summary judgment in favor of Colony as to the cause of action for Bad Faith because Three Blind Mice has failed to present any evidence that Colony's denial of coverage was based on anything other than an honest interpretation of the policy terms.

This the 16th day of September, 2015.



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Attorneys for Defendant Colony Insurance Company

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

CASE NO. 2014-CP-23-3422

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

**BRIEF IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2015 SEP 30 8 35

ENTERED COMPUTER

Colony Insurance Co. (Colony) has moved for summary judgment on its action to declare that the policy it issued to Three Blind Mice, LLC (Three Blind Mice) provided no coverage for the litigation instituted by Katherine and Bobby Frost against Three Blind Mice. Colony asserts in general that there is an absence of coverage due to the applicability of an exclusion for claims based upon "assault and battery" as well as an exclusion for damages resulting from participating in an athletic or sporting event. Colony goes on to argue that Three Blind Mice's action for bad faith denial of coverage lacks substance due to the applicability of those two exceptions and because it had a well-founded basis for denying coverage. As argued below, Three Blind Mice is of the position that summary judgment in favor of Colony is unwarranted because the exclusion for "assault and battery" would not apply where the underlying action sought to recover for negligence and not battery; because the exclusion for damages resulting from participating in an athletic event only applies to those who actually participate in the event; and because Colony acted contrary to the fiduciary duty it owed to Three Blind Mice by placing its interest above those of its insured, thereby acting in bad faith. As a result, the undisputed facts and applicable law demonstrate that summary judgment should instead be granted to Three Blind Mice.

**AN ACTION FOR NEGLIGENCE IS NOT BARRED
BY AN EXCLUSION FOR ASSAULT AND BATTERY**

Colony first argues that South Carolina Courts have routinely applied "assault and battery" exclusions to bar coverage for claims arising out of a "battery." The argument is correct as far as it goes. However, Colony fails to point out that the cases on which it relies as authority for its position all involve factual scenarios in which it was undisputed that the event giving rise to the claim constituted an "assault and battery."

In Sphere Drake Ins. Co. v. Litchfield, 313 SC 471, 438 S.E.2d 275 (Ct. App. 1993), Litchfield and his wife had gone to the nightclub where a customer asked Litchfield's wife to dance. She refused. Litchfield also told the customer that his wife did not wish to dance with him, whereupon the customer struck Litchfield, knocking him to the floor. Thereafter, three bouncers picked Litchfield up and physically threw him out of the nightclub. The Court found that the assault and battery exclusion applied to the vicarious acts of negligence asserted against the establishment since there would have been no damage as a result of the alleged negligence but for the intentional assault and battery. There was no question, as there is here, whether the underlying facts constituted an intentional tort which had been specifically excluded.

Likewise, in the case of St. Paul Reinsurance Co., Ltd. v. Riviello, 296 Fed.Appx. 377, 2008 WL 4636182 (4th Cir., unreported), Riviello went to a nightclub known as Ollie's by the Bay, where he was the victim of an assault and battery by other customers. He alleged a cause of action for assault and battery against those who had attacked him and causes of action for vicarious negligence on the part of the nightclub. Because the asserted acts of negligence arose out of the assault and battery of others, coverage was excluded. Again, no issue was raised as to whether the underlying acts truly constituted an "assault and battery."

In Founders Ins. Co. v. The Barn Club, Inc., 2012 WL 5398215 (DSC, 2012, unreported), the Barn Club, Inc. sought coverage from Founders Insurance for allegations arising out of a criminal attack on Scott Lee Thomas, who was shot while being robbed on the premises of the nightclub where he had just completed a musical performance. Although the plaintiff in the underlying case attempted to couch the criminal acts as negligence, the Court, in reviewing the allegations, clearly saw that the underlying acts constituted an “assault and battery” out of which the “negligent” acts grew. Accordingly, the exclusion was applicable to the “negligent” acts of the nightclub.

Finally, Colony relies on the case of USF Ins. Co. v. D&S Enterprises, Inc., 2010 WL 2232211 (DSC 2010, not reported). This case also involved an attempted robbery which resulted in a bystander being shot. Plaintiff’s counsel in the underlying suit characterized his action as one of “negligence.” The Court disregarded this characterization and properly found that the allegations constituted an “assault and battery” and therefore coverage was excluded.

In each of these cases, the underlying acts clearly constituted an intentional act directed towards harming another person. Unlike the facts of those cases, the instant matter involves a non-intentional, accidental act which resulted in injury. As a result, while South Carolina courts have recognized and applied the “assault and battery” exclusion where there has been an intentional (and often criminal) act, there are no cases indicating that the exclusion should be applied to a non-intentional matter, as Colony has attempted to do.

The true issue presented is not whether the “assault and battery” exclusion may generally be acceptable under some circumstances, but whether it is applicable under the particular circumstances of this case. This requires a determination of whether a “battery” includes both intentional and unintentional acts or only intentional acts. Only if the definition unambiguously applies to both intentional and unintentional acts should Colony prevail on its position.

The term "battery" is defined by the Colony policy to include "an act which brings about harmful or offensive contact to another or anything connected to another." Colony argues that this definition should be broadly construed to include both intentional and unintentional acts, even though the definition does not specifically state that it includes both types of acts. South Carolina requires a narrow interpretation of policy exclusions in favor of coverage where the exclusion is unclear. Horry County v. Insurance Reserve Fund, 344 S.C. 493, 544 S.E.2d 637 (Ct. App. 2001). Colony, in its brief, has simply ignored this.

In fact, most authorities would define an "assault and battery" as an intentional act. The Restatement (2d), Torts §18 directs that one is subject to liability for battery if "he acts intending to cause a harmful or offensive contact" with the person of another and causes an offensive contact to take place. Section 18 goes on to state that where the intent is absent, there is no liability for a battery, although there may be for negligence. Comment (g) to section 8 provides that the interest protected is one of dignity and, as such, only applies against an intentional invasion.

Dan Dobbs, in his treatise The Law of Torts, notes that a defendant is subject to liability for battery when he intentionally causes bodily contact which is either harmful or against the plaintiff's will. An accidental touching may count as negligence but is not a battery. Dobbs, The Law of Torts, §28. Dobbs goes on to state that intent and negligence are entirely different concepts, and are naturally exclusive. Negligence entails an unreasonably risky conduct. The focus is on the risk as it would be perceived by the reasonable man, not on the defendant's purpose or the certainty required to show intent. Id. at 326.

According to F. Patrick Hubbard and Robert L. Felix in their treatise The South Carolina Law of Torts, battery has two elements: (1) a harmful or offensive touching without consent and

(2) an intent to commit the touching or to cause apprehension of being touched. Hubbard and Felix, The South Carolina Law of Torts, (2d ed. 1997) at 396. (Emphasis added.)

In the case of Herring v. Lawrence Warehouse Co., 222 S.C. 226, 72 S.E.2d 453 (1952), the South Carolina Supreme Court held that the trial court committed error in charging the jury that there must be proof that the defendant intended to inflict injury on the plaintiff. In so ruling, it cited Corpus Juris Secundum (CJS). That same authority holds that in order for a plaintiff to recover for battery, there must be proof that there was bodily contact, that the contact was offensive, and that the defendant intended to make the contact. 6A CJS, Assault §8. It is sufficient if the defendant intends to inflict either harmful or offensive contact without the other's consent. In other words, there need not be proof of an intent to do harm, only proof of the absence of consent by the plaintiff by some affirmative act. Id. at §13. As noted by the South Carolina Supreme Court in Smith v. Smith, 194 S.C. 247, 9 S.E.2d 584 (1940):

Generally speaking, a battery is the unlawful touching or striking of another by the aggressor himself or by any substance put in motion by him, done with the intention of bringing about a harmful or offensive contact which is not legally consented to by the other, and not otherwise privileged. It is sometimes defined as any injury done to the person or another in a rude, insolent or revengeful way.

(Internal citations omitted.)

Finally, as noted by Prosser in his treatise Law of Torts:

In order to be liable for battery, the defendant must have done some positive and affirmative act... The act must cause, and must be intended to cause, an unpermitted contact. Mere negligence, or even recklessness which only creates a risk that the contact will result may afford a distinct cause of action in itself, but under modern usage of the term it is not enough for battery.

W. Prosser, Law of Torts, §9 (4th ed. 1971).

Colony nonetheless argues that it is inappropriate to utilize a common law definition where a contractual definition has been utilized. See Yarborough v. Phoenix Mut. Life Ins. Co.,

266 S.C. 584, 225 S.E.2d 344 (1976). Where there is a definition set forth in the policy, the court will determine the intent by reviewing the policy as a whole. Spartan Iron & Metal Corp. v. Liberty Ins. Co., 5 Fed Appx. 176 (4th Cir. 2001) (not published); see also, Yarborough v. Phoenix Mut. Life Ins. Co., supra. In the instant case, the policy provides that coverage will be afforded where an "occurrence" causes bodily injury, unless otherwise excluded. The term "occurrence" is defined by the policy to include "an accident, including continuous or repeated exposure to substantially the same general harmful conditions". The term "accident" is not defined by the policy, but has been held to mean "an unexpected happening or event, which occurs by chance and usually suddenly, with harmful result, not intended or designed by the person suffering the harm or hurt." Green v. United Ins. Co. of America, 254 S.C. 202, 174 S.E.2d 400 (1970). The policy also excludes coverage for "bodily injury" "expected or intended from the standpoint of the insured." This exclusion is consistent with the definition of an "occurrence" since the exclusion is concerned with intentional acts and an "occurrence" is only concerned with unintentional acts. The exclusion for "assault and battery" expands on the exclusion for intentional acts since it is not limited to being from the "standpoint of the insured." If the exclusion for "assault and battery" applies only to intentional acts, this definition would be in conformity with the exclusion for "intentional acts" (which does not apply to unintentional acts) and also to the definition of "occurrence" (which covers unintentional, or accidental, acts, but not intentional acts). On the other hand, if the exclusion for "assault and battery" is expanded to include "unintentional acts," this does not conform to the definition of an "occurrence" but, instead, disallows coverage for bodily injury which is caused by unintentional contact with another. Under the circumstances, the broader interpretation of the "assault and battery" exclusion leads to an ambiguity, which must be interpreted in favor of the insured, Three Blind Mice. On the other hand, if a narrow interpretation is used, limiting the exclusion to

only intentional acts, coverage would still have to be found in favor of Three Blind Mice, and the intent of the policy as a whole to provide coverage for bodily injury and property damage caused by accident, would be met.

It should also be noted that the court in Anastasis v. American Safety Indemnity Co., 786 NYS 2d 88 (2004), when presented a factual scenario of injury caused by a bouncer inadvertently stepping on the plaintiff's foot and leg, found that coverage was available notwithstanding the existence of an "assault and battery" exclusion. The court noted that the term "battery" was defined by the policy as "harmful or offensive contact between or among two or more persons." It found that the language "harmful or offensive contact" was derived from the definition of the tort of battery, to-wit "bodily contact" which was "offensive" and which arose when the party committing the battery intended to make contact without the plaintiff's consent. As a result, the "assault and battery" exclusion applies only to causes of action which are "rooted in intentional tortious behavior." Where there were no allegations of intentional acts, the exclusion would not apply. The definition of "battery" in the Colony policy also uses the language of "harmful or offensive" contact discussed in Anastasis. The logic of Anastasis would indicate that a "battery" is limited to only intentional acts.

Even if there are some authorities which utilize definitions which are broad enough to include unintentional acts within the meaning of "battery," the mere fact that there are different interpretations is sufficient to create an ambiguity. Greenville County v. Insurance Reserve Fund, 313 S.C. 546, 443 S.E.2d 552 (1994). Where an ambiguity exists, the construction most favorable to the insured must be used. Id. To avoid this unfavorable resolution, Colony could have utilized language which specifically sets forth inclusion of both intentional and unintentional acts within the definition of "battery." Its failure to do so leaves its insureds without guidance as to what restrictions exist in the coverage provided. Because Colony drafted

the policy language, the ambiguity must be construed against its interest and in favor of Three Blind Mice.

**THE EXCLUSION FOR DAMAGES ARISING OUT OF AN
ATHLETIC OR SPORTS EVENT ONLY APPLIES TO
THOSE WHO ACTUALLY PARTICIPATE IN THE EVENT**

Colony also argues that coverage should be barred under its "Athletic or Sport Participants Exclusion." Exclusions such as this are usually applied to bar coverage for injuries sustained by athletes or performers during athletic competition or other live events. See, e.g., Giacourelli v. Scottsdale Ins. Co., 354 Mont. 15 (2009) (exclusion barred coverage for injuries suffered by jockeys during horse race); Madison County Sheriff's Posse, Inc. v. Horseman's Limited Assn., Inc., 434 So.2d 1387 (Ala. 1983) (exclusion barred coverage for injuries sustained by rodeo participant injured when horse tripped over equipment prior to event); Jefferson Ins. Co. v. Sea World of Fla., Inc., 586 So.2d 95 (Fla. Dist. Ct. App. 1991) (exclusion barred recovery on behalf of diver killed while driving jet ski during water ski show).

However, courts have narrowly construed the application of the exclusion with regard to those injured who were not participating in an athletic competition or other live event. See e.g., Interstate Fire Ins. Co. v. Harmon, 580 F.2d 184 (5th Cir. 1978) (photographer covering motorcycle jump event injured when hit by motorcyclist was not barred from coverage by exclusion); Clermont Central Soccer Assn. v. Cincinnati Ins. Co., 82 Ohio Misc. 2d 31 (1995) (exclusion was ambiguous as to whether referee injured in soccer match was a participant); Garcia v. St. Bernard Parish School Bd., 576 So.2d 975 (La. 1991) (cheerleader injured during stunt at a high school football game was not unambiguously included as participating in game).

Courts have held that in order to establish the applicability of the exclusion, the insurer must prove:

- 1) the event in which the person was injured was a contest or exhibition;
- 2) the contest or exhibition was of an athletic or sports nature;
- 3) the contest or exhibition was sponsored by the named insured; and
- 4) the injured person was practicing for or participating in the contest or exhibition at the time of injury.

Garcia v. St. Bernard Parish School Bd., 576 So.2d 975 (La. 1991); Jefferson Ins. Co. v. Sea World of Fla., Inc., 586 So.2d 95 (Fla. 1991)

While there may be questions about whether striking a boxing bag is an athletic contest, it is clear that Katherine Frost was not participating in the event. Moreover, the exclusion is ambiguous as to whether it applies to anyone who might be injured by one participating in an athletic event or more narrowly to anyone who might be injured while participating in a sport event. As noted previously, this type of ambiguity must be construed in favor of coverage and narrowly against exclusion.

**BY UNILATERALLY DISAVOWING COVERAGE,
COLONY BREACHED ITS OBLIGATION OF GOOD FAITH
BY DENYING WITHOUT REASONABLE BASIS
THE SECURITY AND PEACE OF MIND THREE BLIND MICE
SOUGHT IN PURCHASING AN INSURANCE POLICY**

Colony has correctly observed that the issue of coverage is resolved by comparing the allegations set forth in the underlying Complaint with the provisions of the applicable insurance policy. Shelby Mut. Ins. Co. v. Askins, 307 S.C. 81, 413 S.E.2d 855 (Ct. App. 1992). The underlying Complaint alleges that Katherine Frost was injured when an unknown patron inadvertently struck her while he was using a boxing machine located on the premises. Colony then argues that this act on the part of the unknown patron constitutes an assault and battery rather than an act of negligence as specifically alleged. Pursuant to the terms of its policy, Colony had the duty to provide a defense for those occurrences which caused bodily injury and were not excluded. In construing this duty to defend, courts have made that duty broader than

the duty to indemnify by assuming that the allegations set forth in the Complaint are true. J.W. Stempal, Stempal on Insurance Contracts (3d. ed.) §9.03[A]. Following this assumption, the allegations in this Complaint should have been construed as an action for negligence rather than an action based upon assault and battery. If the matter was one based on negligence, then there was a duty to defend unless it was subsequently established that the factual allegations actually constituted an assault and battery. The proper method of resolving this matter would have been for Colony to issue a reservation of rights letter, followed by a declaratory judgment action to determine the applicability of the exclusions for assault and battery and/or injuries to sports participants. By following this method, Colony would have provided a defense to Three Blind Mice until the applicability of the exclusions was resolved through the declaratory action.

However, Colony chose to deny coverage by taking the unilateral position that the exclusions for actions based upon assault and battery and injuries to sports participants barred coverage. By doing so, it purposefully placed its interests above those of its insured, Three Blind Mice and left Three Blind Mice with no choice but to hire its own attorney and resolve the underlying litigation in its best interests. Where a mutually binding contract of insurance has been entered into, a duty of good faith and fair dealing arises by operation of law due to the special relationship of the parties to the contract. Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). When an insured enters into an insurance contract, he does not do so seeking profit, but instead seeks security and peace of mind against calamity. Because this bargained-for peace of mind and security are the principal benefits for the insured, courts have imposed special obligations upon insurer in the investigation and resolution of claims and litigation. A.D. Windt, Insurance Claims and Disputes (5th ed.) §9:26. These special obligations include the good faith processing of claims with due regard for the insured who has imposed a confidence which creates a quasi-fiduciary relationship. See Pitts v. Jackson Nat. Life Ins. Co.,

supra. Where these quasi-fiduciary duties are breached, an insurer is guilty of bad faith. See Lira v. Shelter Ins. Co., 913 P.2d 514 (Colo. 1996).

In the instant case, Colony was requested on two occasions to undertake the defense of Three Blind Mice with regard to the claims of Katherine and Bobby Frost. It did not undertake to have any issues of coverage resolved by a declaratory action after issuance of a reservation of rights letter. Instead, on each occasion, it denied coverage. As a result, Three Blind Mice was left to undertake the defense of the litigation on its own, to negotiate a settlement and to thereafter institute this action against Colony once the underlying sit has been resolved. Colony took no action to attempt to resolve the coverage issues until forced to do so when this action was filed. By doing so, Colony deprived Three Blind Mice not only of its contractual right to a litigation defense and indemnification, but also of the peace of mind and security that it was owed under the Colony policy.

Colony contends that it has not acted in bad faith since the exclusions for "assault and battery" and injury to a participant in an athletic activity were clearly applicable and well-grounded. However, this assertion ignores the fact that Colony has been unable to cite any case or authority for the application of the "assault and battery" exclusion where the underlying Complaint clearly asserts that the event was caused by an unintentional negligent event. This is particularly true where the applicable policy provisions fail to explicitly provide that both intentional and unintentional acts are excluded. Likewise, the basis for application of the exclusion for injury to participants in athletic activities is poorly grounded since Katherine Frost was not a participant. Moreover, all cases applying this exclusion have only applied to those actually involved in the sports event.

Rather than having a well-grounded basis for application of these exclusions, Colony has instead unilaterally acted to interpret these provisions in an expanded and liberal way so as to

cause the exclusions to fit the facts of this case. In other words, Colony was looking for a way not to provide coverage to its insured in order to further its own interests. This is a breach of its duty to Three Blind Mice and constitutes bad faith.

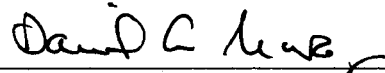
CONCLUSION

By purchasing a comprehensive general liability policy from Colony, Three Blind Mice sought to obtain both security and peace of mind that litigation so often threatens. While an insurer such as Colony has a duty to investigate the existence of coverage for particular claims, that duty should not be fulfilled by interpreting policy provisions with an eye toward finding a way to avoid coverage. Such an approach violates the fiduciary duty owed by an insurer to its insured and denies the very security and peace of mind the insured sought to purchase.

Yet, in this case, it is clear that Colony has undertaken to find a way to avoid coverage by unreasonably applying two exclusions. Where the Complaint served upon an insured clearly sets forth allegations which constitute negligence and not an unintentional act directed at a third party, coverage is available because the injury was allegedly caused by an "occurrence." Colony has attempted to expand its exclusion for "assault and battery" to preclude coverage not only for intentional acts but also unintentional acts. This is not what Three Blind Mice sought in purchasing its policy from Colony, and Colony should not be permitted to unreasonably expand its exclusion to avoid duties and obligations for which it has already been paid. Likewise, the policy exclusion for injury arising out of participation in an athletic event is clearly directed toward limiting damages to participants in those activities. Katherine Frost was not participating in using the boxing machine and, therefore, the exclusion is inappropriate.

Colony's position on the utilization of those exclusions to deny coverage is not well-founded. It denied coverage without first seeking confirmation by a court of the reasonableness of its actions. While filing a declaratory judgment action is not always required, particularly

where the policy language excluding coverage is clear, it is the better policy where it is unclear whether exclusions are applicable. In this instance, the exclusions were clearly not applicable or, at best, simply ambiguous. By simply denying coverage, Colony acted to save itself litigation costs and expenses and place that burden on its insured. In fact, it did not act to file a declaratory judgment action until after Three Blind Mice had filed its declaratory action. In so acting, Colony placed its interests above those of its insured, violating the covenant of good faith and thereby rendering itself liable for damages not only for breach of contract but also for bad faith.



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September 28, 2015
Greenville, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

CIVIL ACTION NO. 2014-CP-23-03422

THREE BLIND MICE, LLC d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant,

**DEFENDANT COLONY'S RESPONSE BRIEF
IN OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT**

ENTERED COMPUTER

FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS/MSH
2014-CP-23-03422
PM 8 38

COMES NOW Defendant Colony Insurance Company, by and through counsel and pursuant to South Carolina Rule of Civil Procedure 56, and serves this Response Brief in opposition to Plaintiff's Motion for Summary Judgment.

RESPONSE ARGUMENT

Plaintiff Three Blind Mice, LLC d/b/a The Blind Horse Saloon has filed a Motion for Summary Judgment requesting that this Court declare as a matter of law that Colony breached its contract with Three Blind Mice in bad faith by denying coverage for claims asserted against Three Blind Mice in the underlying Frost Lawsuit.¹ In its Brief in Support of its Motion for Summary Judgment, Three Blind Mice fails to recognize that the "comparison test" utilized by South Carolina courts to determine whether an insurer has an obligation to defend its insured against a particular claim requires that the court compare the allegations in the underlying suit against the insured **with the terms of the policy itself** in order to determine whether the insurer has a duty to defend such claim. *Holmes v. McKay*, 334 S.C. 433, 438, 513 S.E.2d 851, 853 (S.C. Ct. App. 1999) (emphasis added); *see also St. Paul Reinsurance Co. v. Ollie's Seafood Grille & Bar, LLC*, 242 F.R.D. 348, 352 (D.S.C. 2007). As a result, Three Blind Mice bases its

¹ Capitalized terms are defined in Colony's Memorandum of Law in Support of its Motion for Summary Judgment.

argument on definitions that have been ascribed by some courts to the term "battery" under the common law in order to support its position that the "Assault, Battery or Assault and Battery Exclusion" in the Policy does not bar coverage for the claims asserted against Three Blind Mice in the Frost Lawsuit because the individual who hit Katherine Frost did so unintentionally. However, to reach this result, Three Blind Mice is asking this Court to ignore the plain terms of the Policy which specifically define the term "battery," which does not include the element of intent.

Such argument misconstrues the central issue in this coverage dispute: whether coverage is afforded under the plain terms of the Policy for the claims asserted against Three Blind Mice in the Frost Lawsuit. The Policy specifically defines the term "battery" as "an act that brings about harmful or offensive contact with another" without any requirement that the person act with the intent to bring about such harmful or offensive contact. Therefore, definitions ascribed to the term "battery" by courts that were not interpreting this definition of "battery" are not relevant to the present coverage dispute because the Policy specifically defines the term. Utilizing the definition of the term "battery" as specifically set forth in the Policy's "Assault, Battery or Assault and Battery Exclusion," the conduct alleged in the Frost Lawsuit clearly falls within the Policy's definition of such term, so coverage is excluded for the claims asserted against Three Blind Mice in the Frost Lawsuit.

Similarly, Three Blind Mice ignores the plain terms of the "Athletic or Sport Participants Exclusion" in the Policy in its argument that such exclusion should only apply if the injured person was practicing for or participating in the contest or exhibition at the time of the injury. In making this argument, Three Blind Mice purports to be relying on case law from courts in other jurisdictions "interpreting a similar clause." (Pl. Brief, p. 8) However, a review of such

cases discloses that they were interpreting exclusionary provisions with language that varied in significant respects from the "Athletic or Sport Participants Exclusion" in the Policy. Based upon the plain terms of the Policy's "Athletic or Sport Participants Exclusion," coverage is excluded for the claims asserted against Three Blind Mice in the Frost Lawsuit.

Finally, without any legal or evidentiary support, Three Blind Mice argues in its Brief that this Court should grant summary judgment in favor of Three Blind Mice on its cause of action for bad faith. However, Three Blind Mice failed to forecast any evidence (or even make any legal argument) that Colony's denial of coverage resulted from any bad faith or unreasonable action in handling the claim, as opposed to the coverage denial being based on a reasonable interpretation of the Policy terms. At most, Three Blind Mice has shown an honest disagreement as to the interpretation of the Policy terms. However, in order to maintain this claim under South Carolina law, Three Blind Mice must show that any coverage denial of coverage was undertaken with a willful or reckless disregard of the insured's rights. Therefore, even if this Court were to find that Three Blind Mice should somehow be afforded coverage under the Policy for the claims asserted in the Frost Lawsuit, the cause of action for bad faith and request for punitive damages still fail as a matter of law.

I. THREE BLIND MICE IGNORES THE PLAIN TERMS OF THE POLICY IN ARGUING THAT IT IS ENTITLED TO COVERAGE FOR THE CLAIMS ASSERTED AGAINST IT IN THE FROST LAWSUIT

A. The "Assault, Battery or Assault and Battery Exclusion"

Three Blind Mice argues in its Brief in Support of its Motion for Summary Judgment that coverage should be provided under the Policy because the battery committed by the unknown individual against Katherine Frost was "unintentional," and therefore, does not qualify as a "battery" under the "Assault, Battery or Assault and Battery Exclusion" in the Policy.

In coming to its conclusion that the Policy only excludes coverage for an intentional “battery,” Three Blind Mice relies upon the manner in which some courts have defined the common law tort of battery. *See, Longshore v. Saber Sec. Serv., Inc.*, 365 S.C. 554, 619 S.E.2d 5 (S.C. Ct. App. 2005) (“Assault and battery is generally classified as an intentional tort.”). However, other South Carolina cases hold that intent is not an element of a civil claim for battery. *See Mellen v. Lane*, 377 S.C. 261, 659 S.E.2d 236 (S.C. Ct. App. 2008) (“There is a well recognized distinction between criminal assault and a civil action for an assault and battery. In civil actions, the intent, while pertinent and relevant, is not an essential element.”); *USF Ins. Co. v. D&J Enters.*, 2010 U.S. Dist. LEXIS 55123, *11, 2010 WL 2232211 (D.S.C. June 3, 2010) (“More recent cases, however, suggest that intent is not a necessary element of the civil offense of assault and battery.”).

Even though this debate about whether South Carolina law currently recognizes intent as an essential element of a civil claim for battery is an interesting one, such debate is irrelevant to the issue now before this Court. The Policy contains a specific definition of “battery” and that definition must be applied. The relevant question in this coverage action, therefore, is whether the allegations in the Frost Lawsuit fall within the coverage afforded by the plain terms of the Policy issued by Colony to Three Blind Mice. *See C.A.N. Enter., Inc. v. S.C. Health & Human Ser. Fin. Com.*, 296 S.C. 373, 373 S.E.2d 584 (S.C. 1988) (holding that insurance policies are subject to the general rules of contract construction and that the court’s duty is “limited to the interpretation of the contract made by the parties themselves ‘regardless of its wisdom or folly, apparent unreasonableness, or failure [of the parties] to guard their interests carefully’”); *Spartan Iron & Metal Corp. v. Liberty Ins. Corp.*, 6 Fed. Appx. 176, 178 (4th Cir.

S.C. 2001) (“To adopt a common law definition here where the policies provide a contractual definition would be at odds with South Carolina law.”).

The Policy specifically defines a “battery” as “an act which brings about harmful or offensive contact to another.” As such, the Policy’s definition of the term “battery” does not impose a requirement that the act which brings about harmful or offensive contact to another” be done with any intent to bring about such harmful or offensive contact regardless of whether some courts have interpreted the undefined term “battery” to require an element of intent. Three Blind Mice concedes in its Brief that the allegation against Three Blind Mice in the Frost Lawsuit is that Katherine Frost was injured when “the unknown patron [who was using a boxing machine] apparently swung wildly, struck Kathrine Frost and caused her injury.” (Pl. Brief, p. 1) Therefore, based upon the allegations in the underlying complaint and the plain terms of the Policy, the claims against Three Blind Mice in the Frost Lawsuit arose out of a “battery”—as that term is specifically defined by the Policy—so coverage is excluded under the Policy’s “Assault, Battery or Assault and Battery Exclusion.”

Apparently recognizing that coverage is barred under the plain terms of the Policy, Three Blind Mice attempts to manufacture some sort of ambiguity in the Policy by referencing various “ISO forms” in its Brief which are not even part of the Policy in this coverage action.² Various ISO forms define the term “battery” in different ways depending on the nature of the insured business, the premium paid, and a host of other insurance underwriting factors. However, the extraneous policy forms referenced by Three Blind Mice in its Brief—which were not even in existence when the Policy at issue in this matter was issued—are irrelevant to

² Insurance Services Office, Inc. (ISO) is a private company that provides a broad range of services to the insurance industry, including the development of policy forms and endorsements. The “ISO forms” referenced in the Brief submitted by Three Blind Mice include copyrighted material of ISO.

the coverage dispute before this Court.³ This insurance coverage action seeks a legal determination as to whether the plain terms of the Policy at issue (as found in its policy forms) provides coverage for claims asserted against Three Blind Mice in the Frost Lawsuit. Accordingly, ISO forms which were not included as part of the Policy, and indeed were not even in existence when the Policy was issued, are irrelevant to the coverage determination to be made by the Court in this matter. Rather, the central issue in this coverage action is whether the plain terms of the Policy (as contained in the policy forms actually used in the Policy) provide coverage for the claims asserted against Three Blind Mice in the Frost Lawsuit.

Furthermore, there is no “internal inconsistency” within the Policy as claimed by Three Blind Mice in its briefing. Essentially, Three Blind Mice argues that to define the term “battery” to include an unintentional act which brings about harmful or offensive contact to another would “preclude all coverage for bodily injury damages.” This argument is without merit. Although the plain terms of the “Assault, Battery or Assault and Battery Exclusion” in the Policy exclude coverage for the claims asserted by the plaintiffs in the Frost Lawsuit for the injuries sustained by Katherine Frost when she was struck by the unknown individual in the bar, such exclusion certainly does not “preclude all coverage for bodily injury damages” as suggested by Three Blind Mice. The scenarios under which the Policy would provide coverage for bodily injury claims are too numerous and varied to provide an exhaustive list; however, simple examples would include a claim arising out of injuries sustained by a patron who slips and is injured on a slick spot on the dance floor, or a claim arising out of a food poisoning incident caused by improperly prepared food at the bar.

³ The ISO forms referenced by Three Blind Mice all end with the number “05 11”, meaning that those forms were promulgated in May 2011. The Policy at issue in this case was issued on December 14, 2010. Therefore, Three Blind Mice’s position rests on the curious argument that Colony created an ambiguity when it issued the Policy because Colony failed to utilize policy forms that did not even exist.

An insurer has the right to limit its liability through the use of exclusionary provisions and defined terms to bar coverage for certain types of risks. In the present matter, Colony issued the Policy to an entity in the business of operating a bar, on the condition that the Policy include the “Assault, Battery or Assault and Battery Exclusion.” Three Blind Mice had a duty to read the Policy and Three Blind Mice therefore accepted the Policy as issued. *See Lewis v. OMNI Indem. Co.*, 970 F. Supp. 2d 437, 449 (D.S.C. 2013) (“It is well settled in South Carolina that an insured has the duty of reading his insurance policy and of acquainting himself with its contents. Failure to do so will prevent him from avoiding the written contract on the grounds that he did not know its terms.”) (citing *Able v. Equitable Life Assur. Soc. of the U.S.*, 186 S.C. 381, 195 S.E. 652 (1938)). As such, the provisions of the Policy—including the “Assault, Battery or Assault and Battery Exclusion”—must be applied pursuant to their plain terms.

The claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit arose out of or resulted from a “battery” as that term is specifically defined by the Policy. As a result, such claims are expressly excluded from coverage pursuant to the plain terms of the “Assault, Battery or Assault and Battery Exclusion” in the Policy. Therefore, under the “comparison test” applied by South Carolina courts to determine whether an insurer has a duty to defend, this Court should find as a matter of law that Three Blind Mice was not entitled to coverage under the Policy for the claims asserted in the Frost Lawsuit, and should deny the Motion for Summary Judgment filed by Three Blind Mice and grant summary judgment in favor of Colony.

B. The “Athletic or Sport Participants Exclusion”

Three Blind Mice continues to disregard the plain terms of the Policy in its argument relating to the “Athletic or Sport Participants Exclusion.” Specifically, Three Blind Mice argues that “there is no question that the exclusion only applies to those who actually participate

in the event.” (Pl. Brief, pp. 7–8) In support of its position, Three Blind Mice cites two out-of-state cases without any analysis of the factual underpinnings of those cases or the policy language at issue in those cases. In fact, a review of those cases reveals that exclusions at issue in those cases differed significantly from the “Athletic or Sport Participants Exclusion” in the Policy at issue in this matter. *Jefferson Ins. Co. v. Sea World of Fla.*, 586 So. 2d 95, 97 (Fla. Dist. Ct. App. 5th Dist. 1991) (analyzing an exclusion that provided that “the insurance does not apply to bodily injury to any person while performing in any exhibition or diving event sponsored by the named insured”); *Garcia v. St. Bernard Parish Sch. Bd.*, 576 So. 2d 975, 975 (La. 1991) (analyzing an exclusion that provided that “the insurance does not apply to bodily injury to any person while practicing for or participating in any contest or exhibition of an athletic or sports nature sponsored by the named insured.”).

Unlike the exclusions in the policies at issue in the cases cited by Three Blind Mice in its Brief, the language in the “Athletic or Sport Participants Exclusion” at issue in the present coverage dispute specifically provides that coverage is not afforded for “bodily injury to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.” (emphasis added) It is undisputed that the claims asserted by the Frosts against Three Blind Mice in the Frost Lawsuit arise out of or result from the unknown individual participating in an athletic activity or game (the punching bag machine). Accordingly, such claims are excluded by the plain terms of the “Athletic or Sport Participants Exclusion” in the Policy, and so this Court should deny the Motion for Summary Judgment filed by Three Blind Mice and grant summary judgment in favor of Colony.

II. THREE BLIND MICE FAILS TO PRESENT ANY LEGAL ARGUMENT OR EVIDENCE TO SUPPORT A CAUSE OF ACTION FOR BAD FAITH OR CLAIM FOR PUNITIVE DAMAGES AGAINST COLONY

Finally, Three Blind Mice provides no legal argument nor forecasts any evidence to support its cause of action for bad faith against Colony. Rather, Three Blind Mice simply makes the assertion that “where the refusal to defend has no reasonable basis, the insurer may be guilty of bad faith.” (Pl. Brief, p. 12) However, Three Blind Mice never provides any argument or evidence to suggest that Colony’s denial of coverage “has no reasonable basis.”

In this matter, Colony properly denied coverage for the claims against Three Blind Mice in the Frost Lawsuit, so Three Blind Mice does not have a valid cause of action for bad faith against Colony in this matter. *BMW of N. Am., LLC v. Complete Auto Recon Servs.*, 399 S.C. 444, 453, 731 S.E.2d 902, 907 (S.C. Ct. App. 2012) (holding that the insurer could not have acted in bad faith in denying the purported additional insured’s claim for coverage because no coverage existed under its policy for such claim). Furthermore, even if this Court were to somehow find coverage under the Policy for the claims asserted against Three Blind Mice in the Frost Lawsuit, the cause of action for bad faith still fails as a matter of law because Three Blind Mice has not come forward with any evidence to prove (or even to suggest) that Colony’s denial of coverage resulted from a bad faith or unreasonable handling of the claim, as required to support a bad faith cause of action. *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359, 415 S.E.2d 393, 396–97 (S.C. 1992) (holding that one of the elements of a cause of action for bad faith refusal to pay first party benefits under a contract of insurance includes the refusal to pay benefits due under the contract resulting from the insurer’s bad faith or unreasonable action in handling the claim).

It should also be noted that Three Blind Mice has not made any legal argument, nor forecast any evidence, to support a claim for punitive damages in this matter. To establish a claim for punitive damages in the context of an insurer's alleged bad faith in the handling of a claim, the insured must prove that the insurer's actions in denying coverage were willful or in reckless disregard of the insured's rights. *Nichols v. State Farm Mut. Auto. Ins. Co.*, 279 S.C. 336, 340, 306 S.E.2d 616, 619 (S.C. 1983). In the present case, Colony's coverage position has been well-grounded and timely communicated, and Three Blind Mice has not come forward with any evidence that Colony's actions were willful or in reckless disregard of the insured's rights.

CONCLUSION

Although the core of the dispute between the parties to this insurance coverage action is whether the plain terms of the Policy provide coverage for the claims in the Frost Lawsuit, Three Blind Mice devotes the majority of its argument to analyzing everything except for the plain terms of the Policy. Under South Carolina law, an insurer's duty to defend claims asserted against its insured is determined based upon the allegations of the complaint in the underlying lawsuit as compared with the plain terms of the policy. It is alleged in the complaint in the Frost Lawsuit that Katherine Frost was struck by an unknown individual who was attempting to strike a boxing machine. The Policy includes an "Assault, Battery or Assault and Battery Exclusion" which expressly excludes coverage for claims arising out of or resulting from a "battery"—specifically defined in the Policy as "an act which brings about harmful or offensive contact to another or anything connected to another" without any requirement of intent to bring about such harmful or offensive contact. Therefore, based upon

the allegations in the underlying complaint and the plain terms of the Policy, the claims asserted against Three Blind Mice in the Frost Lawsuit are not covered under the Policy.

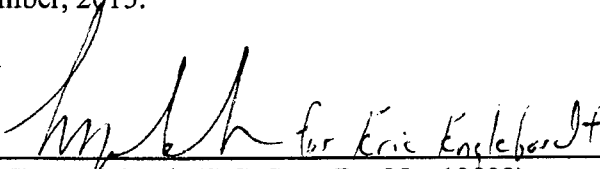
Similarly, the Policy also includes an "Athletic or Sport Participants Exclusion," which by its plain terms excludes coverage for claims for "'bodily injury' to any person arising out of or resulting from practicing or participating in any athletic contest, exhibition, activity, game or sport." It is specifically alleged in the underlying lawsuit that the plaintiff was injured when she was struck by an individual who was using a punching bag boxing machine. Accordingly, based upon the plain terms of the Policy as compared with the allegations in the underlying lawsuit, Three Blind Mice was not entitled to coverage under the Policy for the claims in the Frost Lawsuit.

Finally, Three Blind Mice fails to make any legal argument or to forecast any evidence to support its cause of action for bad faith or its claim for punitive damages. In order to support a cause of action for bad faith refusal to pay benefits under an insurance policy, the insured must demonstrate that such refusal to pay resulted from the insurer's bad faith or unreasonable actions in handling the claim, and must have been done with a willful or reckless disregard of the insured's rights. In the present matter, Three Blind Mice has not presented any evidence other than that there is an honest disagreement with Colony as to the proper interpretation of the Policy. Therefore, even if this Court were to find that Three Blind Mice was entitled to coverage under the Policy for the claims asserted in the Frost Lawsuit, there is no evidence to support a cause of action for bad faith or a request for punitive damages.

Accordingly, because the claims asserted against Three Blind Mice in the underlying lawsuit are excluded from coverage under the plain and unambiguous terms of the Policy, this Court should hold as a matter of law that Three Blind Mice was not entitled to coverage

under the Policy for such claims, and grant Colony's Motion for Summary Judgment and deny the Motion for Summary Judgment filed by Three Blind Mice.

This the 28th day of September, 2015.

A handwritten signature in black ink, appearing to read "Eric K. Englehardt", written over a horizontal line.

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Attorneys for Defendant Colony Insurance Company

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

THREE BLIND MICE, LLC, d/b/a
THE BLIND HORSE SALOON,

Plaintiff,

vs.

COLONY INSURANCE COMPANY,

Defendant.

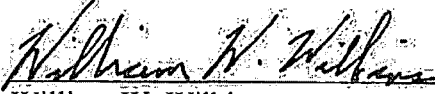
IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-23-3422

MOTION FOR HEARING

This is an action for breach of contract and bad faith denial of insurance coverage. In an order issued by the Honorable James R. Barber, III dated November 18, 2015, the Court granted Plaintiff's motion for summary judgment. In that order, the Court directed counsel for both parties to agree on the amount of attorneys' fees and costs to which Plaintiff is entitled. After some correspondence, the parties did agree to an amount to which Plaintiff is entitled. However, Defendant's counsel, David Brown of Greensboro, North Carolina – with the exception of one unproductive occasion – has repeatedly failed to communicate with Plaintiff's counsel regarding the language of a proposed order. Plaintiff's counsel has already incurred approximately \$3500.00 in additional fees in drafting a proposed order and attempting to communicate by email and telephone with Defendant's counsel and otherwise resolve the matter, and will likely incur more if the matter is not resolved. In light of the foregoing, Plaintiff respectfully requests that this Court hold a hearing to determine the amount of attorneys' fees and costs to which the Plaintiff is entitled and enter a proposed order.

Respectfully submitted,



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*Attorneys for Plaintiff Three Blind Mice, LLC,
d/b/a The Blind Horse Saloon*

February **22**, 2016
Greenville, South Carolina

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge
James B. Barber III, Circuit Court Judge

Case No. 2014-CP-23-3422

Three Blind Mice, LLC, d/b/a
The Blind Horse Saloon,

Respondent,

v.

Colony Insurance Company,

Appellant.

NOTICE OF APPEAL

Colony Insurance Company appeals the final Order and Judgment of the Honorable Letitia H. Verdin filed on April 8, 2016, as well as the interlocutory Order of the Honorable James B. Barber III dated November 18, 2015 and filed on November 25, 2015. Appellant received written notice of entry of the final Order and Judgment in this action on or after April 8, 2016.

May 3, 2016



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COURT OF COMMON PLEAS
2014-CP-23-3422

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TRANSCRIPT OF RECORD

[illegible]

October 15, 2015
Greenville, South Carolina

THE HONORABLE JAMES R. BARBER, III, JUDGE

DAVID L. MOORE, JR., ESQ.
WILLIAM WILKINS, ESQ.
Attorney for the Plaintiff

DAVID LEONARD BROWN, ESQ.
ERIC K. ENGLEBARDT, ESQ.
Attorney for the Defendant

CHERYL A. SMITH
Circuit Court Reporter

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Certificate of Reporter

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EXHIBITS

NO

DESCRIPTION

ID

EVD

No exhibits were offered.

PROCEEDINGS

THE COURT: The next case we have is Three Blind Mice vs. Colony Insurance, and there are several motions. One is a motion for -- well, there's two motions for summary judgment by each side, I guess; is that correct? Does everybody agree there's no issue of fact?

MR. BROWN: Yes, Your Honor.

MR. MOORE: Yes, Your Honor.

THE COURT: It's strictly a matter of law?

MR. MOORE: Yes, sir.

MR. BROWN: Yes, sir.

THE COURT: All right. Who wants to go first? Apparently, the defendant filed their motion ahead of the plaintiff.

MR. BROWN: Be happy to proceed. Be happy to ~~be~~ be glad to do that, Your Honor.

THE COURT: You don't want to flip? Apparently not. I asked if y'all want to flip a coin, but if you can decide, that's fine.

All right. Yes, sir. Defendant going first?

MR. BROWN: Yes, Your Honor.

THE COURT: All right. Are you Mr. Moore?

MR. BROWN: I'm David Brown, Your Honor. I'm here on behalf of Defendant Colony along with Eric Englehardt.

THE COURT: Okay, David. I'm sorry. All right.

1 MR. BROWN: So may it please the court. I'm David
2 Brown here actually from North Carolina. With the pleasure
3 of the Court, I appreciate the opportunity and the pleasure
4 of being here along with Mr. Englehardt as local counsel.

5 There's been several briefs submitted on this, Your
6 Honor, and I know you probably had a chance to look at
7 those. I don't want to be redundant.

8 THE COURT: I have not had a chance to see either of
9 these, so I don't know.

10 LAW CLERK: One of them you've seen. One of them we
11 got a couple weeks ago.

12 THE CLERK: Oh, yeah. The one that went to Columbia.
13 That's correct. I've seen that.

14 MR. BROWN: I think there are four motions. And if
15 you need any additional -- I think I have extra copies of
16 each, and I'm sure Mr. Moore does as well. The defendant
17 moved for summary judgment, the plaintiff moved for summary
18 judgment, and then each side responded to the other party's
19 motion for summary judgment. So there should be four
20 briefs, two from each side.

21 THE COURT: Well, as far as I can see, we've got
22 three. We've got one from Mr. Englehardt, and one from
23 Mr. Moore, and one, I guess, Mr. Englehardt again, which
24 was the Defendant Colony's response brief.

25 MR. BROWN: Yes, Your Honor.

1 MR. MOORE: The other one is in the mail, I guess.
2 Probably didn't get to you before you came up here. So
3 you'll have four all together.

4 THE COURT: Well, the courthouse was closed in
5 Richland County all last week because of the weather, and
6 then we left -- I left on the weekend to come up here
7 Sunday -- actually, Friday. I left Friday.

8 But I know y'all will cover everything.

9 MR. BROWN: I'm sure that's the case.

10 Your Honor, this lawsuit arises out of -- it's an
11 insurance coverage action, and the fundamental issue is
12 whether or not Colony had a duty to defend a personal
13 injury lawsuit that was filed against the defendant, now
14 the plaintiff, Three Blind Mice, d/b/a the Blind Horse
15 Saloon.

16 The lawsuit arises out of an incident that occurred at
17 the saloon during a Halloween party. The plaintiff in the
18 underlying personal injury action, a Katherine Frost, was
19 one who was present at the Halloween party in October, I
20 believe, of 2010. The bar and saloon also has games
21 including various sorts of things people can play while
22 they're there, serves food, alcohol, et cetera. One of the
23 games is a punching bag.

24 Later in the evening, there was an occasion where
25 there was a Halloween costume kind of parade or lineup and

1 people looked at each other's costumes and judging the
2 costumes. This is all of what's alleged in the underlying
3 complaint.

4 Ms. Frost was there watching the parade of costumes,
5 at which point she felt something like she had been hit in
6 the back. She fell down. Never saw -- nobody ever really
7 identified the person who actually did the hitting.

8 And what is alleged by Ms. Frost in her lawsuit
9 against the Three Blind Mice, the saloon, is that someone
10 was hitting the -- playing on the punching bag, swung at
11 the punching bag, missed the punching bag, hit Ms. Frost in
12 the back, caused her to fall, and she sustained personal
13 injuries as a result of that.

14 She filed a lawsuit against, among other defendants,
15 Three Blind Mice alleging, in essence, a failure to keep
16 the area secure, failure to train personnel to keep the
17 area secure during the event where there are this many
18 people involved and so forth.

19 In October of 2010, Colony, my client, Insurance
20 Company had in force a liability policy with Three Blind
21 Mice. When Ms. Frost filed the lawsuit, Three Blind Mice
22 tendered it to Colony for defense. Colony denied a duty to
23 defend based on the allegations in the complaint, and
24 particularly based on two exclusions in the policy, one of
25 those being an assault and battery exclusion, and the

1 second being an athletic participants exclusion. Three
2 Blind Mice then hired separate counsel, Mr. Moore's firm,
3 Mr. Wilkins' firm, to defend the action. They eventually
4 settled it and in turn filed this coverage lawsuit against
5 Colony saying, basically, Colony should have defended the
6 lawsuit. So that's what brings us here today.

7 So the fundamental question is whether there was --

8 MR. MOORE: Hold on. Let me interrupt just a second.
9 I don't think the judge has a copy of either the complaint
10 or the insurance policy. It might help to follow along.
11 And I'll give you -- you've already got this, but it's a
12 copy of my brief, and you'll find attached a copy of the
13 policy and the complaint.

14 Sorry.

15 MR. BROWN: No, no. Thank you.

16 THE COURT: Yeah. I've got -- is this the same one
17 you sent me?

18 MR. MOORE: Yes, sir. You may have it already.

19 THE COURT: I have it. Y'all sent it to me in
20 Columbia, and I had a chance to look at it.

21 MR. MOORE: If you look through there, you'll see when
22 he starts talking about the insurance policy, it's in
23 there, and that will help you to be able to follow along.

24 THE COURT: All right. Thank you, Mr. Moore.

25 Yes, sir.

1 MR. BROWN: So the duty to defend test in South
2 Carolina, and, indeed, around the country is the comparison
3 test where the Court compares the allegations and complaint
4 to the four corners of the policy. Some courts refer to it
5 as the four-corners test, some the eight-corners test. But
6 basically, the Court looks at the four corners of the
7 complaint, sees what's alleged, and then looks at the four
8 corners of the insurance policy and senses whether that
9 policy has a duty to defend that complaint.

10 So I think that's the spirit in which both parties
11 come to you today indicating that this is a question of
12 law, something that is a question of law whether the policy
13 issued by Colony is obligated to defend the complaint that
14 was alleged by Ms. Frost against Three Blind Mice.

15 There was a claim for punitive damages that was
16 alleged by the plaintiff alleging bad faith in Colony's
17 position and seeking punitive damages, and I think that
18 would not be subject to summary judgment from the
19 plaintiff's perspective. We move for summary judgment
20 asking for that claim to be dismissed. And Mr. Moore
21 recently sent a letter to Your Honor you may or may not
22 have seen indicating that the plaintiff was no longer
23 seeking the claim for punitive damages.

24 So I believe what's before you is a question of law of
25 whether the Colony policy was obligated to defend the Frost

1 complaint, and if not, there will be no coverage, and if
2 so, then there would be potential for the plaintiff to
3 recover its actual damages, that is, what it paid to defend
4 the underlying case and what it paid to settle the
5 underlying case. So that's what brings us here.

6 So we start, of course, with the complaint. And if
7 you have that, in paragraph -- really, 14 through about 17
8 in the complaint is where the basic factual allegations
9 reside. And the allegations are that Ms. Frost -- I guess
10 starting on paragraph 13, Plaintiff Katherine Frost was one
11 of many patrons standing in the general facility engaged in
12 conversation. She felt a sharp pain in the small of her
13 back. She awoke on the floor to find herself surrounded by
14 people and discovered that an unknown individual who had
15 been using a punching bag boxing machine had missed the
16 punching bag he had been attempting to strike as part of
17 the machine's use, inadvertently striking her in the back.
18 And then she goes on to allege that the boxing machine was
19 in the middle of the floor, was not -- didn't have a
20 barrier around it, didn't have the proper safety
21 precautions around it, and so that's what allowed this
22 individual who was attempting to strike the punching bag to
23 miss the punching bag and hit her in the back causing her
24 injury.

25 So when we compare that allegation to the Colony

1 policy, there are two provisions that are in play. The
2 first one is the assault, battery or assault and battery
3 exclusion. And the language of that exclusion in Section A
4 is extraordinarily broad. It provides that there is no
5 coverage. This insurance does not apply to damages or
6 expenses due to bodily injury arising out of or resulting
7 from assault, battery or assault and battery committed by
8 any person, the failure to suppress or prevent assault or
9 battery, et cetera.

10 And I don't think there's dispute, at least not in the
11 briefing before Your Honor, that if that was a battery,
12 that the language of the exclusion would sweep up the
13 allegations in the complaint, and therefore, there would be
14 no coverage. I think the crux of the dispute or really the
15 issue before Your Honor on this exclusion relates to the
16 definition of "battery." And the definition of "battery"
17 in the policy is very clear. "Battery" means an act which
18 brings about harmful or offensive contact to another or
19 anything connected to another. An act which brings about
20 harmful or offensive contact to another or anything
21 connected to another.

22 And so what was plainly alleged by Ms. Frost was that
23 there was an impact, the act of this unknown, unidentified
24 individual attempting to hit the punching bag, and that
25 that act brought about injury to her. And so Colony's

1 position was in denying the duty to defend and is here
2 today before the Court, that the plain language or that
3 exclusion bars any coverage, and hence, there was no duty
4 to defend the complaint.

5 Now, the issue there is this. There's much in the
6 briefing in front of you about whether an element of intent
7 is required for battery. And, indeed, there are some cases
8 in South Carolina that talk about intent being an element
9 of battery. There's some other cases, and plaintiff's
10 counsel has ably cited those cases. We likewise have cited
11 cases, the Mellon case, some others that are before you,
12 and I have extra copies up here today, in South Carolina,
13 in fact, more recent cases in South Carolina that say, no,
14 for a civil claim of battery, intent is not an element.

15 So, I think, candidly, there's some cases on both
16 sides of that issue in South Carolina. We would contend
17 that the more recent cases provide that intent, while an
18 element of criminal battery is not an element of civil
19 battery.

20 But, I think, candidly, that debate about whether the
21 current state of the law in South Carolina on the civil
22 claim for battery requires an element of intent or not is
23 beside the point, because the point here is that the
24 insurance policy defines the word "battery" very
25 specifically. And it has long been the policy of South

1 Carolina, and, indeed, of all states in interpreting
2 insurance policies, that when the policy defines a term,
3 that definition is to be used. And the policy defines
4 "battery" to mean an act which brings about harmful or
5 offensive contact to another, and that's precisely what
6 happened here.

7 So our contention to Your Honor is that the Court need
8 look no further, should look no further than the plain
9 language of the policy, and when one applies the plain
10 language of that exclusion and that definition of
11 "battery," then there is no coverage.

12 And, I think, for four briefs, lots of interesting
13 discussion about cases, I really think it boils down to
14 that does the Court apply the definition in the policy of
15 battery, and if so, respectfully suggest that there is no
16 duty to defend, and therefore, summary judgment would be
17 appropriate for Colony Insurance Company in this case. Or
18 if the Court chooses not to apply the policy definition but
19 for some reason to look at the South Carolina common-law
20 definition of "battery," then there's this debate that
21 would need to be had about whether there is or is not an
22 element of intent required for the civil tort of battery.
23 And I respectfully suggest that the Court need not get
24 there because the policy is plain on its face.

25 I also want to kind of say this, you know, kind of a

1 big-picture way. The policy that is in the record that is
2 in front of you had coverage for a year with a
3 million-dollar limit and \$6,700 in premium. So a fairly
4 modest premium for a policy that covers lots of things
5 ranging from slip-and-fall claims to food-borne illness
6 claims and all the kinds of things that a bar, a saloon
7 could find itself being sued for in the course of a year.

8 And I think the big picture here, I think it's one
9 thing to look at this and say, "Well, gosh, if you take
10 that broad definition of battery, Colony, then, you know,
11 what are we paying our premium for?" That's kind of the
12 suggestion that the plaintiff's have made -- plaintiff has
13 made in its brief. And I think the answer to that is that,
14 you know, this is a hard risk to insure. It's a hard risk
15 to insure, frankly, to get coverage for a bar and saloon.

16 Colony, as an excess and surplus lines carrier, was
17 willing to write that risk, and it was willing to write
18 that risk subject to certain exclusions making the policy
19 chiefly no coverage for anything associated with assault,
20 battery, any hitting, anything that goes on associated with
21 that. It would cover ordinary tort type claims, claims
22 associated with offering alcohol and food, et cetera, but
23 things associated with the games in the saloon, things
24 associated with assault or battery are simply not going to
25 be covered under the policy. That's why this form was

1 used. That's why this form is candidly broad in what it
2 excludes from coverage in the nature of assault and
3 battery. We would ask for that plain language to be
4 enforced.

5 The second exclusion of which Colony relied in denying
6 the duty to defend is the athletic or sports participants
7 exclusion. That exclusion provides that this insurance
8 does not apply to bodily injury to any person arising out
9 of or resulting from practicing or participating in any
10 athletic contest, exhibition activity, game or sport. So
11 no coverage for bodily injury to any person arising out of
12 or resulting from participating in any game or sport.
13 Again, the same idea. Colony certainly understood when it
14 wrote this insured risk that there was going to be these
15 kinds of games that took place, and this is a broad
16 exclusion that bars from coverage any claims for bodily
17 injury arising out of or associated with those games in the
18 bar and the saloon. So on that basis, separately and
19 independently, we would ask the Court to grant summary
20 judgment for Colony.

21 Now, there are many cases in South Carolina that both
22 parties have cited. And I have copies of here today that
23 enforce assault and battery exclusions. There are some
24 cases that say, "Well, under the specific facts in certain
25 cases, the assault and battery exclusion does not apply."

1 We can kind of debate the nuance of what the exclusion said
2 in this case versus that case. There are, indeed, cases
3 from other jurisdictions. I think counsel for plaintiff
4 has ably pointed out cases from other jurisdictions, and
5 likewise, in our briefing, we've tried to point out cases
6 from other jurisdictions that have enforced exclusions just
7 like these, this assault and battery language that I was
8 alluding to in many circumstances. And I'm happy to talk
9 about those as well.

10 But I think the fundamental point that we bring to the
11 Court today is that this is unambiguous language. One need
12 not strain to find the ambiguity where one does not exist.
13 And regardless of whether someone may or may not like the
14 unambiguous language, it is, indeed, unambiguous. And when
15 one compares the plain language of the policy to the four
16 corners of the complaint, there would be no duty to defend.

17 So happy to answer any questions Your Honor might have
18 at this time, otherwise, defer to my friend for the
19 plaintiff.

20 THE COURT: All right.

21 MR. MOORE: Judge, I'm David Moore, and I'm here with
22 Billy Wilkins to represent Three Blind Mice which is the
23 owner of the Blind Horse Saloon which you may or may not
24 know is a nightclub and bar that operates here in
25 Greenville.

1 And in that respect, Three Blind Mice obtained a CGL,
2 or a comprehensive general liability policy, from Colony
3 Insurance Company. Let me clarify one thing. This CGL
4 policy was not a Dram Shop policy, and so I believe
5 Mr. Greene [sic] indicated they carried liquor liability
6 and that type thing. If you look at the materials that
7 have been handed to you, it does not cover that. It's a
8 very limited type policy. It's a CGL policy with
9 exclusions involved in it.

10 When they purchased this CGL policy, the intent there
11 is to provide some kind of piece of mind of coverage with
12 regard to a typical tort or an accident that occurs at this
13 place of business. It is an occurrence-based policy. And
14 you've probably dealt with a number of insurance policy
15 cases. An occurrence-based policy basically covers
16 accidents. So the question is whether the matter involved
17 here falls within the definition of an accident or whether
18 it is something that is excluded otherwise by the policy.

19 Now, to make that determination, it's important to
20 understand the factual background. And he's given a pretty
21 good background here, but let me further expand on that.
22 Katherine Frost and her husband, Bobby Frost, went out to
23 this party, Halloween party. And it's a pretty crowded
24 area at the time. She, just before this accident took
25 place, is near this machine. It's a boxing machine. And

1 basically, what you do is you hit the bag, and it registers
2 what force is involved with regard to how hard you hit it.
3 Her back is to that bag at the time that she gets hit, so
4 she's not participating in that particular activity. And
5 that's important.

6 With her back to the bag, this unknown patron, we
7 don't know who he was, either hit the bag or missed the
8 bag, one of the two. And in any event, his fall-through
9 caused him to fall forward and hit her in the back. And
10 it's a right serious injury. She had a cracked spleen or a
11 cracked liver, from what we could determine through
12 discovery. So she has a significant injury from this
13 particular accident.

14 When the claim was made, we submitted it to Colony
15 Insurance Company. They denied coverage. When the
16 complaint was filed, we, again, submitted it a second time,
17 and Colony denied coverage.

18 Now, the basis for the denial is what has been
19 explained to you before, are two basic exclusions. One
20 exclusion is for sports participation. The second
21 exclusion has to do for an assault and battery. And that's
22 what we're here before you today to discuss.

23 With regard to the assault and battery matter, and
24 this is due with regard to either one of these exclusions,
25 our position is, number one, that it really is not

1 ambiguous, that it is clear. But it's clear that there is
2 coverage as opposed to not being coverage. However you
3 should disagree with that, if you think it's ambiguous, we
4 still win because the law in South Carolina is all
5 ambiguities have to be given towards the insured as opposed
6 to the insurer.

7 The final general point I'd make is by rule of
8 construction, any exclusion is to be narrowly interpreted.
9 Not broadly interpreted. Narrowly interpreted in favor of
10 coverage. If we use those three propositions to look at
11 these two exclusions, I think you'll see that there is
12 coverage in this situation.

13 So let's start with the exclusion for sports
14 participation. I don't know if you can go through all that
15 policy, but in that particular policy, it's a separate
16 endorsement. And the endorsement is titled Athletic or
17 Sport Participants Exclusion. Just from that title alone,
18 it is clear that it involves an exclusion for sports or
19 athletic participants. Ms. Frost was not a participant in
20 this activity. She's an innocent bystander. Based upon
21 that alone, this exclusion does not apply to this
22 particular situation.

23 Now, David Greene goes on to argue that if you look at
24 the language of that exclusion, it applies to any person
25 who's injured as a result of someone practicing or

1 participating in an athletic contest. Now, that can be
2 construed two ways. One is that it only applies to someone
3 practicing or participating in an athletic contest, or it's
4 someone who is injured by someone participating or
5 practicing in an athletic contest. The exclusion itself is
6 not clear on that particular matter.

7 However, if you use one of the general rules of
8 construction, which is you look at the policy as a whole,
9 and if you look at the title to this exclusion, then you
10 have to read it as being it applies to someone who's
11 actually participating in that particular action. They're
12 playing football and get hurt playing football, there's no
13 coverage for it. Or, more generally, in this particular
14 case, if they have one of these bulls out there that
15 they're riding and they fall off the bull and get hurt
16 there, there is no coverage for it.

17 But it's not as broad as being an exclusion where
18 someone who's riding the bull, for example, and falls off
19 and hits someone else and causes an accident, that the
20 person who is hit is not covered. In that situation, there
21 is coverage here because, number one, the exclusion
22 specifically says it only applies to participants.

23 The exclusion, when you read it -- when you try to do
24 away with any ambiguity and read it in conjunction with
25 that title, the heading, that there is coverage only --

1 that there is no coverage only as to participants, and,
2 finally, if you narrowly construed that particular
3 exclusion, there would be coverage because you narrowly
4 construe it in favor of coverage so that it would only
5 apply to those who are participating in that sport or
6 activity.

7 So our position with regard to that particular
8 exclusion is it doesn't apply in this situation, and Colony
9 is wrong, has made a mistake with regard to try and exclude
10 on that basis.

11 The second exclusion that they rely upon is the
12 assault and battery exclusion. And when you get an
13 opportunity to read these briefs, you'll see we have a long
14 discussion as to whether this is actually an assault and
15 battery.

16 Generally, assault and battery includes an intentional
17 act. You probably studied this in law school. We learned
18 it was an intentional act. If you look at Prosser, if you
19 look at Dobbs, if you look at most of the cases in this
20 state and other states, if you look at all the treatises,
21 if you look at the restatement, they all talk about it
22 being an intentional act.

23 Now, David Greene argues, well, you can't really
24 consider that in making your decision here because what you
25 have to do is look at the policy. And the general rule is,

1 as he says, that you look at the policy and compare that to
2 the allegations of the complaint, the allegations of the
3 complaint fall in the policy language, then there's
4 coverage. Otherwise, there is not coverage. And I agree
5 to that.

6 THE COURT: What is your cause of action?

7 MR. MOORE: I'm sorry?

8 THE COURT: What is your cause of action?

9 MR. MOORE: Two causes of action. One's breach of
10 contract, one's for bad faith.

11 THE COURT: You don't believe you alleged a tort of
12 assault and battery?

13 MR. MOORE: In the underlying case, you mean? No. He
14 alleged, and if you look at paragraph -- I believe it's 14
15 in the complaint that's attached ---

16 THE COURT: All right.

17 MR. MOORE: --- you'll see he talks about an
18 intentional act. An unintentional act is an accident. We
19 have case law. If it's an accident, it then becomes an
20 occurrence for which there is coverage.

21 Now, with regard to the assault and battery exclusion,
22 if you look at it from just the policy position, his
23 argument is, well, it's clear that it applies to both
24 intentional and unintentional acts. The policy doesn't say
25 that. It just does not say that. It says it applies to an

1 act creating -- as an assault, an apprehension in another
2 of immediate or harmful, offensive contact. Battery means
3 an act which brings about harmful or offensive contact to
4 another.

5 So the question is, what's an act? What's included
6 within that definition of an act? It is not defined by the
7 policy, so the policy is unclear on that particular aspect
8 of it.

9 What you do with regard to making an interpretation,
10 another rule of construction is you look at the policy as a
11 whole. When we do that, you'll see, number one, the policy
12 applies to occurrences, accidents. So if an accident
13 occurs in the Blind Horse Saloon and someone is injured,
14 this policy applies.

15 Now, in general, most insurance policies, as you know,
16 they start off with broad proposition, you know, will cover
17 any personal injury, bodily injury or property damage
18 caused by an occurrence, and then they start narrowing it
19 down with exclusions. In this particular case, though,
20 when we look at it, the broad proposition is that there is
21 coverage for an accident such as what happened here, that
22 she was struck inadvertently, according to the complaint,
23 by this unknown patron and got hurt. So in general,
24 there's coverage for that.

25 Now, then the question becomes, does this assault and

1 battery exclusion apply here? And it's unclear as to
2 whether the act includes intentional or unintentional acts.
3 They want to construe it very broadly. That violates that
4 other rule of construction that exclusions in an insurance
5 policy are to be narrowly construed in favor of coverage.
6 If you construe it only as an act being to intentional acts
7 as opposed to intentional and unintentional acts, then
8 there is coverage in this situation, and this particular
9 exclusion does not apply.

10 Now, along with that rule of construction where you
11 look at the whole policy, you look at it and say, okay,
12 well, there's coverage for an occurrence, an accident, and
13 what they're trying to do in this particular situation is
14 take away that coverage for an unintentional act or an
15 accident. And by virtue of that disagreement, if you
16 interpret it the way they do, there is an ambiguity there.
17 And that ambiguity has to then be construed in favor of the
18 Blind Horse Saloon, and, again, we would win under those
19 circumstances.

20 So, number one, the assault and battery, we think, is
21 clear, because the typical way you interpret assault and
22 battery is an intentional act. It doesn't apply here.
23 This is an unintentional act, inadvertently struck her
24 because of the way he was swinging.

25 THE COURT: If this lady walked by somebody who was in

1 a fight with somebody else and she got struck by one of the
2 combatants ---

3 MR. MOORE: There's coverage for her.

4 Now, change that scenario just a little bit. If one
5 of the combatants got hit and sued ---

6 THE COURT: No, no ---

7 MR. MOORE: --- there's no coverage.

8 THE COURT: No. This woman just happens to be in the
9 bar and just walks by.

10 MR. MOORE: Just walking be and inadvertently gets
11 hit. Same scenario. There is coverage under those
12 circumstances because that's an accident. She -- there's
13 no -- from her standpoint, she did not intend to get hurt,
14 you know. So that's basically the same thing you've got
15 here.

16 So, number one, with regard to the assault and
17 battery, it's clear it applies only to intentional acts.
18 But if you disagree with that, if it's both intentional and
19 unintentional, that raises an ambiguity as to with regard
20 to the obvious coverage for unintentional acts or
21 accidents.

22 So you have a broad coverage for unintentional acts,
23 and then you have this exclusion for supposedly
24 unintentional acts. How do you resolve that conflict?
25 Well, you have to resolve it in favor of coverage because

1 that's an ambiguity. And, again, you have to construe
2 these matters in favor of coverage, so you narrowly
3 construe this exclusion, each of which works in favor of
4 coverage. So neither one of these exclusions applies.

5 So our position is, number one, you've got a breach of
6 contract because neither one of these exclusions apply. So
7 they should have -- number one, they should have provided
8 coverage, they should have provided defense, and yet they
9 left the Blind Horse Saloon which paid -- you know, they've
10 been paying for years on this policy without making a
11 claim, made one claim, it got denied, and they dropped the
12 coverage afterwards.

13 Here you've got a situation where you've got, number
14 one, no real basis for denying coverage there. That's not
15 really a well-founded exclusion or basis for exclusion
16 because, number one, the sports participation is clear. It
17 only applies to participants. The assault and battery
18 exclusion is likewise clear because it's contradictory to
19 the overall purpose of that policy.

20 Since there is no real good reason for denying
21 coverage, our position is you've put the insured in a real
22 bad position here. You're supposed to have coverage here,
23 but you just said, "No, we're not going to have coverage."
24 Didn't even do a reservation of rights letter in this
25 situation. They just flat-out said "no coverage" and left

1 everything in the hands of the insured which then had to
2 hire their own attorneys, then had to participate by
3 themselves in discovery, then had to participate in
4 mediation. We settled it at mediation and would have had
5 to try this case by themselves without what they actually
6 paid the premium for which is for that coverage and for
7 that defense. That's bad faith.

8 We feel like we are entitled to summary judgment
9 because neither one of these exclusions applies, there is
10 coverage, there should have been a defense, there should
11 have been payment or indemnification, and they didn't do
12 that, and now they ought to be ordered to do so.

13 THE COURT: All right. Anything?

14 MR. BROWN: Thank you, Your Honor. Just very briefly.

15 All the briefing and all the argument really comes
16 down to the question of whether the definition of "battery"
17 is ambiguous or not ambiguous. If the definition of
18 "battery" is ambiguous, then -- and that's what the Court
19 finds, then that particular exclusion would not apply.
20 That's the general rule of construction in South Carolina
21 and, indeed, in all 50 states. But there's nothing
22 ambiguous about it. "Battery" means an act which brings
23 about harmful or offensive contact to another, and that is,
24 indeed, what happened here.

25 So at the risk of being a bit redundant, I just kind

1 of wanted to underscore that point. I think that's at the
2 heart of all the briefing and all the case law that had
3 been cited to you is that very question, and we
4 respectfully ask that summary judgment be entered in favor
5 of Colony on the grounds that that language is clear, and
6 therefore, no coverage is afforded under the policy.

7 Thank you.

8 THE COURT: What do you say about the argument made as
9 to the sport event situation, that it's the participant,
10 not the innocent bystander who happens to be standing by?
11 Or clearly, it seems to me if that was what they were
12 attempting to exclude, that they would specifically exclude
13 that.

14 MR. BROWN: Yeah. The language of that exclusion is
15 clear as well. It refers to any person. I would concede
16 to the Court that that's not as strong an -- there's a
17 reason I limit the assault and battery discussion, because
18 I believe that is crystal clear, and that language bars all
19 coverage for the complaint and is the end of story. The
20 athletic participants exclusion is a secondary and
21 independent argument that --

22 THE COURT: You're really hanging your hat on the
23 assault and battery.

24 MR. BROWN: That's correct. That definition of
25 "battery" is where we're hanging our hat.

1 THE COURT: All right.

2 MR. BROWN: Thank you, Your Honor.

3 THE COURT: Mr. Moore, anything else you want to say?

4 MR. MOORE: With regard to the assault and battery
5 exclusion, if Colony Insurance Company wanted to exclude
6 both intentional and unintentional acts, they could have
7 said so in their policy. In fact, they use ISO language,
8 which is a company which provides general language for some
9 of these policies.

10 And one of the ISO provisions on assault and battery
11 includes that provision of both intentional and
12 unintentional acts. They didn't do that in this situation.
13 They could have easily done it. They drafted the policy so
14 that it was their obligation to do so. It should be a
15 matter of where an insured, who is not educated with regard
16 to the law of -- insurance law or basically law itself
17 where they have to go and divvy out what these definitions
18 mean, it shouldn't be a "got you" type situation. It
19 should be something where the insurance company, if they
20 want to exclude something and something as broad as an
21 unintentional act, then they should say that.

22 Otherwise, the insurance policy basically doesn't have a
23 whole lot of value because the unintentional act exclusion
24 wipes out a lot of the coverage for bodily injury which is
25 supposed to cover unintentional acts.

1 THE COURT: All right. Anything further?

2 All right. Can I get both of you to do me a proposed
3 order?

4 MR. MOORE: Yes, sir.

5 THE COURT: Send it to me.

6 MR. BROWN: Yes, sir.

7 THE COURT: Mail it to Columbia, if you would.

8 MR. BROWN: Do you want it to be regular mail or
9 e-mail and regular mail? How would you prefer to get it?

10 THE COURT: It depends on how long you're going to
11 write. I mean, I would like it to be in a form that if I
12 want to make any changes to it, that I can make some
13 changes. So I guess e-mail would be the best way to do
14 that. But let's not send a 50-page order.

15 MR. BROWN: No fear of that, Your Honor.

16 *****END OF TRANSCRIPT OF RECORD*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, Official Court Reporter for the
Thirteenth Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate
and complete Transcript of Record of the proceedings had
and evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Greenville County, South Carolina, on the 15th day of
October, 2015.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

May 23, 2016



Cheryl A. Smith, CVR-M

Court Reporter



CERTIFICATION

I, Deborah Batterson, hereby certify that the attached is a true and correct copy of Policy Number GL3812749 issued to Three Blind Mice Inc. DBA Blind Horse Saloon for the policy period of 12/14/2010 to 12/14/2011.

Operations Manager - Richmond

State of Virginia

City of Richmond

Subscribed and sworn to before me this 29TH day of August 2014.

Notary Public, State of Virginia

My Commission expires: 12/31/2018





IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary as duly authorized representatives of the Company.

Barbara L. Sutherland

Barbara L. Sutherland, President

Craig Comeaux

Craig Comeaux, Secretary

Colony Insurance Company
Colony Specialty Insurance Company
Colony National Insurance Company
8720 Stony Point Parkway, Suite 300
Richmond, VA 23235

Surplus lines insurers' policy rates and forms are not approved by any Florida regulatory agency.



IN WITNESS WHEREOF, the Company has caused this policy to be signed by its President and Secretary as duly authorized representatives of the Company.

Barbara L. Sutherland

Barbara L. Sutherland, President

Craig Comeaux

Craig Comeaux, Secretary

Colony Insurance Company
8720 Stony Point Parkway, Suite 300
Richmond, VA 23235

190
COMMON POLICY DECLARATIONS

Colony Insurance Company

8720 Stony Point Parkway, Suite 300
Richmond, VA 23235

Underwritten By Colony Management Services, Inc.

POLICY NUMBER

GL3812749 M&D

RENEWAL OF

GL3812350

PDQ CODE

94B

1. NAMED INSURED and MAILING ADDRESS:

THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON
1035 LOWNDES HILL ROAD
GREENVILLE

SC 29607

PRODUCER: 39002

Market Finders
1200 WOODRUFF RD STE G-14, MEROVAN CTR
GREENVILLE SC 29607

2. POLICY PERIOD: From 12/14/2010 to 12/14/2011 12:01 A.M. Standard Time at your Mailing Address above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE
AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

3. THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

| COVERAGE PARTS | | PREMIUM |
|---|--|----------------|
| Commercial General Liability | THE COVERAGE PROVIDED BY THIS POLICY MAY NOT BE AS REQUESTED ON THE APPLICATION. IT IS YOUR RESPONSIBILITY TO CHECK AND CONFIRM THAT THIS POLICY DOES PROVIDE COVERAGE AS QUOTED AND AGREED UPON. IF THERE IS ANY DISCREPANCY PLEASE CONTACT US IMMEDIATELY. | \$ 6,227.00 |
| Liquor Liability | | \$ NOT COVERED |
| Commercial Property | | \$ NOT COVERED |
| Commercial Crime | | \$ NOT COVERED |
| Commercial Inland Marine | | \$ NOT COVERED |
| Commercial Farm and Ranch | | \$ NOT COVERED |
| Owners And Contractors Protective | | \$ NOT COVERED |
| Coverage for Certified Acts of Terrorism Rejected; Exclusion Attached.
(Per Policyholder Disclosure TRIA2002Notice attached.) | | \$ NOT COVERED |
| TOTAL | | \$ 6,227.00 |
| 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 | | \$ |
| | | \$ 150.00 |
| | | \$ 255.08 |
| | | \$ 127.54 |
| | | \$ |
| | | \$ |
| | | \$ |
| | | \$ |

Premium shown is payable at inception.

Total Policy Premium: \$ 6,759.62

4. FORMS APPLICABLE TO ALL COVERAGE PARTS:

See Schedule of Forms and Endorsements - U001

5. BUSINESS DESCRIPTION: NIGHT CLUB/BAR

JT

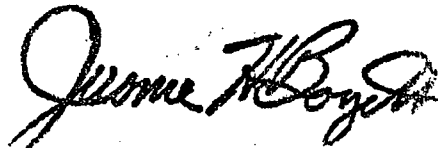
This company has been approved by the director or his designee of the South Carolina Department of Insurance to write
business in this State as an eligible surplus lines insurer, but it is not afforded guaranty fund protection.

(NO FLAT CANCELLATION)

Countersigned: 12/20/10

Date

By:



Authorized Representative

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DCJ6550 (07/05)

Company

THREE BLIND MICE, INC. DBA
Insured: BLIND HORSE SALOON -191-

Policy Number: GL3812749

SCHEDULE OF FORMS AND ENDORSEMENTS

Forms and Endorsements applying to and made part of this policy at the time of issuance:

| NUMBER | TITLE |
|--|--|
| PJCG (09-09) | COMMON POLICY JACKET |
| PJCIC FL (09-09) | COMMON POLICY JACKET |
| DCJ6550 (07-05) | COMMON POLICY DECLARATIONS |
| U001 (10-04) | SCHEDULE OF FORMS AND ENDORSEMENTS |
| FORMS APPLICABLE - POLICY COMMON FORMS | |
| U002 (09-04) | MINIMUM POLICY PREMIUM |
| U094 (07-02) | SERVICE OF SUIT |
| UCG2175 (01-08) | EXCL-CERT. ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM |
| IL0017 (11-98) | COMMON POLICY CONDITIONS |
| IL0021 (04-98) | NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT |
| FORMS APPLICABLE - COMMERCIAL GENERAL LIABILITY | |
| DCJ6553 (07-02) | COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS |
| U003 (07-02) | HAZARDOUS MATERIALS EXCLUSION |
| U004 (07-07) | MISCELLANEOUS EXCLUSIONS ENDORSEMENT |
| U006 (07-07) | ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION |
| U007 (07-02) | OPEN ROOF COVERAGE LIMITATION |
| U016 (07-02) | ATHLETIC OR SPORT PARTICIPANTS EXCLUSION |
| U018 (11-06) | COMMUNICABLE DISEASE EXCLUSION |
| U042 (07-02) | ANIMAL LIABILITY EXCLUSION |
| U046 (09-04) | LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT |
| U048 (09-04) | EMPLOYMENT-RELATED PRACTICES EXCLUSION |
| U070 (03-08) | DEDUCTIBLE LIABILITY INSURANCE |
| U087 (07-02) | TOTAL LIQUOR LIABILITY EXCLUSION |
| U147 (07-02) | WEAPONS EXCLUSION |
| U155 (07-08) | ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION |
| U159 (07-02) | LIMITATION OF COVERAGE TO BUSINESS DESCRIPTION |
| CG0001 (12-04) | COMMERCIAL GENERAL LIABILITY COVERAGE FORM |
| CG0067 (03-05) | EXCLUSION - VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX |
| CG2139 (10-93) | CONTRACTUAL LIABILITY LIMITATION |
| CG2167 (12-04) | FUNGI OR BACTERIA EXCLUSION |
| CG2407 (01-96) | PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED |
| FORMS APPLICABLE - STATE SPECIFIC | |
| UIL0249 (09-07) | SOUTH CAROLINA CHANGES - CANCELLATION AND NONRENEWAL |

Important notice: See the actual policy forms attached for the full title, terms and conditions.

U001 (10/04)

Company

Page 1 of 1

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM POLICY PREMIUM

The following additional policy Conditions supercede any other policy conditions as regards the "minimum earned premium" for this policy:

Minimum Earned Premium

This policy is subject to a "minimum earned premium". "Minimum earned premium" means the premium that is calculated as follows:

1. The total policy premium as shown in the policy Declarations, plus
2. Any premium adjustment by endorsements, plus
3. Any additional premium developed by audit.

Audits and Minimum Earned Premium

Audits will not reduce the "minimum earned premium". The due date for audit premiums is the date shown as the due date on the bill.

Cancellation and Minimum Earned Premium

1. If you cancel this policy, the return premium will be 90% of the pro rata balance of any remaining unearned premium but no less than 25 % of the "minimum earned premium".
2. If we cancel the policy for any reason, other than for non-payment of premium, the "minimum earned premium" shall not apply. We will return to you the pro rata amount of the unearned premium.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT

Service of process may be made upon the Company to:

Claims Manager
Colony Insurance Company,
Colony National Insurance Company, or
Colony Specialty Insurance Company
8720 Stony Point Parkway, Suite 300
Richmond, Virginia 23235

Where required by statute, regulation or other regulatory directive, the Company appoints the Commissioner of Insurance, or other designee specified for that purpose, as its attorney for acceptance of service of all legal process in the state in any action or proceeding arising out of this insurance.

The Commissioner or other designee is requested to forward process to the Company as shown above, or if required in his/her particular state, to a designated resident agent for service of process.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE ¹⁹⁴POLICY. PLEASE READ IT CAREFULLY.

CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

A. The following exclusion is added:

TERRORISM AND PUNITIVE DAMAGES

This insurance does not apply to "any injury or damage" arising out of or resulting, directly or indirectly, from:

- (1) "Certified acts of terrorism" or "other acts of terrorism", including any action taken in hindering or defending against an actual or expected incident of "certified acts of terrorism" or "other acts of terrorism"; or
- (2) Any act of terrorism:
 - (a) that involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
 - (b) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - (c) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials;regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage in (1) or (2) above; including
- (3) Damages arising out of or resulting, directly or indirectly, from (1) or (2) above that are awarded as punitive damages.

B. In the event of an act of terrorism, a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

C. The following definitions are added to the **DEFINITIONS** Section:

For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to any damage, "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

- a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

"Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS POLICY
COMMERCIAL AUTO COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
SPECIAL PROTECTIVE AND HIGHWAY LIABILITY POLICY NEW YORK DEPARTMENT OF
TRANSPORTATION
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:

A. Under any Liability Coverage, to "bodily injury" or "property damage":

- (1)** With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
- (2)** Resulting from the "hazardous properties" of "nuclear material" and with respect to which **(a)** any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or **(b)** the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:

- (1)** The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- (2)** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
- (3)** The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material **(a)** containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and **(b)** resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

- 199 - **COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS**

This Coverage Part consists of this Declarations Form, the Common Policy Conditions, the Commercial General Liability Form and the Endorsements indicated as applicable. (See "COMMON POLICY DECLARATIONS" for Items 1 and 2)

POLICY NO. GL 3812749

NAMED INSURED THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON

3. LIMITS OF INSURANCE

| | | |
|--|--------------|------------------|
| General Aggregate Limit (Other Than Products - Completed Operations) | \$ 2,000,000 | |
| Products Completed Operations Aggregate Limit | \$ 2,000,000 | |
| Personal & Advertising Injury Limit | \$ 1,000,000 | |
| Each Occurrence Limit | \$ 1,000,000 | |
| Damage To Premises Rented To You Limit | \$ 100,000 | Any One Premises |
| Medical Expense Limit | \$ 5,000 | Any One Person |

RETROACTIVE DATE (CG 00 02 only) - Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown below.

Retroactive Date: NONE (Enter Date or "None" if no Retroactive Date applies.)

Location of All Premises You Own, Rent or Occupy (Same as Item 1 unless shown below):
1035 LOWNDES HILL ROAD GREENVILLE SC 29607

| CLASSIFICATION | CODE NO. | PREMIUM BASIS | RATE | ADVANCE PREMIUM | |
|----------------|----------|---------------|------|-----------------|-----------|
| | | | | PR / CO | ALL OTHER |
| BAR | 16817 | R 900,000 | 6.92 | INCLUDED | 6,227 |

4. FORMS / ENDORSEMENTS APPLICABLE:

SEE SCHEDULE OF FORMS AND ENDORSEMENTS - FORM U001

**TOTAL PREMIUM
FOR THIS
COVERAGE PART**

\$ 6,227.00

5. FORM OF BUSINESS: ☐ Individual ☐ Joint Venture ☐ Partnership ☐ Organization (Other than Partnership or Joint Venture) ☒ Corporation

Audit Period: Annual unless otherwise stated:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HAZARDOUS MATERIALS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, f. and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions, n. and m. are replaced by the following:**

This insurance does not apply to:

Hazardous Materials

- (1)** "Bodily injury", "property damage" or "personal and advertising injury" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "hazardous materials" at any time.
- (2)** Any loss, cost or expense arising out of any:
 - (a)** Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "hazardous materials"; or
 - (b)** Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "hazardous materials".
- (3)** Any obligations to share damages with or indemnify another party whom must pay damages because of injury or damage relating to "hazardous materials".
- (4)** Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with paragraphs **(1)**, **(2)**, or **(3)** above.

This exclusion applies whether or not such "hazardous material(s)" has any function in your business, operations, premises, site or location.

- B. SECTION V – DEFINITIONS** is amended and the following added:

"Hazardous materials" means "pollutants", lead, asbestos, silica and materials containing them.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MISCELLANEOUS EXCLUSIONS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** is amended and the following is added:

EXCLUSION - INTERCOMPANY PRODUCTS SUITS

This insurance does not apply to any claim for damages by any Named Insured against another Named Insured because of "bodily injury" or "property damage" arising out of or resulting from "your products" and included within the "products-completed operations hazard".

- B. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions** and **COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions** are amended and the following are added:

USL&H, JONES ACT and MARITIME EXCLUSION

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from:

- (1) operations over navigable waters or offshore including but not limited to drilling and production platforms, pipelines, and vessels; or
- (2) direct or indirect actions including but not limited to subrogation involving U.S. Longshore & Harbor Workers Compensation Act (USL&H), Merchant Marine Act ("Jones Act") or other maritime laws and any amendments to those laws.

EXCLUSION - PROFESSIONAL SERVICES

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from the rendering or failure to render any "professional service" except by endorsement to this policy and then only to the extent of such endorsement.

"Professional service" means:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Engineering services, including related supervisory or inspection services;
- (4) Medical, surgical, dental, x-ray or nursing services, treatment, advice or instruction;
- (5) Any health or therapeutic service, treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (8) Body piercing or tattooing services including but not limited to the insertion of pigment, collagen or any other foreign substance into or under the skin;
- (9) Services in the practice of pharmacy;
- (10) Law enforcement or firefighting services; and
- (11) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSAULT, BATTERY OR ASSAULT AND BATTERY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:**

Assault, Battery or Assault and Battery

This insurance does not apply to damages or expenses due to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from:

- (1) "Assault", "Battery" or "Assault and Battery" committed by any person;
- (2) The failure to suppress or prevent "Assault", "Battery" or "Assault and Battery" by any person;
- (3) The failure to provide an environment safe from "Assault", "Battery" or "Assault and Battery";
- (4) The failure to warn of the dangers of the environment which could contribute to "Assault", "Battery" or "Assault and Battery";
- (5) "Assault", "Battery" or "Assault and Battery" arising out of the negligent hiring, supervision, or training of any person;
- (6) The use of any force to protect persons or property whether or not the "bodily injury" or "property damage" or "personal and advertising injury" was intended from the standpoint of the insured or committed by or at the direction of the insured.

- B. SECTION V – DEFINITIONS is amended and the following is added:**

"Assault" means:

- a. an act creating an apprehension in another of immediate harmful or offensive contact, or
- b. an attempt to commit a "Battery".

"Battery" means an act which brings about harmful or offensive contact to another or anything connected to another.

"Assault and Battery" means the combination of an "Assault" and a "Battery".

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPEN ROOF COVERAGE LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended and the following added:**

Open Roof and Heating Equipment

This Insurance does not apply to "property damage" arising out of or resulting from:

- (1) an "open roof".**

This exclusion does not apply if:

- (a) such "open roof" is covered with suitable waterproof material at the time of loss; and**
- (b) such suitable waterproof material has been secured to the structure;**

- (2) heat process equipment.**

This exclusion does not apply if the insured:

- (a) maintains a 15 lb. or larger charged ABC extinguisher at the site; and**
- (b) maintains personnel at the site for 30 minutes or longer after the equipment has been shut off or left the site, and**
- (c) personally inspects the area the heat work has been performed prior to leaving the site.**

- B. SECTION V – DEFINITIONS is amended and the following added:**

"Open roof" means any roof or section of a roof where the protective covering (shingles, tar, felt paper, etc.) has been removed leaving the shell of the structure exposed.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ATHLETIC OR SPORT PARTICIPANTS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended and the following added:

Athletic or Sport Participants

This insurance does not apply to "bodily injury" to any person arising out of or resulting from practicing for or participating in any athletic contest, exhibition, activity, game or sport.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

Communicable Disease

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from the:

- (1) transmission of a communicable disease; or
- (2) failure to perform services which were either intended to or assumed to prevent communicable diseases or their transmission to others.

Communicable Disease means a contagious disease or illness arising out of or in any manner related to an infectious or biological virus or agent or its toxic products which is transmitted or spread, directly or indirectly, to a person from an infected person, plant, animal or anthropoid, or through the agency of an intermediate animal, host or vector of the inanimate environment or transmitted or spread by instrument or any other method of transmission. Communicable Disease shall include, but not be limited to Acquired Immune Deficiency Syndrome (AIDS) or Human Immunodeficiency Syndrome (HIV), Severe Acute Respiratory Syndrome (SARS), West Nile Disease, chicken pox, any type or strain of influenza (including, but not limited to avian flu), legionella, hepatitis, measles, meningitis, mononucleosis, whooping cough, cholera, bubonic plagues and anthrax.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ANIMAL LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

Liability for Animals

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from any animal.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

| |
|--|
| SCHEDULE OF PREMISES OR PROJECTS: |
| NIGHT CLUB/BAR LOCATED AT 1035 LOWNDES HILL ROAD,
GREENVILLE SC 29607 |
| (If no entry appears above, information required to complete this endorsement will be shown in the
Declarations as applicable to this endorsement.) |

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of or resulting from:

- (1) The ownership, maintenance or use of the premises shown in the Schedule; or
- (2) The project shown in the Schedule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions and SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 2. Exclusions are amended and the following added:

This insurance does not apply to:

Employment-Related Practices

"Bodily injury" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, assault, battery, discrimination or abuse including sexual abuse directed at any person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

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

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

| Coverage | Amount and Basis of Deductible | |
|--|--------------------------------|-------------------|
| | PER CLAIM | or PER OCCURRENCE |
| Bodily Injury Liability
OR | \$ NOT APPLICABLE | \$ NOT APPLICABLE |
| Property Damage Liability
OR | \$ NOT APPLICABLE | \$ NOT APPLICABLE |
| Bodily Injury Liability and/or
Property Damage Liability Combined | \$ 500 | \$ NOT APPLICABLE |

A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.

B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:

1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage";
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage", combined; or
- d. Under Supplementary Payments-Coverage A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies

as the result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "property damage", person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages because of "property damage";
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined; or
 - d. Under Supplementary Payments-Coverage A and B, to all amounts we pay in the defense and investigation of any claim or "suit" to which this insurance applies as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".
- C. The terms of this insurance, including those with respect to:
- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
 - 2. Your duties in the event of an "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.
- D. We, at our sole election and option, may either:
- 1. Pay any part of or all of the deductible amount to effect settlement of any claim or suit, and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us; or
 - 2. Simultaneously upon receipt of notice of any claim or at any time thereafter, request you pay or deposit with us all or any part of the deductible amount, to be held and applied by us as herein provided.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL LIQUOR LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, c. is deleted and replaced with the following:

This insurance does not apply to:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WEAPONS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SECTION 1 – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions is amended and the following added:

Use of Weapons

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of or resulting from the possession, ownership, maintenance, use of or threatened use of a lethal weapon, including but not limited to firearms by any person.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, paragraph g. is deleted and replaced with the following:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of or resulting from the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft.

B. The following is deleted under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance, paragraph b. Excess Insurance:

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I – Coverage A – Bodily Injury and Property Damage Liability.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATION OF COVERAGE TO BUSINESS DESCRIPTION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

BUSINESS DESCRIPTION: NIGHT CLUB/BAR

A SECTION I - COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

(4) The "bodily injury" or "property damage" is caused by or results from the business described in the Schedule.

B. SECTION I - COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY, 1. Insuring Agreement, b. is amended and the following added:

This insurance applies to "personal and advertising injury" caused by an offense in the course of the business described in the Schedule.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:
 - (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
 - (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.
- b. This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
 - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

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

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

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

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

- (5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

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

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

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

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

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

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

n. Recall Of Products, Work Or Impaired Property

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

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

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

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION II – WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

(2) "Property damage" to property:

- (a) Owned, occupied or used by,

- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- c. Any person or organization having proper temporary custody of your property if you die, but only:

- (1)** With respect to liability arising out of the maintenance or use of that property; and

- (2)** Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:**

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:**

- a. Insureds;

- b. Claims made or "suits" brought; or

- c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- c. Damages under Coverage B.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

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

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

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

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in **c.** below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

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

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
 - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
 - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement;if such property can be restored to use by:
 - a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

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

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean 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.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- 19.** "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

- 20.** "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a)** You;
 - (b)** Others trading under your name; or
 - (c)** A person or organization whose business or assets you have acquired; and
 - (2)** Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2)** The providing of or failure to provide warnings or instructions.

- c.** Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1)** Work or operations performed by you or on your behalf; and
 - (2)** Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
 - (2)** The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – VIOLATION OF STATUTES THAT GOVERN E-MAILS, FAX, PHONE CALLS OR OTHER METHODS OF SENDING MATERIAL OR INFORMATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

2. Exclusions

This insurance does not apply to:

DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a.** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b.** The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c.** Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

2. Exclusions

This insurance does not apply to:

DISTRIBUTION OF MATERIAL IN VIOLATION OF STATUTES

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a.** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b.** The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c.** Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

OUTPUT POLICY COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EXCESS LIABILITY POLICY
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
LIQUOR LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART

A. Paragraphs 2. and 3. of the **Cancellation Common Policy Condition** are replaced by the following:

2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium;
or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's and agent's last known addresses.

B. The following is added to the **Cancellation Common Policy Condition**:

7. Cancellation Of Policies In Effect For 120 Days Or More

If this policy has been in effect for 120 days or more, or is a renewal or continuation of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;
- b. Material misrepresentation of fact which, if known to us, would have caused us not to issue the policy;
- c. Substantial change in the risk assumed, except to the extent that we should reasonably have foreseen the change or contemplated the risk in writing the policy;
- d. Substantial breaches of contractual duties, conditions or warranties; or
- e. Loss of our reinsurance covering all or a significant portion of the particular policy insured, or where continuation of the policy would imperil our solvency or place us in violation of the insurance laws of South Carolina.

Prior to cancellation for reasons permitted in this Item e., we will notify the Commissioner, in writing, at least 60 days prior to such cancellation and the Commissioner will, within 30 days of such notification, approve or disapprove such action.

Any notice of cancellation will state the precise reason for cancellation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement.

C. The following is added and supersedes any provisions to the contrary:

Nonrenewal

1. We will not refuse to renew a policy issued for a term of more than one year, until expiration of its full term, if anniversary renewal has been guaranteed by additional premium consideration.
2. If we decide not to renew this policy, we will:
 - a. Mail or deliver written notice of nonrenewal to the first Named Insured and agent, if any, before:
 - (1) The expiration date of this policy, if the policy is written for a term of one year or less; or
 - (2) An anniversary date of this policy, if the policy is written for a term of more than one year or for an indefinite term; and
 - b. Provide at least:
 - (1) 60 days' notice of nonrenewal, when nonrenewal is to become effective between November 1 and May 31; or
 - (2) 90 days' notice of nonrenewal, when nonrenewal is to become effective between June 1 and October 31.
3. Any notice of nonrenewal will be mailed or delivered to the first Named Insured's and agent's last known addresses. If notice is mailed, proof of mailing will be sufficient proof of notice.
4. Any notice of nonrenewal will state the precise reason for nonrenewal.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FUNGI OR BACTERIA EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b. Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

2. Exclusions

This insurance does not apply to:

Fungi Or Bacteria

- a. "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b. Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

C. The following definition is added to the Definitions Section:

"Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 24 07 01 96

PRODUCTS/ COMPLETED OPERATIONS HAZARD REDEFINED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

| | |
|---|-------------------------|
| Endorsement effective
12/14/2010 12:01 A.M. standard time | Policy No.
GL3812749 |
| Named Insured
THREE BLIND MICE, INC. DBA
BLIND HORSE SALOON | Countersigned by |

(Authorized Representative)

SCHEDULE

Description of Premises and Operations:

NIGHT CLUB/BAR

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

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf.

Paragraph a. of the definition of "Products-completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
Katherine Frost and Bobby Frost)
Plaintiffs,)
vs.)
Knockout Vending Worldwide, LLC,)
McCracken & Amick, Inc. d/b/a New)
Vemco Music Co. of SC, and Three)
Blind Mice, LLC d/b/a The Blind Horse)
Saloon,)
Defendants.)

IN THE COURT OF COMMON PLEAS

COMPLAINT
(Jury Trial Demanded)

C.A. No.: 2012-CP-23-3249

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2012 MAY 15 A 8:46

The Plaintiffs, complaining of the Defendants herein, would hereby show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Katherine Frost and Bobby Frost ("Plaintiffs") are residents and citizens of Spartanburg County, South Carolina.
2. Upon information and belief, Knockout Vending Worldwide, LLC ("Knockout Vending") is a duly authorized corporation organized and existing under the laws of New York with its principal place of business in Holbrook, New York.
3. Upon information and belief, McCracken & Amick, Inc. d/b/a New Vemco Music Co. of SC ("Vemco") is a duly authorized corporation organized and existing under the laws of North Carolina with its principal place of business in Greenville, South Carolina.

4. Upon information and belief, Three Blind Mice, LLC d/b/a The Blind Horse Saloon ("Blind Horse") is a duly authorized corporation organized and existing under the laws of South Carolina with its principal place of business in Greenville County, South Carolina.

5. The injuries alleged herein occurred in Greenville County, South Carolina.

6. Jurisdiction and venue for this case are proper in Greenville County, South Carolina.

FACTUAL BACKGROUND

7. On or about Saturday, October 29, 2011, Plaintiff Katherine Frost and her husband, Plaintiff Bobby Frost, went with friends to a Halloween costume contest being held at the Blind Horse Saloon in Greenville, South Carolina.

8. The party of guests arrived at the Blind Horse Saloon at approximately 11:30 p.m., got drinks, and went to a table.

9. At approximately 12:00 a.m., the entire party moved to the dance floor, along with most other patrons of the Blind Horse, to watch the costume contest.

10. At approximately 1:00 a.m., the crowd disbursed at the end of the costume contest.

11. Plaintiff Katherine Frost saw friends standing in the bar area in a circle and walked over to join in conversation with them.

12. Plaintiff Katherine Frost was one of many patrons standing in the same general vicinity engaged in conversation.

13. She suddenly felt a sharp pain in the small of her back, which knocked the wind out of her and caused her to become unconscious and fall to the floor.

14. Plaintiff Katherine Frost awoke on the floor to find herself surrounded by people, and she discovered that an unknown individual who had been using a punching bag boxing machine had missed the punching bag he had been attempting to strike as part of the machine's use, inadvertently striking her in the back.

15. The boxing machine was in the middle of the floor with no barrier, warning, or other means of protecting Blind Horse patrons and invitees from being injured by persons attempting to strike the machine in the manner particular to the use of the boxing machine.

16. Plaintiff Bobby Frost approached to find his wife, Katherine Frost, injured on the floor and the person who had inadvertently punched her standing in the vicinity; this unknown person was allowed to leave the scene so that his identity remains unknown.

17. Plaintiff Katherine Frost was rushed by ambulance to the emergency room of Greenville Memorial Hospital in Greenville, South Carolina, where she was diagnosed with severe internal bleeding and a contusion to her liver.

18. She remained in the hospital for one week, and her husband, Plaintiff Bobby Frost, stayed with her every night of the week.

19. Plaintiff Katherine Frost was unable to lift or care for her son Colton, or engage in virtually any activity, for approximately one month after the injury.

20. On approximately January 25, 2012, Plaintiff Katherine Frost suffered a miscarriage as a direct and proximate result of her injuries alleged herein.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendant Knockout Vending)

21. All prior paragraphs are reiterated as if restated verbatim herein.
22. Upon information and belief, Knockout Vending designed, manufactured, marketed, and distributed the boxing machine that caused Plaintiffs' injuries.
23. As designers, manufacturers, marketers, and distributors, Defendant Knockout Vending owed duties of care to Plaintiffs, and Defendant Knockout Vending willfully, wantonly, and recklessly breached its duties of care in the following particulars, to wit:
 - a. In designing, manufacturing, marketing, and distributing a gaming machine in violation of industry standards;
 - b. In designing, manufacturing, marketing, and distributing a boxing machine that is inherently dangerous;
 - c. In failing to warn Plaintiffs and other potential consumers that serious injury could occur from use of the product;
 - d. In failing to provide adequate instructions as to the product's use;
 - e. In placing the product into the stream of commerce when the product was improperly designed and manufactured for its intended purpose;
 - f. In failing to exercise the degree and kind of care that reasonably prudent designers, manufacturers, marketers, and distributors would have exercised under the circumstances;

g. In designing, manufacturing, marketing, and distributing a product that had no guard mechanism or safe zone to protect persons near the product from the intended use of the product;

h. In such other and further particulars as will be shown at the trial of this matter.

24. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendant Vemco)

25. All prior paragraphs are reiterated as if restated verbatim herein.

26. Upon information and belief, Defendant Vemco owned, distributed, installed, and operated the boxing machine that was the proximate cause of Plaintiff's injuries as alleged herein.

27. As owner, distributor, installer, and operator of the boxing machine, Defendant Vemco owed duties of care to Plaintiffs, and Defendant Vemco breached said duties in the following particulars, to wit:

a. In owning, distributing, installing, and operating a boxing machine that was inherently dangerous and in violation of industry standards within the game industry;

b. In failing to place a barrier or otherwise make a safe zone in which the boxing game could be used;

c. In failing to provide adequate instructions as to the boxing machine's use;

d. In placing a product into the stream of commerce for consumer use when the product was inherently dangerous and improperly designed and manufactured for its intended purpose;

e. In failing to exercise the degree and kind of care that reasonably prudent owners, distributors, installers, and operators should have exercised under the circumstances;

f. In such other and further particulars as the evidence introduced at the trial of this matter may show.

28. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendant Blind Horse)

29. All prior paragraphs are reiterated as if restated verbatim herein.

30. As a business, Defendant Blind Horse Saloon owed duties of care to Plaintiffs as patrons and invitees, and Defendant Blind Horse Saloon breached its duties by numerous acts and/or omissions including, but not limited to, the following particulars, to wit:

a. In maintaining a product that was unreasonably dangerous for its location in the Blind Horse's premises;

b. In failing to place any guards and/or a safe zone in which patrons/invitees of its establishment were safe from harm from the boxing machine that is the subject of this suit.

c. In failing to warn invitees of the danger inherent in the use of the boxing machine.

d. In such other and further particulars as will be shown at the trial of this matter.

31. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A FOURTH CAUSE OF ACTION
(Strict Liability)

32. All prior paragraphs are reiterated as if restated verbatim herein.

33. Defendants were engaged in the business of selling, and injecting into the stream of commerce for the use of consumers, the subject boxing machine.

34. Defendants expected the boxing machine to reach consumers without substantial change in the product's condition from the time it was sold and placed into the stream of commerce for consumer use, and the product did reach the Plaintiff without a substantial change of condition from the time of its being sold and placed into the stream of commerce.

35. Defendants placed the product into the stream of commerce in an unreasonably dangerous and defective condition.

36. Defendants are strictly liable to the Plaintiff for designing, manufacturing and marketing defects, and for placing into the stream of commerce the boxing

machine, which was unreasonably dangerous for reasons including, but not limited to, the following particulars, to wit:

- a. In its known violation of industry standards within the game industry;
- b. In its inherent, unreasonable dangerousness;
- c. In its containing inadequate warnings to those who use or may be injured by its use;
- d. In its being improperly designed and manufactured for its intended purpose;
- e. In its not having adequate instructions for the product's use;
- f. In such other and further particulars as the trial of this matter may show.

37. As a direct and proximate result of the unreasonably dangerous and defective condition of the boxing machine and its component parts, the Plaintiffs have been severely injured and damaged, and they seek recovery, including, but not limited to, recovery under S.C. Code Ann. § 15-73-10 et. seq.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty)

38. All prior paragraphs are reiterated as if restated verbatim herein.

39. Defendants impliedly warranted that the boxing machine being used was safe and fit for the purpose intended and conformed with warranties including, but not limited to, the warranty of workmanship and warranty of merchantable quality.

40. The boxing machine was not merchantable, fit, suitable, or safe for use by a consumer, and, as a direct and proximate result of the use of said product, Plaintiffs

suffered the injuries alleged herein and is entitled to recovery including, but not limited to, recovery under S.C. Code Ann. § 36-2-318.

FOR A SIXTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)

41. All prior paragraphs are reiterated as if restated verbatim herein.

42. The Defendants at the time of manufacture, sale, and placement into the stream of commerce of the boxing machine knew or should have known the particular purpose for which the machine was required and knew or should have known that Plaintiff and other similarly situated consumers and persons were relying on the skill and judgment of the Defendants to select and/or furnish suitable goods fit for this purpose.

43. The boxing machine was not fit for the particular purpose of use in a setting with business patrons and invitees without risk of harm to said patrons and invitees.

44. Accordingly, Defendants have breached the implied warranty of fitness for a particular purpose established by common law and by S.C. Code Ann. §§ 36-2-315 and 36-2-318 because the boxing machine was not fit for its particular purpose and subsequently harmed the Plaintiffs; as a proximate result of Defendants' breach, Plaintiffs suffered the injuries and damages alleged herein for which they are entitled to recover damages.

FOR A SEVENTH CAUSE OF ACTION
(Failure to Warn)

45. All prior paragraphs are reiterated as if restated verbatim herein.

46. The injuries and damages incurred by Plaintiffs were directly and proximately caused by the Defendants' careless, negligent, grossly negligent, willful, and wanton acts and omissions in one or more of the following particulars, to wit:

a. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the dangerous conditions created by the boxing machine;

b. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the boxing machine's defective design and manufacture;

c. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the specific hazards that caused Plaintiffs' injuries; and

d. Defendants failed in such other and further particulars as the evidence introduced at the trial of this matter may show.

47. Defendants' careless, negligent, willful, wanton, and reckless acts and omissions were the direct and proximate cause of the injuries and damages to Plaintiffs, and Plaintiffs are entitled to recovery therefor.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium)
(As to Plaintiff Bobby Frost)

48. All prior paragraphs are reiterated as if restated verbatim herein.

49. Defendants' willful, wanton, and reckless acts and omissions caused the injuries alleged to Plaintiff Katherine Frost as stated more fully herein.

50. Plaintiff Bobby Frost suffered damages as a result of Katherine Frost's injuries proximately caused by Defendants by, *inter alia*, his being deprived of her society and companionship.

DAMAGES

51. All prior paragraphs are reiterated as if restated verbatim herein.

52. As a direct and proximate result of the acts and omissions complained of, the Plaintiffs have sustained the following damages:

- a. Severe physical injuries;
- b. Severe pain and suffering;
- c. Mental anguish;
- d. Emotional distress;
- e. Increased susceptibility to future injury;
- f. Substantial expenses for medical services;
- g. Miscarriage;
- h. Loss of consortium;
- i. Such other and further damages as the evidence introduced at trial may show.

53. Plaintiffs are informed and believe they are entitled to recover such actual and punitive damages as the jury determines.

WHEREFORE, Plaintiffs pray for damages, actual and punitive, against these Defendants, jointly and severally, and for such other damages as shall be proven at the

trial of this case; for a trial by jury; for costs; and for such other and further relief as this Honorable Court shall deem just and proper.



Logan Rollins
The Hawkins Law Firm
P.O. Box 5048
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864-574-8801
864-574-8810 (Fax)
Attorney for Plaintiffs

May 11, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Katherine Frost and Bobby Frost)
)
Plaintiffs,)
)
vs.)
)
Kalkomat USA d/b/a IGPM Group, Inc.,)
Brady Distributing Company, Brady)
Distributing Services, Inc., McCracken)
& Amick, Inc. d/b/a New Vemco Music)
Co., and Three Blind Mice, LLC d/b/a)
The Blind Horse Saloon,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

AMENDED COMPLAINT
(Jury Trial Demanded)

C.A. No.: 2012-CP-23-3249

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS

2013 FEB 19 PM 12:06

The Plaintiffs, complaining of the Defendants herein, would hereby show unto this Honorable Court as follows:

JURISDICTION AND VENUE

1. Katherine Frost and Bobby Frost ("Plaintiffs") are residents and citizens of Spartanburg County, South Carolina.
2. Upon information and belief, Kalkomat USA d/b/a IGPM Group, Inc. ("IGPM") is a corporation organized and existing under the laws of Illinois with its principal place of business in Cook County, Illinois.
3. Upon information and belief, Brady Distributing Co. and Brady Distributing Services, Inc. (hereafter collectively referred to as "Brady Distributing") are corporations organized and existing under the laws of North Carolina with their principal places of business in Mecklenburg County, North Carolina.

4. Upon information and belief, McCracken & Amick, Inc. d/b/a New Vemco Music Co. ("Vemco") is a duly authorized corporation organized and existing under the laws of North Carolina with its principal place of business in Forsyth County, North Carolina.

5. Upon information and belief, Three Blind Mice, LLC d/b/a The Blind Horse Saloon ("Blind Horse") is a duly authorized corporation organized and existing under the laws of South Carolina with its principal place of business in Greenville County, South Carolina.

6. The injuries alleged herein occurred in Greenville County, South Carolina.

7. Jurisdiction and venue for this case are proper in Greenville County, South Carolina.

FACTUAL BACKGROUND

8. On or about Saturday, October 29, 2011, Plaintiff Katherine Frost and her husband, Plaintiff Bobby Frost, went with friends to a Halloween costume contest being held at the Blind Horse Saloon in Greenville, South Carolina.

9. The party of guests arrived at the Blind Horse Saloon at approximately 11:30 p.m., got drinks, and went to a table.

10. At approximately 12:00 a.m., the entire party moved to the dance floor, along with most other patrons of the Blind Horse, to watch the costume contest.

11. At approximately 1:00 a.m., the crowd disbursed at the end of the costume contest.

12. Plaintiff Katherine Frost saw friends standing in the bar area in a circle and walked over to join in conversation with them.

13. Plaintiff Katherine Frost was one of many patrons standing in the same general vicinity engaged in conversation.

14. She suddenly felt a sharp pain in the small of her back, which knocked the wind out of her and caused her to become unconscious and fall to the floor.

15. Plaintiff Katherine Frost awoke on the floor to find herself surrounded by people, and she discovered that an unknown individual who had been using a punching bag boxing machine had missed the punching bag he had been attempting to strike as part of the machine's use, inadvertently striking her in the back.

16. The boxing machine was in the middle of the floor with no barrier, warning, or other means of protecting Blind Horse patrons and invitees from being injured by persons attempting to strike the machine in the manner particular to the use of the boxing machine.

17. Plaintiff Bobby Frost approached to find his wife, Katherine Frost, injured on the floor and the person who had inadvertently punched her standing in the vicinity; this unknown person was allowed to leave the scene so that his identity remains unknown.

18. Plaintiff Katherine Frost was rushed by ambulance to the emergency room of Greenville Memorial Hospital in Greenville, South Carolina, where she was diagnosed with severe internal bleeding and a contusion to her liver.

19. She remained in the hospital for one week, and her husband, Plaintiff Bobby Frost, stayed with her every night of the week.

20. Plaintiff Katherine Frost was unable to lift or care for her son Colton, or engage in virtually any activity, for approximately one month after the injury.

21. On approximately January 25, 2012, Plaintiff Katherine Frost suffered a miscarriage as a direct and proximate result of her injuries alleged herein.

FOR A FIRST CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendant IGPM)

22. All prior paragraphs are reiterated as if restated verbatim herein.

23. Upon information and belief, IGPM designed, manufactured, marketed, and distributed the boxing machine that caused Plaintiffs' injuries.

24. As designer, manufacturer, marketer, and distributor, Defendant IGPM owed duties of care to Plaintiffs, and Defendant IGPM willfully, wantonly, and recklessly breached its duties of care in the following particulars, to wit:

a. In designing, manufacturing, marketing, and distributing a gaming machine in violation of industry standards;

b. In designing, manufacturing, marketing, and distributing a boxing machine that is inherently dangerous;

c. In failing to warn Plaintiffs and other potential consumers that serious injury could occur from use of the product;

d. In failing to provide adequate instructions as to the product's use;

e. In placing the product into the stream of commerce when the product was improperly designed and manufactured for its intended purpose;

f. In failing to exercise the degree and kind of care that reasonably prudent designers, manufacturers, marketers, and distributors would have exercised under the circumstances;

g. In designing, manufacturing, marketing, and distributing a product that had no guard mechanism or safe zone to protect persons near the product from the intended use of the product;

h. In such other and further particulars as will be shown at the trial of this matter.

25. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendants Brady Distributing and Vemco)

26. All prior paragraphs are reiterated as if restated verbatim herein.

27. Upon information and belief, Defendants Vemco, Brady Distributing Company, and Brady Distributing Services, Inc. owned, distributed, installed, and operated the boxing machine that was the proximate cause of Plaintiff's injuries as alleged herein.

28. As owners, distributors, installers, and operators of the boxing machine, Defendants Vemco and Brady Distributing owed duties of care to Plaintiffs, and Defendants Vemco and Brady breached said duties in the following particulars, to wit:

a. In owning, distributing, installing, and operating a boxing machine that was inherently dangerous and in violation of industry standards within the game industry;

b. In failing to place a barrier or otherwise make a safe zone in which the boxing game could be used;

c. In failing to provide adequate instructions as to the boxing machine's use;

d. In placing a product into the stream of commerce for consumer use when the product was inherently dangerous and improperly designed and manufactured for its intended purpose;

e. In failing to exercise the degree and kind of care that reasonably prudent owners, distributors, installers, and operators should have exercised under the circumstances;

f. In such other and further particulars as the evidence introduced at the trial of this matter may show.

29. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A THIRD CAUSE OF ACTION
(NEGLIGENCE/GROSS NEGLIGENCE)
(As to Defendant Blind Horse)

30. All prior paragraphs are reiterated as if restated verbatim herein.

31. As a business, Defendant Blind Horse Saloon owed duties of care to Plaintiffs as patrons and invitees, and Defendant Blind Horse Saloon breached its duties by numerous acts and/or omissions including, but not limited to, the following particulars, to wit:

a. In maintaining a product that was unreasonably dangerous for its location in the Blind Horse's premises;

b. In failing to place any guards and/or a safe zone in which patrons/invitees of its establishment were safe from harm from the boxing machine that is the subject of this suit.

c. In failing to warn invitees of the danger inherent in the use of the boxing machine.

d. In such other and further particulars as will be shown at the trial of this matter.

32. All of which acts and/or omissions, separately or together, were the direct and proximate cause of the Plaintiffs' damages and injuries, and Plaintiffs are entitled to recover therefor.

FOR A FOURTH CAUSE OF ACTION
(Strict Liability)
(As to All Defendants)

33. All prior paragraphs are reiterated as if restated verbatim herein.

34. Defendants were engaged in the business of selling, and injecting into the stream of commerce for the use of consumers, the subject boxing machine.

35. Defendants expected the boxing machine to reach consumers without substantial change in the product's condition from the time it was sold and placed into the stream of commerce for consumer use, and the product did reach the Plaintiff without a substantial change of condition from the time of its being sold and placed into the stream of commerce.

36. Defendants placed the product into the stream of commerce in an unreasonably dangerous and defective condition.

37. Defendants are strictly liable to the Plaintiff for designing, manufacturing and marketing defects, and for placing into the stream of commerce the boxing machine, which was unreasonably dangerous for reasons including, but not limited to, the following particulars, to wit:

- a. In its known violation of industry standards within the game industry;
- b. In its inherent, unreasonable dangerousness;
- c. In its containing inadequate warnings to those who use or may be injured by its use;
- d. In its being improperly designed and manufactured for its intended purpose;
- e. In its not having adequate instructions for the product's use;
- f. In such other and further particulars as the trial of this matter may show.

38. As a direct and proximate result of the unreasonably dangerous and defective condition of the boxing machine and its component parts, the Plaintiffs have been severely injured and damaged, and they seek recovery, including, but not limited to, recovery under S.C. Code Ann. § 15-73-10 et. seq.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Warranty)
(As to All Defendants)

39. All prior paragraphs are reiterated as if restated verbatim herein.

40. Defendants impliedly warranted that the boxing machine being used was safe and fit for the purpose intended and conformed with warranties including, but not limited to, the warranty of workmanship and warranty of merchantable quality.

41. The boxing machine was not merchantable, fit, suitable, or safe for use by a consumer, and, as a direct and proximate result of the use of said product, Plaintiffs suffered the injuries alleged herein and is entitled to recovery including, but not limited to, recovery under S.C. Code Ann. § 36-2-318.

FOR A SIXTH CAUSE OF ACTION
(Breach of Implied Warranty of Fitness for a Particular Purpose)
(As to All Defendants)

42. All prior paragraphs are reiterated as if restated verbatim herein.

43. The Defendants at the time of manufacture, sale, and placement into the stream of commerce of the boxing machine knew or should have known the particular purpose for which the machine was required and knew or should have known that Plaintiff and other similarly situated consumers and persons were relying on the skill and judgment of the Defendants to select and/or furnish suitable goods fit for this purpose.

44. The boxing machine was not fit for the particular purpose of use in a setting with business patrons and invitees without risk of harm to said patrons and invitees.

45. Accordingly, Defendants have breached the implied warranty of fitness for a particular purpose established by common law and by S.C. Code Ann. §§ 36-2-315 and 36-2-318 because the boxing machine was not fit for its particular purpose and subsequently harmed the Plaintiffs; as a proximate result of Defendants' breach,

Plaintiffs suffered the injuries and damages alleged herein for which they are entitled to recover damages.

FOR A SEVENTH CAUSE OF ACTION
(Failure to Warn)
(As to All Defendants)

46. All prior paragraphs are reiterated as if restated verbatim herein.

47. The injuries and damages incurred by Plaintiffs were directly and proximately caused by the Defendants' careless, negligent, grossly negligent, willful, and wanton acts and omissions in one or more of the following particulars, to wit:

a. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the dangerous conditions created by the boxing machine;

b. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the boxing machine's defective design and manufacture;

c. Defendants failed to properly warn users, consumers, and other persons affected by the product's use, including the Plaintiffs, of the specific hazards that caused Plaintiffs' injuries; and

d. Defendants failed in such other and further particulars as the evidence introduced at the trial of this matter may show.

48. Defendants' careless, negligent, willful, wanton, and reckless acts and omissions were the direct and proximate cause of the injuries and damages to Plaintiffs, and Plaintiffs are entitled to recovery therefor.

FOR AN EIGHTH CAUSE OF ACTION
(Loss of Consortium—As To Bobby Frost)
(As to All Defendants)

49. All prior paragraphs are reiterated as if restated verbatim herein.

50. Defendants' willful, wanton, and reckless acts and omissions caused the injuries alleged to Plaintiff Katherine Frost as stated more fully herein.

51. Plaintiff Bobby Frost suffered damages as a result of Katherine Frost's injuries proximately caused by Defendants by, *inter alia*, his being deprived of her society and companionship.

DAMAGES

52. All prior paragraphs are reiterated as if restated verbatim herein.

53. As a direct and proximate result of the acts and omissions complained of, the Plaintiffs have sustained the following damages:

- a. Severe physical injuries;
- b. Severe pain and suffering;
- c. Mental anguish;
- d. Emotional distress;
- e. Increased susceptibility to future injury;
- f. Substantial expenses for medical services;
- g. Miscarriage;
- h. Loss of consortium;
- i. Such other and further damages as the evidence introduced at trial may show.

54. Plaintiffs are informed and believe they are entitled to recover such actual and punitive damages as the jury determines.

WHEREFORE, Plaintiffs pray for damages, actual and punitive, against these Defendants, jointly and severally, and for such other damages as shall be proven at the trial of this case; for a trial by jury; for costs; and for such other and further relief as this Honorable Court shall deem just and proper.



Logan Rollins
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P.O. Box 5048
Spartanburg, SC 29304
864-574-8801
864-574-8810 (Fax)
Attorney for Plaintiffs

February 19, 2013

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

Katherine Frost and Bobby Frost)
Plaintiffs,)

vs.)

Kalkomat USA d/b/a IGPM Group, Inc.,)
Brady Distributing Company, Brady)
Distributing Services, Inc., McCracken)
& Amick, Inc. d/b/a New Vemco Music)
Co., and Three Blind Mice, LLC d/b/a)
The Blind Horse Saloon,)

Defendants.)

IN THE COURT OF COMMON PLEAS

SUMMONS
(Jury Trial Demanded)

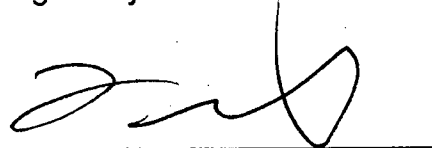
C.A. No.: 2012-CP-23-3249

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL R. WICKESINGER

2013 FEB 19 PM 12:06

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office with an address of P.O. Box 5048, Spartanburg, South Carolina, 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, judgment by default will be rendered against you for the relief demanded in the Complaint.



Logan Rollins
The Hawkins Law Firm
P.O. Box 5048
Spartanburg, SC 29304
(864) 574-8801
FAX: 574-8810
Attorney for the Plaintiffs

Spartanburg, South Carolina
February 19, 2013

NEXSEN | PRUET

David L. Moore, Jr.
Special Counsel
Admitted in SC

October 1, 2015

The Honorable James R. Barber, III
P.O. Box 2766
Columbia, SC 29202

Re: Three Blind Mice, LLC, d/b/a The Blind Horse Saloon
vs. Colony Insurance Company
Case No. 2014-CP-23-3422
N/P File No. 51273.1

Dear Judge Barber:

You are scheduled to hear cross-motions for summary judgment in the above matter in Greenville on October 15. In that regard, the parties have agreed to file briefs in support of their respective motions for summary judgment and briefs in opposition to the opposing party's motion for summary judgment. We are seeking to recover damages on the part of Three Blind Mice, LLC under theories of breach of contract and bad faith denial of coverage by Colony Insurance Company. In that regard, please note that we will only be seeking actual damages and not punitive damages with regard to the action for bad faith. Hopefully, this will clarify any confusion with regard to the type of damages we are seeking. However, if there are questions, please do not hesitate to contact me.

Charleston

Charlotte

Columbia

Greensboro

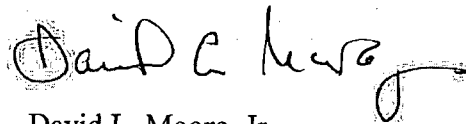
Greenville

Hilton Head

Myrtle Beach

Raleigh

Sincerely yours,



David L. Moore, Jr.

DLM/dkr

cc: Eric K. Englehardt, Esq.
David L. Brown, Esq.

55 E. Camperdown Way
Suite 400 (29601)
PO Drawer 10648
Greenville, SC 29603
www.nexsenpruet.com

T 864.282.1173
F 864.477.2635
E DMoore@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

NEXSEN|PRUET

David L. Moore
Special Counsel
Admitted in SC

December 2, 2015

David L. Brown
Goldberg Segalla, LLP
800 Green Valley, Suite 302
Greensboro, NC 27408

Eric K. Englebardt
Turner Padgett Graham & Laney, PA
P.O. Box 1509
Greenville, SC 29602

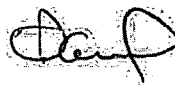
Re: Three Blind Mice, LLC d/b/a The Blind Horse Saloon vs.
Colony Insurance Company
Case No. 2014-CP-23-3422

Dear David and Eric:

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Pursuant to the Court's Order of November 18 in the above matter, I am enclosing for your review the various invoices submitted to Three Blind Mice, LLC for work performed by Nexsen Pruet. With regard to the underlying case of Bobby and Katherine Frost vs. The Blind Horse Saloon, et al., Judge Billy Wilkins charged a flat fee of \$10,000. I billed on an hourly basis \$36,120.50. In addition, there are costs of \$254.84. As you are aware, Three Blind Mice's portion of the settlement was \$10,000. When the statutory interest is applied, there is interest in the amount of \$7300.61. With regard to the attorney fees and cost incurred to this matter, there was \$43,069.50 in attorney's fees and \$556.70 in costs. These total \$107,302.15 for all attorney's fees, litigation costs and expenses, interest and agreed upon settlement. Once you have had an opportunity to review these matters, please advise me as to your position.

Sincerely yours,



David L. Moore

DLM/lml
Enclosures

55 East Camperdown Way
Suite 400 (29601)
PO Drawer 10648
Greenville, SC 29603-0648
www.nexsenpruet.com

T 864.282.1173
F 864.477.2635
E DMoore@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

Summary of Costs

| | |
|-----------------------------|--------------|
| 1. Wilkins flat fee (Frost) | \$ 10,000.00 |
| 2. Moore (Frost) | \$ 36,120.50 |
| 3. Costs (Frost) | \$ 254.84 |
| 4. Settlement (Frost) | \$ 10,000.00 |
| 5. Interest (Frost) | \$ 7,300.61 |
| 6. Attorney fees (Colony) | \$ 43,069.50 |
| 7. Costs (Colony) | \$ 556.70 |
| | \$107,302.15 |

The entries highlighted in green on the invoices through July 2, 2014 are related to the Colony matter.

The invoices from July 30, 2014 forward are all entries related to the Colony matter.

From: David L. Brown
Sent: Thursday, March 31, 2016 8:50 AM
To: Wilkins, William W.; Mathias, Andrew A. (AMathias@nexsenpruet.com)
Cc: Englehardt, Eric K. (EEnglehardt@TurnerPadget.com)
Subject: Three Blind Mice v. Colony
Attachments: Proposed Consent Order re_ Attorneys Fees.docx; Three Blind Mice v. Colony

Counsel:

This will confirm that Colony is amenable to the entry of Judgment in this matter, consistent with the attached Order, and that Colony will not contest on appeal the reasonableness of the fees reflected in this Order. Of course, Colony will contest the issues of coverage, bad faith, and whether any amount at all is owed to the plaintiff. However, Colony will not appeal the reasonableness of the fees as reflected on the attached. Furthermore, Colony reserves the right to contest the reasonableness of any additional fees the plaintiff may seek (e.g. those fees associated with the appeal), but we can address those fees when, and if, that issue becomes ripe. I trust this meets your concerns, but please let me know if that is not the case.

With regard to the attached Order itself, I have red-lined the changes from the last version you sent to me. The two changes are as follows. First, I made it an "Order" as it was on earlier drafts. I saw that you changed it to a "Consent Order", but we would prefer for it to be an "Order" for the reasons we previously discussed. Second, I changed the amount to be consistent with the fees we have actually received, i.e. \$107,302.15. You mentioned an additional \$3,360.82 in fees when we last spoke, but I did not receive the associated invoices for those fees (see the attached email), or the newly claimed fees. Feel free to send those invoices along and we will be happy to review.

Best regards.



GOLDBERG SEGALLA

New York | Illinois | Florida | Maryland | Missouri | North Carolina
Pennsylvania | New Jersey | Connecticut | United Kingdom

David L. Brown, Esq.

Partner

800 Green Valley Road | Suite 302 | Greensboro, NC 27408

DIRECT 336.419.4902 | FAX 336.419.4950

MOBILE 336.209.0763

dbrown@goldbergsegalla.com

[View Profile and vCard](#) | www.GoldbergSegalla.com

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Privileged Attorney-Client Communication / Attorney's Work Product

| | | |
|------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GREENVILLE |) | Civil Action No. 2014-CP-23-3422 |
| |) | |
| THREE BLIND MICE, LLC, d/b/a |) | |
| THE BLIND HORSE SALOON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | CONSENT ORDER |
| V. |) | |
| |) | |
| COLONY INSURANCE COMPANY, |) | |
| |) | |
| Defendant |) | |

This is an action for breach of contract and bad faith denial of insurance coverage. The parties submitted to the Court cross-motions for summary judgment. The Court, in an interlocutory order dated November 18, 2015 and filed on November 25, 2015, granted summary judgment to Three Blind Mice, LLC, on both the breach of contract and bad faith causes of action. Thereafter, the attorneys for Three Blind Mice, LLC, submitted to the attorneys representing Colony Insurance Company documentation regarding the fees, costs and expenses incurred, settlement amount paid, and interest to be applied, all of which totaled ~~\$107,302.15~~ ~~\$114,440.15~~.

The Court now enters judgment in favor of Three Blind Mice, LLC, in the amount of ~~\$107,302.15~~ ~~\$114,440.15~~ against Colony Insurance Company. The Court finds that the amount of this award is reasonable.

Colony Insurance Company shall have the right to file an appeal regarding the Court's determination of liability as to both the breach of contract and bad faith causes of action within thirty (30) days after receipt of written notice of entry of the final Judgment entered by the Court in this action, in accordance with the South Carolina Rules of Appellate Procedure.

Judge, Thirteenth Judicial Circuit

Date:

Greenville, South Carolina

From: Mathias, Andrew A. <AMathias@nexsenpruet.com>
Sent: Wednesday, February 24, 2016 11:57 AM
To: David L. Brown; Englebardt, Eric K. (EEnglebardt@TurnerPadget.com)
Cc: Wilkins, William W.
Subject: Three Blind Mice v. Colony

David and Eric,

Thanks for speaking to us today. Attached is a bill evidencing the additional fees and costs Colony agrees to add to the previously agreed upon figure in the proposed order. It shows an additional \$3,360.82, which brings the total amount agreed upon to \$110,662.97.

We will submit the proposed order and forgo a hearing on the issue if we can get in writing from Colony that it will not contest on appeal the award of attorneys' fees and costs in the amount of \$110,662.97, and that Colony will not contest the reasonableness of this amount. We are not asking that Colony stipulate to the reasonableness of the award, just written assurance that it will not appeal those issues.

Andrew

Andrew A. Mathias
Member
Nexsen Pruet, LLC
55 East Camperdown Way, Suite 400
Post Office Drawer 10648 (29603)
Greenville, SC 29601
T: 864.370.2211, F: 864.477.2697
AMathias@nexsenpruet.com
www.nexsenpruet.com

NEXSEN PRUET



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From: Mathias, Andrew A. <AMathias@nexsenpruet.com>
Sent: Thursday, March 31, 2016 10:58 AM
To: David L. Brown; Wilkins, William W.
Cc: Englehardt, Eric K. (EEnglehardt@TurnerPadget.com)
Subject: RE: Three Blind Mice v. Colony
Attachments: Order awarding fees and costs 3.31.16.DOCX; Invoice No. 53660053.pdf

Counsel,

Thank you for confirming that Colony will not appeal the amount or reasonable of the fee award ultimately entered by the court (I think we're almost there).

As far as your comments re the order below:

I have no problem changing "Consent Order" back to "Order." And, you correctly point out that I owed you documentation for the increase we discussed. Attached is an invoice for all time entered in the matter since the date on which the order was initially drafted. As you will see the ultimate increase is only \$3,594.92, which brings the total amount included in the order to \$110,897.07. I apologize for the misstatement on this increase yesterday – frankly I misread a different accounting report and incorrectly calculated the figure.

Please confirm that Colony consents to the attached order by close of business tomorrow. Assuming we receive that approval, we will have the submit the order to the court next week and cancel the hearing.

Andrew

From: David L. Brown [<mailto:dbrown@goldbergsegalla.com>]
Sent: Thursday, March 31, 2016 8:50 AM
To: Wilkins, William W.; Mathias, Andrew A.
Cc: Englehardt, Eric K. (EEnglehardt@TurnerPadget.com)
Subject: Three Blind Mice v. Colony

Counsel:

This will confirm that Colony is amenable to the entry of Judgment in this matter, consistent with the attached Order, and that Colony will not contest on appeal the reasonableness of the fees reflected in this Order. Of course, Colony will contest the issues of coverage, bad faith, and whether any amount at all is owed to the plaintiff. However, Colony will not appeal the reasonableness of the fees as reflected on the attached. Furthermore, Colony reserves the right to contest the reasonableness of any additional fees the plaintiff may seek (e.g. those fees associated with the appeal), but we can address those fees when, and if, that issue becomes ripe. I trust this meets your concerns, but please let me know if that is not the case.

With regard to the attached Order itself, I have red-lined the changes from the last version you sent to me. The two changes are as follows. First, I made it an "Order" as it was on earlier drafts. I saw that you changed it to a "Consent Order", but we would prefer for it to be an "Order" for the reasons we previously discussed. Second, I changed the amount to be consistent with the fees we have actually received, i.e. \$107,302.15. You mentioned an additional

\$3,360.82 in fees when we last spoke, but I did not receive the associated invoices for those fees (see the attached email), or the newly claimed fees. Feel free to send those invoices along and we will be happy to review.

Best regards.



GOLDBERG SEGALLA

New York | Illinois | Florida | Maryland | Missouri | North Carolina
Pennsylvania | New Jersey | Connecticut | United Kingdom

David L. Brown, Esq.

Partner

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| | | |
|------------------------------|---|----------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GREENVILLE |) | Civil Action No. 2014-CP-23-3422 |
| |) | |
| THREE BLIND MICE, LLC, d/b/a |) | |
| THE BLIND HORSE SALOON, |) | |
| |) | |
| Plaintiff, |) | |
| |) | ORDER |
| V. |) | |
| |) | |
| COLONY INSURANCE COMPANY, |) | |
| |) | |
| Defendant |) | |

This is an action for breach of contract and bad faith denial of insurance coverage. The parties submitted to the Court cross-motions for summary judgment. The Court, in an interlocutory order dated November 18, 2015 and filed on November 25, 2015, granted summary judgment to Three Blind Mice, LLC, on both the breach of contract and bad faith causes of action. Thereafter, the attorneys for Three Blind Mice, LLC, submitted to the attorneys representing Colony Insurance Company documentation regarding the fees, costs and expenses incurred, settlement amount paid, and interest to be applied, all of which totaled \$110,897.07.

The Court now enters judgment in favor of Three Blind Mice, LLC, in the amount of \$110,897.07 against Colony Insurance Company. The Court finds that the amount of this award is reasonable.

Colony Insurance Company shall have the right to file an appeal regarding the Court's determination of liability as to both the breach of contract and bad faith causes of action within thirty (30) days after receipt of written notice of entry of the final Judgment entered by the Court in this action, in accordance with the South Carolina Rules of Appellate Procedure.

Judge, Thirteenth Judicial Circuit

Date:

Greenville, South Carolina

NEXSEN | PRUET

March 31, 2016

Invoice No. 53660053

Matter: 051273-00001

THREE BLIND MICE, LLC D/B/A THE BLIND HORSE SALOON
ATTENTION: CLYDE E. PAUL
217 COLLINS CREEK ROAD
GREENVILLE, SC 29607-3730

Re: BOBBY FROST & KATHERINE FROST V. BLIND HORSE SALOON, ET AL.

Enclosed please find our statement for the period ending March 18, 2016. We trust that you will find this statement to be in order and will place it in line for payment.

If you have any questions, please do not hesitate to contact us. You can also reach our finance department at 803-253-8242.

Very truly yours,

Nexsen Pruet, LLC

PLEASE SEND REMITTANCE TO: **NEXSEN PRUET, LLC**
Attorneys and Counselors at Law
Post Office Drawer 2426
Columbia SC 29202
ID# 051273-00001

55 E. CAMPERDOWN WAY, SUITE 400, GREENVILLE, SC (29601) • POST OFFICE DRAWER 10648, GREENVILLE, SC (29603-0648)
864-370-2211 • FAX 864-282-1177
www.NexsenPruet.com

OFFICES ALSO IN:

CHARLESTON, SC

CHARLOTTE,
NC

COLUMBIA,
SC

GREENSBORO,
NC

HILTON HEAD,
SC

MYRTLE BEACH,
SC

RALEIGH, NC

NEXSEN | PRUET

IRS # 570386425

THREE BLIND MICE, LLC D/B/A THE BLIND
HORSE SALOON
ATTENTION: CLYDE E. PAUL
217 COLLINS CREEK ROAD
GREENVILLE, SC 29607-3730

Remit Address:

Post Office Drawer 2426
Columbia, SC 29202

Matter No. 051273-00001
Invoice No. 53660053
Invoice Date March 31, 2016
Attorney WW WILKINS

Re: BOBBY FROST & KATHERINE FROST V. BLIND HORSE SALOON, ET AL.

For Professional Services Rendered Through March 18, 2016.

PLEASE SEE REVERSE FOR DETAILS.

| | |
|-----------------------|-------------|
| Previous Balance..... | \$37,604.85 |
| Finance Charges..... | \$1,791.62 |
| Current Charges..... | \$3,594.92 |
| New Balance..... | \$42,991.39 |

ALL BILLS ARE DUE AND PAYABLE IN FULL UPON RECEIPT OF THIS INVOICE. A LATE PAYMENT CHARGE
OF 1 ½% PER MONTH WILL BE ADDED TO ANY BALANCE REMAINING UNPAID 30 DAYS AFTER THE
BILLING DATE.

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

NEXSEN | PRUET

Invoice Date: 3/31/16

Invoice No. 53660053

Matter No. 051273-00001

FEES

| Date | Timekeeper | Description | Hours | Amount |
|----------|------------|---|-------|--------|
| 12/15/15 | DLM | PREPARATION OF MOTION TO ASSESS ATTORNEY FEES, COSTS AND EXPENSES. | 0.50 | 175.00 |
| 12/16/15 | DLM | TELEPHONE CALL WITH ERIC ENGLEBARDT CONCERNING ATTORNEY FEES, RESERVATION OF ISSUES FOR APPEAL. | 0.20 | 70.00 |
| 12/17/15 | DLM | TELEPHONE CALL WITH ERIC ENGLEBARDT CONCERNING ATTORNEY FEES AND APPEAL. | 0.20 | 70.00 |
| 12/17/15 | DLM | PREPARATION OF ORDER GRANTING JUDGMENT. | 0.50 | 175.00 |
| 12/17/15 | DLM | LETTER TO JUDGE ROBIN STILWELL CONCERNING ORDER GRANTING JUDGMENT. | 0.20 | 70.00 |
| 01/13/16 | AAM | CONFERENCE WITH CO-COUNSEL RE ORDER GRANTING SUMMARY JUDGMENT, REVIEW MOTION AND MEMO RE SAME. | 3.00 | 930.00 |
| 02/08/16 | AAM | CORRESPONDENCE WITH OPPOSING COUNSEL RE DRAFT ORDER, RECEIPT AND REVIEW OF SAME, CONFERENCE WITH CO-COUNSEL RE SAME. | 0.40 | 124.00 |
| 02/09/16 | AAM | CORRESPONDENCE RE DRAFT ORDER, CONFERENCES WITH OPPOSING COUNSEL AND CO-COUNSEL. | 1.00 | 310.00 |
| 02/15/16 | EARP | PREPARE MOTION FOR HEARING ON FEES AND COSTS TO OBTAIN FINDING OF REASONABLENESS. | 1.60 | 336.00 |
| 02/15/16 | EARP | DRAFT LETTER TO JUDGE BARBER ENCLOSING PROPOSED ORDER ENTERING FINAL JUDGMENT. | 0.30 | 63.00 |
| 02/15/16 | EARP | REVISE PROPOSED ORDER ENTERING FINAL JUDGMENT. | 0.30 | 63.00 |
| 02/15/16 | AAM | WORK ON ORDER ON FEES/COSTS AND COVER LETTER TO COURT, EMAIL CORRESPONDENCE AND TELEPHONE CONFERENCE WITH OPPOSING COUNSEL RE SAME. | 0.80 | 248.00 |
| 02/17/16 | JAJ | REVIEW BILLING FILE FOR | 0.20 | 36.00 |

OFFICES IN:

CHARLESTON, SC

CHARLOTTE, NC

COLUMBIA, SC

GREENSBORO, NC

GREENVILLE, SC

HILTON HEAD, SC

MYRTLE BEACH, SC

RALEIGH, NC

NEXSEN | PRUET

| Date | Timekeeper | Description | Hours | Amount |
|--------------------|------------|--|-------|-------------------|
| 02/19/16 | AAM | PREPARATION OF FINAL ORDER
DRAFT MOTION FOR HEARING,
TRANSMIT TO OPPOSING COUNSEL. | 1.40 | 434.00 |
| 02/22/16 | AAM | WORK ON MOTION FOR HEARING. | 0.40 | 124.00 |
| 02/23/16 | AAM | CONFERENCE WITH CO-COUNSEL,
EMAIL CORRESPONDENCE WITH
OPPOSING COUNSEL RE ORDER
AWARDING FEES. | 0.30 | 93.00 |
| 02/24/16 | AAM | PREPARE FOR AND PARTICIPATE IN
PHONE CALL WITH ALL COUNSEL,
DRAFT EMAIL MEMORIALIZING
CONVERSATION AND REQUESTING
WRITTEN CONFIRMATION FROM
DEFENDANT THAT IT WILL NOT APPEAL
AWARD OF ATTORNEYS' FEES AND
COSTS. | 0.60 | 186.00 |
| 03/21/16 | AAM | REVIEW SCHEDULING NOTICE, CALL
OPPOSING COUNSEL RE HEARING. | 0.20 | 62.00 |
| Total Fees: | | | | \$3,569.00 |

EXPENSES

| Date | Description | Amount |
|------------------------|---------------------------|----------------|
| 12/31/15 | POSTAGE MAILED ON 12-3-15 | 0.92 |
| 02/22/16 | FILING FEES | 25.00 |
| Total Expenses: | | \$25.92 |

TIME SUMMARY RECAP

| Timekeeper | Title | Hours | Rate | Amount |
|---------------|-----------|--------------|----------|-------------------|
| AA MATHIAS | PARTNER | 8.10 | \$310.00 | \$2,511.00 |
| DL MOORE JR. | COUNSEL | 1.60 | \$350.00 | \$560.00 |
| EAR PARR | ASSOCIATE | 2.20 | \$210.00 | \$462.00 |
| JA JOHNSON | PARALEGAL | 0.20 | \$180.00 | \$36.00 |
| Total: | | 12.10 | | \$3,569.00 |

OFFICES IN:

CHARLESTON, SC

CHARLOTTE, NC

COLUMBIA, SC

GREENSBORO, NC

GREENVILLE, SC

HILTON HEAD, SC

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RALEIGH, NC

NEXSEN | PRUET

IRS # 570386425

THREE BLIND MICE, LLC D/B/A THE BLIND
HORSE SALOON

ATTENTION: CLYDE E. PAUL
217 COLLINS CREEK ROAD
GREENVILLE, SC 29607-3730

Remit Address:

Post Office Drawer 2426
Columbia, SC 29202

Matter No. 051273-00001
Invoice No. 53660053
Invoice Date March 31, 2016
Attorney WW WILKINS

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BILLING DATE.

OFFICES IN:

CHARLESTON, SC CHARLOTTE, NC COLUMBIA, SC GREENSBORO, NC GREENVILLE, SC HILTON HEAD, SC MYRTLE BEACH, SC RALEIGH, NC

From: David L. Brown
Sent: Friday, April 01, 2016 1:08 PM
To: 'Mathias, Andrew A.'; Wilkins, William W.
Cc: Englebardt, Eric K. (EEnglebardt@TurnerPadget.com)
Subject: RE: Three Blind Mice v. Colony

That \$110,897.07 number is fine.

David

From: Mathias, Andrew A. [mailto:AMathias@nexsenpruet.com]
Sent: Thursday, March 31, 2016 10:58 AM
To: David L. Brown; Wilkins, William W.
Cc: Englebardt, Eric K. (EEnglebardt@TurnerPadget.com)
Subject: RE: Three Blind Mice v. Colony

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Andrew

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Sent: Thursday, March 31, 2016 8:50 AM
To: Wilkins, William W.; Mathias, Andrew A.
Cc: Englebardt, Eric K. (EEnglebardt@TurnerPadget.com)
Subject: Three Blind Mice v. Colony

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Best regards.



GOLDBERG SEGALLA

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Pennsylvania | New Jersey | Connecticut | United Kingdom

David L. Brown, Esq.

Partner

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DIRECT 336.419.4902 | FAX 336.419.4950

MOBILE 336.209.0763

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

James R. Barber III, Circuit Court Judge
Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP-23-03422

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SC Court of Appeals

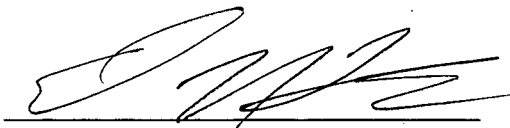
Three Blind Mice, LLC
d/b/a The Blind Horse Saloon Respondent

v.

Colony Insurance Company 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.



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October 26, 2016.