

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Robert E. Hood, Circuit Court Judge
Jocelyn Newman, Circuit Court Judge

Case No. 2014-CP-40-04661

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SC Court of Appeals

Porthemos Curry.....Respondent/Appellant,

v.

Carolina Insurance Group of SC, Inc. and Maurice Derrick.....Appellants/Respondents.

CONSOLIDATED RECORD ON APPEAL
Volume II of II

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Certificate of Counsel

The undersigned hereby certifies that the Consolidated Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

November 16, 2016

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

2014-CP-40-04661

3
4 Porthemos Curry,)

5 Plaintiff,)

6 vs.)

TRANSCRIPT OF RECORD

7 Scottsdale Insurance Group,)
8 Carolina Insurance Group of)
SC, Inc., and Maurice Derrick,)

9 Defendants.)

10 April 18-19, 2016

11 Columbia, South Carolina

12
13
14 B E F O R E:

15 THE HONORABLE JOCELYN NEWMAN, JUDGE.

16
17
18 A P P E A R A N C E S:

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23
24
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Official Court Reporter

1 day for that. I don't know how this trial is going
2 to progress, but -- and I don't know --

3 MR. PEEL: I will do whatever they need
4 time-wise.

5 MS. PEAUVY: Let us -- if -- Your Honor, if we
6 can discuss it after this motion hearing is over
7 and make a decision.

8 THE COURT: Absolutely. Absolutely. Okay.
9 But I will, you know, I guess order that he make
10 himself available at a reasonable time, once they
11 figure out --

12 MR. PEEL: I don't think that is a problem,
13 Your Honor.

14 THE COURT: Okay. And we'll ensure that
15 deposition happens this week, if necessary.

16 Next motion.

17 MS. PEAUVY: Your Honor, this is a motion in
18 limine to exclude evidence relating to previously
19 dismissed claims against and settlement with
20 Scottsdale Insurance Company.

21 The Plaintiff submits that the only evidence
22 properly for the jury to consider is that the
23 Plaintiffs filed a claim for insurance benefits
24 under a builders risk policy, vacant structure
25 policy that was sold to him by Carolina Insurance

1 Group and its agent, Maurice Derrick, and the
2 policy was issued by Scottsdale, and Scottsdale
3 denied the claim.

4 The only claim before this jury are claims for
5 negligence and gross negligence against the
6 Defendant.

7 And originally this lawsuit was filed naming
8 Scottsdale Insurance Company as an additional
9 Defendant. The claims against Scottsdale were
10 separated from the claims against Carolina
11 Insurance Group and Maurice Derrick.

12 The only claims that have ever been asserted
13 against Carolina Insurance Group and Mr. Derrick
14 are negligence claims. The claims against
15 Scottsdale were for breach of contract, statutory
16 bad faith, and common law bad faith, which is
17 incorporated into a contract action.

18 We settled -- the Plaintiff settled its claims
19 against Scottsdale in December of 2015, and a
20 stipulation of dismissal as to Scottsdale was
21 circulated among all counsel in this case and was
22 filed with the court on December 30th, 2015.

23 Defendant's counsel subsequently requested a
24 copy of the release from me earlier this month, and
25 I provided it to him.

1 I believe that the Defendant may seek to
2 introduce testimony related to Mr. Curry's claims
3 against Scottsdale or settlement with Scottsdale in
4 this lawsuit. And I would submit that that is
5 improper, and that evidence of Mr. Curry's previous
6 claims against Scottsdale, which are now dismissed,
7 which are settled, are irrelevant and would be
8 highly prejudicial to the Plaintiff's case, because
9 it would allow the jury to consider a setoff when
10 setoff is solely a matter at the post-verdict stage
11 for the Court to consider. And that is assuming
12 the Defendants make such a motion. And we would
13 obviously reserve the right to object to any setoff
14 of any verdict.

15 And I'm relying upon the case of Riley v. Ford
16 Motor Company and Scott v. Fruehauf Corp, which the
17 Scott case held that evidence of relief was
18 inadmissible.

19 Scottsdale is not a party to this lawsuit, and
20 any mention of Mr. Curry's prior claims against or
21 settlement with Scottsdale would make the jury
22 think that Mr. Curry was improperly seeking a
23 double recovery or had already gotten paid for his
24 damages in this case. There is no overlap between
25 the causes of action that are pending against these

1 Defendants and what was alleged against Scottsdale.

2 I would like to hand up to Your Honor the two
3 cases that I cited, as I believe they are
4 instructive in support of my motion.

5 THE COURT: All right.

6 MS. PEAVY: And if Your Honor will give me one
7 minute.

8 THE COURT: Sure. While you are looking for
9 that, let me hear from you Mr. Peel.

10 MR. PEEL: I was looking for a copy of the
11 release, and I've got such a stack of papers I
12 can't find it.

13 Your Honor, normally I would completely agree
14 with Ms. Peavy -- normally. We have had a little
15 bit of a different situation. We talked beforehand
16 a little bit about how to deal with this.

17 I did not see the executed releases until
18 April 8th. Ms. Peavy gave it to me as soon as I
19 asked for it, the same day. However, it was
20 apparently signed in December. I would say it
21 should have been introduced to me under our
22 discovery requests as communications between other
23 parties. When they served the release on me, not
24 just the stipulation of dismissal, I had signed it,
25 I did not get -- I went back and checked -- I did

1 not get anything but the stipulation. So I didn't
2 see it. So this relates to another motion that we
3 have in front of -- Judge Lee has dealt with some
4 of this also, so it is a little complicated.

5 Once I examined the release, I believe there
6 are arguments that that release operates to release
7 my clients completely. So, based upon that, we
8 filed a motion this morning to amend to add a
9 defense of release based upon the information we
10 got from April 8th. See, actually reading the
11 copy.

12 So, like I said, normally -- everything they
13 say generally is correct, especially if it is under
14 the contribution of the tortfeasors act, that would
15 normally exclude setoffs for the province of the
16 judge only for the trial. However, this
17 situation -- this goes to -- we told you earlier
18 about our motion for summary judgment -- and Judge
19 Lee had partially instructed some procedure --
20 moved for summary judgment on two grounds. We move
21 this morning, one, the release on its face as it is
22 a full satisfaction of everything due under the
23 policy for consequential damages, which would
24 operate as a matter of law to release these
25 parties. And it also states that it releases all

1 agents of Scottsdale Insurance.

2 Well, the complaint, the amended complaint,
3 second amended complaint, filed in October of 2015
4 alleges that Carolina Insurance and Maurice Derrick
5 are agents of Scottsdale.

6 On the face of the pleading under Rule 11,
7 that is taken as fact and you can't state something
8 that you know to be false. The fact is that they
9 aren't, in reality. But that doesn't matter. What
10 matters is the intention of the parties on that
11 release.

12 So you've got two points where we say that
13 release -- and I think it is a matter of law for
14 the Court to decide, because I think you can take
15 the four corners and present extrinsic evidence.

16 So the issue I have -- and that is not
17 something I normally would want for any reason to
18 put in front of the jury, but extrinsic evidence is
19 needed to decide the intention of the parties, and
20 release is an affirmative defense that we're
21 entitled to plead, is to how to deal with that
22 issue of the release. And I think it ends up being
23 a weighing analysis under the rules of evidence
24 whether or not it is prejudicial. There may be --
25 I have been thinking on it. There may be other

1 ways. Judge Lee has instructed us to take it up at
2 the directed verdict stage as far as those
3 arguments.

4 One way to handle it would be to determine at
5 directed verdict if Your Honor determines that they
6 are matters outside the four corners of the
7 pleadings that require findings of fact. I could
8 recall Mr. Curry in the second half of the case to
9 introduce it and discuss it in my case. But it is
10 problematic, to say the least. And that would be
11 my suggestion, is I think I'm entitled -- normally
12 I wouldn't want to do it, but I think because of my
13 defense, and if there is an issue of fact related
14 to it, I'm entitled to present it. And that
15 overcomes the reasons for not disclosing. Because
16 there is no other way to get to it.

17 THE COURT: I think as to the motion in
18 limine -- I understand what you are saying,
19 Mr. Peel, but I want to say that I think that is
20 sort of a separate matter. And I understand how it
21 ties into your motion for summary judgment and all
22 of that, but without ruling on the motion for
23 summary judgment exactly at this point, I would
24 grant the motion in limine, because I just don't
25 think that settlement with another party is proper

1 for this jury to determine.

2 Now, as to whether that release, that
3 settlement should resolve this entire case, the
4 separate matter -- I think that is a matter of law
5 for the Court, but without ruling on the motion for
6 summary judgment, should we get to presenting
7 testimony before this jury, that testimony should
8 not include anything about this release.

9 MR. PEEL: Could I ask the Court to do this?
10 I think that is completely fair and is a matter of
11 strategy generally. We just don't know what they
12 are going to do with something like that.

13 THE COURT: Sure.

14 MR. PEEL: I would like -- once the motion for
15 summary judgment is fully argued, my concern is the
16 Court will determine there is an issue of fact that
17 needs to be determined. I'd like to reserve rights
18 to revisit the idea again during the Defense's case
19 regarding the admission of the settlement agreement
20 then. It would depend on your ruling at summary
21 judgment.

22 THE COURT: Right. And I would withhold
23 any -- I mean, I can't predict the future.

24 MR. PEEL: Right.

25 THE COURT: Yes, I think that would --

1 MR. PEEL: So I would just like to revisit it
2 maybe at the beginning of our case after that, and
3 Your Honor could tell me no again at that part of
4 the case. There may be a reason at that point in
5 time we need to address it if it has not been
6 developed. But I don't want to introduce it in
7 their case.

8 THE COURT: Okay. That is clear.

9 MS. PEAVY: Your Honor, would you like to see
10 these cases, or should I hold off until the
11 directed verdict stage?

12 THE COURT: I actually would like to see those
13 cases. What I would also like to see is -- and
14 maybe it is not exactly the right time, but I would
15 like to see the release -- the settlement documents
16 that you are referring to.

17 Actually, I think, for scheduling purposes,
18 the best thing to do actually may be to go ahead
19 and bring the jury back in and release them for the
20 day, because I actually am interested in the
21 arguments on this motion for summary judgment. It
22 may have some teeth to it. I'm not entirely sure.
23 But I would like everyone to have a full and fair
24 opportunity to argue that and for me to consider
25 that.

1 I'm sorry, has Judge Lee already ruled on
2 that, or was that a suggestion?

3 MS. PEAVY: She did rule that the matter
4 should be incorporated into their defense of the
5 case at the directed verdict stage. Because when I
6 received their motion for summary judgment on
7 Friday, I obviously couldn't prepare a response to
8 that, and so I reached out to Judge Lee, as she was
9 the one who set the date certain for this trial and
10 had been administering various scheduling issues,
11 et cetera, and she ruled at that time that the
12 matter -- the arguments contained in the summary
13 judgment motion were best incorporated into the
14 directed verdict stage of the case.

15 MR. PEEL: And all that is correct. That is
16 exactly what the e-mail said. My understanding was
17 that Ms. Peavy was not going to argue that today,
18 not be prepared to argue it. I don't know that
19 going through the trial -- since we are not putting
20 the settlement agreement into evidence, I don't
21 think going through the trial is going to benefit
22 the Court in any way in making a decision, but it
23 would at least give Ms. Peavy additional time to
24 argue her motion. But that is what Judge Lee told
25 us.

1 MS. PEAVY: Well, Your Honor, Judge Lee told
2 us that the trial would go forward this week and
3 that these arguments that he was making in the
4 summary judgment motion that was filed on Friday
5 could be incorporated into the directed verdict
6 stage.

7 MR. PEEL: And I just point out to the Court,
8 I got the release April 8th, so I filed the motion
9 at the end of the week right after I got it, so I
10 apologize for it being last minute.

11 MS. PEAVY: Well, Your Honor, the point is
12 Mr. Peel signed off on the stipulation of dismissal
13 as to Scottsdale in December.

14 THE COURT: I understand. I understand. I
15 heard you.

16 MS. PEAVY: He never signed the release.

17 THE COURT: I understand.

18 MS. PEAVY: Okay.

19 THE COURT: And if that was your understanding
20 from Judge Lee, then we are not going to argue that
21 motion for summary judgment now.

22 MR. PEEL: That is exactly right.

23 MS. PEAVY: Would you like me to hand up these
24 cases and a copy of the release, Your Honor?

25 THE COURT: I would, actually, yes.

1 MS. PEAUVY: May I approach?

2 MR. PEEL: And I agree, Your Honor, with the
3 number of motions, to release --

4 THE COURT: Right. I was going to say, I am
5 still going to bring the jury in, release them for
6 the day, and we'll just start with -- we are going
7 to finish the motions this afternoon, but we will
8 start with opening -- and start the trial tomorrow
9 morning.

10 MS. PEAUVY: Thank you, Your Honor.

11 THE COURT: Because it is already almost 3:30.
12 So if you will hand those up.

13 MS. PEAUVY: Okay. Can I actually -- these are
14 for you, Your Honor. Can I ask to get a copy of
15 this release? This is my file copy.

16 THE CLERK: Just one?

17 MS. PEAUVY: Yes. Oh, he's got copies. I'm
18 sorry.

19 MR. PEEL: That was one of the issues on our
20 directed verdict. This is not in evidence.

21 THE COURT: Right.

22 MR. PEEL: So if I am going to argue a motion
23 on this, I need some type of stipulation as to this
24 is an accurate copy.

25 MS. PEAUVY: We don't deny this is the release.

1 THE COURT: I'm just curious to see it. I
2 don't intend to make any ruling on anything.

3 MR. PEEL: And I wasn't trying to hold it from
4 her.

5 (Hands to Court.)

6 MS. PEAVY: And, Your Honor, we will also need
7 to be able to -- this morning Mr. Peel filed a
8 motion to amend his answer to assert the defense of
9 release. So we will need to be able to argue that
10 issue at the time perhaps when you are considering
11 the greater motion as a whole, if that is in Your
12 Honor's --

13 THE COURT: I understand. At this point let's
14 bring this jury in so that I can let them go for
15 the day.

16 MS. PEAVY: Okay.

17 THE BAILIFF: Now, Your Honor?

18 THE COURT: Yes, please.

19 THE BAILIFF: Yes, Your Honor.

20 (WHEREUPON, the jury came into open
21 court at 3:28 p.m.)

22 THE BAILIFF: Your Honor, the jury is present
23 and seated.

24 THE COURT: Thank you.

25 Ladies and gentlemen, I told you we were going

1 to start the trial of this case this afternoon, but
2 that is not going to happen. As I told you, I had
3 some matters of law to discuss with the attorneys,
4 and those are taking much longer than I
5 anticipated. I know that you have already been
6 back there for about half an hour, and I hate to
7 keep you sitting and waiting, and certainly
8 wouldn't want to leave you sitting for another hour
9 and then get started at 4:30, or something like
10 that.

11 So, that said, I'm going to spend the rest of
12 the afternoon with the lawyers dealing with those
13 matters of law, and I am going to dismiss you for
14 the day so that I don't waste your afternoon.

15 I'm going to ask you to be back in your jury
16 room tomorrow morning at 9:30. And I will tell
17 you, as I told you before, do not discuss the case.
18 Don't go home and try to do any research about the
19 case, about any of the attorneys, the parties, the
20 limited facts that you know about the case, or any
21 of the issues involved in the case. You shouldn't
22 be on Facebook or Twitter or just Googling the
23 issues in this case or the attorneys and the
24 parties to the case, or even the court personnel.
25 You are to get all of your information about this

1 case within this courtroom while court is in
2 session and from no other source.

3 You also shouldn't be on social media telling
4 people that you are on jury duty, only because it
5 is not a secret that you are on jury duty, but once
6 you post your Facebook status as jury duty, people
7 are going to ask questions about what is going on.
8 And you are not permitted to answer those
9 questions.

10 So you will be able to talk about all of it
11 when it is all over, but you shouldn't do that
12 during the week.

13 So, with that said, I'm going to dismiss you
14 for the afternoon. Be back in your jury room at
15 9:30 tomorrow morning, and we will begin then.

16 Have a good night.

17 THE JURY: You, too.

18 (WHEREUPON, the jury was released for
19 the day at 3:30 p.m.)

20 THE COURT: All right, counsel. Move on with
21 the next motion in limine.

22 MS. PEAVY: Yes, Your Honor. This is the
23 motion in limine that has been partially resolved
24 by the attorneys. It is the motion in limine to
25 exclude evidence relating to Ulysses Simpkins.

1 THE COURT: Yes, ma'am.

2 MS. PEAVY: And the attorneys have agreed that
3 we will not be -- that there will be no
4 solicitation of evidence relating to Mr. Simpkins
5 as it relates to the fact that Mr. Simpkins is
6 currently incarcerated, that Mr. Simpkins operated
7 a company that sold the vacant land to Mr. Curry
8 back in 2007/2008.

9 And the only issue left for the Court to
10 determine is whether Mr. -- is whether the
11 Defendant can elicit testimony relating to the
12 chain of title on this property, meaning going
13 through the Richland County property records to
14 show that Mr. Curry purchased it from AAO
15 Investments in 2008, I think it was. And that the
16 deed was recorded. The purchase price was around
17 \$2,500. All that.

18 And, Your Honor, we would just submit that
19 that puts into the jury's mind the idea that there
20 was something weird or unsavory about the property
21 transaction. There has been no dispute whatsoever
22 that Mr. Curry, at the time that this loss
23 occurred, was the record owner of the property and
24 continues to be so to this day.

25 So eliciting testimony about who he bought the

1 property from seems to try to plant in the mind of
2 the jurors that there is something relevant about
3 who the seller of the property was, the way the
4 transaction went down, all of that. So we would
5 ask Your Honor to exclude evidence related to that.

6 THE COURT: All right. Mr. Peel?

7 MR. PEEL: Your Honor, if I may? Everything I
8 agreed to is correct. There is no need to mention
9 anybody about the incoming deed. The only deed I
10 intend to introduce related to that property is the
11 incoming deed to Mr. Curry where he got the
12 property for \$5 from this AAO Investment and the
13 mortgage on the property, which is the subject of
14 another motion. I think we can handle it all in
15 one. It is really the same argument, I think.

16 THE COURT: I think probably they are too, but
17 tell me about both of those. What is the relevance
18 of the mortgage and the identity of the previous
19 owner?

20 MR. PEEL: Well, I do have several reasons.

21 THE COURT: Sure.

22 MR. PEEL: First I will point the Court to
23 kind of the history of this. And the history of
24 Mr. Curry and my client is going to be important
25 and how they conducted themselves. And that is

1 just really helping me more than you so I'll
2 remember it.

3 This property was -- the building permit was
4 pulled in 2007. This deed that we're talking about
5 is dated 12/3/2008. Mr. Curry had come to us to
6 purchase builders risk in 2009, October of 2009.
7 He bought a year-long builder risk policy, which
8 expired, and he let it go for some time uninsured.
9 And then we get into kind of the two policies that
10 this case was about. In October, where there is
11 another time where he lets it expire and comes back
12 and gets coverage.

13 So first, Your Honor, the reason that it is
14 relevant, the policy itself says that -- and I
15 still get it on my computer -- under the loss
16 payment section that they will pay -- one of the
17 limitations is they will pay no more than the
18 insured's financial interest in the property.

19 So to the extent that he paid \$5 for this lot,
20 the valuation of the house, the total financial
21 interest may in the end be important depending on
22 his testimony and testimony about what is in the
23 house. But that is a policy provision that limits
24 payment on the house. And that is what this case
25 is about is what would have been paid on that

1 policy.

2 THE COURT: Okay.

3 MR. PEEL: The second is the custom and habit
4 of how he dealt with his business, how these
5 non-conventional things kept happening in the
6 course of the builder policy. And, in fact, Your
7 Honor, I think it is probably important, the
8 mortgage, the mortgagee is a named insured on that
9 first insurance policy. From 2009/2010 he didn't
10 carry insurance, which I will get into to show that
11 that was his general habit, to let the insurance
12 expire. So how he got the property, what he paid
13 for it is relevant under the terms of the policy
14 and establishing the way Mr. Curry conducted
15 business.

16 THE COURT: Well, what is the problem with him
17 asking, When did you get the property? How much
18 did you pay for it? And things like that.

19 MS. PEAVY: Well, first of all, Your Honor, he
20 is saying that Mr. Curry -- I guess his line of
21 reasoning is Mr. Curry is only entitled to \$5 if
22 that is what his document shows under the policy.
23 Is that your argument?

24 And the Richland County Assessor's Office I
25 have shows Mr. Curry purchasing the property for

1 \$2,700, according to the Richland County records.

2 But, regardless, Your Honor, Mr. Peel has
3 already consented to the motion in limine as it
4 relates to the mortgage on the property.

5 I don't have a problem with him, you know,
6 saying, When did you buy the property, and all
7 that, but it seems to me going through these
8 documents has nothing to do with whether insurance
9 was placed on the property at the time the loss
10 occurred.

11 If they want to get up in front of the jury
12 and argue that all Mr. Curry is entitled to is
13 either \$5 or \$2,700 because that is what he paid
14 for the raw land in 2008, you know, I don't --

15 THE COURT: And he may intend to do that, I
16 don't know, but I don't see any problem with him
17 asking when he got the property, who he bought it
18 from, and how much it cost, and any questions about
19 when it was insured and was it insured, and things
20 like that.

21 THE COURT: Okay, Your Honor.

22 MR. PEEL: She's correct.

23 MS. PEAVY: That's fine. That's fine, Your
24 Honor.

25 MR. PEEL: But the deed -- I just want to

1 introduce the deed for what is on the face, the
2 date, time.

3 MS. PEAVY: Can I see the date that you are
4 referring to? Because it conflicts with the
5 assessor's record.

6 (Pause.)

7 THE COURT: All right. I am not going to rule
8 on the admissibility of that deed at this point. I
9 mean, I don't know what context it would come in
10 under, what foundation would be laid, if any,
11 unless he contested it was a true and accurate
12 copy, there is some issue of authenticity. I mean,
13 even that could be addressed at a later date. I
14 don't know if they have some witness to
15 authenticate it.

16 MR. PEEL: We can get a stamped copy from
17 right downstairs.

18 MR. GOODWYN: Just for clarity. Their
19 position in the case is that this is relevant
20 towards the proper damages argument that they are
21 going to argue that he is only entitled to \$5 under
22 this policy.

23 MR. PEEL: That's --

24 MR. GOODWYN: Correct. They sold him a
25 policy, they backdated it, and they say he wants to

1 get \$5.

2 THE COURT: I don't know what his argument is,
3 and I am not going to ask him at this point.

4 MR. GOODWYN: I want him to open on that. I
5 mean, that is a great argument for us.

6 THE COURT: I can't try your case for you. If
7 he ultimately argues that, fine, y'all will deal
8 with it however you deal with it.

9 MR. GOODWYN: Okay.

10 MR. PEEL: To be clear, that is not what I
11 said.

12 MR. GOODWYN: That is what you said. You
13 said --

14 THE COURT: Whether he did or didn't isn't for
15 me to determine right now. Let's move on to the
16 next motion, please.

17 MS. PEAUY: Thank you, Your Honor. I believe
18 that you have heard all you will hear from me, Your
19 Honor.

20 THE COURT: All right. Then let's go on.

21 MS. PEAUY: I believe my co-counsel has --

22 THE COURT: Another?

23 MS. PEAUY: -- one more.

24 MR. GOODWYN: Well, there is one more. This
25 is their motion, actually. I was going to respond

1 to their --

2 MS. PEAVY: Okay.

3 THE COURT: I will hear Ms. Peavy first.

4 MR. PEEL: Your Honor, I think we filed -- if
5 this is the proper time, we filed a motion to amend
6 this morning to assert the defense of release.

7 As Your Honor knows, a motion to amend should
8 be really granted, even can be granted during
9 trial. As I said, I just got this release, copy of
10 the release April 8th from -- I did move this
11 morning. It was too late Friday to get everything
12 done. Judge Lee may have already ruled on this.
13 It is hard to tell from the one line that she sent
14 us that it should be properly incorporated into the
15 trial -- and I don't have the quote from the e-mail
16 right now -- at directed verdict. But we just ask
17 to be allowed to amend to assert the defense of
18 release based solely on the release that we
19 received April 8th.

20 THE COURT: Yes, ma'am?

21 MS. PEAVY: Your Honor, we would oppose their
22 motion to amend at this late date. And the reason
23 for that is that they were on notice that we
24 settled with Scottsdale in December. And they
25 signed off on the stipulation of dismissal as to

1 Scottsdale. They never signed any release. They
2 were never dismissed on this case. We're here to
3 try the case. And now they are trying to say that,
4 oh, they were released from it at this late date
5 when they have known that Scottsdale has been out
6 presumably because we settled with Scottsdale since
7 December.

8 So now to move to amend on the day of trial to
9 assert this when they have known about it, it goes
10 to their summary judgment motion, Your Honor, but,
11 you know, I think it is -- I don't think it is
12 proper. I would ask that the Court deny the
13 motion. They are moving to amend the day of trial
14 on an issue that they had notice of five months
15 ago.

16 MR. PEEL: I did not have notice of it. You
17 did not serve me with a copy of the release and I
18 distinctly requested copies of any correspondence,
19 e-mails, anything like that, any documents between
20 the Plaintiff and any Co-Defendants, any Defendants
21 in the case, and y'all did not provide it to me.

22 MS. PEAVY: He had notice that the release
23 would have existed because he signed off on the
24 stipulation of dismissal as to Scottsdale in
25 December.

1 THE COURT: So because he didn't move to
2 enforce or file a motion to compel to enforce --

3 MS. PEAVY: He didn't ask me for it.

4 THE COURT: I haven't finished my question.

5 MS. PEAVY: I'm sorry.

6 THE COURT: -- to compel you to comply with
7 your continuing duty to disclose -- or provide
8 documents under the Rules of Evidence, then he
9 should be foreclosed from being able to do that
10 now? Is that your position?

11 MS. PEAVY: Your Honor, my position is he was
12 on actual notice that a settlement agreement had
13 been executed. If I failed to provide that to him
14 in December, that is my error, but it is not that
15 he didn't have notice that it existed. He knew
16 Scottsdale had been released because he signed off
17 on the stipulation of dismissal as to Scottsdale.

18 THE COURT: I know, but it seems to me that
19 you are seeking to benefit from your failure to
20 provide him with a copy of the document. You have
21 a continuing duty under the Rules of Civil
22 Procedure to --

23 MS. PEAVY: Uh-huh.

24 THE COURT: -- provide copies of documents.
25 If it was something that he previously requested,

1 you came into possession of it in December and did
2 not provide a copy to him in December, January,
3 February, or March, and he seeks to enforce it in
4 April, I don't know that you should benefit from
5 your delay.

6 MS. PEAUVY: Thank you, Your Honor.

7 THE COURT: Or your failure to do that.

8 MR. PEEL: Your Honor, may I add one thing?

9 THE COURT: Sure.

10 MR. PEEL: I'm sorry. There is absolutely no
11 prejudice because it is their document. They know
12 what is in it.

13 THE COURT: And he has just received a copy of
14 it on April 8th. I am inclined to -- yes, I am
15 going to grant the motion. I know it ties into the
16 motion for summary judgment really.

17 MS. PEAUVY: Okay.

18 THE COURT: But, yes, you know, Rule 15(a) --
19 is it? I don't know. Rule 15 allows amendment of
20 the pleadings. Amendments are freely given when
21 justice so requires and the opposing party is not
22 significantly prejudiced. I find that is the case
23 here, particularly in light of the fact that you
24 had a copy and you knew what it said. Yes. And
25 you were under a continued duty to disclose anyway.

1 So I will allow that amendment.

2 MR. PEEL: Thank you, Your Honor.

3 THE COURT: What is next? And before you even
4 get to the next motion, I see before me Defendant's
5 motion in limine to disqualify the Plaintiff's
6 expert witness and disregard purported expert's
7 affidavit.

8 Just reading the face of this motion, the
9 basis is that Mr. Hesse will testify about matters
10 within common knowledge of the jury and he is not
11 qualified to testify as an expert. Without having
12 heard his testimony, I mean --

13 MR. GOODWYN: And we would suggest we take
14 that up when we produce him.

15 THE COURT: Right. I can't rule on that now.
16 Certainly there will be an opportunity for you to
17 lay a foundation for him as an expert and the need
18 for his expert testimony. There will be an
19 opportunity for voir dire from the Plaintiff of his
20 qualifications. But I will not make a ruling on
21 that matter at this time.

22 MR. PEEL: Okay. Thank you very much. I'm
23 sorry, I misplaced my notes I made during lunch so
24 I could get through this quickly.

25 Next would be the Carolina Insurance Group's

1 provide me a summary. I'm not real clear on that.
2 We can get together and straighten it out.
3 Anything else that has a legal argument I can bring
4 up at the time they try to introduce it will be
5 fine.

6 THE COURT: Okay. The only thing that is
7 left, then, is this motion for summary judgment.
8 And I understand that nobody was prepared to argue
9 that today.

10 My reading of Judge Lee's message is that, You
11 should be prepared for trial today and you can take
12 up any additional issues with the trial judge.
13 That would be me. The motions can be incorporated
14 into the defense of the case and argued at the
15 directed verdict stage.

16 I'm sort of struggling with that because that
17 is -- if that is what y'all were prepared to do,
18 that is what we'll do, but --

19 MR. PEEL: Can I state my concern on the
20 record?

21 THE COURT: Please.

22 MR. PEEL: Procedurally how this might be a
23 problem?

24 THE COURT: Please.

25 MR. PEEL: I filed the motion late, but I

1 think -- right at the eve of trial, and I don't
2 blame Ms. Peavy at all for not wanting to have to
3 deal with it right away because she is trying to
4 get ready for trial, just like me, working all
5 weekend. However, it is a legal issue and I just
6 became aware of it. If it is not ruled upon prior
7 to trial starting, then I don't have any idea of
8 what evidence that I need to put in, or at least
9 proffer and have turned down to preserve reversible
10 error. So I didn't think of that until we were
11 sitting here a minute ago. So it is a real issue.
12 And I think that that is what Judge Lee said, that
13 needs to be reconsidered, because my concern is
14 that I get to directed verdict and I have waived my
15 client's right to present that defense without
16 preserving error on the record regarding the
17 admission or not of the release for consideration
18 by the trier of fact.

19 THE COURT: And, obviously, counsel, that is
20 sort of my concern too, and that is why I said I
21 was sort of troubled by Judge Lee's decision.

22 MR. GOODWYN: I mean, I don't have any problem
23 with you seeing the release and ruling on the
24 release, and all of that. It is just we don't want
25 to go before the jury. Why can't we just kind of

1 stipulate that it is the release and it is in
2 evidence but not for the jury to see but for the
3 Court to see to rule on this summary judgment and
4 the release issue?

5 MR. PEEL: I think that is a perfectly
6 reasonable position. However, in reading the case
7 law on this, which we have not argued today, the
8 issue may become, if Your Honor says, I do not see
9 in the four corners of this document that it is a
10 release, we would have to offer extrinsic evidence
11 to demonstrate its intent. Or if you found that
12 there was a reason for extrinsic evidence and then
13 it would have to be introduced, I would have to
14 cross-examine Mr. Curry on it, and I just -- I
15 don't want to -- I don't want to waive my client's
16 rights.

17 MR. GOODWYN: My problem with that, though, is
18 extrinsic evidence, I wouldn't want to call
19 Scottsdale to come and say, Did you think you were
20 settling out with the other Defendant, and they
21 would say presumably no. But now we are here at
22 trial, they are in Arizona, I can't depose and get
23 them here. I have no way to show that. Not to
24 this jury. Maybe if we reserve that for, you know,
25 another trial, or something like that. But, I

1 mean, that is a problem with filing it the day of
2 the trial is that we can't get the witnesses we
3 need here to defend that argument.

4 (Pause.)

5 MR. PEEL: Your Honor, we have just discussed
6 it. I'm wondering if perhaps you will give us this
7 evening to more clearly present to the Court what
8 we believe the law to be is on this subject and aid
9 Your Honor in rendering a decision first thing in
10 the morning?

11 THE COURT: Actually, that is what I would
12 suggest actually. And, of course, prepare to begin
13 trial as though I denied your motion for summary
14 judgment. But, yes, overnight if you could pull
15 together your arguments, any law that you think
16 applies, and we'll start at 9:00 o'clock in the
17 morning.

18 MR. PEEL: Okay.

19 THE COURT: So that I can hear arguments.

20 MR. GOODWYN: We are going to argue the
21 summary judgment tomorrow?

22 MR. PEEL: She said be prepared to.

23 THE COURT: Yes.

24 MR. PEEL: Perhaps.

25 THE COURT: Yes. And I don't know what my

1 decision -- of course I don't know what my decision
2 will be at that point, and I know that that gives
3 you a really short turnaround, but --

4 MR. GOODWYN: I can't even get -- I have got
5 to provide an affidavit in response two days before
6 the motion. And I'd like to get one from
7 Scottsdale, get their take on what the intent was
8 and I can't do that.

9 MR. PEEL: At this point, I'm not asking -- I
10 think that would be the ruling is that as a matter
11 of law you can't consider anything outside of the
12 four corners of that document. If you can't decide
13 it based upon the four corners of that document,
14 that is the only time we need to get into that,
15 even worry about getting it to the jury.

16 MR. GOODWYN: Well, maybe we can just -- if
17 you rule that I can decide within the four corners,
18 that is one thing, then we don't have to worry
19 about what all this other extrinsic evidence is.

20 MR. PEEL: That's what I'm saying.

21 MR. GOODWYN: If we don't, yes. If you say, I
22 need extrinsic evidence, then we can cross that
23 bridge when we get there.

24 THE COURT: Right. I would agree with that.

25 MS. PEAVY: Thank you, Your Honor.

1 THE COURT: I know that is an odd sort of
2 situation.

3 MS. PEAUVY: Uh-huh.

4 THE COURT: And it may or may not get us any
5 farther down the road in this case, but I think I
6 need to hear some preliminary arguments on it.
7 Something.

8 MR. GOODWYN: Right.

9 THE COURT: In the morning. That gives you
10 overnight to prepare as much as you can.

11 Yes, ma'am?

12 MS. PEAUVY: I mean, there is many, many legal
13 issues contained in their motion for summary
14 judgment, Your Honor, that need to be fully
15 briefed. They are contending that, you know --
16 their whole thing goes to -- they say that it is a
17 question of law, but then they are talking about
18 the fact that we have identified them alternatively
19 as being agents of Scottsdale, but then the
20 testimony in the case is undisputed that both
21 Scottsdale and Carolina Insurance Group and
22 Mr. Derrick deny unequivocally that they are in any
23 kind of agency relationship. So, you know, already
24 there we're at questions of fact that are right
25 there.

1 MR. GOODWYN: And we're going to have to --

2 MS. PEAVY: They are saying the language of
3 the release releases Scottsdale's agents and they
4 have been identified as agents of Scottsdale even
5 though they themselves and Scottsdale have both
6 denied that they are agents, in an agency
7 relationship. So right there you are at a question
8 of fact, Your Honor.

9 MR. PEEL: Your Honor, I wasn't prepared to
10 argue it. If she wants to argue it, I'll do so.

11 MS. PEAVY: Just --

12 THE COURT: And, of course, right, like I
13 said, we are going to argue this in the morning. I
14 assume that their response to that would be that
15 the party's intent control -- of course, they were
16 not parties to this release -- and if it was your
17 intent -- if you believe that they are agents and
18 it was your intent to release agents of Scottsdale,
19 then --

20 MR. GOODWYN: We didn't know what they were.
21 You know, we just -- you pick out agents, you
22 don't --

23 THE COURT: I don't know. I am telling you
24 that may or may not be their response. I'm not
25 sure.

1 MR. GOODWYN: But, anyway, just because we
2 allege something doesn't make it so. If they are
3 not agents, in fact, if we thought they might have
4 been at some point, we were wrong. You don't know
5 when you file a complaint what the relationship is,
6 you just make allegations. They denied it. Okay.
7 It is not even a factor in the case anymore.

8 MR. PEEL: Except if you amend after you have
9 taken all the depositions.

10 MR. GOODWYN: I don't think so.

11 THE COURT: Well, I think it is akin to me
12 thinking that your name is Bob, and I say, Bob, go
13 over there, I intend to tell you to go out that
14 door, whatever it is, even though I may be wrong
15 about your name. I mean, my intent was to get you
16 to do a thing even though I'm wrong about the
17 identity. I don't know that is the argument.

18 MR. GOODWYN: Just for the record, I do want
19 to object to hearing the summary judgment motion
20 tomorrow just because this was filed last Friday,
21 we haven't had ten days' notice to prepare, we
22 cannot get any affidavits, and it is very short
23 notice for a complicated legal argument.

24 MR. PEEL: We don't intend to argue anything
25 outside the motion. And then, you know -- my

1 understanding is we may or may not argue. You want
2 us to be prepared to argue.

3 THE COURT: I want you to be prepared to
4 argue.

5 MR. PEEL: And then you want us to present
6 reasons why it may be prejudicial or not to deal
7 with it on the front end.

8 THE COURT: Absolutely.

9 MS. PEAVY: So the first issue is whether it
10 should even be heard, and then you'll decide
11 whether you will hear it based on those arguments,
12 Your Honor, if I'm understanding?

13 THE COURT: All right. Because there is a
14 real possibility that as a matter of law this case
15 should be over. I don't know. I don't know. And
16 that is their argument.

17 MS. PEAVY: Uh-huh.

18 THE COURT: So I'd like to hear arguments on
19 that issue in the morning.

20 MS. PEAVY: Thank you, Your Honor.

21 THE COURT: But also presume that I will deny
22 the motion and be prepared to try the case.

23 MR. PEEL: We are ready today, Judge.

24 THE COURT: Plus, I think the rules say that
25 outstanding motions are to be heard before

1 commencement of the trial of the case. I can't
2 find the rule right off, but --

3 MR. GOODWYN: It says we get ten days to
4 prepare a response for summary judgment.

5 THE COURT: I understand. I understand. All
6 right. So we will back at 9:00 o'clock tomorrow
7 morning.

8 MS. PEAUVY: Thank you.

9 THE COURT: Thank you.

10 MR. PEEL: Your Honor, can we leave some of
11 our boxes?

12 THE COURT: Absolutely. The courtroom will be
13 locked.

14 (WHEREUPON, the requested proceedings
15 were concluded for the day at 4:10 p.m.)

16 APRIL 19, 2016

17 (WHEREUPON, the requested proceedings
18 resumed at 9:27 a.m.)

19 THE COURT: Good morning.

20 MS. PEAUVY: Good morning, Your Honor.

21 MR. PEEL: Good morning, Your Honor.

22 THE COURT: Now, I know when we broke
23 yesterday I told you to prepare to argue the
24 summary judgment motion. And that is something I
25 was wrestling with both before starting yesterday,

1 throughout yesterday, last night, this morning,
2 because my concern is that there may or may not be,
3 I don't know, but there may be a valid defense to
4 this case.

5 However, because of the late nature of the
6 filing of the motion, or the amended motion at
7 least, for summary judgment just having been filed
8 yesterday, I tend to agree with the Plaintiff and
9 with Judge Lee, and I come back to it not being a
10 timely motion for summary judgment. And as Judge
11 Lee suggested, perhaps that defense needs to be
12 raised, argued, whatever, at the directed verdict
13 stage.

14 In order for that to happen -- I know we went
15 through several motions in limine yesterday, and I
16 think that specifically the one as to -- mention of
17 the settlement with Scottsdale or the mention of
18 Scottsdale Insurance Company, I forget exactly what
19 it was titled, since we have such a large file
20 here -- I maintain that it is not appropriate for
21 the jury to determine any setoff or reduction, or
22 anything like that, but I do think on a very, very
23 limited extent, if Mr. Peel feels it is necessary,
24 that you should be able to question the Plaintiff
25 about whether he signed this release, or something

1 of that nature, to -- I don't want to say --

2 MR. GOODWYN: I may have a way around all of
3 that.

4 THE COURT: Okay.

5 MR. GOODWYN: I think the question is -- their
6 argument, from what I understand, is that the
7 release to Scottsdale and its agents and because --
8 and then the question is, Are their clients agents?
9 That is the ultimate question. If they are not
10 agents, the release doesn't apply to them. If they
11 are agents, then the release applies to them. That
12 is my analysis of it.

13 And so the jury doesn't -- the jury doesn't
14 need to see the release. The only question -- fact
15 question -- that may be out there is, Are they
16 agents or not? And, again, we filed a stipulation
17 this morning that they are not. They have
18 alleged -- they denied the allegation that we made
19 in our complaint, and we filed a stipulation this
20 morning saying that they are not agents. We
21 stipulated to that fact now in this case. That is
22 a fact in the case. Anyway. If you want to send
23 it to the jury, that's fine, but they don't need to
24 see the release.

25 THE COURT: And I wasn't suggesting that the

1 jury would see the release or that it be admitted
2 into evidence, but to the extent that -- and I
3 don't know what the argument is going to be --

4 MR. GOODWYN: And we can stipulate to what we
5 need to to allow the judge to review the release.

6 MS. PEAVY: But, Judge, they are still asking
7 for the judge -- it incorporates the issue of the
8 judge construing what the release means.

9 THE COURT: Absolutely.

10 MS. PEAVY: What the release says. But that
11 is the summary judgment motion. And that is what
12 I'm saying, Your Honor. I think that what we need
13 to do here -- and I laid this out in my memorandum
14 this morning under the section entitled
15 "preliminary matters" as to whether the motion
16 should be heard.

17 Your Honor has correctly noted the ten day
18 requirement has not been met here. And we would
19 request that there be no hearing on the motion for
20 summary judgment, which necessarily incorporates
21 the judge hearing motions as to what the release
22 means as a matter of law and making a finding as a
23 matter of law. And that directly impacts our
24 ability to present our case, because if they are
25 allowed to get testimony as to, Well, you ended up

1 releasing Scottsdale from any claims in this
2 matter, then that means that there has been a
3 determination that they believe -- that there has
4 been a determination that the release is ambiguous
5 and therefore is a question for the jury, or there
6 has been a determination by the Court as a matter
7 of law that the release is not ambiguous and it
8 does apply to their client.

9 So, Your Honor, I think that that situation in
10 this case is for the motion for summary judgment
11 that was filed -- obviously we can't have a timely
12 hearing of it now -- that it be added to the
13 motions roster, Your Honor, and that the trial of
14 this matter not go forward, because it all circles
15 back to the process of what the release means. And
16 they can't argue that properly within this case.
17 They need to be able to argue it in a separate
18 summary judgment motion.

19 THE COURT: And I don't want to play a
20 semantics game, but really sort of envisioning what
21 Judge Lee meant and what I think would be
22 appropriate -- I understand it is styled as a
23 summary judgment motion -- is not appropriate at
24 this time, because you have not had ten days'
25 notice. However, at the directed verdict stage,

1 after the Plaintiff has presented their case, or
2 may be at some point after the Defendant has
3 rested, I don't know which would be appropriate or
4 whether it would be an appropriate argument at
5 either time, but in any trial at the directed
6 verdict stage the contention of the party making
7 the motion is that there is either a lack of
8 evidence as to some element or just as a matter of
9 law just in general the case should not be
10 submitted to the jury. There is nothing for the
11 jury to determine, no issues of fact for the jury
12 to consider, because as a matter of law the case
13 cannot go forward. That is essentially what the
14 summary judgment motion is, that as a matter of law
15 this case cannot go forward. And maybe it can't
16 come up at summary judgment, but certainly at a
17 trial the judge can determine as a matter of law
18 whether the case goes forward.

19 MS. PEAVY: Your Honor, certainly that is the
20 standard for directed verdict, but in order for
21 them to make a motion for directed verdict based on
22 the grounds they listed in their summary judgment
23 motion, the release has to be part of the record.
24 And it has to be evidence in the case. And it is
25 not evidence in the case.

1 THE COURT: Let me hear from you, Mr. Peel.

2 MR. PEEL: Thank you. And, Your Honor, and
3 I'd like permission to put something on the record.
4 I hear you have ruled about hearing it, but I think
5 just to preserve errors I have got to do this, if
6 it is okay with you, just briefly.

7 THE COURT: Absolutely.

8 MR. PEEL: As to the timeliness of the filing,
9 because I think we all spent a lot of time last
10 night getting ready for this today, but Your Honor
11 was correct yesterday, Rule 16, as a matter of fact
12 I believe it lets the trial judge take care of all
13 outstanding motions prior to trial. And, in fact,
14 Summer Place v. Knight, 379 S.E.2d 724 -- I hand
15 the Court a copy, if that is okay -- the Court of
16 Appeals -- this is one of Judge Peeples' cases
17 where he ruled in chambers on summary judgment with
18 no notice -- the Court said they have a summary
19 judgment pending and they weren't aware it had been
20 decided at pretrial conference with no court
21 reporter present without violating the civil
22 procedure rules. And Court Administration can
23 provide all motions pending at the time of pretrial
24 hearing which was not presented for disposition so
25 it wouldn't violate Rule 56.

1 As to timeliness, I feel like I've got to
2 address that, because I reviewed all the
3 correspondence in the file last night. I was never
4 served, ever, under Rule 5 with a file copy or even
5 a transmitted copy to the court of the stipulation
6 of dismissal. I never received that. In addition
7 to not receiving the release, I never even got the
8 stipulation. Now, I know the case was settled. I
9 was aware. They asked me to sign the stipulation
10 and I sent it back.

11 THE COURT: Go ahead.

12 MR. PEEL: But I was never served with it. So
13 until I realized I didn't have any of this,
14 April 8th is the first day I got it, so April 8th
15 it is impossible for me to comply with Rule 56(c)
16 and file a motion for summary judgment, because
17 that puts -- I think ten days is still like
18 tomorrow or the next day, before I could file it.
19 So it clearly was included in my request for
20 production that all e-mail correspondence, notice
21 statements between the parties, and it was not
22 supplemented.

23 So a party should not be able to profit from
24 their own wrongdoing by putting me in this
25 position, but I do agree with Ms. Peavy, because I

1 think we do have an evidentiary issue, that the
2 problem exists upon our review of the case law last
3 night. It is no problem at all if Your Honor
4 reviews the settlement release and says it is
5 unambiguous and rules for either one of us. That
6 does not create a problem. What creates the
7 problem, Ms. Peavy is right, is that if there is a
8 ruling of ambiguity --

9 THE COURT: Sure.

10 MR. PEEL: -- then there is a question of fact
11 to be reviewed by the jury. And if it is not dealt
12 with pursuant to Rule 16 -- I say that is the
13 reason for that rule -- then there is a real issue
14 when we get to the directed verdict stage. And
15 Ms. Peavy is right. I think we have to deal with
16 it or we have to continue the trial. Otherwise, my
17 client will be prejudiced on that defense, because
18 I agree we don't -- we can't -- I mean, I think
19 there is a prejudicial effect to the jury if it
20 came in. It would outweigh those risks. But if we
21 have an issue and we have determined -- if we
22 determined that it is ambiguous, as the Court may
23 well find, then we have got to get a determination
24 of fact.

25 The stipulations now as to what was said in

1 the complaint -- I feel like I need to address
2 that -- don't matter. All that matters is what was
3 going on at the time the release was entered.

4 THE COURT: Right.

5 MR. PEEL: But, Your Honor, I think it is the
6 exact reason of Rule 16 is to prevent situations
7 like that. And, like I said, it is not fair to
8 prejudice my client because we didn't get this
9 until the week before trial.

10 MR. GOODWYN: And, again, we're fine --

11 THE COURT: Mr. Peel, the motion for summary
12 judgment filed on yesterday morning was an amended
13 motion. When was the original motion filed?

14 MR. PEEL: Friday.

15 THE COURT: Do you have a copy of that that I
16 can look at? We're having trouble locating it.

17 MR. GOODWYN: I think we do.

18 THE COURT: And it may not have made it to the
19 court's file because it was not on the shelf in
20 preparing for this trial. I don't know.

21 MR. PEEL: Your Honor, that is the danger of
22 keeping everything electronically.

23 MR. GOODWYN: This is my copy here.

24 (Hands to Court.)

25 THE COURT: Thank you, sir.

1 MS. PEAUVY: Your Honor --

2 MR. GOODWYN: Now that he has kind of said
3 what he said, I mean, we don't have objection to
4 the trial being continued so all this issue about
5 the release and whether the Defense -- the release
6 is valid can be determined.

7 MS. PEAUVY: The reality, Your Honor, is that
8 if either side gets an adverse -- and we believe
9 they are moving obviously for a motion for summary
10 judgment as to their affirmative defense of
11 release. And so there will be rulings issued on
12 the motions for summary judgment. The parties will
13 presumably want to submit affidavit testimony or
14 further testimony in response. And so we believe
15 the proper thing is to continue this trial so that
16 these motions can be heard, and then any appeal
17 from the granting or denial of such motions can
18 work its way through the system. Because, really,
19 this issue is now becoming the crux of the case.

20 THE COURT: Well, I tell you, I considered --
21 and that is where I was yesterday afternoon --
22 continuing the trial. My concern is that this was
23 set for a day certain.

24 MR. GOODWYN: Only because of the expert's
25 schedule.

1 THE COURT: And --

2 MR. GOODWYN: We didn't know about all these
3 problems.

4 THE COURT: Let me just note, though, it was
5 scheduled for a day certain to accommodate your
6 expert, who is then not available on Wednesday or
7 Thursday of this week.

8 MR. PEEL: It was supposed to be a two to
9 three day trial when that was agreed to in the
10 status conference with Judge Lee. I apologize for
11 that. I thought he could be here. But we could --
12 generally, unless he's being a sponsor like he was
13 this day, then he would be able to get somebody to
14 sub for the course.

15 THE COURT: So he doesn't need -- I mean, you
16 don't need a day certain?

17 MR. GOODWYN: Not generally.

18 MR. PEEL: Well, what I could do is the next
19 couple of terms I can go check right away and see
20 about his schedule and we can work around it.
21 Generally two days is unusual unless he has to
22 teach in Boston sometimes. Usually it is one day.
23 So usually it is fairly easy to work around.

24 MR. GOODWYN: Are you available next month if
25 it is continued to try the case?

1 MS. PEAUVY: May or June?

2 MR. GOODWYN: We're available. Because of the
3 prejudice to the jury and this whole release issue
4 and the timing, it just makes a lot of sense to get
5 this issue resolved first so we don't prejudice the
6 jury by any exposure to the release.

7 MR. PEEL: Judge, I want to say something to
8 make something clear. Not getting the release, I
9 believe that is completely inadvertent. I don't
10 want anyone to think I am saying that they held
11 back the release.

12 MR. GOODWYN: The day he asked, we gave it to
13 him. I never sent a Rule 11 letter saying, Hey, I
14 know there is a release out there, please provide
15 it. As soon as he asked for it, we gave it to him.

16 THE COURT: I understand. And, frankly -- I
17 know this is maybe asking a bit much, I know how
18 the practice of law goes -- but I think had you
19 received the release on April 8th, reviewed it that
20 day, and filed a motion for summary judgment that
21 day, we would not be here, because even excluding
22 that day, today would be the tenth day.

23 MR. PEEL: Well, even so, it doesn't apply.
24 Technically, as the practice of law goes, I did get
25 it that day, but getting ready for this trial --

1 THE COURT: I understand. I understand.

2 MR. PEEL: -- I'm not sure --

3 THE COURT: I understand.

4 MR. GOODWYN: The next nonjury calendar is ten
5 days from Friday. And that should give us plenty
6 of time for the judge to rule and let the judge
7 know we're on the trial calendar for the next term.

8 MS. PEAVY: I mean, that would be up to the
9 Clerk's Office, what motions roster it would be
10 placed on, Your Honor, but we are going -- we are
11 filing -- have filed a motion for summary judgment
12 today, almost like a cross motion on the
13 affirmative defense of release, and so then they
14 will need ten days to respond to that as well,
15 so --

16 MR. GOODWYN: Ten days from today.

17 THE COURT: So what I'm going to do, I am
18 going to continue the case. It will be continued
19 until May 9th. Because you need ten days' notice
20 on these motions, it cannot be scheduled next week.
21 And then the week of May 2nd there is no court. So
22 the next available appropriate term of court will
23 be May 9th. I do not intend to ask the Clerk's
24 Office to put it on any special motions roster or
25 schedule it as they would motions. You will come

1 in that morning prepared to argue the motions. And
2 depending on the outcome of those motions, you will
3 begin the trial that morning.

4 MR. PEEL: Your Honor, and we can deal with my
5 expert. If it looks like he is out of town, we can
6 go ahead and get his video deposition done, so that
7 way --

8 MR. GOODWYN: I don't have a calendar of court
9 terms. Is there another term of court close to
10 that? We have got a huge federal court case with a
11 class action with six motions that day, or that
12 week.

13 MS. PEAVY: Well, Your Honor, the other issue
14 I anticipate with that is almost the same issue
15 that has impacted this trial this week, is that if
16 we receive -- if a motions hearing is held, but at
17 the same time we are preparing for the trial of the
18 case, then all the witnesses have been corralled.
19 But if an adverse ruling is entered for either
20 party, then it would be an appealable issue, Your
21 Honor, and then the jury would have been convened
22 and the witnesses would have been assembled here,
23 and then it would all be -- the court's resources
24 would have been --

25 MR. GOODWYN: It will be more judicially

1 efficient, I think is what she is saying, to have
2 the motions hearing held a few days before so we
3 know the result before we actually go in the
4 courtroom and have everybody ready.

5 MS. PEAVY: And qualify a jury and strike a
6 jury, and everything else, Your Honor.

7 THE COURT: I understand. The problem is,
8 Judge Lee said this case will not be continued, it
9 has been continued a number of times. So I am sort
10 of stepping out on a limb in continuing it at all.
11 I will be happy to have a motions hearing before
12 the 9th, except that I am not available. You know,
13 I --

14 MR. GOODWYN: Is there a nonjury calendar,
15 motions calendar between now and then that
16 anybody -- I mean, that should be put on that
17 calendar.

18 MS. PEAVY: And, Your Honor, we can certainly
19 write Judge Lee and her law clerk to request it be
20 added to a different motions roster and explain the
21 situation.

22 THE COURT: I mean, allowing ten days' notice
23 from -- no, there isn't. There isn't another term
24 of court, because ten days' notice, if you filed a
25 motion this morning, exclusive of today, would put

1 us into --

2 MS. PEAVY: I'm talking about a motions
3 nonjury term.

4 MR. GOODWYN: When is the next motions
5 calendar? Because he said he would waive ten days'
6 notice if -- I mean, as long as we have four or
7 five days, I think that would be plenty, or
8 something within ten days.

9 THE COURT: I don't really know how to read
10 the calendar. Is there a motions term next week,
11 or do you know?

12 THE CLERK: I'm not sure.

13 THE COURT: There may or may not be a day that
14 we can stick it on next week. Again, I'm not
15 available next week. And then there is --

16 MR. GOODWYN: Maybe we can ask Judge Lee for a
17 special set date for us next week.

18 THE COURT: Right. Except that I don't know
19 Judge Lee's schedule, and I am not going to just
20 leave it out there. I want it scheduled before we
21 leave here today.

22 MR. GOODWYN: Can we maybe consult with Judge
23 Lee before we leave?

24 THE COURT: She's in court. And I hear what
25 you are saying about the 9th. And I don't know

1 that that is -- having the witnesses come and
2 having to be prepared for trial is so much judicial
3 efficiently so much as convenience for your
4 witnesses or not, I don't know. But if there is no
5 motions term next week, then it will have to be the
6 9th. And then you'll be prepared to go forward at
7 that time with whoever the judge is.

8 MS. PEAUY: Okay.

9 MR. GOODWYN: I don't know my rules of
10 conflict with federal court. Do federal motions
11 take precedence over a jury trial?

12 (Pause.)

13 THE COURT: Mr. Truitt is on the way.

14 (Pause.)

15 THE COURT: As to the 9th, you say you have
16 motions in federal court?

17 MS. PEAUY: We have a pending class action in
18 federal court.

19 THE COURT: What is scheduled for the 9th?

20 MS. PEAUY: Scheduled for the 9th is
21 approximately 10 to 12 motions that have been
22 pending in the case for approximately six months.
23 And Judge Childs' office elected to schedule them
24 on May 10th.

25 (Mr. Truitt enters courtroom.)

1 MR. TRUITT: Hello, Your Honor.

2 THE COURT: Hello. These folks were set to
3 begin trial this week. They have some motions that
4 need to be heard in advance of trial. I don't want
5 to continue the case for too, too long, and so I'm
6 trying to figure out what is going on next week.
7 Does somebody have a motions term throughout the
8 week where I can tag them on one day? Or I don't
9 really know how to read the calendar where it says
10 nonjury, what that really means.

11 MS. PEAVY: It is showing Judge Hood is here.
12 We were wondering if he could possibly fit.

13 MR. TRUITT: Judge Hood is doing motions.

14 THE COURT: Motions, motions, motions?

15 MR. TRUITT: Yes.

16 THE COURT: Okay. That's what I needed to
17 know. Thank you.

18 So what we are going to do is add on --

19 MR. GOODWYN: The 25th, it says.

20 THE COURT: Says what?

21 MR. GOODWYN: Judge Hood's motions calender.

22 THE COURT: So I am just going to squeeze two
23 motions in in this case. So I'll try to pick a
24 time where there are lots of motions to compel or
25 something.

1 (Colloquy held off record.)

2 THE COURT: What day?

3 MR. GOODWYN: The 25th?

4 MR. PEEL: Judge, the only day I can't is
5 Thursday. I have got my schedule out.

6 THE COURT: It says: Appearance shall have
7 such priority as is appropriate. But because it
8 has been scheduled a while, I am going to continue
9 the trial until I guess the week of May 16th. And
10 if it can't happen, I mean, you know, if it is
11 stayed pending some appeal, that -- but, if not, if
12 there is no reason not to go to trial, if no appeal
13 is filed after these motions are decided,
14 dada-dada-da, we should be prepared to try the case
15 on May 16th.

16 MR. GOODWYN: Oh, absolutely.

17 MS. PEAVY: Okay. And, obviously, Your Honor,
18 that would also depend on Judge Hood issuing an
19 order prior to the May 16th term. Okay.

20 MR. GOODWYN: We will let him know that we
21 were in here and that we really need to try the
22 case by the 16th.

23 THE COURT: Absolutely. Absolutely.

24 MR. PEEL: And I will take care of my expert.

25 If we need to, I'm sure we will work out a date, we

1 will do a video deposition.

2 MR. GOODWYN: Yes.

3 MR. PEEL: That way it is not an issue.

4 THE COURT: Right. So, just to be clear, in
5 addition, I forget which expert hasn't been
6 deposed --

7 MR. GOODWYN: Well, now the expert is
8 finally -- well, I guess we have time to depose
9 their expert if we want to between now and trial.

10 THE COURT: Absolutely. So any depositions,
11 any additional discovery --

12 MR. GOODWYN: And they can depose our guy.

13 THE COURT: Exactly. And for whatever reason,
14 if the Defendant needs to depose the Plaintiff to
15 talk about those credit card statements, that all
16 needs to be done before May 16th.

17 MR. GOODWYN: Okay.

18 MS. PEAVY: Thank you so much.

19 MR. GOODWYN: All right. Thank you. Tell the
20 jury we apologize for all the confusion.

21 THE COURT: Absolutely.

22 MR. GOODWYN: They will probably be really
23 happy. They can actually say they have served now,
24 they have been sworn?

25 THE COURT: They have not been sworn.

1 MR. GOODWYN: Oh.

2 MR. PEEL: Judge, thank you. Sorry for the
3 confusion.

4 THE COURT: Thanks, Jim.

5 MR. TRUITT: You're welcome.

6 THE COURT: We are going to bring the jury
7 back in, so y'all just sit tight and have a seat
8 while I dismiss the jury.

9 (WHEREUPON, the jury was dismissed.)

10 (WHEREUPON, at 10:05 a.m., the requested
11 proceedings were concluded.)

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(END OF REQUESTED TRANSCRIPT)

24

25

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	2014-CP-40-4661
	)	
	)	
	)	
	)	
PORTHEMOS CURRY,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
SCOTTSDALE INSURANCE	)	
COMPANY, CAROLINA INSURANCE	)	
GROUP OF SC, INC., AND	)	
MAURICE DERRICK,	)	
DEFENDANTS.	)	

April 26, 2016
Columbia, South Carolina

B E F O R E:

THE HONORABLE ROBERT E. HOOD, JUDGE.

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

RACHEL PEAVY, ESQ.
Attorney for the Plaintiff

WESLEY D. PEEL, ESQ.
Attorney for the Defendant

KAREN AMBROZIAK, RPR
Circuit Court Reporter

P R O C E E D I N G S

THE COURT: All right. So we're on the record in 2014-CP-40-4661, Porthemos Curry vs. Scottsdale Insurance and others. Ms. Peavy and Mr. Goodwin are here on behalf of the Plaintiffs. Mr. Peel and Mr. Floyd are here on behalf of the Defendants.

I didn't read anything any of you submitted because, apparently, there was some letter that went to Judge Lee, said something about somebody recusing themselves. I read absolutely nothing. So somebody tell me what's going on.

MR. PEEL: Your Honor, first, there are three motions before you today. They're cross motions for summary judgment on a finite issue, finite defense in this underlying case of whether a release affecting Scottsdale Insurance Company also released my clients, Carolina Insurance and Maurice Derrick.

And this was all -- this case was set for trial last week. Issues arose with the date of the filing my motion for summary judgment release and so the case was continued until May with the stipulation that this motion be heard by Your Honor today.

THE COURT: Okay.

MR. PEEL: As part of -- my motion in brief says that the release executed between Scottsdale and the Plaintiff as a matter of law releases Carolina Insurance and Maurice

1 Derrick because it operated as a full release and it
2 purported full compensation of the claim and it purported
3 to release the agency of Scottsdale.

4 In response to that, Plaintiff's counsel handed up a
5 memorandum of law to Judge Newman Tuesday morning. I did
6 not read it that morning in full. She sent us on home. I
7 read it Friday, and in that motion were communications
8 communicating settlement offers from the mediator, John
9 Cuttino, to the Plaintiffs from me, some e-mails from me
10 regarding settlement. And then delivered to my office
11 Friday, which I understand were not filed, were detailed
12 affidavits detailing mediation. I think the Plaintiff is
13 trying to argue that I never believed the case was
14 settled, which I don't. I've got a strict legal defense
15 that I'm arguing today. So I filed immediately pursuant
16 to ADR Rule 10 a motion for sanctions that says Rule 23,
17 Rule 23 says directed to the chief administrative judge.

18 Judge Lee said I'm here and don't have a court
19 reporter, I'll send to it Judge Hood and you can argue
20 that today. I don't really need a ruling on that motion
21 for sanctions if Your Honor has not read anything that's
22 in that file.

23 MR. GOODWIN: I just --

24 THE COURT: Whoa.

25 MR. GOODWIN: We have withdrawn that motion.

1 THE COURT: Okay. Let him finish.

2 Go ahead.

3 MR. PEEL: Because what Plaintiff's counsel has done
4 clearly violates the rule. Communicating settlement
5 offers and communication with the mediator undermines the
6 total purpose of mediation and it has nothing to do with
7 this case.

8 So to the extent that it's already in the Court's
9 file, it's been filed with the Court, I think that should
10 be removed because those are all these exhibits with
11 Mr. Cuttino's direct communication. That's a violation of
12 our mediation agreement. We had a signed agreement for
13 confidentiality.

14 THE COURT: Okay. Let me say what I hear you saying
15 and is what I think I heard Mr. Goodwin saying. I don't
16 know anything about y'all's case. All I know you're on
17 the trial docket next week and then somehow you ended up
18 on my docket today. I don't know the parties. I don't
19 know the facts. I don't know the circumstances. I don't
20 even know who these people are you're talking about. I
21 haven't read -- I saw some e-mails -- literally, when
22 Ms. Peavy started e-mailing the Court yesterday and
23 courtesy copied opposing counsel, I went to my law clerk
24 and said why are all these people e-mailing me? I don't
25 know anything about this.

1 So that's literally when I learned about it. So I
2 read nothing of any substance or anybody's response of any
3 substance. I didn't even know what it was. I didn't
4 understand why I had it. When I went and pulled my
5 docket, the last document we had pulled, it wasn't even on
6 it. So, I mean, I didn't have the file sitting around or
7 anything else and reading it. And my law clerk said,
8 Well, I'm working on it. And I said, Well, don't tell me
9 anything about it. He said, Well, Mr. Peel doesn't want
10 you to read anything. I said, That's fine. I'm just not
11 going to read anything at all. So if I haven't read
12 anything, are you withdrawing your motion for sanctions?

13 MR. PEEL: If you've not read anything, I don't need
14 you to rule on anything. I'd like the original memorandum
15 that has all of those communications --

16 THE COURT: Y'all are willing for him to withdraw
17 that; is that right?

18 MS. PEAVY: Your Honor, we are, but we believe that
19 incorporated within his motion for sanctions, he's made an
20 argument that we've improperly put this before the Court
21 in regards to his pending summary judgment motion.

22 THE COURT: Okay.

23 MS. PEAVY: And, Your Honor, if I may, I'd like to
24 briefly go through just a discreet timeline of what has
25 been going on in this case.

1 THE COURT: Okay.

2 MS. PEAVY: Because I think it will be instructive
3 because the motions are almost linked in a way.

4 THE COURT: Okay.

5 MS. PEAVY: So if you'll allow me just to briefly go
6 through it. This action was filed by Porthemos Curry
7 against Scottsdale Insurance Company, Carolina Insurance
8 Group and an agent of Carolina Insurance Group,
9 Mr. Maurice Derrick. Plaintiff alleged claims for
10 negligence against Carolina Insurance Group and
11 Mr. Derrick arising out of their failure to procure
12 insurance for a certain period of time.

13 Plaintiff alleged completely separate claims against
14 Scottsdale Insurance Company, who issued the policy, and
15 those claims were for breach of contract and statutory bad
16 faith, so completely separate actions.

17 Plaintiff did allege in his pleadings that the
18 Defendants -- and when I refer to Defendants in this
19 action, I'm referring to Mr. Peel's clients. Scottsdale
20 is no longer a party to this action.

21 THE COURT: Scottsdale is out?

22 MS. PEAVY: Scottsdale is out as of December. Okay.
23 So Plaintiff --

24 THE COURT: So Mr. Peel represents Carolina Insurance
25 Group and Mr. Derrick?

1 MS. PEAVERY: Right. And the caption should be amended
2 to reflect that, Your Honor. If it hasn't been, I
3 apologize.

4 THE COURT: That's okay.

5 MS. PEAVERY: Plaintiff alleged in his pleadings that
6 the Defendants were agents of Scottsdale.

7 THE COURT: Okay.

8 MS. PEAVERY: The Defendants always denied that they
9 were agents of Scottsdale in both their pleadings, meaning
10 their answers, and there were several amended pleadings in
11 this case, and they also denied it in their deposition
12 testimony. And I've attached all this as exhibits, okay.

13 MR. PEEL: Your Honor, I'm so sorry, but these are
14 both my motions and I really should have an opportunity to
15 present the facts --

16 MS. PEAVERY: Your motion on sanctions is being heard
17 --

18 MR. PEEL: -- first.

19 MS. PEAVERY: -- and I'm allow to address that.

20 THE COURT: I thought we were --

21 MR. PEEL: Those --

22 THE COURT: I asked if you were willing to withdraw
23 it and you didn't answer that question with a yes or a no.

24 MR. PEEL: I'm sorry. Yes, if the exhibits now filed
25 with the Court with confidential communications are

1 withdrawn.

2 THE COURT: Okay. I thought Mr. Goodwin told me the
3 document was withdrawn.

4 MS. PEAUVY: Your Honor, we notified counsel and Your
5 Honor that we were willing to withdraw it. However, the
6 motion for sanctions requires the Court to find that these
7 exhibits that were attached to the memorandum are not
8 properly for the Court's consideration in considering the
9 construction of the release.

10 Mr. Peel argues that the plain language of the
11 release between Scottsdale and Mr. Curry also releases his
12 clients, even though his clients are not named in the
13 release.

14 THE COURT: Okay.

15 MS. PEAUVY: The construction of a contract, the Court
16 is to consider the intent of the parties, all of the
17 circumstances surrounding what the contract is, what the
18 parties intended to agree to. So the evidence that
19 Plaintiff seeks to present to the Court is necessary to
20 defend the motion on the grounds that Mr. Peel never
21 intended and his clients never intended nor believed that
22 they were released when Mr. Curry in acceptance of payment
23 from Scottsdale Insurance Company signed a release
24 releasing Scottsdale Insurance Company and its agents and
25 employees.

1 The critical issue here, Your Honor, is that on
2 November 25th, the Defendants were notified by
3 Scottsdale's attorney, J.R. Murphy, that Mr. Murphy had
4 settled Scottsdale's case with the Plaintiff in exchange
5 for the payment of \$85,000, the signing of a release that
6 Mr. Curry was to execute, and the execution by all the
7 parties of a stipulation of dismissal as to Scottsdale
8 Insurance Company only. So that's November 25th.

9 So on November 25th, Mr. Peel's clients are on notice
10 that the case against Scottsdale, which Mr. Curry brought
11 separate claims, has been settled. There's a release.
12 There's a stipulation of dismissal as to Scottsdale, and
13 there's a check from Scottsdale and Scottsdale alone in
14 the amount of \$85,000.

15 On December 10th, Mr. Peel is forwarded a copy of the
16 stipulation of dismissal for his signature, Your Honor.
17 And this is attached as Exhibit C to my memorandum in
18 opposition to sanctions. You'll see it tabbed up there.

19 On that date, December 14th, J.R. Murphy's firm is
20 enclosing a stipulation of dismissal as to Defendant
21 Scottsdale Insurance Company in the above-referenced
22 matter. And the stipulation of dismissal clearly states
23 that the Plaintiff by and through its undersigned counsel
24 having settled this case with the Defendant Scottsdale
25 Insurance Company hereby dismisses with prejudice the

1 complaint and all subsequent amendments thereto as to the
2 Defendant Scottsdale Insurance Company only. And then it
3 states in bold the Plaintiff's case against the remaining
4 Defendants, meaning Mr. Peel's clients, shall not be
5 affected by this dismissal. Mr. Peel presumably reviewed
6 the stipulation of dismissal, signed it and it was filed
7 with the Court.

8 Now, the stipulation of dismissal was filed on
9 December 30th. And following the notification that
10 Mr. Curry had settled out with Scottsdale, this becomes
11 critical. The Plaintiff and the Defendants moved forward
12 with the case. They communicated with Judge Lee,
13 specifically, advising Judge Lee, Mr. Peel in his letter
14 of December 2015, that the case against Scottsdale had
15 been settled and that the parties needed the Court's
16 guidance in setting the case for a date certain. And I
17 can hand that up, Your Honor. But the parties proceeded
18 with the case as would be expected because our contention
19 is that we did not settle with Mr. Peel's clients when we
20 released Scottsdale Insurance Company in exchange for the
21 payment of Scottsdale's check in the amount of \$85,000.

22 Now, prior to taking the depositions of the expert
23 witnesses in this case -- and both sides have retained
24 expert witnesses to opine as to the duties of an
25 independent insurance agent, Mr. Peel again initiated

1 settlement negotiations with the Plaintiff by way of an
2 e-mail.

3 MR. PEEL: Objection, Your Honor.

4 THE COURT: Why?

5 MR. PEEL: She's talking about the settlement again.

6 MS. PEAVY: But you put it at the heart of your
7 motion and intent is before the Court.

8 MR. PEEL: Your Honor, I'm sorry.

9 MS. PEAVY: This is --

10 THE COURT: I don't understand what the issue is,
11 Mr. Peel.

12 MR. PEEL: The issue is this, Your Honor. The intent
13 of the parties or my intent or the intent of the parties
14 to this release between parties does not matter unless the
15 Court finds that release to be ambiguous. At that point,
16 if the Court finds it was ambiguous, extrinsic evidence
17 would be proper to determine the meaning of the parties
18 under that agreement, but under Rule 10 -- Rule 8 of the
19 ADR rules, settlement discussions, settlement proposes,
20 communications with the mediator are all confidential and
21 must remain that way.

22 MS. PEAVY: Your Honor --

23 MR. PEEL: There's been no finding of ambiguity by
24 the Court. And if I'm allowed to argue my motion on the
25 release --

1 THE COURT: What about the Rule 8 to the rules of ADR
2 that says there's an exception to confidential material if
3 required by law, meaning like Judge Newman told you to go
4 talk about this issue?

5 MS. PEAVY: Judge Newman told us --

6 THE COURT: Hold on. Let him answer.

7 MS. PEAVY: Okay.

8 MR. PEEL: It's required by law I think if Judge
9 Newman -- I don't think that's what that means. I think
10 if there was a subpoena or some other legitimate reason or
11 order from some criminal matter. But Judge Newman did not
12 tell us to do that.

13 THE COURT: What did she tell you?

14 MR. PEEL: She told us to come argue the motion for
15 summary judgment in front of you today and be prepared for
16 trial the week of May 16th.

17 MS. PEAVY: Your Honor, that's incorrect. On
18 April 18th, this case was set for a date certain trial.

19 THE COURT: Last Monday?

20 MS. PEAVY: Last Monday.

21 THE COURT: Okay.

22 MS. PEAVY: On April 15th, the Friday before the date
23 certain trial, Mr. Peel filed this motion for summary
24 judgment. On April 18th, after we qualified and selected
25 a jury, Judge Newman then took up various pretrial matters

1 and motions. Part of that hearing was that Judge Newman
2 considered whether she was going to hear the late filed
3 summary judgment motion of Mr. Peel as that would
4 obviously be outside the 10-day notice requirement that
5 the Plaintiff is entitled to under Rule 56.

6 Judge Newman entertained oral argument from both
7 parties on April 18th and adjourned for the day in the
8 late afternoon directing the parties, ordering the parties
9 to brief two issues. One issue was whether the motion
10 should be heard on April 19th, the following day, outside
11 Rule 56(c) requirements.

12 The second order was that the parties should be
13 prepared for Judge Newman to rule that she would hear the
14 motion outside of the 10-day requirement, and that the
15 parties should be prepared to argue it fully briefed on
16 the issues contained in the motion.

17 As a result, because she told us to argue -- to be
18 prepared to argue the merits of the late filed summary
19 judgment motion, the law of contract in South Carolina is
20 clear. And I cite to three cases, Middleborough
21 Horizontal Property Regime, Parker V. Bird, which says
22 that the purposes of all rules of contract instruction is
23 to ascertain the intention of the parties to the contract.
24 And I'll also cite Columbia East Associates vs. Bi-Lo,
25 which notes that the main concern of the Court is to give

1 affect the intention of the parties.

2 Mr. Peel on April 15th raised an entirely new defense
3 to this lawsuit wherein he alleged that even though he was
4 not mentioned in the Scottsdale release, even though his
5 clients were not mentioned in the Scottsdale release, even
6 though his clients contributed not a dime to the
7 settlement with Scottsdale, even though his clients were
8 always represented by him and Scottsdale was always
9 represented by J.R. Murphy, and even though he signed a
10 stipulation of dismissal filed with the Court that
11 specifically provides that the Plaintiff's claims as to
12 the remaining Defendants, namely --

13 MR. PEEL: Your Honor, I'll withdraw my motion.

14 MS. PEAVY: -- Carolina Insurance Group.

15 THE COURT: Okay. The motion for sanctions is
16 withdrawn.

17 MS. PEAVY: Okay. Your Honor. I do believe, though,
18 that raised within the motion is the issue of whether
19 Plaintiff can properly present evidence of the intent of
20 the parties to this release for the Court to consider.
21 And I note that it's under Rule 8(b)(5) that I believe we
22 are required to do so --

23 THE COURT: Hold on.

24 MS. PEAVY: Okay.

25 THE COURT: The motion for sanctions is withdrawn.

1 MS. PEAUVY: Okay.

2 THE COURT: Do a form four.

3 MS. PEAUVY: Okay.

4 THE COURT: Now, do you both have summary judgment
5 motions?

6 MR. PEEL: Yes, cross summary judgment.

7 THE COURT: Okay. So here are our options. I'm
8 happy to hear them right now if you want to do them right
9 now.

10 MS. PEAUVY: Yes, Your Honor.

11 MR. PEEL: I think we have to, Your Honor. Judge Lee
12 would be upset.

13 THE COURT: Well, she's always upset with me, so
14 there you go.

15 So who filed their motion for summary judgment first?

16 MR. PEEL: That would be me, Your Honor.

17 THE COURT: Okay. All right. So let's hear it.

18 MR. PEEL: Okay. Your Honor, let me give you the
19 facts of the lawsuit. The Plaintiff, Porthemos Curry,
20 purchased originally a builder's risk policy of insurance
21 from my client, Carolina Insurance, and the agent,
22 Mr. Derrick, is in the courtroom with us.

23 THE COURT: How are you doing?

24 MR. DERRICK: Good.

25 THE COURT: Thanks for being here.

1 MR. PEEL: And he was building a home here in
2 Columbia, a house, and he wanted to get a builder's risk
3 policy to ensure it while he was building it. And that
4 was like 2009, 2010, a year-long policy. For various
5 reasons, he did not complete the home. He came back
6 in 2013 and bought a 90-day vacant structure policy with
7 the builder's risk endorsement. Basically, what those
8 policies do is they insure a vacant structure that's not
9 finished, plus anything else that he puts in it to finish
10 it. And that policy expired -- and these were issued by
11 Scottsdale Insurance, which is their involvement in the
12 case -- or was their involvement in the case. And then --
13 maybe it would be helpful if I can hand up tabbed
14 exhibits.

15 THE COURT: Thank you.

16 MR. PEEL: I've given counsel the same one that has
17 the same highlights and same tabs.

18 THE COURT: All right. Just tell me what tab you
19 want me to look at.

20 MS. PEAVY: Your Honor, can I make a quick objection
21 for the record?

22 THE COURT: Sure.

23 MS. PEAVY: Some of these exhibits, when we agreed to
24 waive the 10-day notice requirement for the hearing of
25 this motion for summary judgment, we agreed to do so based

1 on the motion for summary judgment that Mr. Peel had filed
2 and the amended memorandum in support of the motion, which
3 was filed on April 19th. So, essentially, at that time,
4 Mr. Peel did not attach as exhibits several of the
5 exhibits that are contained in the Court's notebook before
6 you.

7 THE COURT: Okay.

8 MS. PEAVY: So we object to those exhibits being
9 offered in support of their motion as they were not before
10 Judge Newman. They were not before Plaintiff's counsel.
11 And we contend that it's highly prejudicial.

12 THE COURT: How about that, Mr. Peel?

13 MR. PEEL: Well, these were all mentioned in
14 memorandum and they've all been identified. There's no
15 question as to the authenticity of any of them.

16 MS. PEAVY: Your Honor, they're not mentioned. Not
17 all of them. I specifically refer to the residential
18 building permit, Mr. Curry's deposition --

19 MR. PEEL: Okay. I don't have to have that.

20 MS. PEAVY: Mr. Curry's deposition, Mr. Mitchell's
21 deposition, Plaintiff's responses to discovery.
22 Obviously, the pleadings are part of the Court's file
23 regardless.

24 THE COURT: Okay. So what am I not looking at?

25 MR. PEEL: Your Honor, I don't need to refer to tab

1 three at all. It was just a reference for square footage
2 for the house. Everything else -- I mean, these are
3 depositions of their own client and their own expert and I
4 merely included them because of the illustration of value
5 is important in this case -- or in this motion. There
6 should be no surprise about that because I've been arguing
7 it constantly.

8 MS. PEAVY: Your Honor, Mr. Peel alleged in a motion
9 to amend his answer on April 18th that he wished to amend
10 his answer to assert the affirmative defense of relief.
11 Judge Newman heard that motion and granted it over the
12 Plaintiff's objection. There was nothing at that hearing
13 that related to what the value of the house was or the
14 Plaintiff's damages in this case. It's just we're here
15 because he contends the Scottsdale release releases his
16 clients.

17 MR. PEEL: Your Honor, I should add that the reason
18 we're here so late, I think this was glossed over, is that
19 the Plaintiff did not give me the executed copy of the
20 release as they were under a duty to do under the
21 discovery until April 8th, the week before trial when I
22 requested a copy of it. In fact, I was never served with
23 a signed and executed filed stipulation of dismissal. So
24 that's why we're jammed up here at the end right before
25 trial.

1, The fact of the matter is Judge Newman did grant my
2 motion to amend and I'd like the opportunity to argue the
3 release. I've presented no documents before the Court
4 that have not been identified in discovery and, in fact,
5 identified in deposition of almost every party to the
6 case.

7 MS. PEAVY: Your Honor.

8 THE COURT: Yes, ma'am.

9 MS. PEAVY: I understand that Mr. Peel did not
10 request a copy of the release from me until April 8th, but
11 as of November 25th, he was on notice that there was a
12 release and he signed the stipulation of dismissal, which
13 contains very specific language as to the fact that the
14 Plaintiff's claims against the remaining Defendants,
15 Carolina Insurance Group and Mr. Derrick, remain active
16 and alive. I mean, there's just no way around it.

17 If he didn't request it from me, if he didn't send a
18 Rule 11 letter towards me, I didn't produce it to him. He
19 was on notice of it. He happened to ask me for it on
20 April 8th, a week before trial. I gave to it him
21 promptly. He then waited a week to file his motion for
22 summary judgment.

23 And I'll note, Your Honor, again, this goes to the
24 issue in the -- what evidence can be before the Court in
25 hearing this motion, that intent of the parties is

1 critical here. Because after Mr. Peel received a copy of
2 the release, settlement negotiations continued.

3 MR. PEEL: Your Honor, I would really appreciate the
4 chance to get through my arguments.

5 THE COURT: Okay. I mean, this stuff is deposition
6 testimony. I'll look at it. Tell me what you want to
7 say.

8 MR. PEEL: All I want to say --

9 THE COURT: Get it all through and I'll deal with it.

10 MR. PEEL: It's not a big part of my argument anyway.
11 Really, I was just asking the Court to look at tab two,
12 which is a copy of the insurance policy, the second policy
13 that was issued. And it was issued 11/21/13 through
14 2/21/2014. And that is the gravamen of the complaint
15 here.

16 Mr. Curry, the Plaintiff, says that he called my
17 clients in December -- or he says we called him and
18 requested a new -- that the -- a new policy. The policy
19 had expired for like 10 days, the previous policy had
20 expired in November.

21 We were able to -- we renewed the policy with
22 continuous coverage from 11/21, 2013 to 2/21, 2014.

23 Mr. Curry said well, I thought it renewed in December and
24 then I had 10 more days coverage. The house burned down,
25 basically, the day after the policy expired. Scottsdale

1 denied coverage. It was burned down February 22nd -- or
2 February 21st at some certain time. Scottsdale denied
3 coverage because they said the policy had expired.
4 Mr. Curry then after the claim was denied brought suit
5 against Scottsdale for all the reasons that Ms. Peavy has
6 already accepted.

7 THE COURT: Is this Chris Bagwell's Carolina
8 Insurance Group?

9 MR. DERRICK: Joel Sauls is the agent.

10 THE COURT: Carolina Insurance Group in Lexington,
11 South Carolina?

12 MR. PEEL: Of South Carolina.

13 THE COURT: 951-3351?

14 MR. DERRICK: Yes, sir.

15 MS. PEAVY: I don't know.

16 MR. PEEL: I don't know.

17 THE COURT: Do you want to hear how long they had my
18 insurance?

19 MS. PEAVY: We waive any -- I mean, Your Honor, we
20 believe that you're able to be fair.

21 THE COURT: I don't have it anymore, but I had them
22 for years. I have MetLife now. But I did do business
23 with Carolina Insurance Group for a number of years.

24 Ms. Peavy, Mr. Goodwin, would you like to discuss
25 that amongst each other outside of my presence?

1 MS. PEAUVY: We waive no objection.

2 THE COURT: I don't do business with them now, but I
3 had homeowners and car insurance with Chris Bagwell there
4 for years.

5 MS. PEAUVY: Okay.

6 THE COURT: Sorry. I just saw the name and then saw
7 the address and put two and two together.

8 Okay.

9 MR. PEEL: So, Your Honor, the dispute was over
10 Scottsdale said the policy expired, no coverage.
11 Mr. Curry says, Well, I should have had coverage anyway.
12 On top of that, Mr. Derrick and Carolina Insurance, you
13 should have renewed the policy and I should still have had
14 10 days on there and I would have been covered with the
15 houses fire. He sued both of us. He sued for, you know,
16 breach of contract and he sued Scottsdale for bad faith
17 and statutory common law. And he sued us for negligence
18 and gross negligence on the second amended complaint.

19 THE COURT: Okay.

20 MR. PEEL: And, in fact, this case went on for quite
21 some time and the case went to mediation. There is no
22 dispute that Carolina Insurance and Mr. Derrick did not
23 and have not settled with the Plaintiff. However,
24 post-mediation, Scottsdale and the Plaintiff were able to
25 work out an agreement. At tab one is the release to which

1 they entered.

2 THE COURT: All right.

3 MR. PEEL: The release specifically says that
4 Scottsdale Insurance Company is forever released upon
5 payment of \$85,000 -- paid them \$85,000. I'll point out
6 to Your Honor this policy insurance policy had a completed
7 value limit of 110,000.

8 THE COURT: Okay.

9 MR. PEEL: They released forever, discharged
10 Scottsdale Insurance, its agents, servants, employees,
11 assessor and assigns of and from any and all actions,
12 causes of action, demands and/or claims of whatsoever kind
13 of nature prior to and including the date of any property
14 coverage which may apply under policy number CVS 1884774,
15 which is the policy I just showed you.

16 It goes on to say the consideration expressed herein
17 constitute full payment for all damages, losses or
18 injuries, whether known or unknown, developed or
19 undeveloped for policy benefits or consequential damages
20 recovered -- recoverable from Scottsdale Insurance
21 Company, which have resulted or may have resulted from the
22 loss aforesaid.

23 THE COURT: Okay. Now, why is that important?

24 MR. PEEL: Well, it's important because of the
25 Bartholomew rule. The Bartholomew rule is set forth which,

1 is at tab one in my cases in the notebook that I handed
2 up.

3 THE COURT: Okay.

4 MR. PEEL: McArthur.

5 THE COURT: I'm with you.

6 MR. ATTY2: Okay. And the rule in that case is on --
7 they were saying the old rule where they release of one
8 tortfeasor will release all isn't going to apply in South
9 Carolina. We're not doing that. And it says the release
10 of one tortfeasor does not release others who wrongfully
11 contributed to the Plaintiff's injuries unless this was
12 the intention of the parties, one, or two, unless
13 Plaintiff has, in fact, received full compensation
14 amounting to his satisfaction.

15 THE COURT: Okay.

16 MR. PEEL: So it's either or. Either one of those
17 and it's released. Then post Tort Claims Act Ecclesiastes
18 Ministries case, which is the next case and it's tab
19 number two, they pick up on the old Bartholomew rule and
20 point out that -- and they go through and say yes, that's
21 right. You look to see whether there is an intent on the
22 face of the document to release a non-named party or is
23 it -- did it operate as full satisfaction. And I got
24 ahead of myself on my printouts. There's also the case of
25 Lloyds vs. Good, 412 S.C.2nd 441.

1 I'm sorry, I forgot, I meant to give you what I've
2 got here.

3 MS. PEAVY: Thank you.

4 MR. PEEL: That just -- it just recites that same
5 rule. For that case, they found identical satisfaction.
6 And the case says the release -- in this case, the release
7 was full compensation amounting to a satisfaction and
8 pointed out the issue does not determine the exact amount
9 a jury would award. Instead, the issue is full
10 compensation amounting to a satisfaction which is
11 generally a discharge of obligation by paying a party what
12 is due to him or the performance of a substitute
13 obligation in return. The party's intention must be
14 determined from the language of the contract and parties
15 are governed by their outward expressions. And the Court
16 is not at liberty to consider their secret intentions.
17 That's on Page 9.

18 They go on -- it goes to this case, in addition to
19 having the Bartholomew rule recited, it recites all the
20 rules that counsel about contract interpretation and the
21 like.

22 So in this situation, we need to go back to the
23 complaint then to decide whether or not this was an intent
24 to release or a full compensation. And there are three
25 complaints in this lawsuit. There was an original

1 complaint, which is at tab nine.

2 THE COURT: Got it.

3 MR. PEEL: And those are all the causes of action we
4 discussed, statutory bad faith, common law bad faith and
5 negligence against my clients. The amended complaint
6 alleges the same thing.

7 THE COURT: So here's where you're going, your
8 argument is that they claim in their complaints and
9 amended complaints that your clients are agents of
10 Scottsdale and therefore, your clients are out because
11 Scottsdale is out because of the language in the release?

12 MR. PEEL: There are two arguments. That's one.

13 THE COURT: Okay.

14 MR. PEEL: That's one. The other one --

15 THE COURT: All right.

16 MR. PEEL: -- and I think the more important one is
17 full compensation.

18 THE COURT: Okay.

19 MR. PEEL: Of course -- and since you picked up on
20 that, yes, the complaint was amended three times.

21 THE COURT: Okay.

22 MR. PEEL: Every time --

23 THE COURT: They say --

24 MR. PEEL: -- they say we're an agent. We're not
25 Scottsdale's agent. We denied it continuously.

1 THE COURT: I'm not saying you are. I'm saying
2 that's what it says.

3 MR. PEEL: That's what it says.

4 THE COURT: That's one of your theories?

5 MR. PEEL: That's correct.

6 THE COURT: Okay.

7 MR. PEEL: I want to be clear. We've always denied
8 that. In deposition, we told them we're not. However,
9 the last amended complaint, which was filed with the Court
10 right before the flood on October 1st, 2015, after all
11 fact depositions had been taken, after most all discovery,
12 except for expert discovery has been completed, paragraph
13 34 remained the same. And the thing is it's not
14 necessary. There's no vicarious liability claim, but they
15 keep repeating it and keep repeating it. And then
16 December 10th, they execute a document that says
17 Scottsdale and its agents are released. So on the face of
18 the pleadings --

19 It doesn't matter what I think and it doesn't matter
20 what Mr. Derrick thinks and it doesn't matter what
21 Carolina Insurance thinks, they are estopped from denying
22 what they put in their complaint. They can't use what
23 they wanted to use as a sword and now turn around and go
24 oh, no, we didn't mean that. And you know we didn't mean
25 it because you told us so, but they kept, no matter what,

1 repeating it.

2 I've got the cases on judicial admission. They're
3 tabs -- one of them is -- didn't printout right, nine, 10
4 and 11. South Carolina case, tab 10, says well settled
5 the parties are judicially bound to their pleading unless
6 withdrawn, altered or stricken by amendment or otherwise.
7 And this is a general rule in this state. Allegations,
8 statements or admissions contained in pleadings are
9 concluded as a intra pleader and a party cannot
10 subsequently take a position contradictory of or
11 inconsistent with as pleading or facts.

12 Now, I will say, counsel has now filed, once this
13 issue came up, a stipulation saying well, we agree, you're
14 not agents of Scottsdale. But that was only after I filed
15 this motion.

16 The --

17 THE COURT: I wasn't trying to cut you off, but was
18 that where you were going?

19 MR. PEEL: That's exactly where I was going. I
20 thought since you picked up on that, we'd just --

21 THE COURT: That's fine. I don't want lawyers to
22 feel like I'm just cutting them off, but I thought that's
23 where you were going. I just wanted to make sure I was
24 tracking you.

25 MR. PEEL: That's right. And that's kind of the

1 easiest one to deal with. In the case, the Sue case at
2 Tab 12, it's really kind of a headline case around the
3 country about judicial admissions. It says, you know,
4 Plaintiff's sued -- it's a railroad case, fell victim to
5 the well settled rule that a party is bound by what it
6 states in its pleading, judicial admissions or formal
7 consents in the pleadings or stipulation by party or
8 counsel that are binding upon the party making them. And
9 a plaintiff can plead himself out of court by alleging
10 facts which he shows he has no claim even though -- even
11 though he was not required to allege those facts. And
12 this the situation, those facts weren't required to bring
13 any of these causes of action. And so judicial efficiency
14 demands that a party not be allowed to controvert what its
15 already pled.

16 And so, Your Honor, in this part one, of course, of
17 that Bartholomew test is did it release them? It doesn't
18 matter what I thought. They said we're their agents,
19 we're their agents, we're their agents three times at the
20 close of discovery. And then they didn't reserve
21 anything. They could have reserved something that changed
22 the language in the release. It was not there. So that's
23 part one.

24 Part two is the full compensation analysis. The
25 question here is did Mr. Curry receive a full compensation

1 for his injuries under the law?

2 Now, Plaintiff contends -- they cited a recent Ford
3 Motor Company case that deals with wrongful death and
4 survival. And it says you can't have a set off for two
5 separate causes of action. That doesn't really apply
6 here. You have to understand what cause of action means,
7 number one, but number two, clearly, that case, the error
8 was the judge attempted to apportion a previous settlement
9 payment between a wrongful death and satisfaction judgment
10 at trial. And, of course, I think the case -- those are
11 two complete -- they are completely different cause of
12 action because they are different damages and they're for
13 different parties in a satisfaction of wrongful death.

14 But there's no question -- let me find my place. In
15 this case, the way the action was pled, Scottsdale and my
16 clients, Mr. Derrick and Carolina Insurance, are joint
17 torts feasors. And so they come under the rule that if
18 there's a full satisfaction of one, then all are released.

19 And the reason I say that is number one, the injury
20 is the exact same in this situation. The injury claimed
21 is you did not pay Scottsdale and Carolina Insurance and
22 Maurice. My house burned, I'm supposed to have a policy
23 of insurance, nobody paid me for it. And as a result of
24 that, I suffered some consequential damages. I couldn't
25 sell my house. I have these credit cards bills I couldn't

1 pay off.

2 Well, those are damages you're entitled to in a
3 negligent procurement case. That's the Republic Textile
4 Equipment case in tab three. And it spells out you're
5 eligible to get damages in a procurement case, the amount
6 of policy that should have been in place and any
7 consequential damages related to that.

8 Well, those are the exact same damages that you can
9 get in a bad faith claim. Nichols V. State Farm, tab
10 four, you get damages from the policy that didn't pay and
11 consequential damages.

12 Plaintiff claims they're not joint tortfeasors, but
13 the South Carolina courts have made it clear that bad
14 faith is a tort. And that is at tab eight, Charleston
15 County School District vs. The Budget and Control Board.
16 This is Justice Toal's opinion from 1993. And on the last
17 -- very last page, it says Nichols, we -- the case I cited
18 earlier, we clearly held the cause of action was tort to
19 the extent Bartman Brown had otherwise hereby overruled,
20 in every case since then, it is a tort under the law.

21 So the question then becomes what are we looking for?
22 We're looking for the same injuries a cause of action.
23 This is an older case because this used to be a big
24 discussion, Mitchell vs. Federal Intermediate Credit Bank,
25 and that's at tab seven. It quotes United States Supreme

1 Court and explains what is meant by causes of action. It
2 says a cause of action does not consist of facts, but of
3 the unlawful violation of the rights which the facts show.
4 The number and variety of the acts alleged do not
5 establish more than one cause of action so long as the
6 result, whether they be considered severally or in
7 combination, is the violation of the one right by a single
8 legal wrong. The mere multiplication of grounds of
9 negligence alleged is causing the same injury does not
10 result in the multiplying of causes of action. So in this
11 case, there's a tort. They're torts and it's the same
12 injury, same damage. There's nothing different to be
13 gained.

14 So here we have a release. And we know the policy
15 insurance, the limit on the policy insurance. And here we
16 have a release, it's four corners, says the consideration
17 expressed herein constitutes full payment for all damages,
18 losses or injuries, whether known or unknown, developed or
19 undeveloped for policy benefits or consequential damages.
20 That's all there ever was to collect in this case, policy
21 benefits. They didn't allege we got them the wrong
22 policy. We got them the right policy. That's the lengths
23 they requested. It was the right policy, they didn't like
24 the dates. So they received, according to this release,
25 full compensation.

1 And I point Your Honor back to the final amended
2 complaint, and the prayer. For all the damages, the
3 language is the same, the claimant has been damaged in the
4 amount of his losses to the property. That's in paragraph
5 45 as to my clients and that's in the prayer for relief.
6 Paragraph 30, Scottsdale's failure to properly adjust
7 Plaintiff's claim, failure to make a payment as required
8 by the terms and policy will result in bad faith and
9 reckless intention, disregard Plaintiff's rights under the
10 policy. And so they're asking for prayer for relief
11 damages in the amount of his unpaid losses as established
12 at trial from Scottsdale and judgment in the amount of
13 Plaintiff's unpaid losses established at trial from my
14 clients. Same injury, same facts.

15 Now, I think I need to address one more thing before
16 wrapping it up. The Plaintiff has pointed out that I
17 signed a stipulation of dismissal dismissing Scottsdale
18 from the case pursuant to 41(A)(1). And it says to the
19 effect that this dismissal does not affect any of the
20 other claims. And I agree completely with that. The
21 dismissal does not affect any of their claims. It does
22 not affect any of my defenses available to me under the
23 law. It's just they told me they settled, they're allowed
24 to get out of the case. There's no point in standing in
25 their way. What I do say is the stipulation doesn't

1 affect any rights, this release does. .

2 So for the two reasons I stated, one, they've availed
3 themselves of amending the pleadings several times over
4 and keep alleging we're agents, even though we made it
5 very clear we're not. And then they released all the
6 agents in the December release. And then, finally,
7 \$85,000. And that's what's important in these cases, when
8 it says full compensation, then that's what it's got to
9 mean. And they've got -- the man has gotten \$85,000 for a
10 \$110,000 policy. And the house, I should say, it's
11 uncontroverted, it was not complete. It was around 90 to
12 95 percent complete. That's Mr. Curry's testimony and I
13 don't think anybody disagrees with that within five
14 percent, so.

15 THE COURT: All right.

16 MR. PEEL: He would clearly not do 110.

17 THE COURT: All right.

18 MR. PEEL: Thank you very much, Your Honor, for
19 letting me get through.

20 THE COURT: All right.

21 Response to Defendant's motion for summary judgment.

22 MS. PEAUVY: Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 MS. PEAUVY: In order to expedite things, I believe my
25 argument will also necessarily encompass my cross motion

1 for summary judgment as to the affirmative defense of
2 release.

3 THE COURT: Got it.

4 MS. PEAUVY: I guess Mr. Peel is arguing according to
5 satisfaction; is that correct?

6 MR. PEEL: I'm sorry, Ms. Peavy, I should have made
7 clear on that. I think that was really referring to the
8 claim between you and Scottsdale.

9 MS. PEAUVY: Okay. So you're not asserting --

10 MR. PEEL: I have not amended to assert that, no.

11 MS. PEAUVY: Okay.

12 MR. PEEL: I'm sorry. You did ask me that.

13 MS. PEAUVY: Okay.

14 Your Honor, I want to address a few key points from
15 Mr. Peel's argument that also go to my cross motion. The
16 first is his reliance on the allegations in the pleadings
17 filed by the Plaintiff, a complaint that alleged that the
18 Defendants are agents of Scottsdale. I would ask Your
19 Honor to look at the case of Vermeer vs. Woodchuck Chipper
20 Corp, which is the law of South Carolina, which provides
21 that allegations in a complaint denied in answer are
22 evidence of nothing.

23 Only facts which are admitted by the pleadings -- and
24 by the pleadings, that means someone has made an
25 allegation and someone has admitted them, are taken as

1 true against the pleader for the purpose of the action.
2 And that's Elrod V. W. W. All, Your Honor. And I'm happy
3 to hand these cases up.

4 Furthermore, Your Honor, I look to the principle that
5 a party to an action is bound by the testimony of his own
6 witnesses where he does not prove the facts to be
7 otherwise and as such witnesses testify them to be. I'll
8 direct Your Honor's attention to Exhibit C of my
9 memorandum, which relays the deposition testimony of both
10 Joel Sauls, the owner of Carolina Insurance Group, and
11 also Mr. Derrick. And this deposition testimony says
12 explicitly what's the relationship between Carolina
13 Insurance and Scottsdale?

14 Answer, we don't have a relationship.

15 Okay.

16 With them.

17 Who pays the commissions to Carolina Insurance when a
18 Scottsdale policy is issued?

19 Tapco, answer.

20 Does Scottsdale own Lloyds of London to your
21 knowledge?

22 I couldn't tell you.

23 So that's the deposition testimony of Mr. Sauls.

24 You then go to Mr. Derrick, who under questioning
25 from Scottsdale's attorney says in response to the

1 question, You're not employed by Scottsdale or any of its
2 affiliates, are you?

3 Correct.

4 In fact, you have no direct relationship with
5 Scottsdale Insurance Company as a producing agent in this
6 case?

7 I do not.

8 You have no authority to issue a policy on behalf of
9 Scottsdale?

10 I do not.

11 And you have no authority to bind Scottsdale to a
12 policy?

13 I do not.

14 So, essentially, you are acting as an independent
15 insurance agent here in Columbia and in this transaction
16 involving the builder's risk policy issued by Scottsdale,
17 you represented the interest of Mr. Curry, correct?

18 Answer of Mr. Derrick, Correct.

19 Okay. Your Honor, so under Vermeer Carolina's and
20 the other cases I've cited, the allegation in our
21 pleadings does not then become the evidence of the case.
22 That's just not the way the law provides.

23 Your Honor, the idea of judicial admission, which
24 Mr. Peel argues and relies upon the 7th circuit Sue case,
25 that's not the law in South Carolina, Your Honor. The law

1 in South Carolina is Vermeer V. Woodchipper. Your Honor,
2 I contend that the allegations in the pleadings here do
3 not serve to then incorporate Mr. Peel's clients into the
4 Scottsdale release.

5 I want to also address, again, Mr. Peel talks about
6 the McArthur decision, which puts into direct
7 consideration for the Court the intention of the parties
8 or whether a party received full compensation by virtue of
9 release.

10 Your Honor, in this case, the intent of the parties
11 is clear. And I've submitted affidavits to Mr. Peel on
12 Friday. I did not serve them on the Court pending the
13 Court's ruling on whether he would -- on whether he would
14 consider these affidavits, but these affidavits are the
15 affidavits of my client, Mr. Curry, as to what he intended
16 to do when he accepted payment only from Scottsdale,
17 released only Scottsdale and dismissed only Scottsdale.
18 The other two affidavits are affidavits of both myself and
19 Mr. Goodwin,, which attest to a course of dealing and
20 communication between Defense counsel and ourselves
21 following the dismissal of Scottsdale which makes clear
22 that the parties never intended nor believed that the
23 release operated to release Mr. Peel's clients.

24 Your Honor, at this time, I'd like to hand up those
25 affidavits in the event Your Honor considers them properly

1 before the Court to review. And I think because Mr. Peel
2 has argued specifically as to the intent of the parties to
3 this release that they're properly before the Court.

4 MR. PEEL: Your Honor, I guess it's -- I think --
5 Thank you for letting me respond.

6 I think that there are only admissible if you make
7 the determination -- there are two steps. One, you make a
8 determination that the language of the release itself is
9 ambiguous because none of this outside evidence, extrinsic
10 evidence matters because the Court has to construe the
11 four corners of the contract. If you made a ruling that
12 you found that the contract is ambiguous, then you can
13 consider outside evidence to deduce intent. Secondly, I'm
14 unaware again of any rule that -- I've read the
15 affidavits. They're very detailed as to the settlement
16 negotiations and what occurred at mediation. And I think
17 the ADR protects those anyway.

18 THE COURT: I mean, you don't dispute that --

19 MR. PEEL: We did not settle.

20 THE COURT: That their position is they didn't think
21 they released your client?

22 MR. PEEL: I don't know what they thought, but I say
23 we didn't settle with them. I didn't pay them any money.

24 THE COURT: Right.

25 MR. PEEL: I did not execute a release. And I'm

1 still -- that's why I'm here arguing in front of Your
2 Honor today. There is no dispute as to that. All I'm
3 arguing is what is in the four corners of this document.

4 THE COURT: Okay. So I don't understand under what
5 theory of Rule 56 the affidavits are not admissible?

6 MR. PEEL: Under Rule 56?

7 THE COURT: Yes.

8 MR. PEEL: I don't know, Your Honor.

9 THE COURT: That's the --

10 MR. PEEL: The problem is the ADR rule. Of course,
11 you consider whatever you want. I would say until the
12 Court finds -- if you make a determination of ambiguity --

13 THE COURT: I don't need to make a determination of
14 ambiguity. The Defendant's motion for summary judgment is
15 denied.

16 You can continue with your motion for summary
17 judgment on yours.

18 MS. PEAVY: Thank you, Your Honor. May I pass up
19 these affidavits, Your Honor?

20 THE COURT: Yes, ma'am.

21 And I'll just note for the court reporter that these
22 were served upon Defense counsel on April 27th.

23 Your Honor, our motion is based upon the fact that
24 the terms of the release and the intent of the parties are
25 unambiguous and crystal clear. This is evidenced by the

1 release itself, which language specifically provides --
2 and I'll draw your attention back to Tab A on my amended
3 memorandum. And it specifically states the consideration
4 expressed herein constitutes full payment for all damages,
5 losses or injuries, whether known or unknown, developed or
6 undeveloped for policy benefits or consequential damages
7 recoverable from Scottsdale Insurance Company which have
8 resulted or may result from the loss aforesaid.

9 THE COURT: Now, your argument at this point is that
10 you think he shouldn't be able to argue release in the
11 jury trial?

12 MS. PEAVY: Your Honor, my argument at this point is
13 that Mr. Peel's argue is essentially a set off argument,
14 which is addressed properly by the trial judge at a
15 post-verdict stage. Mr. Peel is essentially arguing that
16 he's entitled to set off the amount that Scottsdale
17 settled for. And this is a damages issue that the trial
18 judge would properly consider at the set off stage, Your
19 Honor.

20 THE COURT: Is this the new defense that Judge Newman
21 granted last week?

22 MS. PEAVY: I'm sorry?

23 THE COURT: I heard y'all say earlier that --

24 MS. PEAVY: Judge Newman granted --

25 THE COURT: -- that the Defense moved to amend their

1 answer before Judge Newman last week and she granted that.
2 Is that the same legal issue?

3 MS. PEAUVY: The issue of the release, yes.

4 THE COURT: Okay.

5 MS. PEAUVY: They moved to amend their answer to
6 assert the affirmative defense of release.

7 THE COURT: Okay.

8 MS. PEAUVY: Judge Newman granted that motion. We
9 then subsequently filed a motion for summary judgment as
10 to the affirmative defense of release because we believe
11 that the undisputed facts before the Court and the
12 construction of the contract can only arrive at one
13 conclusion, that this release is between Scottsdale
14 Insurance Company for damages that the Plaintiff
15 potentially could recover against Scottsdale.

16 THE COURT: I don't understand how you can argue that
17 your client should be released when your client has
18 admitted that they're not agents. That's what I don't
19 understand. This is my disconnect.

20 MR. PEEL: I'm sorry, Your Honor. And that was --
21 like I said earlier, I thought that was a minor argument.

22 THE COURT: I mean, you told me and your clients have
23 testified they are not the agents of Scottsdale Insurance
24 Group; right?

25 MR. PEEL: Correct.

1 THE COURT: So you want to proceed to jury trial on
2 the theory that we're out because the release says
3 Scottsdale's agents?

4 MR. PEEL: Your Honor --

5 THE COURT: You got understand -- whoa, whoa, whoa.
6 Y'all have got to understand, I don't know anything about
7 this case, okay. So y'all have been living with this case
8 for however long. I've been living with it for the past
9 45 minutes of my life. So if I'm saying it wrong, then
10 just say no, listen, you're missing it, that's not what
11 I'm saying. Just tell me. I'm trying --

12 MS. PEAVY: And I --

13 THE COURT: What I heard -- here's what I hear.
14 Here's what I hear, the Defendants want out because the
15 agreement to settle the case with Scottsdale says agents,
16 so therefore, Carolina Insurance Group and Mr. Derrick say
17 we're out because the Plaintiffs claimed in their
18 complaint that they were agents. I've done away with
19 that. That doesn't exist anymore.

20 So under what theory of law can Carolina Insurance
21 Group and Mr. Derrick go to a jury trial now and say we're
22 released because of the November 25th -- or December 10th,
23 2015 release with Scottsdale?

24 MR. PEEL: Your Honor, if I can recall you back to
25 Bartholomew, it was an or -- we had an or --

1 THE COURT: Right, number one or number two, the
2 intention of the parties or the full satisfaction.

3 MR. PEEL: Full satisfaction.

4 THE COURT: Right.

5 MR. PEEL: So the issue as to full satisfaction does
6 not hinge on who was anybody's agent or anything else.
7 The question there, the courts have said, did the payment
8 under the release --

9 THE COURT: Go to joint tort feasons, I got it.

10 MR. PEEL: Amount to a full satisfaction. So that
11 portion of the argument, I'm not saying it doesn't matter
12 who's the agent. All that matters is we're doing tort
13 feasons and Mr. Curry in this case has received full
14 satisfaction under the agreement. And it depends on the
15 language set forth in the release and nothing else. So if
16 Your Honor says --

17 THE COURT: Okay. I see what you're saying now.
18 See, that's why I needed you to fix me from where I was
19 going. I heard you saying something else.

20 MR. PEEL: I apologize.

21 MS. PEAVY: Well --

22 MR. PEEL: But I do want to --

23 You're asking to dismiss that defense, right?

24 MS. PEAVY: I'm asking the Court to rule as a matter
25 of law that the Plaintiff is entitled to judgment as a

1 matter of law.

2 THE COURT: On the issue of --

3 MS. PEAVY: On the affirmative defense of release.

4 THE COURT: Okay.

5 MS. PEAVY: And --

6 THE COURT: Your argument is what? Tell me very
7 specifically that, what your -- the crux of your argument
8 is.

9 MS. PEAVY: That the terms of the release and the
10 intent of the party are unambiguous, that allegations in a
11 complaint denied in answer are evidence of nothing, that
12 this case centers on the fact that the Defendants never
13 entered into a release. The release was only between
14 Scottsdale and the Plaintiff. That's clearly laid out in
15 the language of the release itself.

16 I contend that the intent of the parties that the
17 Court has allowed testimony on clearly shows that the
18 Defendants did not believe that they were released or that
19 they were entitled to be released, and they signed a
20 stipulation of dismissal as to Scottsdale Insurance
21 Company that specifically provided that the case was going
22 forward against Carolina Insurance Group and Mr. Derrick.
23 And that they proceeded to litigate this case for a period
24 of six months prior to the date certain trial.

25 Your Honor, I'll say to you, as well, that the

1 Defendants assert -- it appears that they're abandoning
2 their argument as to the intention of the parties. And
3 now, they're arguing that the Plaintiff somehow received
4 full compensation; and therefore, the release operates to
5 bar any further claims or collection of damages against
6 their clients. It's undisputed that they did not
7 contribute a dime to this settlement. It's further
8 undisputed that there's no overlapping cause of action
9 between these two parties.

10 And Your Honor, Riley vs. State Farm -- vs. Ford
11 Motor Company case, which the Supreme Court filed on
12 September 30th of 2015 addresses this squarely, Your
13 Honor. And I can hand it up for you if you like.

14 THE COURT: Give me the Reader's Digest version.

15 MS. PEAVY: Okay. Well, essentially, what it is, is
16 that under the joint tort feisor act, the legislature
17 specifically provides under section 15-38-50 that when a
18 release or covenant not to sue or not to enforce judgment
19 is given in good faith to one of two or more persons
20 liable in tort for the same injury or same wrongful death,
21 one, it does not discharge any of the other tort feisors
22 from liability for the injury or wrongful death unless its
23 terms so provide, but it reduces the claim against the
24 other to the extent of any amount stipulated by the
25 release or the covenant or in the amount of consideration

1. paid for it, whichever is greater.

2. In this case, you have no tort cause of action
3. against Scottsdale. Plaintiff sought to collect
4. attorney's fees. There was a statutory bad faith action.
5. And \$85,000 does not cover the Plaintiff's damages in this
6. case. The Plaintiff has not been made whole here. The
7. policy limits are irrelevant as it pertains to the
8. remaining alive case. And this is the set off issue. And
9. this is why this is important for the trial judge to
10. consider at the post-verdict stage. Because the Supreme
11. Court in Riley vs. Ford Motor Company said despite the
12. Defendant's entitlement to set off, whether it common law
13. or under section 15-38-50, any reduction in the judgment
14. must be from a settlement for the same cause of action.
15. And that's the Supreme Court in September, Your Honor.

16. And so this argument that they're making now as to
17. joint tort feisor liability and that they're entitled to
18. benefit as to a set off of this, this is for the trial
19. judge. If there's a verdict, they can raise it at the
20. post-verdict stage, but they're not entitled to judgment
21. as a matter of law that this release applies to them as a
22. joint tort feisor. The causes of action never overlapped.
23. And under the Riley case, they're not even entitled to a
24. set off according to what the Supreme Court said.

25. THE COURT: All right.

1 Mr. Peel, do you want to respond to that?

2 MR. PEEL: Yes, Your Honor. I think I covered that
3 to start with. Bad faith is a tort. The Supreme Court
4 has made that clear.

5 THE COURT: Right.

6 MR. PEEL: They seek the same exact injury. There is
7 only one policy of insurance. It's \$110,000 for completed
8 value. They're the same consequential damages. The
9 damages are all the same as to -- let's say this went to
10 trial, Your Honor, they'd be entitled to present the
11 entire case to the jury and the jury would be able to make
12 a determination of if one were at fault, both were at
13 fault, or set off right under the joint tort feisor act
14 and we'd be entitled to the set off. But they are joint
15 torts. They are the same cause of action. They're a tort
16 for the same injurious conduct of not having the policy.

17 And so, Your Honor, I just -- you know, all I'm
18 asking you to do is look at the language in the release
19 that expresses what they're being paid and what it's for.

20 THE COURT: Okay.

21 Yes, ma'am, anything else?

22 MS. PEAVY: Your Honor, I just would like to make the
23 point that Mr. Peel talks about the damages being the
24 same, but the causes of action were different. And
25 Mr. Curry prosecuted a statutory bad faith claim against

1 Scottsdale. And part of that was the fact that Mr. Curry
2 contended in his prosecution of the claim against
3 Scottsdale that the policy itself was ambiguous as to the
4 expiration time of the policy. And why that ended up
5 mattering, Your Honor, is because this was a policy that
6 was issued for a term from November 21st, 2013 to
7 February 21st, 2014.

8 The undisputed evidence in the case is that a car ran
9 into Mr. Curry's house sometime before midnight on
10 February 21st. And so if the policy ran through
11 February 21st, there would have been coverage under the
12 policy, but Scottsdale, looking at the policy, contended
13 that no, the policy actually expires at 12:01 a.m. on
14 February 21st, so it doesn't matter, you only get one
15 minute of coverage.

16 So you can see, Your Honor, there are different
17 claims against these parties and the pleadings in this
18 case clearly set that out. If Mr. Peel wants to argue at
19 the post-verdict motion stage that he's entitled to a set
20 off as an alleged joint tortfeasor of the amount
21 contained in this release, Plaintiff doesn't object to
22 that. We don't believe he's entitled to that, but that
23 would be for the trial judge to consider at the
24 post-verdict stage.

25 And I think I've had my say for the day, Your Honor.

1 I'll sit down.

2 THE COURT: Okay.

3 MS. PEAUVY: Thank you.

4 THE COURT: I'm going to let y'all know within the
5 next 72 hours. I'm not going to delay. I know you have a
6 trial date.

7 MS. PEAUVY: Thank you, Your Honor.

8 MR. PEEL: Thank you.

9 THE COURT: All right.

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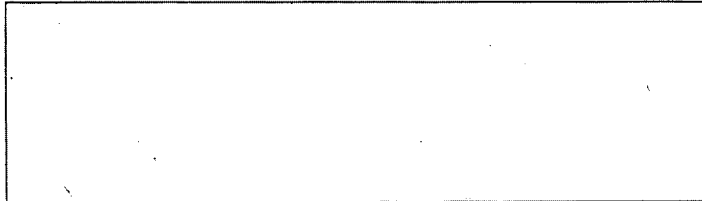
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Policy Number : CPS1884774



Agency Information:

Agency Code: 3901420
CAROLINA INSURANCE GROUP OF SC, INC.
P. O. BOX 2086

LEXINGTON SC 29071
Phone Number: (803) 951-3351

INSURED'S COPY

COMMON POLICY DECLARATIONS

CPS1816463

Renewal of Number



SCOTTSDALE INSURANCE COMPANY®

Home Office:

One Nationwide Plaza Columbus, Ohio 43215

Administrative Office:

8877 North Gainey Center Drive Scottsdale, Arizona 85258

1-800-423-7675

A STOCK COMPANY

Policy Number

CPS1884774

CAROLINA INSURANCE GROUP OF SC, INC.
P. O. BOX 2086

ITEM 1. NAMED INSURED AND MAILING ADDRESS

PORTHEMOS CURRY

6555 FROST AVE

COLUMBIA, SC 29203

AGENT NAME AND ADDRESS

TAPCO UNDERWRITERS, INC.

PO BOX 286

BURLINGTON, NC 27216

LEXINGTON, SC 29071

If property coverage is afforded
by this policy, the POLICY IS A
CO-INSURANCE CONTRACT.

Agent No. 32001 Program No.: NI

ITEM 2. POLICY PERIOD From: 11/21/2013 To: 02/21/2014 Term: 92 DAYS

12:01 A.M. Standard Time at your mailing address.

BUSINESS DESCRIPTION VACANT BUILDING

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. This policy consists of the following coverage parts for which a premium is indicated. Where no premium is shown, there is no coverage. This premium may be subject to adjustment.

Coverage Part(s)

Commercial General Liability Coverage Part
Commercial Property Coverage Part
Commercial Crime Coverage Part
Commercial Inland Marine Coverage Part
Commercial Auto (Business Auto or Truckers) Coverage Part
Commercial Garage Coverage Part
Professional Liability Coverage Part

Premium Summary

\$ 75.00
\$ 175.00
\$ NOT COVERED
\$ NOT COVERED
\$ NOT COVERED
\$ NOT COVERED
\$ NOT COVERED
\$ 250.00

Total Policy Premium:

\$ 250.00

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 IT IS NOT
AFFORDED GUARANTY FUND PROTECTION.

POLICY FEE

\$ 75.00

INSPECTION FEE

\$

STATE TAX

\$ 19.50

\$

\$

\$

\$

Policy Total: \$ 344.50

Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements

Countersigned: BURLINGTON, NC 12/04/2013
SUSAN223 (Date)

By

(Authorized Representative)

THIS COMMON POLICY DECLARATION AND THE SUPPLEMENTAL DECLARATION(S), TOGETHER WITH
THE COMMON POLICY CONDITIONS, COVERAGE PART(S), COVERAGE FORM(S) AND FORMS AND ENDORSEMENTS, IF ANY,
COMPLETE THE ABOVE NUMBERED POLICY.

OPS-D-1 (8-10)

ORIGINAL

deccv.fap

R.337



SCOTTSDALE INSURANCE COMPANY®

SCHEDULE OF FORMS AND ENDORSEMENTS

Policy No. CPS1884774 Effective Date: 11/21/2013
12:01 A.M., Standard Time
Named Insured PORTEMOS CURRY Agent No. 32001

OPS-D-1 08-10	Common Policy Declarations
UTS-SP-2 12-95	Forms & Endorsement Schedule
UTS-COVPG 12-09	COVER PAGE
NOTX0135CW (06-09)	FLOOD DAMAGE NOTICE
NOTX0178CW (02/06)	CLAIM REPORTING INFO
UTS-SP-3 8-96	LOCATIONS SCHEDULE
UTS-3g-1 (03-92)	GLASS EXCLUSION - VANDALISM
UTS-3g-2 (03-92)	SWIMMING POOL EXCL & LIMITATION
UTS-3g-3 (03-92)	SECURED VACANT BUILDING WARRANTY
UTS-3g-4 (03-92)	TOTAL/CONSTRUCTIVE LOSS CAUSE
UTS-365s (02-09)	AMENDMENT OF NONPAYMENT CANC CON
IL0249(09-08)	SC CHANGES - CANC & NON-RENEW
CPS-SD-1 (10-10)	PROPERTY SUPPLEMENTAL DEC
CPS-SP-5L (6-92)	MORTGAGE HOLDERS SCHEDULE
CP0010(06-07)	BUILDING & PERSONAL PROPERTY COV
CP0090(07-88)	COMM PROP COND
CP0110(07-88)	SC CHANGES - VALUATION
CP0140(7-06)	EXCL-LOSS DUE TO VIRUS/BACTERIA
CP0450(7-88)	VACANCY PERMIT
CP1010(06/07)	CAUSE LOSS BASIC
CP1032(08-08)	WATER EXCLUSION ENDORSEMENT
IL0953[01-08]	EXCL-CERTIFIED ACTS OF TERROR
CLS-SD-1L (8-01)	COMM LIAB DEC
CLS-SP-1L 10-93	GL EXT SUPPLEMENTAL DEC
CG 00 01 (12-07)	LIABILITY COVERAGE PART
CG0068 (05-09)	EXCL-RECORDING/DISTRIB OF MATERI
CG2101(11-85)	EXCL ATH/SPT PARTICIPANTS
CG2104(11-85)	EXCL PROD COMP OPS HAZ
CG2136(03-05)	EXCL NEW ENTITIES
CG2137(10-01)	EXCL EMP INSUREDS
CG2138(11-85)	EXCL PERS & ADV
CG2139(10-93)	CONTRACT. LIAB. LIMIT
CG2144(7-98)	LMT CVG DES PREM/PROD
CG2145(07-98)	EXCL FIRE DMG LIAB
CG2149(09-99)	TOT POLL EXCL END
CG2173[01-08]	EXCLUSION OF CERT ACTS OF TERROR
GLS-45s(08-04)	SEX/PHY ABUSE EXCLUSION
GLS-103s(9-06)	DESIGNATED OPS EXCLUSION
GLS-106s(01-11)	TOTAL LIQUOR EXCL
GLS-149s(8-96)	INJURY TO VOLUNTEERS EXCLUSION
GLS-227S(02-07)	ASSAULT & BATTERY EXCLUSION
UTS-85g(02-98)	ANIMAL EXCL
UTS-128s(10-07)	OPTIONAL PROVISIONS ENDT
UTS-180g(10-08)	COMMUNICABLE DISEASE EXCLUSION
UTS-182v(09-08)	AMENDATORY ENDORSEMENTS

ADDITIONAL FORMS



SCOTTSDALE INSURANCE COMPANY®

Home Office:

One Nationwide Plaza • Columbus, Ohio 43215

Administrative Office:

8877 North Gainey Center Drive • Scottsdale, Arizona 85258

1-800-423-7675

A STOCK COMPANY

5

In Witness Whereof, the Company has caused this policy to be executed and attested.

Secretary

President

The information contained herein replaces any similar information contained elsewhere in the policy.



SCOTTSDALE INSURANCE COMPANY®

National Casualty Company

Scottsdale Indemnity Company

FLOOD DAMAGE NOTICE

This policy does not cover damage to your property caused by flooding.

The federal government offers flood insurance through the National Flood Insurance Program (NFIP) to residents of communities that participate in its program. The NFIP provides coverage for residential and non-residential buildings and their contents.

For additional information concerning this important coverage, please contact your agent or you can learn more about the National Flood Insurance Program at www.floodsmart.gov or by calling 888-379-9531.



SCOTTSDALE INSURANCE COMPANY®

National Casualty Company

Scottsdale Indemnity Company

SCOTTSDALE

SURPLUS LINES INSURANCE COMPANY

**CLAIM REPORTING
INFORMATION**

Your insurance policy has been placed with the Scottsdale Insurance Group, a subsidiary of the Nationwide Insurance Company. The Scottsdale Insurance Group is a reliable, service-oriented group of companies that will help protect you against certain losses.

Our commitment to you is to provide fast, fair claim service. Promptly reporting an event that could lead to a claim, as required by your policy, helps us fulfill this commitment to you. Please refer to your policy for this and all other terms and conditions.

To report a claim, you may contact the Scottsdale Insurance Group 24 hours a day, 7 days a week, by calling 1-800-423-7675 or via our Web site at www.scottsdaleins.com.

Thank you for your business and as always, we appreciate the opportunity to serve you.

HOW TO REPORT A CLAIM

Call **1-800-423-7675** or visit our Web site at www.scottsdaleins.com

In order to expedite this process, please be prepared to furnish as much of the following information as possible:

- Your policy number
- Date, time and location of the loss/accident
- Details of the loss/accident
- Name, address and phone number of any involved parties
- If applicable, name of law enforcement agency or fire department along with the incident number

Please refer to your policy for specific claim reporting requirements.



SCOTTSDALE INSURANCE COMPANY®

SCHEDULE OF LOCATIONS

Policy No. CPS1884774 Effective Date 11/21/2013

12:01 A.M. Standard Time

Named Insured PORTHEMOS CURRY Agent No. 32001

Prem. No.	Bldg. No.	Designated Premises (Address, City, State, Zip Code)	Occupancy
01	01	1001 PINELAND DR COLUMBIA, SC 29203 BUILDING TYPE: FRAME PC: 6	VACANT BUILDING

Scottsdale Insurance Company[®]

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE (STANDARD TIME)					INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01	NOON		
CPS1884774	11	21	2013	X		PORTHEMOS CURRY	32001

GLASS EXCLUSION - VANDALISM

CAUSES OF LOSS - BASIC FORM

Under A. **COVERED CAUSES OF LOSS**, Item 8. **Vandalism**, is deleted in its entirety and is replaced by the following:

8. **Vandalism**, meaning willful and malicious damage to, or destruction of, the described property.

We will not pay for loss or damage:

- a. To glass (other than glass building blocks) that is part of a building, structure or an outside sign; but we will pay for loss or damage to other property caused by or resulting from breakage of glass by vandals.
- b. Caused by or resulting from theft, except for building damage caused by the breaking in or exiting of burglars.

All other terms and conditions remain unchanged.

AUTHORIZED REPRESENTATIVE

DATE

Scottsdale Insurance Company[®]

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE (STANDARD TIME)				INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01 A.M. NOON		
CPS1884774	11	21	2013	X	PORTEMOS CURRY	32001

SWIMMING POOL EXCLUSION AND LIMITATION

No coverage is provided under this policy for Bodily Injury arising from the insured's ownership of a swimming pool that is unfenced and/or not in compliance with the city or state laws or safety requirements. The limit of liability that is applicable to any claim or suit brought against an insured relating to swimming pools is \$25,000 including all expenses and defense costs.

AUTHORIZED REPRESENTATIVE

DATE

Scottsdale Insurance Company[®]

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE (STANDARD TIME)					INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01 A.M.	NOON		
CPS1884774	11	21	2013	X		PORTEMOS CURRY	32001

SECURED VACANT BUILDING WARRANTY

The assured warrants that all doors, windows, and other ways of access to the insured building shall be securely locked and/or boarded up to prevent unauthorized entrance at all times during the policy period.

AUTHORIZED REPRESENTATIVE

DATE

Scottsdale Insurance Company[®]

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE (STANDARD TIME)				INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01 A.M. NOON		
CPS1884774	11	21	2013	X	PORTHENOS CURRY	32001

TOTAL OR CONSTRUCTIVE LOSS CAUSE

It is understood and agreed that in the event of a total loss or constructive total loss under the policy, the entire policy premium shall be earned in full and no return premium shall be due the named insured.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT OF NONPAYMENT CANCELLATION CONDITION

Wherever a Cancellation Condition for nonpayment of premium is found in the policy, the following is added:

If the insured failed to pay premium charged on a prior policy we issued and payment was due during the current renewal policy term, we may cancel this policy by mailing or delivering to the first Named Insured and mortgagee, if any, written notice of cancellation at least ten (10) days before the effective date of cancellation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SOUTH CAROLINA CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

- A. Paragraphs 2. and 3. of **Cancellation** Common Policy Condition are replaced by the following:
 - 2. We may cancel this policy by mailing or delivering to the first Named Insured and the agent, if any, written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
 - 3. We will mail or deliver our notice to the first Named Insured's and agent's last known addresses.
- B. The following is added to the **Cancellation** Common Policy Condition:
 - 7. **Cancellation Of Policies In Effect For 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.

- 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.



SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL PROPERTY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No.: CPS1884774 Effective Date: 11/21/2013
12:01 A.M. Standard Time

Named Insured: PORTHEMOS CURRY Agent No.: 32001

Item 1. Business Description: VACANT BUILDING

Item 2. Premises Described:

See Schedule Of Locations

Item 3. \$500 Deductible unless otherwise indicated.

Item 4. Coverages Provided:

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
01	01	VACANT BUILDING	110,000	BASIC	80%

Other Provisions

Construction: FRAME Year Built: 2009 No. of Stories: 1
☐ Agreed Value: _____ Expires: _____ ☒ Replacement Cost
☐ Business Income Indemnity: Monthly Limit: _____ Period: Maximum _____ ☐ Inflation Guard: _____ %
☐ Reporting
Deductible: 500 Earthquake Deductible: _____ % Extended Exceptions: _____

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.

Other Provisions

Construction: _____ Year Built: _____ No. of Stories: _____
☐ Agreed Value: _____ Expires: _____ ☐ Replacement Cost
☐ Business Income Indemnity: Monthly Limit: _____ Period: Maximum _____ ☐ Inflation Guard: _____ %
☐ Reporting
Deductible: _____ Earthquake Deductible: _____ % Extended Exceptions: _____

Prem. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.

Other Provisions

Construction: _____ Year Built: _____ No. of Stories: _____
☐ Agreed Value: _____ Expires: _____ ☐ Replacement Cost
☐ Business Income Indemnity: Monthly Limit: _____ Period: Maximum _____ ☐ Inflation Guard: _____ %
☐ Reporting
Deductible: _____ Earthquake Deductible: _____ % Extended Exceptions: _____

Item 5. Forms and Endorsements:

Form(s) and Endorsement(s) made a part of this policy at time of issue:

See Schedule of Forms and Endorsements

THIS SUPPLEMENTAL DECLARATIONS AND THE COMMON POLICY DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENT(S), IF ANY, COMPLETE THE ABOVE-NUMBERED POLICY.



SCOTTSDALE INSURANCE COMPANY®

SCHEDULE OF MORTGAGE HOLDER(S)

Policy No. CPS1884774 Effective Date 11/21/2013

12:01 A.M. Standard Time

Named Insured PORTHEMOS.CURRY Agent No. 32001

Prem. No.	Bldg. No.	Mortgage Holder Name and Mailing Address
01	01	NONE REPORTED

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

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

Other words and phrases that appear in quotation marks have special meaning. Refer to Section H., Definitions.

A. Coverage

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

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, A.1., and limited in A.2., Property Not Covered, if a Limit of Insurance is shown in the Declarations for that type of property.

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

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;

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

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

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

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

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns;
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (c) Rowboats or canoes out of water at the described premises; or
- (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers;

q. The following property while outside of buildings:

- (1) Grain, hay, straw or other crops;
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than "stock" of trees, shrubs or plants), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

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

4. Additional Coverages

a. Debris Removal

(1) Subject to Paragraphs (3) and (4), we will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.

(2) Debris Removal does not apply to costs to:

- (a) Extract "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

(3) Subject to the exceptions in Paragraph (4), the following provisions apply:

(a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.

(b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

(4) We will pay up to an additional \$10,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if (4)(a) and/or (4)(b) apply, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$10,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

EXAMPLE #1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 - \$500)

Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

EXAMPLE #2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 - \$500)

Debris Removal Expense:	\$ 30,000
Debris Removal Expense Payable	

Basic Amount:	\$ 10,500
Additional Amount:	\$ 10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: $\$80,000 (\$79,500 + \$500) \times .25 = \$20,000$, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the loss payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal expense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

b. Preservation Of Property

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

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

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

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

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

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

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

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

(4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:

(a) You were required to comply with before the loss, even when the building was undamaged; and

(b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

(a) The enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or

(b) Any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of: \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

(a) We will not pay for the Increased Cost of Construction:

(i) Until the property is actually repaired or replaced, at the same or another premises; and

(ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

(b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the same premises.

(c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of e.(6) of this Additional Coverage, is the increased cost of construction at the new premises.

(8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion, to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.

(9) The costs addressed in the Loss Payment and Valuation Conditions, and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in e.(6) of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

(1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data.

(2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:

- (a) If the Causes Of Loss - Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (b) If the Causes Of Loss - Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
- (c) If the Causes Of Loss Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
- (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or

damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

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

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

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions;
 - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
 - (iii) Business personal property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

(b) This Extension does not apply to:

- (i)** Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii)** Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance on or at each newly acquired or constructed property, coverage will end when any of the following first occurs:

- (a)** This policy expires;
- (b)** 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c)** You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

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

- (1)** Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2)** Personal property of others in your care, custody or control.

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

c. Valuable Papers And Records (Other Than Electronic Data)

- (1)** You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2)** If the Causes Of Loss - Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form, and Collapse as set forth in that form.
- (3)** If the Causes Of Loss - Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4)** Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist), and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and therefore coverage of such costs is not additional insurance.

d. Property Off-premises

- (1)** You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a)** Temporarily at a location you do not own, lease or operate;
 - (b)** In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c)** At any fair, trade show or exhibition.

(2) This Extension does not apply to property:

(a) In or on a vehicle; or

(b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.

(3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

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

(1) Fire;

(2) Lightning;

(3) Explosion;

(4) Riot or Civil Commotion; or

(5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

f. Non-owned Detached Trailers

(1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:

(a) The trailer is used in your business;

(b) The trailer is in your care, custody or control at the premises described in the Declarations; and

(c) You have a contractual responsibility to pay for loss or damage to the trailer.

(2) We will not pay for any loss or damage that occurs:

(a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

(b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

(3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.

(4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

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

C. Limits Of Insurance

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

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (herein-after referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss, and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

EXAMPLE #1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance - Building #1:	\$ 60,000
Limit of Insurance - Building #2:	\$ 80,000
Loss to Building #1:	\$ 60,100
Loss to Building #2:	\$ 90,000

The amount of loss to Building #1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building #1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building #1:

\$ 60,100
- 250

\$ 59,850 Loss Payable - Building #1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building #2. Loss payable for Building #2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:

\$59,850 + \$80,000 = \$139,850

EXAMPLE #2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example #1.

Loss to Building #1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building #2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable - Building #1:	\$ 60,000
(Limit of Insurance)	
Loss Payable - Building #2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

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

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

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

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

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

3. Duties In The Event Of Loss Or Damage

- a. You must see that the following are done in the event of loss or damage to Covered Property:
- (1) Notify the police if a law may have been broken.
 - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.
Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
 - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
- (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.
- We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:
- (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

- h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

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

6. Vacancy

a. Description Of Terms

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

- (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

- (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or
(ii) Used by the building owner to conduct customary operations.

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

b. Vacancy Provisions

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

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

- (a) Vandalism;
(b) Sprinkler leakage, unless you have protected the system against freezing;
(c) Building glass breakage;
(d) Water damage;
(e) Theft; or
(f) Attempted theft.

- (2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

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

- a. At actual cash value as of the time of loss or damage, except as provided in b., c., d. and e. below.
b. If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value even when attached to the building:

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

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

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

F. Additional Conditions

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

1. Coinsurance

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

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

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

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

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

EXAMPLE #1 (UNDERINSURANCE)

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

Step (1): $\$250,000 \times 80\% = \$200,000$

(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

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

EXAMPLE #2 (ADEQUATE INSURANCE)

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

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$250,000 x 80%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$39,750 (\$40,000 amount of loss minus the deductible of \$250).

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

EXAMPLE #3

When: The value of the property is:
Building at Location #1: \$ 75,000
Building at Location #2: \$ 100,000
Personal Property at Location #2: \$ 75,000
\$ 250,000

The Coinsurance percentage for it is: 90%

The Limit of Insurance for Buildings and Personal Property at Locations #1 and #2 is: \$ 180,000

The Deductible is: \$ 1,000

The amount of loss is:

Building at Location #2: \$ 30,000

Personal Property at Location #2: \$20,000

\$ 50,000

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

Step (2): $\$180,000 \div \$225,000 = .80$

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

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

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

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
 - (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
 - (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

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

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
- (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

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

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

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

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applied will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times

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

EXAMPLE

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

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
 - (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
 - (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
- (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.
- If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.
- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph 3.b.(1) of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
- 3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

COMMERCIAL PROPERTY CONDITIONS

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

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

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

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

B. CONTROL OF PROPERTY

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

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

C. INSURANCE UNDER TWO OR MORE COVERAGES

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

D. LEGAL ACTION AGAINST US

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

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

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

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

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

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

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

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

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

This will not restrict your insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CP 01 10 07 88

SOUTH CAROLINA CHANGES — VALUATION

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
BUILDERS' RISK COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE*

Prem. No.	Bldg. No.	Agreed Value of Buildings	Total Amount of Insurance to be Carried
01	01	110,000	110,000

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

B. The following is added to VALUATION Loss Condition:

1. For loss or damage to buildings caused by or resulting from fire or lightning, you and we agree that:
 - a. The value of buildings described in this Coverage Part; and
 - b. The total amount of insurance to be carried on the buildings, including this Coverage Part;are the amounts shown in the Schedule.
2. The following applies to the Builders' Risk Coverage Form or the Builders' Risk Changes — Standard Property Policy, if applicable:

The Agreed Value of Buildings represents the value of the building when it is completed.

*Information required to complete this Schedule, if not shown on the endorsement, will be shown in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY**

- A. The exclusion set forth in Paragraph B. applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C. With respect to any loss or damage subject to the exclusion in Paragraph B., such exclusion supersedes any exclusion relating to "pollutants".
- D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
 - 1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
 - 2. Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E. The terms of the exclusion in Paragraph B., or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CP 04 50 07 88

VACANCY PERMIT

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Prem. No.	Bldg. No.	Excepted Causes of Loss		Permit Period	
		Vandalism	Sprinkler Leakage	From	To
01	01			11/21/2013	02/21/2014

A. The VACANCY Loss Condition does not apply to direct physical loss or damage:

1. At the locations; and
 2. During the Permit Period;
- shown in the Schedule or in the Declaration.

B. This Vacancy Permit does not apply to the Excepted Causes of Loss indicated in the Declarations or by an "X" in the Schedule.

CAUSES OF LOSS - BASIC FORM

A. Covered Causes Of Loss

When Basic is shown in the Declarations, Covered Causes of Loss means the following:

1. Fire.
2. Lightning.
3. Explosion, including the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass. This cause of loss does not include loss or damage by:
 - a. Rupture, bursting or operation of pressure-relief devices; or
 - b. Rupture or bursting due to expansion or swelling of the contents of any building or structure, caused by or resulting from water.
4. Windstorm or Hail, but not including:
 - a. Frost or cold weather;
 - b. Ice (other than hail), snow or sleet, whether driven by wind or not; or
 - c. Loss or damage to the interior of any building or structure, or the property inside the building or structure, caused by rain, snow, sand or dust, whether driven by wind or not, unless the building or structure first sustains wind or hail damage to its roof or walls through which the rain, snow, sand or dust enters.
5. Smoke causing sudden and accidental loss or damage. This cause of loss does not include smoke from agricultural smudging or industrial operations.
6. Aircraft or Vehicles, meaning only physical contact of an aircraft, a spacecraft, a self-propelled missile, a vehicle or an object thrown up by a vehicle with the described property or with the building or structure containing the described property. This cause of loss includes loss or damage by objects falling from aircraft.

We will not pay for loss or damage caused by or resulting from vehicles you own or which are operated in the course of your business.

7. Riot or Civil Commotion, including:
 - a. Acts of striking employees while occupying the described premises; and
 - b. Looting occurring at the time and place of a riot or civil commotion.
8. Vandalism, meaning willful and malicious damage to, or destruction of, the described property.

We will not pay for loss or damage caused by or resulting from theft, except for building damage caused by the breaking in or exiting of burglars.
9. Sprinkler Leakage, meaning leakage or discharge of any substance from an Automatic Sprinkler System, including collapse of a tank that is part of the system.

If the building or structure containing the Automatic Sprinkler System is Covered Property, we will also pay the cost to:

 - a. Repair or replace damaged parts of the Automatic Sprinkler System if the damage:
 - (1) Results in sprinkler leakage; or
 - (2) Is directly caused by freezing.
 - b. Tear out and replace any part of the building or structure to repair damage to the Automatic Sprinkler System that has resulted in sprinkler leakage.

Automatic Sprinkler System means:

- (1) Any automatic fire-protective or extinguishing system, including connected:
 - (a) Sprinklers and discharge nozzles;
 - (b) Ducts, pipes, valves and fittings;
 - (c) Tanks, their component parts and supports; and
 - (d) Pumps and private fire protection mains.
- (2) When supplied from an automatic fire-protective system:
 - (a) Non-automatic fire-protective systems; and
 - (b) Hydrants, standpipes and outlets.

10. Sinkhole Collapse, meaning loss or damage caused by the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- a. The cost of filling sinkholes; or
- b. Sinking or collapse of land into man-made underground cavities.

11. Volcanic Action, meaning direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- a. Airborne volcanic blast or airborne shock waves;
- b. Ash, dust or particulate matter; or
- c. Lava flow.

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

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

B. Exclusions

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

a. Ordinance Or Law

The enforcement of any ordinance or law:

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

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

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

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;

- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire or Volcanic Action, we will pay for the loss or damage caused by that fire or Volcanic Action.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

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

d. Nuclear Hazard

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

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

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

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

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

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in g.(1) through (4) above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

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

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion does not apply:

1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
2. To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions B.1.a. through B.1.h. apply whether or not the loss event results in widespread damage or affects a substantial area.

2. We will not pay for loss or damage caused by or resulting from:

a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- (1) Electrical or electronic wire, device, appliance, system or network; or
- (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or microwaves.

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

b. Rupture or bursting of water pipes (other than Automatic Sprinkler Systems) unless caused by a Covered Cause of Loss.

- c. Leakage or discharge of water or steam from any part of a system or appliance containing water or steam (other than an Automatic Sprinkler System), unless the leakage or discharge occurs because the system or appliance was damaged by a Covered Cause of Loss. But we will not pay for loss or damage caused by or resulting from continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

- d. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control.

But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion.

- e. Mechanical breakdown, including rupture or bursting caused by centrifugal force.

But if mechanical breakdown results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

- f. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

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

We will not pay for:

- (1) Any loss caused by or resulting from:
- (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

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

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

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

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period of Indemnity Optional Coverage or any variation of these.

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

- (5) Any other consequential loss.

b. **Leasehold Interest Coverage Form**

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

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

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

c. **Legal Liability Coverage Form**

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

- (a) Paragraph B.1.a., Ordinance Or Law;
- (b) Paragraph B.1.c., Governmental Action;
- (c) Paragraph B.1.d., Nuclear Hazard;
- (d) Paragraph B.1.e., Utility Services; and
- (e) Paragraph B.1.f., War And Military Action.

- (2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

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

C. Additional Coverage - Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in C.2. and C.6. only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
 - a. A Covered Cause of Loss other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
 - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and

- c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under C.2. of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of Covered Causes of Loss (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph b. of Covered Causes Of Loss 9., Sprinkler Leakage.
6. The following, 6.a. or 6.b., applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.
 - a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by

"fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of

when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

D. Limitation

We will pay for loss of animals only if they are killed or their destruction is made necessary.

E. Definitions

"Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WATER EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY**

A. The exclusion in Paragraph B. replaces the **Water Exclusion** in this Coverage Part or Policy.

B. Water

1. Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
2. Mudslide or mudflow;
3. Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
4. Water under the ground surface pressing on, or flowing or seeping through:
 - a. Foundations, walls, floors or paved surfaces;
 - b. Basements, whether paved or not; or
 - c. Doors, windows or other openings; or

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

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

The **Exception Covering Certain Fire Losses** (Paragraph C) applies to property located in the following state(s), if covered under the indicated Coverage Form, Coverage Part or Policy:

State(s)	Coverage Form, Coverage Part Or Policy
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

- A. The following definition is added with respect to the provisions of this endorsement:

"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. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. 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
2. 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.

- B. The following exclusion is added:

CERTIFIED ACT OF TERRORISM EXCLUSION

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

- C. **Exception Covering Certain Fire Losses**

The following exception to the exclusion in Paragraph B. applies only if indicated and as indicated in the Schedule of this endorsement.

If a "certified act of terrorism" results in fire, we will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage by fire to Covered Property. Therefore, for example, the coverage does not apply to insurance provided under Business Income and/or Extra Expense coverage forms or endorsements which apply to those forms, or to the Legal Liability Coverage Form or the Leasehold Interest Coverage Form.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

D. Application Of Other Exclusions

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.



SCOTTSDALE INSURANCE COMPANY®
**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SUPPLEMENTAL DECLARATIONS**

Policy No. CPS1884774 Effective Date 11/21/2013
12:01 A.M., Standard Time

Named Insured PORTEMOS CURRY Agent No. 32001

Item 1. Limits of Insurance	
Coverage	Limit of Liability
Aggregate Limits of Liability	Products/Completed Operations Aggregate \$ <u>EXCLUDED</u> General Aggregate (other than Products/Completed Operations) \$ <u>500,000</u>
Coverage A - Bodily Injury and Property Damage Liability	any one occurrence subject to the Products/Completed Operations and General Aggregate Limits of Liability \$ <u>500,000</u> any one premises subject to the Coverage A occurrence and the General Aggregate Limits of Liability \$ <u>EXCLUDED</u>
Damage to Premises Rented to You Limit	\$ <u>EXCLUDED</u>
Coverage B - Personal and Advertising Injury Liability	any one person or organization subject to the General Aggregate Limits of Liability \$ <u>EXCLUDED</u>
Coverage C - Medical Payments	any one person subject to the Coverage A occurrence and the General Aggregate Limits \$ <u>EXCLUDED</u>
Item 2. Description of Business	
Form of Business: ☒ Individual ☐ Partnership ☐ Joint Venture ☐ Trust ☐ Limited Liability Company ☐ Organization including a corporation (other than Partnership, Joint Venture or Limited Liability Company)	
Location of All Premises You Own, Rent or Occupy: SEE SCHEDULE OF LOCATIONS	
Item 3. Forms and Endorsements	
Form(s) and Endorsement(s) made a part of this policy at time of issue: See Schedule of Forms and Endorsements	
Item 4. Premiums	
Coverage Part Premium:	\$ 75.00
Other Premium:	\$
Total Premium:	\$ 75

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.



SCOTTSDALE INSURANCE COMPANY®

COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. CPS1884774 Effective Date: 11/21/2013
 12:01 A.M., Standard Time
 Named Insured PORTEMOS CURRY Agent No. 32001

Prem. No. 01	Bldg. No. 01	Class Code 68606	Exposure FLAT	Basis AREA - (SQ. FT.)	
Class Description: VACANT BUILDINGS - NOT FACTORIES - NOT FOR PROFIT - EXCLUDING PRODUCTS AND/OR COMPLETED OPERATIONS				Premises/Operations	
				Rate	Premium
				FLAT	\$75
				Products/Comp Operations	
				Rate	Premium
				EXCLUDED	EXCLUDED
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium
Prem. No.	Bldg. No.	Class Code	Exposure	Basis	
Class Description:				Premises/Operations	
				Rate	Premium
				Products/Comp Operations	
				Rate	Premium

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 whether the insured may be liable as an employer or in any other capacity and 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.

q. 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:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) 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.

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. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

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 web-sites 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.

p. 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:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) 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.

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:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) 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 court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

- 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 we have used up the applicable limit of insurance in the payment of judgments or settlements or 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.
 4. 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".
 5. Subject to Paragraph 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.
 6. Subject to Paragraph 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".
 7. Subject to Paragraph 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.
 8. Subject to Paragraph 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.

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.

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 Paragraph 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 Paragraph c. below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) 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

(iv) 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.

(b) 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.

(2) 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.

(3) 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:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) 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 Paragraph 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 Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph 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 Paragraph 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 the repair, replacement, adjustment or removal of "your product" or "your work" or 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, road-beds, 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 Paragraph 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 Paragraph 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, re-conditioned 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.

RECORDING AND DISTRIBUTION OF MATERIAL OR INFORMATION IN VIOLATION OF LAW EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion q. of Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

- B. Exclusion p. of Paragraph 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 01 11 85

EXCLUSION ATHLETIC OR SPORTS PARTICIPANTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description of Operations:

VACANT BUILDING

(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 any operations shown in the Schedule, this insurance does not apply to bodily injury to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 04 11 85

EXCLUSION — PRODUCTS — COMPLETED OPERATIONS HAZARD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "property damage" included within the "products—completed operations hazard".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - NEW ENTITIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph 3. of **Section II - Who Is An Insured** does not apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - EMPLOYEES AND VOLUNTEER WORKERS AS INSUREDS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph 2.a. of Section II - Who Is An Insured does not apply.

B. Paragraph 2. Exclusions of Section I. - Coverage A - Bodily Injury And Property Damage Liability is amended as follows:

1. Paragraph g. is replaced by the following:

This insurance does not apply to:

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:

- (1) Owned or operated by or rented or loaned to any insured; or
- (2) Operated by any "employee" or "volunteer worker" in the course of his or her employment by the insured or while performing duties related to the conduct of the insured's business.

Use includes operation and "loading or unloading".

This exclusion applies even if the claims against the 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, the insured, any of your "employees" or "volunteer workers" or any "employee" or "volunteer worker" of the insured.
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 38 11 85

EXCLUSION PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

COVERAGE B (Section I) does not apply and none of the references to it in the Coverage Part apply .

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CG 21 39 10 93

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.

POLICY NUMBER: CFS1884774

COMMERCIAL GENERAL LIABILITY
CG 2144 07 98

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

Premises: ALL PREMISES

Project: ALL CLASSIFICATIONS

(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 injury", "advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or
2. The project shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DAMAGE TO PREMISES RENTED TO YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** The last paragraph ("Exclusions c. through n. do not apply . . .") of Paragraph 2., **Exclusions** under Section I - **Coverage A - Bodily Injury And Property Damage Liability** is deleted.
- B.** The first exception ("Paragraphs (1), (3) and (4) of this exclusion do not apply . . .") to Exclusion j., **Damage To Property** of Paragraph 2., **Exclusions** of Section I - **Coverage A - Bodily Injury And Property Damage Liability** is deleted.
- C.** Paragraph 6. of **Section III - Limits Of Insurance** is deleted.
- D.** Any reference in the Declarations to "Damage To Premises Rented To You" is deleted.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" 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 "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".

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. 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 "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "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. 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.



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SEXUAL AND/OR PHYSICAL ABUSE EXCLUSION

This endorsement modifies insurance provided under:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
ERRORS AND OMISSIONS COVERAGE PART**

This policy does not apply to any injury sustained by any person arising out of or resulting from "Sexual and/or Physical abuse" by:

1. any insured;
2. any of your "Employees";
3. any person performing volunteer services for you or on your behalf; or
4. any other person.

We shall not have any duty to defend any suit against you seeking "damages" on account of any such injury.

The intent of this endorsement is to exclude all injury sustained by any person, including emotional distress, arising out of "Sexual and/or Physical abuse" including but not limited to "Sexual and/or Physical abuse" caused by negligent employment, investigation, supervision, or reporting to the proper authorities, or failure to so report, or retention of a person for whom any insured is or ever was legally responsible.

The following Definitions are added to the policy:

1. "Sexual and/or Physical abuse" means sexual or physical injury or abuse, including but not limited to assault and battery, negligent or deliberate touching, corporal punishment and mental abuse.
2. "Employee" means any person, other than a person insured, in your employment, including, but not limited to:
 - a. persons with child caring responsibilities;
 - b. attendants;
 - c. janitors;
 - d. bus drivers; and
 - e. volunteer workers.
3. "Damages" means all damages, including damages for death, which are payable because of injury to which this insurance applies.

All other terms and conditions remain unchanged.



SCOTTSDALE INSURANCE COMPANY[®]

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED OPERATIONS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM
HOSPITAL PROFESSIONAL LIABILITY COVERAGE FORM
ERRORS AND OMISSIONS COVERAGE PART
PROFESSIONAL LIABILITY INSURANCE
BEAUTY PARLOR/BARBER SHOP PROFESSIONAL LIABILITY INSURANCE
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE FORM

SCHEDULE

Description of Excluded Operations:
It is understood that coverage is hereby excluded for any loss or damage arising out of or in any way relating to construction, renovation, remodeling or repair being performed at or upon the insured premises.

This insurance does not apply to any **medical incident**, "damages," "bodily injury," "property damage," or "personal and advertising injury" arising out of the operations shown in the Schedule above.

AUTHORIZED REPRESENTATIVE

DATE

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ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

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 FORM

Paragraph Exclusion 2.c. of **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is replaced by:

c. Liquor Liability

(1) "Bodily injury" or "property damage" for which any insured or an indemnity of the insured may be held liable by reason of:

- (a) Causing or contributing to the intoxication of any person;
- (b) The furnishing of alcoholic beverages to a person under the legal drinking age;
- (c) The furnishing of alcoholic beverages to anyone under the influence of alcohol; or

(d) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

(2) Paragraph (1) applies even if the claims or "suits" against any insured or an indemnity of the insured allege negligence or other wrongdoing in the:

- (a) Supervision, hiring, employment, training or monitoring of others who are manufacturing, distributing, selling, serving or furnishing alcoholic beverage; or
- (b) Providing or failing to provide transportation to any person that may be under the influence of alcohol.

AUTHORIZED REPRESENTATIVE

DATE

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ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INJURY TO VOLUNTEERS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

The following exclusion is added to paragraph 2. Exclusions of **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE (SECTION I - COVERAGES)**:

This insurance does not apply to "bodily injury" or "personal injury" to any volunteer worker(s) arising out of their activities as a volunteer.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSAULT AND/OR BATTERY EXCLUSION

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
ERRORS AND OMISSIONS COVERAGE PART
LIQUOR LIABILITY COVERAGE PART**

The following exclusion is added to the Exclusions section:

This insurance does not apply to "injury," "bodily Injury," "property damage," "error or omission" or "personal and advertising injury" arising from:

1. Assault and/or Battery committed by any insured, any employee/"employee" of any insured, or any other person;
2. The failure to suppress or prevent Assault and/or Battery by any person in 1. above;
3. The selling, serving or furnishing of alcoholic beverages which results in an Assault and/or Battery.
4. The negligent:
 - a. Employment;
 - b. Investigation;
 - c. Supervision;
 - d. Reporting to the proper authorities, or failure to so report; or
 - e. Retentionof a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by paragraphs 1., 2. or 3. above.

AUTHORIZED REPRESENTATIVE

DATE



SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ANIMAL EXCLUSION

This policy does not provide coverage for:

Bodily injury, property damage or medical payments to others, caused by any animal, whether owned or not owned by any insured.



SCOTTSDALE INSURANCE COMPANY®

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NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL PROVISIONS ENDORSEMENT

The following special provisions (indicated by an "X") apply to this policy.

SCHEDULE

- ☒ **Bodily Injury, Property Damage, Personal Injury and Advertising Injury Liability Deductible Endorsement**

Coverage	Amount and Basis of Deductible
Bodily Injury Liability	\$ 500 per claimant
Property Damage Liability	\$ 500 per claimant
Personal and Advertising Injury Liability	\$ N/A per claimant

- ☒ **Service of Suit Clause**

Service of Process will be accepted by: DIRECTOR OF INSURANCE

PO BOX 100105, COLUMBIA, SC 29202, and

Service of Process will be mailed to: RECIPIENT NOT REQUIRED

- ☒ **Minimum and Advance Premium Endorsement**

Minimum Premium _____ 100 _____ %.

- ☒ **Minimum Earned Cancellation Premium**

Minimum Earned Cancellation Premium _____ 100 _____ % of the advance premium.

GLS-94s (12-99)

BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY AND ADVERTISING INJURY LIABILITY DEDUCTIBLE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

APPLICATION OF ENDORSEMENT

Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury," "property

damage," "personal and advertising injury," ("personal injury" and "advertising injury") however caused:

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, Personal and Advertising

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Page 1 of 3

UTS-128s (10-07)

ORIGINAL

uts128-4.15p

Injury Liability (Personal Injury and Advertising Injury) Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule of this endorsement as applicable to such coverages, and the Limits of Insurance applicable to Each Occurrence or offense for such coverages will be reduced by the amount of such deductible. Aggregate Limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts apply to damages and all legal and loss adjustment expenses.
3. The deductible amounts stated in the Schedule above apply, respectively:
 - a. Under the Bodily Injury Liability Coverage to all damages because of "bodily injury" sustained by one person;

- b. Under Property Damage Liability Coverage to all damages because of "property damage" sustained by one person, any organization or association; or

- c. Under Personal and Advertising Injury Liability (Personal Injury and Advertising Injury) Coverages to all damages sustained by one person as the result of any one "occurrence" or offense.

4. The terms of this insurance, including those with respect to our right and duty to defend any "suits" seeking those damages and your duties in the event of an "occurrence," offense, claim or "suit," apply irrespective of the application of the deductible amount.
5. We may pay any part 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.

UTS-9g (5-96)

SERVICE OF SUIT CLAUSE

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due under this policy, the Company at the request of the Insured (or reinsured), will submit to the jurisdiction of any court of competent jurisdiction within the United States of America and will comply with all requirements necessary to give the Court jurisdiction. All matters which arise will be determined in accordance with the law and practice of the Court. In a suit instituted against any one of them under this contract, the Company agrees to abide by the final decision of the Court or of any Appellate Court in the event of an appeal.

Pursuant to any statute of any state, territory or district of the United States of America which makes a provision, the Company will designate the Superintendent,

Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured (or reinsured) or any beneficiary arising out of this contract of insurance (or reinsurance).

The officer named in the Schedule of this endorsement is authorized and directed to accept service of process on behalf of the Company.

Having accepted service of process on behalf of the Company, the officer is authorized to mail the process or a true copy to the individual named in the Schedule above.

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

This endorsement modifies Conditions provided under the following:

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

Item 5.b. of the Premium Audit Condition (under **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS, LIQUOR LIABILITY CONDITIONS AND PRODUCTS/COMPLETED OPERATIONS LIABILITY CONDITIONS**) is amended to read:

- b. The advance premium for this Coverage Part is a deposit premium only. The final premium shall be subject to audit. At the close of each audit period we will compute the earned premium for that period. Any audit premiums are due and payable to us on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to the minimum premium as defined below. In the event the first Named Insured fails or refuses to allow our representative to audit your books and records, we may unilaterally charge a final premium for the policy period at double the minimum or advance premium, whichever is greater, and such final premium shall be immediately due and payable on notice to the first Named Insured. For purposes of this endorsement, the terms advance premium, earned premium, and minimum premium are defined as follows:

Advance Premium - The premium that is stated in the applicable initial policy Declarations or Renewal Certificate and payable in full by the first Named Insured at the inception of each Policy Period.

Earned Premium - The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the audit period.

Minimum Premium - The lowest premium for which this insurance will be written for the Policy Period stated in **Item 2.** of the Declarations of the applicable initial policy or subsequent Renewal Certificate. This minimum premium is equal to 100% (unless a different percentage (%) is shown in the **SCHEDULE** above) of the advance premium including any premium adjustments made by endorsement to this policy during the Policy Period. Premium adjustments do not include the audit premium developed for the Policy Period stated in **Item 2.** of the Declarations.

UTS-119g (1-00)

MINIMUM EARNED CANCELLATION PREMIUM

The following provision is added to the Cancellation Condition:

If You request cancellation of this policy, We will retain not less than the percentage of the advance premium as stated in the Schedule.

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DATE

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SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE DATE (12:01 A.M. STANDARD TIME)	NAMED INSURED	AGENT NO.
CPS1884774	11/21/2013	PORTHEMOS CURRY	32001

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COMMUNICABLE DISEASE EXCLUSION

This insurance does not apply to "bodily injury," "property damage," "personal and advertising injury," error or omission, or other damages arising out of the actual or alleged transmission of or exposure to a "communicable disease," illness or condition related to any "communicable disease."

This exclusion applies even if claims against any insured allege negligence or other wrongdoing in the:

- a. Act or failure to act by any insured;
- b. Supervising, hiring, employing, training or monitoring of others or care of animals that may be infected with and spread a "communicable disease";
- c. Testing for a "communicable disease";
- d. Failure to prevent the spread of the disease; or
- e. Failure to report the disease to authorities as required by local, state or federal law, statute or regulation.

For purposes of this endorsement, the following definition applies:

"Communicable disease" means any infectious and/or contagious disease, including but not limited to, diseases caused by bacteria, fungi, protozoa, viruses, or any combination of the foregoing.

AUTHORIZED REPRESENTATIVE

DATE

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SCOTTSDALE INSURANCE COMPANY®

ENDORSEMENT
NO. _____

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDATORY ENDORSEMENTS

This endorsement lists several endorsements that modify your policy as follows:

IL 00 17 11 98

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 canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.

6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. 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

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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.

CG 21 35 10 01

EXCLUSION - COVERAGE C - MEDICAL PAYMENTS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

1. Section I - Coverage C. Medical Payments does not apply and none of the references to it in the Coverage part apply; and
2. The following is added to Section I - Supplementary Payments:

Expenses incurred by the insured for first aid to others at the time of an accident for "bodily injury" to which this insurance applies.

UTS-267g.(5-98)

LEAD CONTAMINATION EXCLUSION

This policy does not apply to:

1. Any damages arising out of the ingestion, inhalation or absorption of lead in any form.
2. Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any "insured" or others test for, monitor, clean up, remove,

contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of lead; 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 lead.

EMPLOYMENT-RELATED PRACTICES 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:

This insurance does not apply to:

"Bodily 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, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily 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 injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability:

This insurance does not apply to:

"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, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "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 injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

AMENDMENT OF CONDITIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
PRODUCTS COMPLETED OPERATIONS COVERAGE PART

The Condition entitled **When We Do Not Renew** is deleted in its entirety.

IL 00 21 09 08

NUCLEAR ENERGY LIABILITY EXCLUSION (BROAD FORM)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
FARM COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
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.

UTS-74g (8-95)

PUNITIVE OR EXEMPLARY DAMAGE EXCLUSION

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This policy does not apply to a claim of or indemnification for punitive or exemplary damages.

Punitive or exemplary damages also include any damages awarded pursuant to statute in the form of double, treble or other multiple damages in excess of compensatory damages.

If suit is brought against any insured for a claim falling within coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then the Company will afford a defense to such action. However, the Company will have no obligation to pay for any costs, interest or damages attributable to punitive or exemplary damages.

ASBESTOS EXCLUSION

This policy does not apply to:

- (1) Damages in any way or to any extent arising out of or involving asbestos, asbestos fibers, or any product containing asbestos or asbestos fibers.
- (2) Any economic loss, diminution of property value, abatement costs, or any other loss, cost or expense including equitable relief, in any way or to any extent

arising out of or involving asbestos, asbestos fibers or any product containing asbestos or asbestos fibers.

- (3) Any fees, fines, costs, or expenses of any nature whatsoever in the investigation or defense of any claim or suit arising out of or involving asbestos, asbestos fibers, or any product containing asbestos or asbestos fibers.

CG 21 67 12 04

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.

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 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:**

- 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.

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AMENDMENT TO OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Condition 4. Other Insurance of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS is deleted in its entirety and is replaced by the following:

4. Other Insurance**a. Primary Insurance**

This insurance is primary except when b. below applies.

b. Excess Insurance

This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (3) If the loss arises out of the maintenance or use of aircraft, "auto" or watercraft to the extent not subject to Exclusion g. of Coverage A. (Section I); or

- (4) That is valid and collectible insurance available to you under any other policy.

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 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 other insurance.

If a loss occurs involving two or more policies, each of which states that its insurance will be excess, then our policy will contribute on a pro rata basis.

STATE OF SOUTH CAROLINA)
) **R E L E A S E**
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this 10 day of

December, 2015.

WITNESSES:

Rachel J. Peavy

Porthemos Curry (SEAL)
Porthemos Curry

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendant.

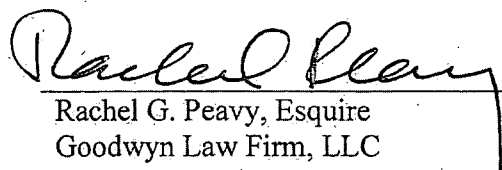
**STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTTSDALE
INSURANCE COMPANY**

2015 DEC 30 PM 2:07

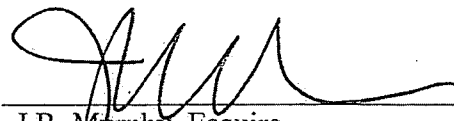
RICHLAND COUNTY
CLERK

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only.

The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.

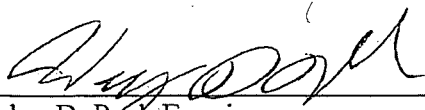


Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry



J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015



Wesley D. Peel, Esquire

Bruner, Powell, Robbins, Wall & Mullins

1735 St. Julian Place

P.O. Box 61110

Columbia, SC 29260-1110

803-252-7693

Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**AFFIDAVIT OF PORTHEMOS
CURRY**

Personally appeared before the undersigned Notary Public, Porthemos Curry, who being duly sworn, does hereby testify as follows:

1. I am the plaintiff in the above-captioned lawsuit and make this affidavit upon personal knowledge and belief.

2. In 2014, I sued Carolina Insurance Group of SC, Inc., its agent Maurice Derrick, and Scottsdale Insurance Company. The Defendants were represented by different attorneys. While my complaints alleged that Carolina Insurance Group of SC, Inc. and Maurice Derrick were agents of Scottsdale, each of the defendants always denied that there was an agency relationship between Scottsdale Insurance Company and Carolina Insurance Group and/or Maurice Derrick, as evidenced by their answers to the Complaints, along with their deposition testimony. I sued Carolina Insurance Group and Mr. Derrick for negligence and gross negligence; I sued Scottsdale for breach of contract; statutory bad faith; and common law bad faith.

3. Likewise, Scottsdale Insurance Company always denied that Carolina Insurance Group of SC, Inc. and Maurice Derrick were its agents; in fact, the only evidence in the case that I am aware of is that Scottsdale has general agents – in this case a company called TAPCO - through which it sells policies like the one in my case.

4. In September 2015, I participated in a mediation with the Defendants and Scottsdale at the offices of John Cuttino, who served as a mediator. At that time, the Defendants and Scottsdale made separate offers of settlement to me, and I rejected them. I never received a combined settlement offer from defendants. The mediation ended with no settlement.

5. On October 30, 2015, after some back and forth negotiations through Mr. Cuttino, Scottsdale Insurance accepted my demand for settlement for them alone in the amount of \$85,000. I agreed to accept this amount in exchange for dismissing my claims against Scottsdale. Again, the claims I had against Scottsdale were for breach of contract; statutory bad faith; and common law bad faith.

6. At the time I agreed to accept the offer from Scottsdale, I never believed, anticipated, or agreed that I was also settling with Carolina Insurance Group and Maurice Derrick. Carolina Insurance Group and Mr. Derrick never offered me any money; the settlement check came from Scottsdale; and the release I signed did not mention Carolina Insurance Group or Mr. Derrick. While the settlement agreement with Scottsdale states that agents of Scottsdale were released, I did not believe that Carolina Insurance Group and Maurice Derrick would be considered agents of Scottsdale given their denial of the allegation in my complaint that they were agents, and their specific deposition testimony that they were not agents of Scottsdale. I also made sure that the Stipulation of Dismissal specifically made it clear that my claims against Carolina Insurance Group and Mr. Derrick remained active and pending. This was important to me because the amount I received from Scottsdale did not cover all of my damages in the case, plus I wanted to try to recover punitive damages against Carolina Insurance Group and Mr. Derrick.

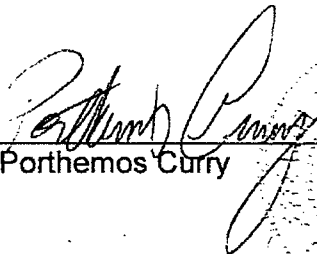
7. In November of 2015, my attorney told me that the attorney for Carolina Insurance Group and Mr. Derrick wanted to get another settlement demand from me that was "within the policy limits." I authorized my attorney to demand \$110,000 from Carolina Insurance Group and Mr. Derrick to settle my claims against them. I never heard back on that.

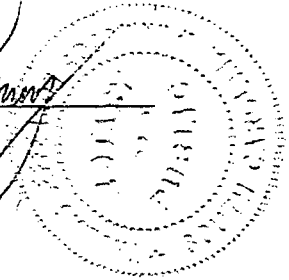
8. After I settled with Scottsdale, I continued to pursue my claims against Carolina Insurance Group and Mr. Derrick. My attorney engaged an expert witness to support my case, and the expert witness depositions were conducted on April 11th. We agreed to a date certain trial of the matter with the judge, and set the date for April 18th.

9. Last month, on or about March 30th, my attorneys told me that the Defendants' attorney, Wesley Peel, had reached out to them about settling the matter before we went forward with the expert witness depositions, which were going to add to my costs in the case. I agreed to try to settle the case with them and we decided to just keep our demand at \$110,000. On April 7th, I received an offer of \$20,000 to settle the case against them. I rejected that and told them I would be willing to accept \$90,000. On April 8th, the Defendants offered me \$30,000, which I also rejected.

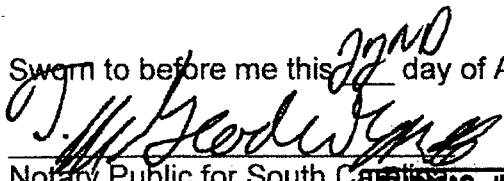
10. This argument by the Defendants has caused me great expense, time, and frustration. I was ready for trial on April 18th as the parties had agreed and Judge Lee had ordered, and I arranged for my mother to accompany me to the trial, as well as to set aside the week for the trial. I attended all portions of the trial beginning with the jury qualification at 9:00 a.m. on Monday morning, April 18th. I do believe that this position by the Defendants is frivolous and is designed to harass me and force me to spend additional money on my attorneys' fees.

THE AFFIANT FURTHER SAYETH NAUGHT.


Porthemos Curry



Sworn to before me this 22nd day of April, 2016


Notary Public for South Carolina

My commission expires: **THOMAS JEFFERSON GOODWYN**
Notary Public, State of South Carolina
My Commission Expires February 12, 2023

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Porthemos Curry,

Plaintiff(s),

vs.

Carolina Insurance Group of SC, Inc.
and Maurice Derrick,

Defendant(s).

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

AFFIDAVIT OF RACHEL PEAVY

Personally appeared before the undersigned Notary Public, Rachel Peavy, who being duly sworn, does hereby testify as follows:

1. I am the attorney for the plaintiff in the above-captioned lawsuit and make this affidavit upon personal knowledge and belief.

2. In 2014, on behalf of my client, I filed a lawsuit against Carolina Insurance Group of SC, Inc., its agent Maurice Derrick, and Scottsdale Insurance Company. I brought suit on behalf of Plaintiff against Carolina Insurance Group and Mr. Derrick for negligence and gross negligence, and against Scottsdale for breach of contract; statutory bad faith; and common law bad faith. The Defendants were represented by Wesley Peel, Esq. and Scottsdale was represented by J.R. Murphy, Esq.

3. Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick always denied that they were agents of Scottsdale Insurance Company, as evidenced by their answers to the complaints, along with their deposition testimony. See Exhibit A (deposition testimony of Carolina Insurance and Mr. Derrick).

3. Likewise, Scottsdale Insurance Company always denied that Carolina Insurance Group of SC, Inc. and Maurice Derrick were its agents, as evidenced by its pleadings and responses to discovery.

4. In September 2015, I participated in a mediation with the Defendants and Scottsdale at the offices of John Cuttino, who served as a mediator. At that time, the Defendants and Scottsdale made separate offers of settlement, which were rejected. At no time was a joint settlement offer communicated to Plaintiff. The mediation ended with no settlement.

5. On October 30, 2015, after some back and forth negotiations through Mr. Cuttino, Scottsdale accepted Mr. Curry's final demand of \$85,000 in exchange for Mr. Curry dismissing his claims against Scottsdale. A copy of the Release is attached as **Exhibit B**. Again, the claims against Scottsdale were for breach of contract; statutory bad faith; and common law bad faith. At the time, I had not received any additional offer of settlement from Mr. Peel's clients.

6. At the time we entered into the settlement agreement with Scottsdale Insurance Company, I never believed, anticipated, or agreed that Mr. Curry was also settling or releasing Carolina Insurance Group and Maurice Derrick, nor was that ever discussed during the settlement negotiations with J.R. Murphy, Esq. The Release which Mr. Murphy and I negotiated did not mention Carolina Insurance Group or Mr. Derrick and was not circulated to Mr. Peel. While the Release states that "agents" of Scottsdale were released, I did not believe that Carolina Insurance Group and Maurice Derrick would be considered agents of Scottsdale, given their denial of the allegation in my complaint that they were agents, and their specific deposition testimony that they were not agents of Scottsdale.

7. Finally, and of particular note, neither Carolina Insurance Group or Mr. Derrick had offered any money towards the settlement of the claims against Scottsdale, and I am not in the habit of releasing parties without payment of funds.

8. By letter dated November 25, 2015, Mr. Peel was notified by J.R. Murphy that Plaintiff had agreed to settle with Scottsdale for \$85,000 and that a release was being forwarded to Plaintiff for signature, along with a Stipulation of Dismissal. A copy of the letter is attached as **Exhibit C**.

9. At the time of the settlement with Scottsdale, I drafted the Stipulation of Dismissal. The Stipulation of Dismissal, which was signed by Wesley Peel as counsel for the Defendants, specifically stated that the Plaintiff had settled the case with Scottsdale; that it was dismissing with prejudice the complaint as to Scottsdale only; and that "Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal." A copy of the Stipulation is attached as **Exhibit D**. The fact that the dismissal specifically stated that it did not affect Carolina Insurance Group and Maurice Derrick made it very apparent to me that the release that had been signed could only have been intended to release Scottsdale.

10. After the settlement with Scottsdale, Mr. Peel and I continued to proceed with the case, with both sides communicating with Judge Lee regarding a date certain. I engaged an expert witness to offer testimony as to the duties of an independent insurance agent, and Mr. Peel and I communicated regarding the dates for expert depositions. These action further evidence what I believe was both remaining parties' belief that the release that was signed with Scottsdale did not release Mr. Peel's clients.

11. On March 30, 2016, I received an e-mail from Mr. Peel about trying to settle the case before we went forward with the expert witness depositions, which were going to add significant cost and expense. Mr. Peel also reached out to John Cuttino, the mediator, in an attempt to get the parties to resume negotiations. See Exhibit E.

12. On April 7, 2016, in response to Plaintiff's last demand to Carolina Insurance Group and Mr. Derrick of \$110,000 (which had been requested by defense counsel back in November), Mr. Peel offered \$20,000 to settle the case. We offered to take \$100,000, in response to which Mr. Peel offered \$25,000. In response, we offered to take \$90,000 in full and final settlement. A copy of the email is attached as **Exhibit F.**

13. At the time of the negotiations, I was aware that Mr. Peel's clients believed they would be entitled to a "set-off" of the amount we received from Scottsdale. I disagreed with that argument but recognized that set-off would be a matter for the Court at the post-verdict stage, if necessary.

14. On the morning of April 8, 2016, I received an email from Mr. Peel requesting a copy of the Release, which I promptly forwarded to him that same morning.

15. Following receipt of the Release, at 4:04 p.m., Mr. Peel made a "final best offer" of \$30,000 to settle the case. See Exhibit G. We rejected the offer and the case moved forward. Since Mr. Peel was continuing to make improved settlement offers after receiving a copy of the Release, it seems clear to me at that point that Mr. Peel did not have any belief that the Release was intended to release his clients.¹

16. On April 11, 2016, I deposed Mr. Peel's expert in Charleston, and Mr. Peel subsequently deposed my expert.

17. Throughout the week of April 11th, I prepared for trial and informed Judge Lee that we were ready for trial on April 18th. We also communicated with Judge Lee regarding scheduling matters related to Mr. Peel's expert witness.

18. On Friday, April 15th, I was served with a Motion for Summary Judgment, asserting that the Scottsdale Release operated to release the Defendants as joint tortfeasors. The Defendants subsequently moved to amend their answer to assert the affirmative defense of release. We objected to the hearing of the late-filed motion under Rule 56 (c), SCRCP.

¹ Counsel is aware of the confidentiality requirements of Rule 8 of the South Carolina ADR Rules; however, counsel believes that her action in disclosing settlement offers is allowed under Rule 8(b)(5) of the South Carolina ADR Rules. Defense counsel has made the intent of the parties as to the Release a ground for the summary judgment motion; accordingly, because "[o]nce a contract is before the court for interpretation, the paramount concern of the court is to give effect to the intention of the parties" Middleborough Horizontal Property Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 477; 465 S.E.2d 765, 770 (1995), Plaintiff's counsel believes these settlement negotiations are properly for the Court. Plaintiff would be severely prejudiced in responding to the Defendants' motion and memorandum— which raises the issue of intent — if he were unable to offer evidence of intent.

19. In anticipation of the Defendants' set-off argument, I prepared a motion *in limine* to exclude evidence of any settlement with Scottsdale or the release with Scottsdale. The grounds for the motion were that issues of set-off were properly for the Court at the post-verdict stage and, further, evidence of any release or settlement with Scottsdale (a dismissed party) would be highly prejudicial and allow an inference that the Plaintiff was seeking a "double recovery" (even though the causes of action did not overlap).

20. On Monday, April 18th, the case was called for trial before the Honorable Jocelyn Newman. A jury was selected, and pre-trial motions were heard by the Court. Defendants made a motion to amend their Answer to assert the affirmative defense of release, which the Court granted over Plaintiff's objection. Additionally, Defendants orally amended their motion for summary judgment to assert that they were an "agent" of Scottsdale as referenced in the Release and further argued in their memorandum of law that the Release represented an "accord and satisfaction." The Motion at heart seeks for the Court to determine as a matter of law what the terms of the Release are; in the event the Release is deemed ambiguous, the defense argues that the jury should determine the meaning of the Release. Defense counsel requested a hearing on the summary judgment motion either prior to opening statements or at the directed verdict stage.

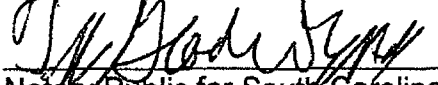
21. In the late afternoon of April 18th, Judge Newman ordered the parties to prepare the following day to argue as to whether the motion should be heard at all and, further, to be prepared for her to hear the motion pending her decision.

22. I objected to the summary judgment motion being heard prior to the ten (10) days notice required under Rule 56(c), SCRPC. Furthermore, I objected to the matter being heard at the directed verdict stage of the case because the Release would not be in evidence at that time and therefore not properly for the Court to consider. In order to protect Plaintiff's position, I filed a motion for summary judgment on the affirmative defenses of release and accord and satisfaction.

23. On April 19th, after oral argument, Judge Newman continued the trial to the week of May 16th and set the summary judgment motions for hearing on April 26, 2016.


Rachel G. Peavy

Sworn to before me this 22nd day of April, 2016


Notary Public for South Carolina

My commission expires:

THOMAS JEFFERSON GOODWYN
Notary Public, State of South Carolina
My Commission Expires February 12, 2023



STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Porthemos Curry,)

Plaintiff(s),)

vs.)

Carolina Insurance Group of SC, Inc.)
and Maurice Derrick,)

Defendant(s).)

IN THE COURT OF COMMON PLEAS

Civil Action No. 14-CP-40-04661

**AFFIDAVIT
OF
T. JEFF GOODWYN, JR.**

Personally appeared before the undersigned Notary Public, T. Jeff Goodwyn, Jr., who being duly sworn, does hereby testify as follows:

1. I am the attorney for the plaintiff in the above-captioned lawsuit and make this affidavit upon personal knowledge and belief.

2. In 2014, on behalf of my client, I filed a lawsuit against Carolina Insurance Group of SC, Inc., its agent Maurice Derrick, and Scottsdale Insurance Company. I brought suit on behalf of Plaintiff against Carolina Insurance Group and Mr. Derrick for negligence and gross negligence, and against Scottsdale for breach of contract; statutory bad faith; and common law bad faith. The Defendants were represented by Wesley Peel, Esq. and Scottsdale was represented by J.R. Murphy, Esq.

3. Defendants Carolina Insurance Group of SC, Inc. and Maurice Derrick always denied that they were agents of Scottsdale Insurance Company, as evidenced by their answers to the complaints, along with their deposition testimony.

3. Likewise, Scottsdale Insurance Company always denied that Carolina Insurance Group of SC, Inc. and Maurice Derrick were its agents, as evidenced by its pleadings and responses to discovery.

4. In September 2015, I participated in a mediation with the Defendants and Scottsdale at the offices of John Cuttino, who served as a mediator. At that time, the Defendants and Scottsdale made separate offers of settlement, which were rejected. At no time was a joint settlement offer communicated to Plaintiff. The mediation ended with no settlement.

5. On October 30, 2015, after some back and forth negotiations through Mr. Cuttino, Scottsdale accepted Mr. Curry's final demand of \$85,000 in exchange for Mr. Curry dismissing his claims against Scottsdale. A copy of the Release is attached as **Exhibit A**. Again, the claims against Scottsdale were for breach of contract; statutory bad faith; and common law bad faith. At the time, I had not received any additional offer of settlement from Mr. Peel's clients.

6. At the time we entered into the settlement agreement with Scottsdale Insurance Company, I never believed, anticipated, or agreed that Mr. Curry was also settling or releasing Carolina Insurance Group and Maurice Derrick, nor was that ever discussed during the settlement negotiations with J.R. Murphy, Esq. The Release which Mr. Murphy and I negotiated did not mention Carolina Insurance Group or Mr. Derrick and was not circulated to Mr. Peel. While the Release states that "agents" of Scottsdale were released, I did not believe that Carolina Insurance Group and Maurice Derrick would be considered agents of Scottsdale, given their denial of the allegation in my complaint that they were agents, and their specific deposition testimony that they were not agents of Scottsdale. See Exhibit B (Deposition testimony of Maurice Derrick and Carolina Insurance Group). Additionally, Scottsdale had specifically denied throughout the case that Carolina Insurance Group or Mr. Derrick were its agents.

7. Finally, and of particular note, neither Carolina Insurance Group or Mr. Derrick had offered any money towards the settlement of the claims against Scottsdale, and I am not in the habit of releasing parties without payment of funds.

8. By letter dated November 25, 2015, Mr. Peel was notified by J.R. Murphy that Plaintiff had agreed to settle with Scottsdale for \$85,000 and that a release was being forwarded to Plaintiff for signature, along with a Stipulation of Dismissal. A copy of the letter is attached as **Exhibit C**. Again, Mr. Peel was not provided a copy of the Release at that time since his clients were not being released.

9. At the time of the settlement with Scottsdale, I drafted the Stipulation of Dismissal. The Stipulation of Dismissal, which was signed by Wesley Peel as counsel for the Defendants, specifically stated that the Plaintiff had settled the case with Scottsdale; that it was dismissing with prejudice the complaint as to Scottsdale only; and that "Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal." A copy of the Stipulation is attached as **Exhibit D**. The fact that the dismissal specifically stated that it did not affect Carolina Insurance Group and Maurice Derrick made it very apparent to me that the release that had been signed could only have been intended to release Scottsdale.

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15. Following receipt of the Release, at 4:04 p.m., Mr. Peel made a "final best offer" of \$30,000 to settle the case. See Exhibit G. We rejected the offer and the case moved forward. It was clear to me at that point that Mr. Peel did not have any belief that the release was intended to release his clients.¹

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18. On Friday, April 15th, I was served with a Motion for Summary Judgment, asserting that the Scottsdale Release operated to release the Defendants as joint tortfeasors. The Defendants subsequently moved to amend their answer to assert the affirmative defense of release. We objected to the hearing of the late-filed motion under Rule 56 (c), SCRCP.

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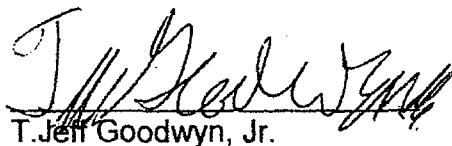
19. In anticipation of the Defendants' set-off argument, I prepared a motion *in limine* to exclude evidence of any settlement with Scottsdale or the release with Scottsdale. The grounds for the motion were that issues of set-off were properly for the Court at the post-verdict stage and, further, evidence of any release or settlement with Scottsdale (a dismissed party) would be highly prejudicial and allow an inference that the Plaintiff was seeking a "double recovery" (even though the causes of action did not overlap).

20. On Monday, April 18th, the case was called for trial before the Honorable Jocelyn Newman. A jury was selected, and pre-trial motions were heard by the Court. Defendants made a motion to amend their Answer to assert the affirmative defense of release, which the Court granted over Plaintiff's objection. Additionally, Defendants orally amended their motion for summary judgment to assert that they were an "agent" of Scottsdale as referenced in the Release and further argued in their memorandum of law that the Release represented an "accord and satisfaction." The Motion at heart seeks for the Court to determine as a matter of law what the terms of the Release are; in the event the Release is deemed ambiguous, the defense argues that the jury should determine the meaning of the Release. Defense counsel requested a hearing on the summary judgment motion either prior to opening statements or at the directed verdict stage.

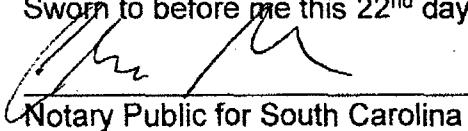
21. I objected to the summary judgment motion being heard prior to the ten (10) days notice required under Rule 56(c), SCRPC. Furthermore, I objected to the matter being heard at the directed verdict stage of the case because the Release would not be in evidence at that time and therefore not properly for the Court to consider. In order to protect Plaintiff's position, I filed a motion for summary judgment on the affirmative defenses of release and accord and satisfaction.

22. In the late afternoon of April 18th, Judge Newman ordered the parties to prepare the following day to argue as to whether the motion should be heard at all and, further, to be prepared for her to hear the motion pending her decision. This required extensive briefing of both issues.

23. On April 19th, after oral argument, Judge Newman continued the trial to the week of May 16th and set the motions for summary judgment for hearing on April 26, 2016.


T. Jeff Goodwyn, Jr.

Sworn to before me this 22nd day of April, 2016


Notary Public for South Carolina

My commission expires: 6/20/22

BRUNER, POWELL, WALL & MULLINS, LLC

ATTORNEYS AND COUNSELORS AT LAW

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BRIAN P. ROBINSON, P.A.

WESLEY D. PEEL, P.A.
JOEY R. FLOYD, P.A.
BENJAMIN C. BRUNER, P.A.

ANN F. ALLISON
CAITLIN C. HEYWARD
ROBERT C. OSBORNE III
BRYAN M.J. TRIPLETT

AUTHOR'S E-MAIL: WPEEL@BRUNERPOWELL.COM

* Of Counsel
** Also Admitted in District of Columbia

December 8, 2015

Via E-Mail Only

The Honorable Alison Renee Lee
P.O. Box 192
Columbia, SC 29202-0192

Re: *Curry v. Scottsdale Insurance Co., Carolina Insurance Group of SC and Maurice Derrick*
Civil Action No: 2014-CP-40-4661
Bruner Powell File No.: 3-264189.1

Dear Judge Lee:

I am writing to request a status conference concerning the above-referenced case at your earliest convenience. If you recall, on October 12, 2015, Plaintiff's counsel, counsel for Defendant Scottsdale Insurance Company and I all meet in your chambers for a status conference. During that meeting, it was agreed that this case would be set for trial in the spring of 2016 due to out-of-state witnesses and the schedules of experts involved in the case. At the time of the meeting, there were no day certain dates available; however, you indicated that the case would be heard sometime in April.

Since the October 12, 2015 meeting, Defendant Scottsdale Insurance Company has settled with the Plaintiff and is no longer involved in the case. This week, I received an email from Plaintiff's counsel where she informed me that the case was listed on the January 4, 2015 Jury Roster. Plaintiff's counsel also stated that because Scottsdale was no longer involved in the case, she thought that there was no longer a need for a date certain.

For a number of reasons, I respectfully request that trial remain scheduled in April as was discussed during our October meeting. First, I have other trials scheduled in the coming months and I have planned my schedule on the assumption that this trial would take place in April. Second, there is discovery in this case that has yet to be completed. Plaintiff named an expert on November 24, 2015 and the deposition of that expert has yet to take place. Plaintiff's counsel is also scheduled to depose our expert witness on January 12, 2015. Finally, I believe Plaintiff's counsel has a Motion to Compel which has yet to be filed or heard.

Due to these issues, I believe a status conference would be beneficial. If you are available either this week or next, please let me know. I will work with Ms. Peavy to find a time

The Honorable Alison Renee Lee
December 8, 2015
Page 2

where we are both available. If you would prefer to discuss these issues on a conference call rather than in your chambers, I am happy to do so.

With my kindest regards, I am,

Very truly yours,
Wesley D. Peel
by Robert Osborne

Wesley D. Peel

WDP/rco

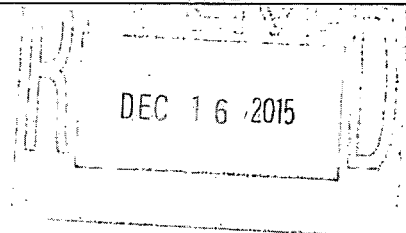
cc: Ms. Rachel Peavy (Via E-mail Only)



MURPHY & GRANTLAND, P.A.

Hannah D. Stetson
Direct dial 803-454-1208
hstetson@murphygrantland.com

December 14, 2015



Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110

Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice Derrick
Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

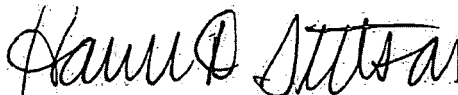
Dear Wesley:

Enclosed please find a Stipulation of Dismissal as to Defendant Scottsdale Insurance Company in the above-referenced matter. If the Stipulation meets with your approval, please sign where indicated and return the original to our office. We will send it to the Clerk for filing.

If you have any questions, please feel free to contact me.

With kind regards, I am

Sincerely,


Hannah D. Stetson

HDS/kbd
Enclosure

cc: Rachel G. Peavy, Esquire

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
Case No. 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

vs.

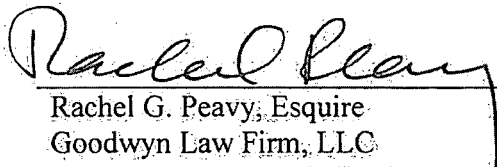
Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendant.

**STIPULATION OF DISMISSAL
AS TO DEFENDANT SCOTTSDALE
INSURANCE COMPANY**

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company only.

The Plaintiff's case against the remaining Defendants shall not be affected by this Dismissal.



Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100
Attorney for Scottsdale Ins. Co.

December 10, 2015

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc. and Maurice Derrick

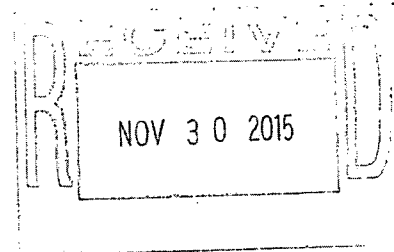


MURPHY & GRANTLAND, P.A.

J. R. Murphy
Direct dial 803-454-1231
jrmurphy@murphygrantland.com

November 25, 2015

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205



Re: Porthemos Curry vs. Scottsdale Ins. Co., Carolina Ins. Group of SC, Inc. and Maurice Derrick

Civil Action No.: 2014-CP-40-04661
Claim No.: 1527747
Date of Loss: 2/21/14
Our File No.: 1500-0129

Dear Rachel:

Enclosed please find the settlement draft in the amount of \$85,000, Release and Stipulation of Dismissal in the above-referenced matter. I would appreciate your holding all settlement funds in trust until the Release and Stipulation of Dismissal have been properly executed and returned to me in the envelope provided.

With warm personal regards, I am

Sincerely yours,

J. R. Murphy

JRM/sb
Enclosures

cc: Wesley D. Peel, Esquire
Rob Fisher, Esquire (via email)

Telephone 803-782-4100 • Facsimile 803-782-4140
4406-B Forest Drive, Columbia, South Carolina 29206 • Post Office Box 6648, Columbia, South Carolina 29260

J. R. Murphy John M. Grantland Ron B. Diegel* Brent M. Boyd E. Ray Moore, III Anthony W. Livoti Adam J. Neil Jeff C. Kull Peter E. Farr
Alice P. Adams Tim J. Newton Chris A. Majure J. Ryan Gates Wesley B. Sawyer Jason P. Luther Elliott B. Daniels Hannah D. Stelson Rogers E. Harrell, III
*Member-American Board of Trial Advocates

R.446

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CIVIL ACTION NO: 2014-CP-40-04661

Porthemos Curry,

Plaintiff,

v.

Scottsdale Insurance Company, Carolina
Insurance Group of SC, Inc. and Maurice
Derrick,

Defendants.

STIPULATION OF DISMISSAL

The Plaintiff, by and through its undersigned counsel, having settled this case with the Defendant Scottsdale Insurance Company, hereby dismisses, with prejudice, the Complaint, and all subsequent amendments thereto, as to the Defendant Scottsdale Insurance Company. The Plaintiff's case against the remaining Defendants, shall not be affected by this Dismissal.

Rachel G. Peavy, Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
803-251-4517
Attorney for Porthemos Curry

J.R. Murphy, Esquire
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
803-782-4100
Attorney for Scottsdale Ins. Co.

Wesley D. Peel, Esquire
Bruner, Powell, Robbins, Wall & Mullins
1735 St. Julian Place
P.O. Box 61110
Columbia, SC 29260-1110
803-252-7693
Attorney for Carolina Ins. Group of SC, Inc.
and Maurice Derrick

November 25, 2015

STATE OF SOUTH CAROLINA)
) **RELEASE**
COUNTY OF RICHLAND)

KNOW ALL MEN BY THESE PRESENTS that the undersigned, Porthemos Curry , in consideration of the sum of Eighty Five and 00/100 (\$85,000.00) Dollars, the receipt of which from Scottsdale Insurance Company is hereby acknowledged, does hereby release and forever discharge Scottsdale Insurance Company, its agents, servants, employees, successors and assigns of and from any and all actions, causes of action, demands and/or claims of whatsoever kind or nature prior to and including the date hereof growing out of any property coverage which may apply under policy number CPS1884774 issued by Scottsdale Insurance Company to Porthemos Curry, on account of or in any way growing out of a loss which occurred on or about February 21, 2014, when a vehicle ran into a vacant structure owned by Curry and located at 1001 Pineland Drive, Columbia, South Carolina, including any and all claims arising from the investigation, adjustment and handling of the loss by Scottsdale Insurance Company, and any claim which was or could have been asserted against Scottsdale Insurance Company in the case of Porthemos Curry v Scottsdale et. al., C.A. No. 2014-CP-40-04661, Court of Common Pleas, Richland County, South Carolina . The consideration expressed herein constitutes full payment for all damages, losses or injuries, whether known or unknown, developed or undeveloped, for policy benefits or consequential damages recoverable from Scottsdale Insurance Company which have resulted or may result from the loss aforesaid.

The undersigned expressly represent and warrants that he has consulted with his attorney and understands the effect of the things herein agreed to and that no statement or representations made by the persons released or by their agents, representatives and attorneys have influenced him or induced him to execute and deliver this Release.

(I have read the foregoing Release and understand it to be a full, final and binding agreement.

IN WITNESS WHEREOF, U have hereunto set my hand and seal this ____ day of
_____, 2015.

WITNESSES:

Porthemos Curry (SEAL)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2014-CP-40-04661
	)	
Porthemos Curry,	)	
	)	
Plaintiff,	)	
	)	DEFENDANTS CAROLINA
vs.	)	INSURANCE GROUP OF SC, INC. AND
	)	MAURICE DERRICK'S FIRST SET OF
Scottsdale Insurance Company, Carolina)	)	INTERROGATORIES AND REQUESTS
Insurance Group of SC, Inc. and Maurice)	)	FOR PRODUCTION TO PLAINTIFF
Derrick,	)	
Defendants.	)	
	)	

TO: RACHEL G. PEAVY, ESQUIRE AND T. JEFF GOODWYN, JR., ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF

The Defendants Carolina Insurance Group of SC, Inc. ("Carolina") and Maurice Derrick ("Derrick"), referred to collectively as the Defendants requests that the Plaintiff answer under oath in accordance with Rule 33 of the South Carolina Rules of Civil Procedure the Interrogatories propounded herein and to respond to the following Request for Production of Documents in accordance with Rule 34 of the South Carolina Rules of Civil Procedure.

INSTRUCTIONS

In answering each interrogatory and responding to each request for production:

1. Pursuant to Rule 33 SCRCP in answering the following interrogatories, you are to furnish all information available to you or subject to your reasonable inquiry including information in the possession of your agents, employees, attorneys, and other persons directly or indirectly employed by or connected with you and any one else otherwise subject to your controls and to serve your answers within thirty days from the date of service of the interrogatories if served alone, and forty-five days of the date of service of the interrogatories if served with the Complaint.

2. To the extent that you believe that any of the interrogatories calls for information contained in documents or communications subject to a claim of confidentiality, trade secret or privilege answer so much of the interrogatory or interrogatories, and each subpart thereof, as does not request, allegedly confidential, secret, or privileged information and identify each such document and communication and set forth the basis for your claim of confidentiality, secrecy or privilege with respect to the information which you refuse to furnish. With regards to each such document, state the date and nature of the document.

3. These interrogatories are deemed to be continuing; as such, you are required to file and serve supplemental answers and any additional information that you may subsequently acquire that would materially change the response to an interrogatory.

4. In responding to the request for production of documents, you are to respond within thirty days from the date of service of the request for production of documents if served alone, and forty-five days of the date of service, if served with the Complaint. Responses shall be in accordance with SCRPC 34 and served upon Bruner, Powell, Robbins, Wall & Mullins, LLC, P. O. Box 61110, 1735 St. Julian Place, Suite 200, Columbia, South Carolina 29260.

DEFINITIONS

1. As used herein, "you", "your", or "plaintiff" mean the plaintiff to whom these interrogatories and requests are addressed and include all other persons acting or purporting to act on behalf of the plaintiffs.

2. "Document" has the same meaning as in Rule 34(a) of the South Carolina Rules of Civil Procedure, and includes but is not limited to the original and all drafts of all written or graphic matter, however produced or reproduced, of any kind or description, and all copies thereof which are different from the original (whether different by interlineation, or otherwise). Included in such

definition are: books, records, reports, memoranda, or notes of conversations and meetings, notes, letters, telegrams, cables, telexes, diaries, calendars, schedules, graphs, charts, contracts, releases, studies, blueprints, cancelled checks, summaries, booklets, circulars, bulletins, instructions, minutes, bills, questionnaires, correspondence, financial statements, tapes, discs, tape recordings, microfilm, microfiche, videotapes, photographs, phonograph records, motion pictures, data cards, as well as any other written, recorded, transcribed, punched, taped, filmed or graphic matter on which information is recorded in writing or in sound or in any other manner, of which you have possession, custody or control.

3. "Files" means all methods of arranging or storing papers, records, documents or other compilations of data (whether contained in folders, cabinets or other containers; whether recorded on magnetic cards, tapes, or discs, or any other record or device) which are maintained by you, for your use, or on your behalf, for preservation or reference.

4. "Person" means any person and includes natural persons, corporations, partnerships, associations, joint ventures, firms and other business enterprises or legal entities, and includes both the singular and the plural.

5. "Policy" or "Renewal Policy" means the insurance policy (Policy No.: CPS1884774).

6. "Previous Policy" means the insurance policy (Policy No.: CPS1816463).

7. "Property" means that property located at 1001 Pineland Driver, Columbia, SC 29203.

8. As used herein, the conjunctions "and" and "or" shall be interpreted and construed "and/or", and shall not be interpreted to exclude any information otherwise within the scope of any request.

8. As used herein, the phrase "refer, regarding or relate", includes containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

9. When asked to "identify" or "for the identity" of any natural person, set forth (i) the full name; (ii) present or last-known address; and (iii) his or her present telephone number.

10. When asked to "identify" or "for the identity" of any entity other than a natural person, set forth its (i) full name or title; (ii) present or last-known address; and (iii) its present telephone number.

11. As used herein, the phrase "refer, regarding or relate", includes containing, alluding to, responding to, commenting upon, discussing, showing, disclosing, explaining, mentioning, analyzing, constituting, comprising, evidencing, setting forth, summarizing or characterizing, either directly or indirectly, in whole or in part.

12. In answering the Interrogatories herein if you are asked to "identify" or "for the identity" of a document, you are required to furnish a copy of each such document in lieu of identifying the same. When identifying a document set forth (i) its date and general type of category (e.g. letter, contract, memorandum, note); (ii) the identity of its author and each person who aided or assisted in its preparation; (iii) those who received the document; (iv) the last-known location or custodian; (v) its subject matter and substance; and (vi) if the document is no longer in your possession or control and the circumstances of its disposition are known, set forth the date and circumstances of the disposition thereof, as well as the identity of the person or entity to whom custody or possession was given.

RULE 33 INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and who has possession of such statements.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of you or your counsel that relate to the claim or the defense in the case.

3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and identify the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

4. List the names and addresses of any and all expert witnesses whom the party proposes to use as a witness at the trial of this case.

5. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statement taken from such witness.

6. Have you ever been a party to any lawsuit, civil or criminal, other than the present one and, if so, for each other lawsuit, state the name of the action, your status in the action, the kind of action involved, the court in which it was filed, the civil action number of the action, the date of filing, if there was a trial, and the ultimate disposition of the case.

7. Set forth with particularity the language in the Policy which indicates that there was no insurance coverage on the Property between November 22, 2013 and December 1, 2013, the steps you undertook to mitigate this risk, the dates on which such attempts were made, and the extent, if any, the attempts were successful.

8. Set forth with particularity the relationship between you and the driver of the vehicle alleged to have caused the loss claimed in the complaint, any interest in said vehicle, and the relationship between you and any witnesses.

9. Set forth with particularity who initiated the conversation that took place on December 2, 2013 between you and Derrick, along with the time such communications were made or attempted, and a summary of any and all conversations with Derrick.

12. Set forth with particularity the policy language on which you relied in alleging that the occurrence is covered under the terms and policy period of the Policy.

13. Set forth with particularity the date, time, and a summary thereof for each time Derrick allegedly contacted or attempted to contact you, and the facts and circumstances surrounding any alleged offer Derrick made with respect to placing another vacant structure policy on the property and the resulting agreement reached, if any.

14. Set forth with particularity the extent to which the plaintiff is currently or has ever been involved in the business of buying and selling real estate including but not limited the identity of the real estate, address, and any and all requests for quotes insurance policies covering any losses associated with any of these properties.

15. Set forth with particularity the day and time you first learned of the loss and the subsequent steps you took to mitigate the loss.

REQUESTS FOR PRODUCTION OF DOCUMENTS

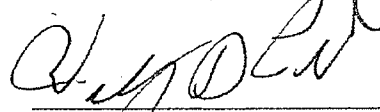
1. All documents in the care, custody, or control of the Plaintiff related to the events alleged in the Complaint.

2. All documents in the care, custody, or control of the Plaintiff related to any allegation or defense asserted in the Answer.

3. Any documents that you contend constitute the contract between the parties.
4. A certified copy of the policy or policies including, but not limited to, the face sheet, declaration sheet, and/or cover sheet for each insurance policy you own or have owned covering losses associated with damage to real property.
5. Copies of any and all reports created by any person, officer, entity, or agency of the state, county, city or municipality regarding to the claim.
6. All emails, correspondence, receipts, bills, invoices, statements, between you and your agents, or you and any other party, concerning this claim, including but not limited to: (a) Tapco Underwriters; (b) Scottsdale Insurance Company; (c) Carolina Insurance Group of SC, Inc; and (d) Maurice Derrick both prior and subsequent to the execution of the Policy.

These interrogatories shall be deemed continuing so as to require supplemental responses by your or your attorney to obtain further information between the time the answers are served and the time of trial.

**BRUNER, POWELL, WALL
& MULLINS, LLC**



Wesley D. Peel
wpeel@brunerpowell.com
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, S.C. 29260
(803) 252-7693
*Attorneys for the Defendants Carolina
Insurance Group of SC, Inc. and Maurice
Derrick*

Columbia, South Carolina
September 22, 2014

From: Wesley Peel [<mailto:WPeel@brunerpowell.com>]
Sent: Monday, April 11, 2016 7:15 PM
To: 'Lee, Alison Renee Law Clerk (Chadwick Devlin)' <ALeeLC@sccourts.org>;
RPeavy@Goodwynlaw.com; Robert Osborne <rosborne@brunerpowell.com>
Cc: Lee, Alison Renee Secretary (Betty J. Smith-Myers) <ALeeSC@sccourts.org>
Subject: RE: Curry v. Scottsdale Insurance Co. et al.; 2014-CP-404661

Dear Judge Lee:

It appears that his matter is at the top of the docket for date certain cases next week. My reason for requesting a date certain is that my expert witness, Terry Tadlock, carries a fairly busy teaching schedule. Mr. Tadlock is scheduled to teach insurance classes in Myrtle Beach next Wednesday and Thursday, which he had mistakenly indicated when we received notice of the trial date was for Thursday only.. Plaintiff's counsel states that she believes that this is now a 4-5 day trial. Originally we had informed the court that this would be 2-3 days.

Both parties are prepared for trial; and we have discussed ways to deal with Mr. Tadlock's testimony. However, I thought it best that we should consult with the court as his live testimony is critical to the defense of this case and it appears that we may have misjudged the length of trial when we had our last status conference. I appreciate any assistance that can be offered. Thank you in advance for your consideration.

Wesley D. Peel

