

STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Hon. Jennifer McCoy, Circuit Court Judge

Case No. 2016-CP-10-4984

(Appellate Case No. 2018-001353)

RECEIVED
DEC 27 2018
SC Court of Appeals

BOUCHELLE INCORPORATED,

Appellant,

Vs.

CANOPIUS US INSURANCE, INC.,
SENECA SPECIALTY INS. CO., THE
BRINSON AGENCY and JOHN BRINSON,

s,

OF WHICH THE BRINSON AGENCY and
JOHN BRINSON are the

Respondents.

AMENDED RECORD ON APPEAL

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Attorney for Respondents The Brinson Agency
And John Brinson

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

BOUCHELLE INCORPORATED,

CASE NO. 2016-CP-10-4984

Plaintiff,

COMPLAINT

vs.

Declaratory Judgment Action

CANOPIUS US INSURANCE, INC.,
SENECA SPECIALTY INS. CO.,
THE BRINSON AGENCY,
and JOHN BRINSON,

Defendants.

FILED
2016 SEP 20 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Plaintiff above named, complaining of the Defendants above named, would respectfully show unto this Honorable Court as follows:

1. Plaintiff, Bouchelle Incorporated is a corporation organized and existing under the laws of the State of South Carolina, with its' primary place of business located in the County of Charleston, and at all times relevant hereto said company was engaged in construction activity for commercial property, more specifically, property located at 7350 Industry Drive, North Charleston, South Carolina 29418.

2. Defendant Canopius US Insurance Inc. (hereinafter "Canopius") is a corporation organized and existing pursuant to the laws of a State other than South Carolina, with its principal place of business at 1450 East American Lane, Suite 1775, Schaumburg, IL 60173. Defendant Canopius is in the business of providing insurance to individuals and companies and was at all times relevant hereto doing business in Charleston County, South Carolina.

3. Defendant Seneca Specialty Ins. Co. (hereinafter "Seneca") is a corporation organized and existing pursuant to the laws of a State other than South Carolina, with its

principal place of business at 160 Water Street, New York, New York 10038-4922. Defendant Seneca is in the business of providing insurance to individuals and companies and was at all times relevant hereto doing business in Charleston County, South Carolina.

4. Defendant The Brinson Agency (hereinafter "Agency") is a sole proprietorship with its' principal place of business located at 759 Folly Road, Unit C, Charleston, Charleston County, South Carolina 29412.

5. Defendant John Brinson (hereinafter "Brinson") is the owner of The Brinson Agency and agent of The Brinson Agency with his residence located in Charleston County, South Carolina.

6. The Court has jurisdiction over the parties and the subject matter of this action.

7. Plaintiff purchased a commercial liability policy, bearing policy number OUS009069353, from Defendant Canopus effective August 11, 2014 to August 11, 2015. The policy constituted a contract of insurance between the Plaintiff and Defendant Canopus.

8. Plaintiff's subcontractor, Charleston Wrecking, Inc., purchased a commercial liability policy, bearing policy Number BAG1033883, from Defendant Seneca effective from November 11, 2014 to November 11, 2015. The policy constituted a contract of insurance between Charleston Wrecking, Inc. and Seneca.

9. The Seneca policy also provided coverage for the commercial property located at 7350 Industry Drive, North Charleston, South Carolina 29418 with Plaintiff being listed as the Certificate Holder of the policy.

10. On or about July 14, 2015, Plaintiff's subcontractor, Charleston Wrecking, Inc. was performing scheduled demolition work to a portion of the project, when sections of the

structure being demolished fell and caused damage, including but not limited to, a wall of a pre-existing building that was not part of the scheduled demolition.

11. The demolition work being performed as aforesaid also resulted in damage, including but not limited to, the supporting structure of the wall of the pre-existing building described in the preceding paragraph.

12. The damage, including but not limited to, the wall of the pre-existing building which was not part of the scope of the scheduled demolition, as described in the preceding two paragraphs, constitutes accidental loss or damage which is a covered loss under the policy.

13. On or about August 12, 2015, Plaintiff presented a claim under its' policy with Defendant Canopus for damages to the pre-existing building as aforesaid.

14. On or about November 15, 2015, Defendant Canopus rejected Plaintiff's claim for reimbursement under the contract of insurance based upon its' conclusion that Plaintiff was not covered by insurance for "general contractor" services but was instead covered by insurance for "carpentry" services. Since Plaintiff was acting as a general contractor on the job site, Defendant Canopus denied coverage for the accident.

15. Upon information and belief, Defendant Seneca has rejected Charleston Wrecking, Inc.'s claim for reimbursement under the contract of insurance, though the reason why has not been disclosed.

16. Plaintiff entered into an agreement with Defendant The Brinson Agency to obtain and maintain general commercial liability insurance for his general contractor's company.

17. After the accident on or about July 14, 2015, when Plaintiff reported the accident to his insurance agent, Defendant Brinson, owner of Defendant Agency, Defendant Brinson

disclosed to Plaintiff that Plaintiff did not have general contractor's liability insurance. Instead, Plaintiff's insurance policy with Defendant Canopus was for carpentry services.

18. At no time did Plaintiff authorize Defendant Brinson and Defendant Agency to notify Defendant Canopus that his commercial liability policy was to be for carpentry services and not general contractor services.

19. As a result of Defendants' actions, Plaintiff has been damaged and will be required to expend large sums of money to repair, correct and replace the damage, along with other costs.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract)

20. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

21. The Defendants' denial of the Plaintiff's claim under the policies constitutes a breach of the contract between the parties, in that the losses described as aforesaid constituted covered losses under the terms and conditions of the policies.

22. Plaintiff has suffered great financial harm and detriment as a direct result of Defendants' breach of the contracts and failure to pay for Plaintiff's covered losses.

FOR A SECOND CAUSE OF ACTION

(Declaratory Judgment)

23. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

24. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act, S.C. Code Section 15-53-10, et seq. for a declaration of the rights, status and other legal

obligations of the parties under the policies issued by Defendants to the Plaintiff, its' subcontractors, and the building owner.

25. Plaintiff is entitled to and requests that the Court issue the following declarations relating to its rights under the policies:

a. That the damages and losses sustained by Plaintiff constituted covered losses under the policies and that the Plaintiff is entitled to compensation for the same pursuant to the terms and conditions of those policies.

b. That the description of the damage provided by Plaintiff to Defendant Canopus accurately described the scope and nature of the project.

FOR A THIRD CAUSE OF ACTION

(Statutory Attorney's Fees)

26. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

27. Defendants have without reasonable cause or basis refused to pay Plaintiff the benefits owed under the policies for the covered losses.

28. Demand has been made by the policy holders and over 90 days have lapsed since Defendants' refusal to pay benefits.

29. Plaintiff is informed and believes that pursuant to S.C. Code Section 38-59-40 Plaintiff is entitled to all reasonable attorneys' fees and costs for pursuing this action against Defendants.

FOR A FOURTH CAUSE OF ACTION

(Breach of Contract)

30. Plaintiff hereby repeats and realleges the foregoing allegations of the Complaint as if set forth herein verbatim.

31. Defendants Brinson and Agency provided commercial liability insurance, through Defendant Canopus, to Plaintiff.

32. Defendants Brinson and Agency was Plaintiff's agent for several years and Defendants Brinson and Agency were fully aware that Plaintiff conducted its' business as a general contractor.

33. Defendants Brinson and Agency breached their contract with Plaintiff by failing to obtain general commercial liability insurance for Plaintiff under the correct category of general contractor, thereby causing Plaintiff to be denied coverage for the accident by Defendant Canopus.

34. Instead, Defendant Brinson applied and re-applied yearly, on behalf of Plaintiff, for general commercial liability insurance for carpentry services, without Plaintiff's knowledge or consent.

WHEREFORE, Plaintiff prays that the Court award it declaratory relief as set forth in this Complaint, for actual, compensatory, consequential and punitive damages against the Defendants, for its attorney's fees and costs of this action, for pre-judgment interest, and for such other and further relief as this Court may deem just and proper.

DEJONG LAW FIRM, LLC

By: _____

Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200

Mount Pleasant, SC 29464-5652

Tel. No. 843-216-6161

Fax No. 843-216-1119

Email: karen@dejonglawfirm.com

Attorney for Plaintiff

Mount Pleasant, SC

9/20, 2016

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff(s)

vs.

CANOPIUS US INSURANCE, INC.,
SENECA SPECIALTY INS. CO., THE
BRINSON AGENCY, and JOHN
BRINSON,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016 - CP - 10 - 4984

FILED
2016 SEP 20 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY

(Please Print)

Submitted By: Karen M. DeJong
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272 West Coleman Blvd., Ste. 200
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SC Bar #: 0070699

Telephone #: (843) 216-6161

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Other:

E-mail: karen@dejonglawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check one box below)

- ☐ JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION

(Check One Box Below)

Contracts

- ☐ Construction (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Wrongful Breach (140)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other Malpractice (299)

Torts - Personal Injury

- ☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Other (399)

Real Property

- ☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Other (499)

Inmate Petitions

- ☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599)

Judgments/Settlements

- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)**
☐ Other (799)

Administrative Law/Relief

- ☐ Driver License Reinstatement (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899)

Appeals

- ☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Other (999)

Special/Complex /Other

- ☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)

** Check only if Summons & Complaint to follow in 20 days

Submitting Party Signature: _____

Date: 9/20/16

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

***FOR MANDATED ADR COUNTIES ONLY**

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

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

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

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

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

v.

CANOPIUS US INSURANCE, INC., SENECA
SPECIALTY INS. CO., THE BRINSON AGENCY and
JOHN BRINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-10- 4984

SUMMONS
(Non-Jury Trial)

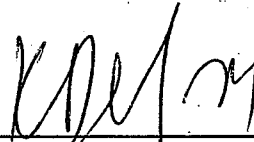
FILED
2016 SEP 20 PM 2:41
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, DeJong Law Firm, LLC, at their offices at 272 West Coleman Blvd., Suite 200, Mount Pleasant, SC 29464-5652, within thirty (30) days of the service hereof, exclusive of the day of such service.

YOU ARE HEREBY GIVEN NOTICE FURTHER, that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

DEJONG LAW FIRM LLC



Karen M. DeJong
272 West Coleman Blvd., Suite 200
Mt. Pleasant, SC 29464-5652
843-216-6161
ATTORNEY FOR PLAINTIFF

Mt. Pleasant, SC
September 20, 2016

* Florence, Horry, Lexington, Richland, Greenville, and Anderson

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL DISTRICT
) CASE NO.: 2016-CP-10-4984

) CASE NO.: 2016-CP-10-4984

)

)

)

4.

)

)

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2017 APR 11 PM 4:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY *pac*

- 15

7. Paragraph 6 states a conclusion of law to which these Defendants are not required to respond.

8. In response to paragraph 7, these Defendants crave reference to the subject Policy and deny all allegations not consistent with it. The second sentence of paragraph 7 constitutes a conclusion of law to which these Defendants are not required to respond.

9. In response to paragraph 8, these Defendants crave reference to the subject Policy and deny all allegations not consistent with it. The second sentence of paragraph 8 constitutes a conclusion of law to which these Defendants are not required to respond.

10. In response to paragraph 9, these Defendants crave reference to the subject Policy and deny all allegations inconsistent with it.

11. These Defendants lack knowledge and information sufficient to form a response to paragraphs 10 – 15 and therefore deny the same.

12. These Defendants deny paragraphs 16 and 17 as stated. Further responding, these Defendants admit only that Plaintiff knowingly and intentionally purchased a Canopus policy covering carpentry services and not covering general contracting services.

13. These Defendants deny paragraphs 18 and 19.

14. In response to paragraph 20, these Defendants repeat all preceding paragraphs as if restated here verbatim.

15. To the extent paragraphs 21 and 22 are directed towards these Defendants, they deny the same.

16. In response to paragraph 23, these Defendants repeat all preceding paragraphs as if restated here verbatim.

17. Paragraph 24 states a conclusion of law to which these Defendants are not required to respond.

18. These Defendants deny paragraph 25, including all subparts, to the extent said paragraph is directed towards them.

19. In response to paragraph 26, these Defendants repeat all preceding paragraphs as if restated here verbatim.

20. These Defendants deny paragraphs 27 – 29 to the extent said paragraphs are directed towards them.

21. In response to paragraph 30, these Defendants repeat all preceding paragraphs as if restated here verbatim.

22. These Defendants deny paragraphs 31 – 34 as stated and in full to the extent they state or imply liability of these Defendants. Further responding, these Defendants admit they sold a Canopus insurance policy and procured coverage for Plaintiff for carpentry services, of which Plaintiff was aware. Plaintiff intended to purchase, and did purchase and renew the policy for coverage for carpentry services.

23. These Defendants specifically deny having a contract with Plaintiff, breaching a contract with Plaintiff and causing Plaintiff any damages.

24. These Defendants deny the prayer for relief.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

25. The Complaint fails to state grounds upon which relief can be granted pursuant to SCRCP 12(b)(6).

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Lack of Contract)

26. These Defendants had no contract with Plaintiff that could support a breach of contract cause of action against them. Additionally, these Defendants did not breach any contract they may have had with Plaintiff. These Defendants are not an insurer. They are third parties who were not party to any contract to provide insurance or any other contract with Plaintiff that could be the subject of a cause of action. Therefore, they cannot be subject to breach of contract or bad faith claims by Plaintiff.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations)

27. The statute of limitations bars or may bar Plaintiff's claim(s) against these Defendants.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Punitive Damages Unconstitutional)

28. The claims for punitive damages are barred as a matter of law under the facts of this matter, and the statutes of the State of South Carolina purporting to authorize those claims violate these Defendants' rights as guaranteed by the Constitutions of the State of South Carolina

and the United States of America. Further, any potential punitive damages are limited in amount under the law.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(No Proximate Cause)

29. No causal connection exists between any alleged acts or omissions of these Defendants and the injuries/damages Plaintiff alleges.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

30. Plaintiff failed or may have failed to take action to reasonably avoid or reduce the alleged damages and injuries; and therefore, Plaintiff is not entitled to recover said damages that should have been avoided or reduced.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

31. Plaintiff's claims in equity are barred against these Defendants because Plaintiff has unclean hands.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Failure to Perfect Service)

32. Plaintiff failed or may have failed to perfect service of process on these Defendants.

FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Estoppel)

33. Plaintiff is estopped in equity from recovery against these Defendants.

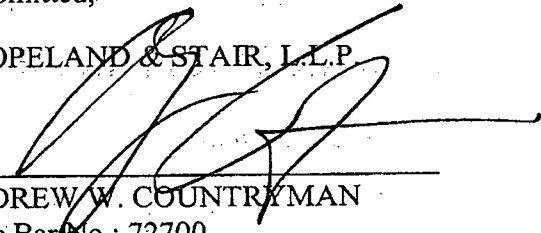
FURTHER ANSWERING THE COMPLAINT AND
AS AN AFFIRMATIVE DEFENSE THERETO
(Reservation/Non-waiver)

34. These Defendants reserve any additional and further defenses as may be revealed by additional information obtained during the course of discovery and investigation and as are consistent with the South Carolina Rules of Civil Procedure.

Wherefore, these Defendants pray this Court dismiss them from the Complaint with prejudice and award costs and other such recovery as the Court deems just and proper. These Defendants reserve the right to request a jury trial.

Respectfully submitted,

CARLOCK, COPELAND & STAIR, L.L.P.

By: 

ANDREW W. COUNTRYMAN
State Bar No. 72700

**Attorney for The Brinson Agency and John
Brinson**

40 Calhoun Street, Suite 400
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843-727-0307
acountryman@carlockcopeland.com

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-10-04984

Bouchelle IncorporatedCanopious US Insurance, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

Defendant Seneca Specialty Insurance Co.'s Motion for Judgment on the Pleadings is granted.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

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

Circuit Court Judge

Ch. Lee Lee

Judge Code 2118

Date

12/29/2017

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Karen DeJong

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Wilkerson

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Bouchelle Incorporated,

Docket No.: 2016-CP-10-04984

Plaintiff,

ORDER

v.

Canopus US Insurance, Inc., Seneca
Specialty Ins. Co., The Brinson Agency,
and John Brinson

Defendants.

FILED
2018 JAN -9 AM 11:14
JULIE A. BRINSON
CLERK OF COURT

This matter came before the Court on a Motion for Judgment on the Pleadings filed by Defendant Seneca Specialty Ins. Co., ("Defendant") against Plaintiff Bouchelle Incorporated, ("Plaintiff") pursuant to Rule 12(c), SCRCF. A hearing on the motion was conducted on September 6, 2017. Present at the hearing were John Wilkerson, Esquire, attorney for Defendant and Karen DeJong, Esquire, attorney for Plaintiff.

PROCEDURAL HISTORY

The Summons and Complaint was filed by Plaintiff on September 20, 2016 seeking insurance coverage under a policy issued by Defendant to Charleston Wrecking, Inc. ("Charleston Wrecking"), for damage to adjoining walls allegedly caused by demolition work conducted by Charleston Wrecking, Inc. Specifically, Plaintiff asserts a claim for breach of contract as a result of Defendant's denial of coverage to Charleston Wrecking, Inc. Defendant filed an Answer and Affirmative Defenses on January 12, 2017. Defendant filed a Motion for Judgment on the Pleadings on March 15, 2017. Defendant thereafter filed a Memorandum in Support of Judgment on the Pleadings on May 11, 2017.

FACTUAL BACKGROUND

Plaintiff was engaged in construction activity for a commercial property located at 7350 Industry Drive in North Charleston, South Carolina. Plaintiff purchased a commercial liability policy from Defendant Canopus US Insurance, Inc. Plaintiff's subcontractor, Charleston Wrecking, purchased a commercial liability policy from Defendant effective from November 11,

2014 to November 11, 2015. Defendant's policy also provided coverage for the commercial property, listing Plaintiff as the Certificate Holder of the policy.

On or about July 14, 2015, Charleston Wrecking was performing scheduled demolition work on a portion of the construction activity when sections of the structure being demolished fell and caused damage. The demolition work also damaged a supporting structure of a wall of another pre-existing building that was not a part of the scheduled demolition. On August 12, 2015, Plaintiff presented a claim under its policy with Defendant Canopus for damages to the pre-existing building of the structure. The claim was rejected on November 15, 2015 based upon Defendant Canopus' conclusion that Plaintiff was not covered by insurance for "general contractor" services, but instead for "carpentry" services. Since Plaintiff was acting as a general contractor on the job site, Defendant Canopus denied coverage for the accident. Plaintiff alleges Defendant Seneca rejected Charleston Wrecking's insurance claim for reimbursement under the contract of insurance for undisclosed reasons. See *Complaint* ¶ 15. No evidence has been provided for the reasons Defendant Seneca rejected Charleston Wrecking's insurance claim.

Defendant Seneca contends that Plaintiff has no standing to assert a direct action against them. Plaintiff is not an insured or an additional insured under Defendant's policy with Charleston Wrecking. Additionally, Defendant contends an injured third party cannot assert a direct action against a purported tortfeasors' insurer, and the terms of Defendant's policy prohibit a direct action until a judgment has been entered against its insured, Charleston Wrecking, which has not yet occurred. Defendant Seneca further contends that coverage is barred by the Demolition Exclusion. Under this exclusion, property damage to abutting, adjoining, shared or common walls, and building of which walls are a part, is precluded.

DISCUSSION

Under Rule 12(c), SCRPC, any party may move for a judgment on the pleadings after the pleadings are closed but "within such time as not to delay the trial." A motion for judgment on the pleadings is proper where pleadings entitle a party to judgment without proof, by disclosure of all facts, where the pleadings present no issue of fact or present merely an immaterial issue. *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 422, 297 S.E.2d 638, 640 (1982). Where the pleadings are fatally deficient in substance or fail to state a good cause of action in favor of the plaintiff and against the defendant, judgment on the pleadings is proper. *Id.* A judgment on the pleadings shall be granted "where there is no issue of fact raised by the complaint that would entitle

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the plaintiff to judgment if resolved in plaintiff's favor." *Home Builders Ass'n of South Carolina v. School Dist. No. 2 of Dorchester Cnty*, 405 S.C. 458, 460, 748 S.E.2d 230, 231 (2013) (quoting *Sapp v. Ford Motor Co.*, 386 S.C. 143, 687 S.E.2d 47 (2009)).

However, if the parties presented "matters outside the pleadings" that were considered by the court and not excluded, a Rule 12(c) motion shall be treated as a Rule 56, SCRPC, motion for summary judgment and disposed of pursuant to Rule 56. Rule 12(c), SCRPC. Defendant attached exhibits to their Answer and presented documents at the motion hearing. Therefore, this motion will be treated as a summary judgment motion. As a result, "all parties shall be given reasonable opportunity to present [to the court] all material made pertinent to such a motion by Rule 56." Rule 12(c), SCRPC.

Summary judgment is proper only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." Rule 56(c), SCRPC. "Under Rule 56(c), SCRPC, the party seeking summary judgment has the initial burden of demonstrating the absence of a genuine issue of material fact." *Trivelas v. South Carolina Dep't of Transp.*, 348 S.C. 125, 130, 558 S.E.2d 271, 273 (Ct. App. 2001). A genuine issue of material fact exists "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." *Schmidt v. Courtney*, 357 S.C. 310, 316-17, 592 S.E.2d 326, 330 (Ct. App. 2003) (citing *Bayle v. South Carolina Dep't of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001)).

I. Interpretation of Seneca Insurance Policy

The complaint alleges that Charleston Wrecking was performing scheduled demolition work to a portion of the project when the sections being demolished fell and caused damage to a wall of a pre-existing building that was not a part of the scheduled demolition. Plaintiff is seeking coverage for property damage to an abutting, adjoining, shared, or common wall and to the building of which the adjoining wall is a part. Defendant contends, based on the allegations in the Complaint, coverage for Plaintiff would be precluded under the policy.

Insurance policies are subject to general rules of contract construction and a court must give policy language its plain, ordinary and popular meaning. *Diamond State Ins. Co. v. Homestead Indus., Inc.*, 318 S.C. 231, 236, 456 S.E.2d 912, 915 (1995). Ambiguous or conflicting

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terms in an insurance policy must be construed liberally in favor of the insured and strictly against the insurer. *Id.* However, if the intention of the parties is clear, courts have no authority to torture the meaning of policy language to extend or defeat coverage that was never intended by the parties. *Id.*

Defendant issued a Commercial General Liability Policy to Charleston Wrecking from November 11, 2014 to November 11, 2015. The policy contains a "No Action" clause that provides:

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 limits 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.

See Defendant's Answer Exhibit A, *Commercial General Liability Insurance Coverage Form*, p. 11. The policy provides that no person or organization has a right under this coverage to bring Defendant into a suit asking for damages from an insured unless the person has complied with all of its terms. Pursuant to the terms of the "No Action" provision, Plaintiff's direct action is barred by the terms of Defendant's policy, which explicitly states that a final settlement or judgment must be entered before a third party may pursue a claim for damages against Defendant.

Additionally, Defendant's Policy also contains a "Demolition Exclusion", stating that "the insurance does not apply to bodily injury or property damaging arising out of or resulting from the demolition of any building or structure which has an original ground height of three stories or 36 feet, whichever is less."¹ See *Seneca Specialty Insurance Company Demolition Exclusion*. This

¹ The work height exclusion was modified to include bodily injury or property damage from ongoing operations performed above a ground height of four stories or 48 feet of any building or structure. See *Seneca Specialty Insurance Company Policy Change Work Height Exclusion*.

includes property damage to any abutting, adjoining, shared or common wall, and any building or property of which such wall is a part.

The plain language of Defendant's policy prohibits third parties from maintaining an action against Defendant until a judgment has been obtained against Defendant's insured or a settlement has been entered with the insured. Plaintiff has not met any of these requirements. Further, the Demolition Exclusion in Defendant's policy precludes coverage for damage to adjoining property, which is what Plaintiff is seeking coverage.

II. Bouchelle Lacks Standing to Maintain an Action against Seneca

Defendant contends Plaintiff lacks standing to maintain this action. The South Carolina Supreme Courts has held that injured third parties have no right to maintain a cause of action directly against an insurer. In *Major v. Nat'l Indem. Co.*, 267 S.C. 517, 229 S.E.2d 849 (1976), the Supreme Court held that several parties who were injured in a motor vehicle accident involving a school bus and a truck could not maintain an action against the insurer of the truck, National Indemnity. The Court stated, "The only issue presented on this appeal is the propriety of this direct action solely against National Indemnity." *Id.* at 518, 229 S.E.2d at 850. In reaching its decision that the action against National Indemnity should be dismissed, the Court explained that at common law, no right to maintain suit directly against the insurer existed absent privity of contract between the claimant and the insured. *Id.* at 520, 229 S.E.2d at 850. Because direct actions against the insurer contravenes common law, such a right must be expressly sanctioned by the legislature and not merely inferentially deduced. *Id.* The court found no right, either statutory or under the common law, to maintain an action solely against the insurer. *Id.* at 521, 229 S.E.2d at 850. See also *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 554, 581 S.E.2d 858, 861 (Ct. App. 2003) (Third-party-liability-insurance contracts are generally indemnity contracts whereby the insurer, or the first party, agrees to pay the insured, or the second party, the amount of any damages the insured may become legally liable to pay a third party; thus, the third party, or the incidental beneficiary, does not have a contractual relationship with the insurer and cannot maintain an action against the insurer for breach of the insurance contract.). Thus, Plaintiff cannot maintain standing in this action absent privity of contract with the insured.

Plaintiff alleges to be listed as the Certificate Holder of the policy. The certificate of insurance issued to Plaintiff in this case did not purport to provide any benefits or protection promised under Defendant's insurance policy. The certificate of insurance issued to Plaintiff

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stated, "the policy does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder." See *Certificate of Insurance*. The certificate issued to Plaintiff conferred no rights under Defendant's policy and does not constitute a contract between Plaintiff and the insured. Therefore, Plaintiff does not have standing to maintain this action. Accordingly, based upon the allegations of the Complaint and the terms of Defendant's policy, Plaintiff's claims are dismissed.

ORDER

For the foregoing reasons, **IT IS HEREBY ORDERED**, Defendant's Motion for Judgment on the Pleadings is **GRANTED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

December 29, 2017
Columbia, South Carolina

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State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

ALISON RENEE LEE
JUDGE

1701 MAIN ST., ROOM 324
POST OFFICE BOX 192
COLUMBIA, SOUTH CAROLINA 29202-0192
TELEPHONE: (803) 576-1765
FAX: (803) 576-1768

December 29, 2017

Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401

Re: Case No. 2016-CP-10-04984 (Bouchelle Incorporated v. Canopus US Insurance, Inc. et al.)

Dear Ms. Armstrong:

Please clock and file the enclosed Orders and provide copies to the parties.

Sincerely,

A handwritten signature in cursive script, appearing to read "L.A. Barnes", written over a horizontal line.

L.A. Barnes

Law Clerk to the Honorable Alison Renee Lee

Enclosures

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bouchelle Inc.,

Plaintiff,

vs.

Canopus US Insurance, Inc.; Seneca
Specialty Ins. Co.; The Brinson Agency and
John Brinson,

Defendants.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Civil Action No. 2016-CP-10-4984

**ORDER GRANTING CANOPIUS US
INSURANCE INC.'S MOTION FOR
SUMMARY JUDGMENT**

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STATEMENT OF THE CASE

This matter came before the court pursuant to Canopus US Insurance Inc.'s ("Canopus US") Motion for Summary Judgment. A hearing on the motion was conducted on December 12, 2017. In this declaratory judgment action, Plaintiff seeks insurance coverage, under a general liability policy it purchased from Canopus US, for damage to a concrete warehouse caused by one of Plaintiff's subcontractors during demolition activity. Plaintiff also asserts claims against his insurance agent, The Brinson Agency and John Brinson, (collectively "Brinson") and Seneca Specialty insurance Company, the insurer for the subcontractor.

At the conclusion of oral arguments on December 12, 2017, and as set forth in the Court's resulting Form 4 order, Canopus US's motion was taken under advisement, with the record left open in order for Plaintiff to take a 30(b)(6) deposition of Canopus US and to submit affidavits, memoranda, or other materials showing a principal/agent relationship exists between Canopus US and Brinson. Canopus US was given the opportunity to respond. Having reviewed the information submitted pursuant to that order, the Court finds there is no genuine issue of material fact and Canopus US is entitled to judgment as a matter of law.

EVIDENCE

Bouchelle, Inc., ("Bouchelle") has operated as a commercial general contractor for approximately twenty years. Bouchelle subcontracted the majority of its work. In May 2015 Bouchelle contracted to perform the renovation of an existing concrete warehouse facility, including demolishing a portion of the structures, for a total contract amount of \$498,641. Bouchelle subcontracted the demolition work to Charleston Wrecking. Part of the subcontracted work was the removal of steel reinforced concrete walls which formed part of a third-story to the building. On July 14, 2015, Charleston Wrecking was using a piece of equipment to grab and remove wall sections. However, instead of coming free from the building, the wall sections swung down and back into the building, damaging it.

pm Canopus US insured Bouchelle for the period August 11, 2014, to August 11, 201, through commercial general liability policy OUS009069353. In the Commercial General Liability Coverage Part, Supplemental Declarations, the "Description of Business" is listed as "CARPENTRY." The Extension of Supplemental Declarations lists the class description as "CARPENTRY", and the premium is based on that classification. No other type of work is listed or classified.

The policy includes an endorsement, ART-GL-01, which includes a number of policy provisions. Relevant to this case is the following:

EXCLUSION – CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B and C (Section I).

This insurance does not apply to "bodily injury", "Property damage," "advertising injury" "personal injury," or medical payments for operations which are not classified or shown in the Commercial General Liability Coverage Declarations, its endorsements or supplements."

STANDARD OF REVIEW

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c); SCRCF; Helms Realty, Inc. v. Gibson-Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005). Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” Middleborough Horizontal Prop. Regime Council of Co-Owners v. Montedison S.p.A., 320 S.C. 470, 479, 465 S.E.2d 765, 771 (Ct. App.1995). “However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted.” Ellis v. Davidson, 358 S.C. 509, 518 (Ct. App. 2004). Where a motion for summary judgment presents a question concerning the construction of a written contract, the question is one of law if the language employed by the contract is plain and unambiguous. Moss v. Porter Bros., Inc., 292 S.C. 444, 357 S.E.2d 25, 27 (1987)(citing First-Citizens Bank & Trust Co. v. Conway Nat'l Bank, 282 S.C. 303, 317 S.E.2d 776 (1984)).

DISCUSSION

I. The Classification Limitation

The Policy does not define “Carpentry”. When an insurance policy does not define a term, the term should be defined according to the usual understanding of the term's significance to the ordinary person. See Manufacturers and Merchants Mut. Ins. Co. v. Harvey, 330 S.C. 152, 158, 498 S.E.2d 222, 225 (Ct.App.1998). “Carpentry” is defined as: 1. the art or trade of a carpenter; *specifically*: the shaping and assembling structural woodwork. 2. Timberwork constructed by a carpenter. <https://www.merriam-webster.com/dictionary/carpentry>. Another definition is provided by Cambridge: the skill or trade of a carpenter, or the work done by a carpenter. <https://dictionary.cambridge.org/us/dictionary/english/carpentry>. Carpenter is, in turn,

defined as a person whose job is making and repairing wooden objects and structures.
<https://dictionary.cambridge.org/us/dictionary/english/carpenter>. Oxford Living Dictionaries defines carpentry as: The activity or occupation of making or repairing things in wood.
<https://en.oxforddictionaries.com/definition/carpentry>.

Insurance policies are subject to the general rules of contract construction. Nationwide Mut. Ins. Co. v. Commercial Bank, 325 S.C. 357, 479 S.E.2d 524, 526 (1996)(citing Standard Fire Ins. Co. v. Marine Contracting & Towing Co., 301 S.C. 418, 392 S.E.2d 460 (1990)). A court must give policy language its plain, ordinary, and popular meaning. Diamond State Ins. Co. v. Homestead Indus. Inc., 318 S.C. 231, 456 S.E.2d 912, 915 (1995). An insurer's obligation under a policy of insurance is defined by the terms of the policy and cannot be enlarged by judicial construction. See South Carolina Ins. Co. v. White, 301 S.C. 133, 390 S.E.2d 471, 474 (1990). Courts may look to a dictionary to determine the meaning of ambiguous, undefined terms. Greenville County v. Insurance Reserve Fund, 313 S.C. 546, 443 S.E.2d 552, 553 (1994). The court has no authority to torture the meaning of policy language or to extend or defeat coverage that was never intended by the parties. Diamond State Ins. Co., 456 S.E.2d at 915. The burden of proof is on the insured to show that a claim falls within the coverage of an insurance contract. Gamble v. Travelers Ins. Co., 160 S.E.2d 523, 525 (1968).

Per the express terms of the policy, the insurance provided by it does not apply to "property damage" for any operation other than "Carpentry". The work which caused the property damage for which Plaintiff seeks coverage has no relationship to working with wood, or with the usual understanding of the word "carpentry" by an ordinary person.

There are no reported South Carolina opinions construing Classification Limitations such as the one at issue. However, Classification Limitation exclusions have been enforced by courts

in several jurisdictions. See Evanston Ins. Co. v. Heeder, 2011 WL 4715177, (M.D. Fla. 2011) (the insured was classified for residential roofing, and therefore no coverage for a commercial roof); Mount Vernon Fire Ins. Co. v. Chios Const. Corp., 1996 WL 15668, (S.D.N.Y. 1996); Canopus U.S. Ins., Inc. v. Cresco, Inc., 2014 WL 5107063 (E.D.Va. 2014) (No coverage for insured classified as Carpentry and Interior Painting where damage stemmed from installation of a walk-in freezer); Atlantic Cas. Ins. Co. v. McCormick Bros. Const. Co., Inc., 2008 WL 2965169 (S.D.Tex., 2008) (exclusion precluded coverage where the insured was classified as working on One or Two Family Dwellings, and injury arose from the construction of a hospital.)

The plain language of the policy provides that it does not apply to "property damage" from operations which are not classified or shown in the policy, and the policy reflects that Bouchelle was classified only as Carpentry. The damages for which Bouchelle seeks coverage did not arise from carpentry, they arose from the demolition of a steel reinforced concrete warehouse, via the use of a large track hoe, and the policy does not provide coverage per its terms.

II. Brinson was not acting as an agent for Canopus US.

Bouchelle alleges that Brinson was aware that Bouchelle was a general contractor and wanted coverage as a general contractor, something that Brinson denies. Bouchelle also alleges that Brinson was Canopus US's agent.

Canopus US 30(b)(6) excerpts

Retail agents, such as Brinson, submit business to Managing General Agents, including Tapco Underwriters, Inc., to fulfill the needs of their clients. "There is no agreement between Canopus US and the retail agents. They are an agent of the insured." (Canopus US p. 38.) There is no relationship, contract or agreement between Canopus US and Brinson. (Canopus US p.

65). Canopus US gives Tapco guidelines for classes of business, and pricing of policies, that Canopus US wishes to write. (Canopus US p. 6). Canopus US agrees to give a certain amount of commission to Tapco. Tapco decides how much of that they wish to pass on to Brinson or other retail insurance agents. Canopus US is not a party to the agreement between Tapco and Brinson. (Canopus US p. 35).

Brinson Agency 30(b)(6) excerpts

Brinson is an independent insurance agent. (Brinson p. 11). "As an independent agent, I have the ability to represent a variety of companies. I am not – as opposed to being a captive agent, where I would just represent like a State Farm, or a Nationwide, I represent many, many companies." (Brinson p. 11). In addition to being an insurance agent Brinson is also an insurance broker, and as a broker he has the ability to go to excess markets to procure coverage. (Brinson p. 11). Asked to explain "excess market" he responded, "That's when you deal with an MGA. Okay? Excess markets are markets that are – how would you explain it? It gives you access to places like Lloyd's of London and these excess markets which are not guaranteed under The State Insurance Fund. (Brinson p. 11). Brinson is licensed as both an insurance agent and separately licensed as an insurance broker. (Brinson p. 12).

Brinson had no business relationship with Canopus US. (Brinson p. 15). He did not receive any communications or money from Canopus US. (Brinson pp. 26-27). He does not have a contract with Canopus US. (Brinson pp. 16.) Brinson does not have any agreement with Canopus US, or any contact with Canopus US.

Brinson has a business relationship with Tapco. (Brinson p. 16). Tapco provides access to the market, such as Canopus US, Lloyd's of London, and similar insurers. After Brinson received the premium check from Bouchelle, Inc., he would send it to Tapco, not Canopus US,

and would receive a check from Tapco, written on Tapco's checking account, for his commission. (Brinson p. 26.) Brinson acknowledged that at all times he has been doing business with Tapco, he has been subjected to an agreement with Tapco that provides that the broker/agent agrees that it is neither an agent nor representative of Tapco, nor of any insurer or other company used by or represented through Tapco. (Brinson p. 74 with exhibit attached.)

Canopus US submitted the affidavit of Todd Coleman, Managing Director of Underwriting for Tapco Underwriters, Inc. The affidavit provides that the Brinson's relationship with Tapco was subject to certain conditions, including that Brinson was not an agent nor representative of Tapco or any insurers Tapco represented.

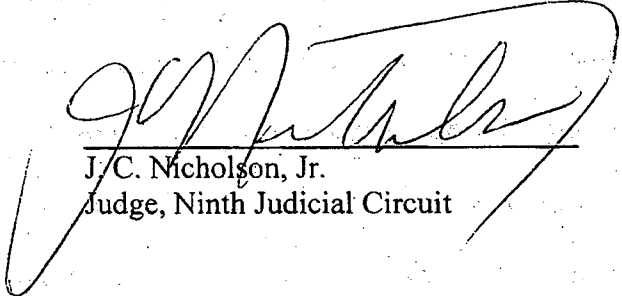
fn The test to determine agency is whether or not the purported principal has the right to control the conduct of his alleged agent, Fernander v. Thigpin, 278 S.C. 140, 293 S.E. 2d 242 (19182). An agency may not be established solely by the declarations and conduct of an alleged agent. Frasier v. Palmetto Homes of Florence, Inc., 323 S.C. 240, 473 S.E. 2d 865 (Ct. App. 1996). (Emphasis added Thompson v. Pruitt Corp., 784 S.E.2d 679, 686, 416 S.C. 43, 55 (S.C.App., 2016). "A broker is ordinarily one who acts as a middleman between the insured and insurer and who solicits insurance from the public under no employment from any special company, but having secured an order, either places the insurance with a company selected by the insured or with a company selected by the broker himself. Appleman, Insurance Law and Practice, s 8726, Page 262." Allstate Ins. Co. v. Smoak, 182 S.E.2d 749, 754, 256 S.C. 382, 392 (S.C. 1971). A broker is ordinarily employed by a person seeking insurance, and when so employed, is to be distinguished from the ordinary insurance agent who is employed by an insurance company to solicit and write insurance in the company. Id. Where one has no agency license with the insurer, and is requested by the insured to place the business, he is a broker. Id.

Generally, an insurance broker is the agent of the insured, and not the insurer. The mere fact that he receives a commission from the insurer for placing the insurance does not change his character as an agent of the insured. Id. Brinson was employed by Bouchelle to obtain insurance for it. Brinson had no agency license with Canopus US. Brinson was an independent broker, at least with regard to Canopus US.¹ Brinson was not an agent of either Canopus US or Tapco Underwriters.

ORDER

The Classification Limitation in the Canopus US policy issued to Bouchelle unambiguously excludes coverage for the loss for which Bouchelle seeks coverage. Further, even if Brinson knew that Bouchelle wanted, or should have, insurance coverage as a general contractor, that knowledge would not impact this decision as Brinson was the agent for Bouchelle, and not for Canopus US. Accordingly, **IT IS HERBY ORDERED** that Canopus US's motion for summary judgment is granted.

AND IT IS SO ORDERED.



J. C. Nicholson, Jr.
Judge, Ninth Judicial Circuit

March 15, 2018
February 15, 2018

¹ Brinson testified that he did have agency contracts with certain insurance companies, but not with Canopus US.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-10-4984

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U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIF.

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FACTS

Plaintiff is a contracting firm based in North Charleston. Compl. Para. 1 (Sep. 20, 2016). Defendant John Brinson owns and operates Defendant the Brinson Agency, an insurance agency on Folly Road on James Island. According to the Complaint, Plaintiff purchased a commercial general liability policy effective August 11, 2014 – August 11, 2015. Defendant Canopus US Insurance, Inc. provided the coverage. The Complaint goes on to allege that Plaintiff retained a subcontractor, Charleston Wrecking, Inc., to work on a Project at 7350 Industry Drive in North Charleston in July 2015. Charleston Wrecking had a commercial liability policy through Seneca Specialty Ins. Co. and was scheduled to perform demolition work at the Project.

Plaintiff says that on or about July 14, 2015, Charleston wrecking was performing demolition work at the Project when a portion of the structure being demolished fell and caused damage to a wall of a pre-existing building that was not scheduled to be demolished. Plaintiff maintains it presented a claim under its Canopus policy for damages. Canopus rejected the claim because (a) the policy did not cover Plaintiff for “general contractor” services, but instead for “carpentry services,” and (b) Plaintiff was acting as the general contractor for the Project. The Complaint alleges the lack of coverage for general contracting services was a surprise to Plaintiff, who “at no time” authorized these Defendants to procure carpentry coverage instead of general contracting coverage.

Plaintiff also alleges Seneca has denied a claim made under the policy it issued to Charleston Wrecking. Plaintiff has sued these Defendants, Canopus and Seneca under breach of contract and bad faith theories. This Motion relates to Plaintiff’s causes of action against these Defendants which include: (a) breach of contract and (b) statutory attorney’s fees under S.C. Code § 38-59-40. The claim against these Defendants is basically that they sold Plaintiff a carpentry coverage when Plaintiff

thought it was purchasing general contracting coverage. As described below, there is zero basis for this contention, and these Defendants are entitled judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCF. The purpose of summary judgment is to "expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). Summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. Rawlinson Rd. Homeowners Assoc., Inc. v. Jackson, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011).

ARGUMENT

These Defendants served initial Interrogatories, Requests for Production and Requests to Admit to Plaintiff on May 19, 2017. Ex. 1. After receiving no response, the undersigned wrote Plaintiff's counsel on June 26, 2017. Ex. 2. That letter notes the Requests to Admit are deemed admitted because of Plaintiff's failure to respond. It also served as a Rule 11 letter regarding the failure to respond to the Interrogatories and Requests for Production and asked for full and complete responses by July 7, 2017. Receiving no response at all to the letter or the discovery requests, the

undersigned filed a Motion to Compel Plaintiff to answer the Interrogatories and Requests for Production on July 12, 2017.

Plaintiff never responded in any manner to the discovery requests, letter or Motion until she served Responses to the Requests to Admit on August 14, 2017. Ex. 3. The Responses contained no cover letter and were two months late. The undersigned sent Plaintiff's counsel a letter on August 17, 2017, regarding the Responses. Ex. 4. The letter indicated the Requests are deemed admitted and asked Plaintiff's counsel to dismiss these Defendants. As of the date of this Motion, Plaintiff's counsel has not responded to that letter or offered any explanation for failing to timely respond to the Requests to Admit.

Under Rule 36, requests to admit are deemed admitted unless, within thirty days after service of the requests, the party to whom the requests are directed served written responses to the party propounding the requests. A matter admitted under Rule 36 is conclusively established unless the court on motion permits withdrawal or amendment of the admission. No such motion has been made here.

The Requests are as follows:

1. *Admit Ex. A is a true and accurate copy of an application for insurance you submitted through the Brinson Agency.*
2. *Admit Ex. A is a true and accurate copy of an application for insurance you submitted to procure the Canopus policy referenced in the Complaint.*
3. *Admit you applied for and obtained insurance coverage for "carpentry services" from 2008 – 2015.*

Exhibit A to the Requests is an application for insurance signed by David Bouchelle on July 31, 2008. It specifically references "Carpentry" as the type of risk for which the company was applying. These Requests are deemed admitted and conclusively establish as facts in this case that: (a) Ex. A to the

Requests is a true and accurate copy of the insurance application for the policy at issue and (b) Plaintiff applied for and obtained coverage for carpentry coverage from 2008 – 2015. In light of these conclusively established facts, Plaintiff cannot show any basis for the causes of action alleged against these Defendants.

The elements of a breach of contract cause of action are: (a) a binding contract entered into by the parties; (b) breach or unjustified failure to perform the contract; and (c) damage suffered by the plaintiff as a direct and proximate result of the breach. The Complaint says Plaintiff and these Defendants entered into a contract whereby they agreed to sell Plaintiff commercial general liability coverage under the category of general contractor; and that these Defendants breached that contract by obtaining coverage for carpentry services without Plaintiff's knowledge or consent. Compl., para. 34.

The conclusively established facts in this case include that Plaintiff applied for and obtained carpentry coverage from 2008 – 2015. They also provide that Ex. A to the Requests is a true and accurate copy of the application Plaintiff signed for that coverage. The application plainly indicates it is for "carpentry" risk coverage. In fact, "Carpentry" is prominently listed on two places in handwriting on the first page of the application. Interestingly, the first page also identifies Plaintiff's operation as 100% "Artisan Contractor" and 0% "General Contractor."

On the second page of the application, Plaintiff checked the box "no" next to the question as to whether Plaintiff performs demolition work. In fact, the second page of the application contains fourteen items asking whether Plaintiff's work includes various types of construction. Plaintiff responded in the negative for all of them. Finally, the second page of the application indicates Plaintiff

does not subcontract out any of its work. There is simply no way to even argue Plaintiff intended to purchase and purchased anything other than carpentry coverage in light of this application.

These established facts leave no issue of material fact left to be determined with respect to Plaintiff's breach of contract cause of action against these Defendants. Plaintiff did not have a contract to purchase CGL coverage for general contracting services. Plaintiff applied for, intended to purchase and did purchase coverage for carpentry services. Plaintiff did this over and over again during the course of 8 years. As a matter of law, Plaintiff's claim against these Defendants for breach of contract fails.

Plaintiff's other claim that can be read to refer to these Defendants is for attorney's fees under S.C. Code § 38-59-40. This Code section provides for liability of an insurer for attorney's fees when the insurer in bad faith refuses to pay a claim. The Complaint does not allege either of these Defendants is an insurer. To the contrary, these Defendants are an insurance agency and insurance agent. Under South Carolina, they cannot be liable for bad faith refusal to pay insurance benefits. Carter v. Am. Mut. Fire Ins. Co., 279 S.C. 368, 307 S.E.2d 227 (1983), Carolina Bank & Trust Co. v. St. Paul Fire & Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App.), Gaddy v. Louradian Life Ins. Co. of Amer., 2009 WL 1393472 (D.S.C. 2009). As a matter of law, these Defendants cannot be liable to Plaintiff for attorney's fees under S.C. Code § 38-59-40.

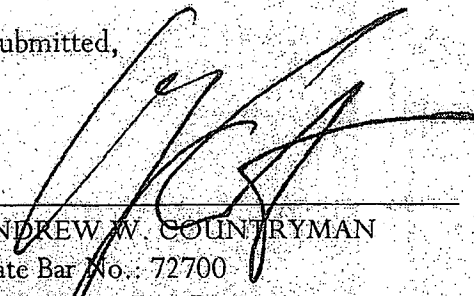
CONCLUSION

Because of the facts conclusively established in this case by virtue of Plaintiff's failure to timely respond to these Defendants Requests to Admit, these Defendants are entitled to summary judgment on all of Plaintiff's claims alleged against them and ask this Court for the same. These Defendants reserve the right to supplement this Motion with supporting brief(s) or memoranda as appropriate.

They also reserve the right to move for summary judgment on other ground in the event this Motion is denied or withdrawn.

Respectfully submitted,

By:



ANDREW W. COUNTRYMAN
State Bar No.: 72700
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

**Lawyer for the Defendants the Brinson
Agency and John Brinson**

COUNTY OF CHARLESTON

Plaintiff,

VS.

Defendants.

NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4984

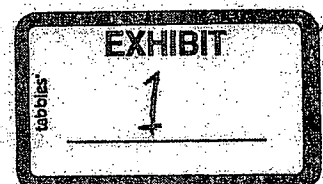
**INITIAL INTERROGATORIES,
REQUESTS FOR PRODUCTION AND
REQUESTS TO ADMIT FROM
DEFENDANTS THE BRINSON AGENCY
AND JOHN BRINSON TO PLAINTIFF**

TO: KAREN DEJONG, COUNSEL FOR PLAINTIFF:

The Defendants John Brinson and the Brinson Agency (“these Defendants”), by and through their undersigned counsel and pursuant to South Carolina Rules of Civil Procedure Rules 33, 34, and 36, submit the below Interrogatories, Requests for Production, and Requests to Admit to Plaintiff. These requests are continuing, and you have a duty under the rules to provide supplemental answers to the extent you receive new/updated information responsive to the requests.

INTERROGATORIES

1. Give the names, addresses and phone numbers of all persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff that relate to the claim or defense in the case.



3. 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 statements taken from such witnesses.

4. Please state the name, address and telephone number of each person who you expect to call as an expert witness at the trial of this case and for each such person give the subject matter on which he or she is expected to testify, the substance of the facts and opinions to which he or she is expected to testify and a summary of the grounds for each such opinion.

5. Prior or subsequent to this litigation, were you ever a plaintiff or defendant in a lawsuit of any kind? If so, please describe in detail the nature of the claim or lawsuit giving the names and addresses of the parties involved, the court where the action was filed (if any), substance of the allegations, date and outcome.

6. Identify all exhibits and demonstrative exhibits you plan to introduce at trial.

7. Identify all records requests, subpoenas and the like you have issued related to this claim.

8. Identify all contracts into which you entered related to the project out of which the claim arose that is the subject of this litigation.

9. Identify all entities, trade names and the like with which David Bouchelle is affiliated and/or under which he has operated since 2005.

10. Identify all contracts for insurance Plaintiff procured from 2005 through the present. For each, identify the type of coverage, policy period, amount, named insured(s), and the carrier.

11. Identify every claim Plaintiff has made under the policies identified above. State the claim number, date of claim, nature of the claim and resolution of the claim.

12. Identify all individuals who were in any way involved with procuring the insurance policy/policies at issue in this litigation (the ones you purchased through the Brinson Agency).

13. Describe the circumstances under which you procured the Canopus policy at issue in this litigation.

14. Provide a description of David Bouchelle's educational background.

15. Provide a description of David Bouchelle's employment history.

16. Identify by monetary amount, all actual damages you claim as a result of the facts and circumstances described in the Complaint.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all material in whatever form in any manner related to the claim as set forth in the Complaint.

2. Produce all correspondence between you and any insurance representative/employee related to the Project and/or the claim as set forth in the Complaint.

3. Produce copies of all subpoenas, records requests and the like you have issued related to this claim.

4. Produce all material identified in your answers to these Defendants' interrogatories.

5. Produce all material received in response to all subpoenas, records requests and the like you have issued related to this claim.

6. Produce your federal and state tax returns for the last five years.

7. Produce all contracts/policies of insurance providing coverage for claims arising out of the Project.

8. Produce all material you submitted to and/or received from the Brinson Agency. This includes insurance applications, correspondence, policies, emails, notes, memos, etc.

9. Produce all documents comprising and/or memorializing the "agreement" referenced in para 16 of the Complaint.

10. Produce all material evidencing your claim for damages in this case.

REQUESTS TO ADMIT

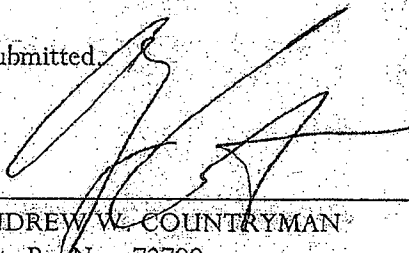
1. Admit Exhibit A is a true and accurate copy of an application for insurance you submitted through the Brinson Agency.

2. Admit Exhibit A is a true and accurate copy of the application for insurance you submitted to procure of the Canopus policy referenced in the Complaint.

3. Admit you applied for and obtained insurance coverage for "carpentry services" from 2008 – 2015.

Respectfully submitted,

By:


ANDREW W. COUNTRYMAN
State Bar No.: 72700
Countryman Law Firm
321 Wingo Way, Suite 102
Mount Pleasant, SC 29464
843-253-4477
awc@countrymanlawfirm.com

**Lawyer for the Defendants the Brinson
Agency and John Brinson**

4. Exact business description and type of work performed: Building Maintenance
5. Description of largest job(s): Large Building
6. What licenses held: N/A What states do you operate in? SC
7. Do you frame residential dwellings? ☐ Yes ☒ No If yes, how many? _____
8. Do you or have you used stucco (EIFS)? NO Any lead, asbestos, mold or radon removal? NO
9. If performing excavation work, do you use "Dig Safe" or a similar method of contacting utilities prior to digging? yes

10. Do you perform any of the following? Explain "Yes" answers to the following questions in the remarks section below:

- | | | | |
|--|--|--|---|
| a. ☐ Yes ☒ No | Do you draw plans, designs or specifications? | i. ☐ Yes ☒ No | Any work performed above 4 stories other than interior remodeling? |
| b. ☐ Yes ☒ No | Any demolition work? | j. ☐ Yes ☒ No | Does applicant install, service or demonstrate products? |
| c. ☐ Yes ☒ No | Any discontinued operations? | k. ☐ Yes ☒ No | Any work performed in removal of asbestos, lead, mold, PCB? |
| d. ☐ Yes ☒ No | Any guarantee, warranties or hold harmless agreements? | l. ☐ Yes ☒ No | Any work performed on road/bridges/highways/overpasses/traffic signals? |
| e. ☐ Yes ☒ No | Any roofing work performed? | m. ☐ Yes ☒ No | Any structural work performed? |
| f. ☐ Yes ☒ No | Any operation(s) involve discharge fumes, acids, wastes? | n. ☐ Yes ☒ No | Any explosive materials used? |
| g. ☐ Yes ☒ No | Any exposure to radioactive/nuclear materials? | | |
| h. ☐ Yes ☒ No | Any equipment loaned/rented leased to others? | | |

REMARKS _____

11. Additional Insured (include Name/Address): N/A
What is the Additional Insured's interest? _____
12. During the past 3 years has any company ever cancelled, declined or refused to issue similar insurance to applicant? NO
If so, explain _____
13. Previous Insurer: Indicate premium and losses for the past three years. Describe all losses.

Year	Company	Poli#	Premium	Losses Paid	Losses Reserved	Description
<u>NO Prior Carrier No losses</u>						

14. Any Work subcontracted? NO If yes, PLEASE COMPLETE PAGE 4.

"PLEASE NOTE, IF MORE THAN 25% OF WORK IS SUBCONTRACTED, CALL FOR A QUOTE."

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a Company Underwriter at TAPCO Underwriters, Inc.

Applicant's Signature *Daniel Burchell* Applicant's Phone# 843-971-7805
 Agency THE BRINSON AGENCY Date 7/31/08
 Agency Address PO BOX 76
POLLY BEACH, SC 29430

Agent's Signature *J. H. B...* Agent's License Number 3801416
 Agent's Phone # 843-406-0202 Agent's Fax # 843-762-2161
 Agent's Email Address _____

FLORIDA FRAUD STATEMENT: Section 817.234(1)(b), F.S. "Any person who knowingly and with intent to injure, defraud, or deceive any insurer, files a statement of claim or an application containing any false or misleading information is guilty of a felony of the third degree."	TENNESSEE / VIRGINIA FRAUD STATEMENT: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
---	--

Upon requesting quotes and/or placement for the coverage listed herein, the producing retail broker hereby confirms that he/she has performed any and all diligent searches, as may be required by statute, for coverage through licensed carriers or other means of placement. Where allowed by governing statutes, "diligent effort" may not require an actual physical search and declaration on each risk, but may be based on the retail producing broker's own experience, opinion and overall knowledge of acceptability in the admitted marketplace.

Premium \$ 1813.00 (Owner)
 Premium \$ _____ (Employees, if any)
 Total Base Premium \$ 1813.00
 Policy Fee \$ 100.00
 Surplus Lines Tax \$ 114.78 (On Premium and Fees) Tax applies to Base Premium only in DC, MD and NC
TOTAL PREMIUM \$ 2027.78

Important: Insurance will be limited to those operations or completed operations described in this policy.
 This application may only be used for the "E-Z" Rate Contractor's Program.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bouchelle Incorporated,

Plaintiff,

vs.

Canopus US Insurance, Inc., Seneca Specialty Ins.
Co., the Brinson Agency and John Brinson.

Defendants.

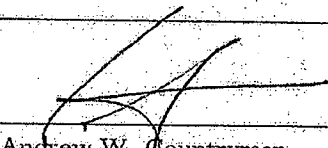
IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-4984

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of John Brinson and the Brinson Agency's initial Interrogatories, Requests for Production and Requests to Admit to Plaintiff for counsel on all parties to this matter via mail and/or email to all parties addresses as follows:

Karen M. DeJong, Esq. DeJong Law Firm, LLC 272 West Coleman Blvd., Suite 200 Mt. Pleasant, SC 29464 karen@dejonglawfirm.com Counsel for Plaintiff Via email and US Mail	Peter H. Dworjanyn, Esq. Christopher M. Huber, Esq. Collins & Lacy, P. C. P. O. Box 12487 Columbia, SC 29211 pdworjanyn@collinsandlacy.com chuber@collinsandlacy.com Counsel for Canopus US Insurance, Inc. Via email only
John S. Wilkerson, III, Esq. Turner Padgett Graham & Laney, P.A. P.O. Box 22129 Charleston, SC 29413 jWilkerson@TurnerPadgett.com Counsel for Seneca Specialty Ins. Co. Via email only	Kristin V. Gallagher, Esq. Daniel Pickett, Esq. Carroll, McNulty & Kull P. O. Box 650 Basking Ridge, NJ 07920 kgallagher@cmk.com dpickett@cmk.com Counsel for Seneca Specialty Ins. Co. Via email only

This 19th day of May, 2017


Andrew W. Countryman

COUNTRYMAN LAW FIRM
LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477

June 26, 2017

VIA EMAIL ONLY

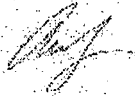
Karen M. DeJong, Esq.
272 W. Coleman Blvd.
Suite 200
Mt. Pleasant, SC 29464-5652
Karen@dejonglawfirm.com

Re: Bouchelle v. Brinson, et al.
C/A No.: 2016-CP-10-49844
CLF: 00008 - 00012

Dear Karen:

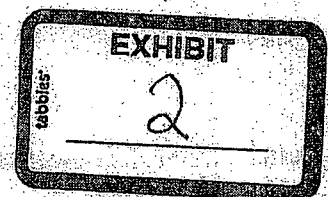
I served initial Interrogatories, Requests to Admit and Requests for Production to the Plaintiff on you May 19, 2017. I don't see where I have received responses to date. In fact, I haven't heard anything at all from you since May 19th. Please serve full and complete responses to the Interrogatories and Requests for Production by July 7, 2017, so I can avoid having to file a Motion to Compel. Thanks, and please feel free to call with questions or to discuss.

Sincerely,



Andrew W. Countryman

cc: all counsel of record (via email)



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

vs.

CANOPIUS US INSURANCE, INC.,

SENECA SPECIALTY INS. CO.,

THE BRINSON AGENCY and JOHN
BRINSON,

Defendants.

) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2016-CP-10-4984

) **PLAINTIFF'S RESPONSES TO**
) **DEFENDANTS THE BRINSON**
) **AGENCY AND JOHN BRINSON'S**
) **REQUESTS TO ADMIT**

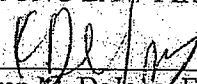
Plaintiff, BOUCHELLE INCORPORATED, in response to Defendant The Brinson Agency and Defendant John Brinson's Requests to Admit, hereby responds as follows:

1. Plaintiff denies the allegations of Paragraph 1.
2. Plaintiff denies the allegations of Paragraph 2.
3. Plaintiff denies the allegations of Paragraph 3.

Dated: August 14, 2017

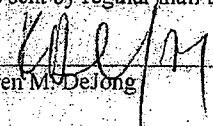
DEJONG LAW FIRM, LLC

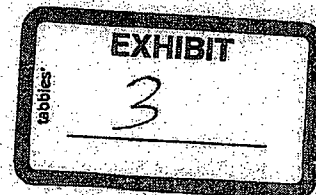
By:


Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
Tel. No. 843-216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

Certificate of Service

I hereby certify that on 8/14/2017, a copy of the pleading was sent by regular mail to all counsel of record.


Karen M. DeJong



COUNTRYMAN LAW FIRM
LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477

August 17, 2017

VIA EMAIL ONLY

Karen M. DeJong, Esq.
272 W. Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
karen@dejonglawfirm.com

Re: Bouchelle v. Brinson, et al.
C/A No.: 2016-CP-10-49844
CLF: 00008 – 00012

Dear Karen:

I received Plaintiff's Responses to my Requests to Admit today (attached). The Responses are dated 8/14/17. I served the Requests on 5/19/17. Under Rule 36, the Requests are deemed admitted. Also, the document I received contains one page but states "1 of 2" at the bottom. I didn't get a second page.

The first time we spoke, you said you were unable to talk because of a death of a client's family member (or something of that nature). Despite saying you would call me back when you could, I didn't hear from you again until weeks later the morning of the hearing for my Motion to Dismiss on 5/19/17. You said you had a flat tire on I-26 on the way to the courthouse. Since then, I haven't heard a peep from you until receiving your (late) Responses to my Requests to Admit today.

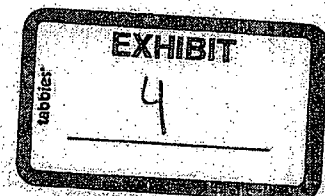
Again, those are deemed admitted under the Rules. Your claim against my clients is based on the theory my client(s) sold yours the wrong insurance. It is now an established fact in this case that your client(s) applied for and obtained coverage for carpentry services from 2008 – 2015. Please let me know if you will voluntarily dismiss my clients. If not, I will pursue dismissal and costs and attorney's fees associated with the same.

Sincerely,



Andrew W. Countryman

attachment
cc: all counsel of record (via email)



Wednesday, August 16, 2017 at 3:45:35 PM Eastern Daylight Time

Subject: Bouchelle v. Brinson
Date: Wednesday, August 16, 2017 at 3:45:18 PM Eastern Daylight Time
From: Andrew Countryman
To: karen@dejonglawfirm.com
CC: kgallagher@cmk.com, pdworjanyn@collinsandlacy.com, Daniel Pickett, Wilkerson, John S.,
chuber@collinsandlacy.com
Attachments: 8.17.17 L to PC re disco.pdf

Karen,

Please see the attached letter.

Andy

--
Andrew W. Countryman
Countryman Law Firm
321 Wingo Way, Suite 102
Mt. Pleasant, SC 29464
awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843-253-4477

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4984

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Defendants the Brinson Agency and John Brinson ("these Defendants"), by and through their undersigned counsel and pursuant to SCRCP 56, submit this Brief in support of its Motion for Summary Judgment of September 6, 2017).

SUMMARY

Plaintiff is a general contracting firm. It applied for and obtained commercial general liability ("CGL") coverage as a carpenter for years beginning in approximately 2008. Plaintiff purchased carpentry coverage for years rather than general contracting coverage. Plaintiff made a claim on its CGL policy after a building was damaged during a 2015 project on which it served as the general contractor. The carrier (Defendant Canopus) denied the claim because Plaintiff was acting as a general contractor when the claim arose, and the policy offered coverage for carpentry. Plaintiff has sued its insurance agent on a breach of contract theory for selling it the wrong coverage. In light of Plaintiff's deposition testimony and other evidence before the court, Plaintiff cannot maintain a breach of contract action against these Defendants, and they are entitled to judgment as a matter of law.

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FACTS

Plaintiff is a commercial general contracting firm based in North Charleston. Compl. Para. 1 (Sep. 20, 2016). David Bouchelle is the president and sole stockholder of the company. Ex. A, Dep. Bouchelle, Inc., p. 10, ln. 2 – 7 (Nov. 29, 2017). Defendant John Brinson owns and operates Defendant the Brinson Agency, an insurance agency on Folly Road on James Island. Plaintiff began purchasing general liability and other insurance policies from these Defendants in 2008. Id. at p. 61, ln. 20 – p. 64, ln. 19. From 2008 through 2014 and using the Brinson Agency, Plaintiff applied for and obtained general liability coverage for carpentry services. Plaintiff's application for the 2014 – 2015 policy period clearly shows it applied for carpentry coverage. Interestingly, it also states Plaintiff did not subcontract out any work. Ex. B, application (Ex. 3 to Plaintiff's depo.). The policy Canopus issued in response to the application provided CGL coverage for general contracting services. Ex. H to Canopus' Brief in Support of Motion for Summary Judgment (Dec. 6, 2017).

Plaintiff received the policies every year, which clearly stated what coverage Plaintiff purchased (carpentry).

Q. So, you obtained these carpentry policies through the Brinson Agency from 2008 through 2014, correct?

A. I obtained a GL policy, correct.

Q. And they were provided coverage for carpentry services?

A. That's what it says under their classification, yes.

Q. Okay. And did you receive copies of these policies on an annual basis from Mr. Brinson's agency?

A. I would think they would have come from the carrier and just been mailed to my office.

Q. You did get them?

A. I would think so, yes. Id. at p. 80, ln. 12 – p. 81, ln. 1.

At no point during this time period did Plaintiff contact anyone at the Brinson Agency and indicate the wrong coverage had been purchased. Id. at p. 81, ln. 24 – p. 82, ln. 17. In fact, despite having every opportunity to do so, Plaintiff never bothered to read any of the policies purchased. Id. at p. 82, ln. 18 – 24.

Q. You did have a chance to read those policies and could have notified someone including Mr. Brinson of any discrepancy and you did not do so, correct?

A. Correct. Id. at p. 84, ln. 7 – 11.

Plaintiff retained a subcontractor, Charleston Wrecking, Inc., to work on a Project at 7350 Industry Drive in North Charleston in July 2015 (“the Project”). On or about July 14, 2015, Charleston Wrecking was performing demolition work at the Project when a portion of the structure being demolished fell and caused damage to a wall of a pre-existing building that was not scheduled to be demolished. Plaintiff made a claim under its Canopus CGL policy for damages. Canopus rejected the claim because (a) the policy did not cover Plaintiff for “general contractor” services, but instead for “carpentry services,” and (b) Plaintiff was acting as the general contractor for the Project. The Complaint alleges the lack of coverage for general contracting services was a surprise to Plaintiff, who “at no time” authorized these Defendants to procure carpentry coverage instead of general contracting coverage.

The Complaint brings one cause of action against these Defendants for breach of contract alleging they sold the wrong policy (carpentry coverage instead of general contracting coverage). As described below, there is zero basis for this contention, and these Defendants are entitled judgment as a matter of law.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to "expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). Summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. Rawlinson Rd. Homeowners Assoc., Inc. v. Jackson, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011).

ARGUMENT

Generally, any claim or suit by a party to an insurance contract must be based on the terms of the policy as issued. Home Indem. Co. v. Harleysville Mutual Ins. Co., 252 S.C. 452, 166 S.E.2d 819 (1969). The duty of good faith in performance of obligations under a contract of insurance does not extend to a person who is not a party to the insurance contract (policy). Carolina Bank of Trust v. St. Paul Fire and Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983). To recover for breach of contract, a plaintiff must allege and prove: (a) a binding contract entered into by the parties; (b) breach or unjustified failure to perform the contract and (c) damages suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

As an insurance agent and agency, these Defendants are not insurers. They did not enter into a contract to provide insurance to the Plaintiff (which Plaintiff admits).

Q. There's no contract between Bouchelle, Inc. and Mr. Brinson's agency for these insurance policies, is there?

A. No. Id. at p. 84, ln. 3 – 6.

Q. And you know that the insurance carriers and not Mr. Brinson or the Brinson Agency actually provided your liability policies over the years, correct?

A. Yes. Id. at p. 105, ln. 98 – 12.

Q. [d]o you understand Mr. Brinson does not write policies? The insurance carriers write the policies, correct?

A. Yes, I understand.

Q. The agent is not the policy writer?

A. Correct.

Q. The agency does not have the contract to provide insurance with the insured, correct?

A. I do understand that. Id. at p. 138, ln. 21 – p. 139, ln. 5.

Plaintiff hangs its hat on the allegation that it “relied” on these Defendants to sell them the correct policy. However, the sale of insurance is an arm’s length transaction that does not give rise to a fiduciary duty. Pitts v. Jackson Nat. Life Ins. Co., 352 S.C. 319, 574 S.E.2d 502 (Ct. App. 2002). **No relationship of trust and confidence exists between the insurance applicant and the insurance agent.** Id. An insurer and its agents owe no duty to advise an insured. Id.

Further, a party to a contract has a duty to read a contract and learn its terms before signing. Burwell v. South Carolina National Bank, 288 S.C. 34, 340 S.E.2d 786 (1986); *see also* Stanley Smith & Sons v. D.M.R. Inc., 307 S.C. 413, 415 S.E.2d 428 (Ct. App. 1992). This rule is subject to exception, which the Supreme Court strictly interprets, that if the party is ignorant and unwary, his

failure to read the document may be excused. Id. The court must consider an individual's education, business experience and intelligence in deciding whether a party may be classified as ignorant and unwary. Id.

Plaintiff readily admits it applied for and obtained carpentry coverage from 2008 – 2014. It receives copies of the policies every year and never bothered to read them. Had Plaintiff read any of these policies, he would surely have seen they covered carpentry services and not general contracting work.

Q. [y]ou would agree with me that -- while it may have come as a surprise to you according to the lawsuit you would agree with me that Bouchelle, Inc. paid for and purchased and was provided CGL coverage covering carpentry risks from 2008 through 2014?

A. That is what these applications say and that is the insurance policy that I saw from Canopus.

Q. So what I said is correct?

A. Correct. Dep. Bouchelle, Inc. at p. 93, ln. 21 – p. 94, ln. 6.

Mr. Bouchelle is college-educated, can read and has zero excuse for not reading his insurance policies.

Id. at p. 59, ln. 22 – p. 60, ln. 5.

Q. I'm not being silly, but you do not know how to read you can comprehend language?

A. Oh, yes.

Q. You do know how to do that?

A. Yes.

Q. You did have these policies and you just did not read them, correct?

A. That's probably correct. Id., at p. 83, ln. 12 – 19.

Q. You did have a chance to read those policies and could have notified someone including Mr. Brinson of any discrepancy and you did not do so, correct?

A. Correct. Id. at p. 84, ln. 7 – 11.

Plaintiff has alleged breach of contract against these Defendants. However, there was no contract with these Defendants. Plaintiff's only contract was to purchase insurance coverage from Canopus. Plaintiff did that through Mr. Brinson, an insurance agent. Neither Mr. Brinson nor the Agency was a party to any contract with Plaintiff.

To the extent Plaintiff alleges it "relied" on these Defendants, this did not create any contract between these Defendants and Plaintiff. Plaintiff paid its premiums to Canopus, not these Defendants, who are paid by the various insurance carriers. Plaintiff did not submit any consideration to these Defendants that could form the basis of a contract. Roberts v. Gaskins, 327 S.C. 478, S.E.2d 771 (Ct. App. 1997). Regardless, any such unjustified reliance does not create any cause of action by an insured against its insurance agent.

Additionally, no basis exists for a claim against Mr. Brinson individually. When asked why the Complaint names Mr. Brinson individually, Plaintiff had no substantive answer and admitted everything Mr. Brinson did was within the scope of acting as an insurance agent.

Q. I'm asking you why you sued him individually and you said --

A. Because --

Q. -- because he did certain things. I'm asking if those things --

A. I just --

Q. That he did -- let me finish my question -- that served as the basis of your suit against him were all the things that he did in the process of trying to obtain insurance for you. There were things that he was doing as your insurance agent, correct?

A. Yes.

Q. He didn't do anything that you're aware of outside of his scope as your insurance agent, correct?

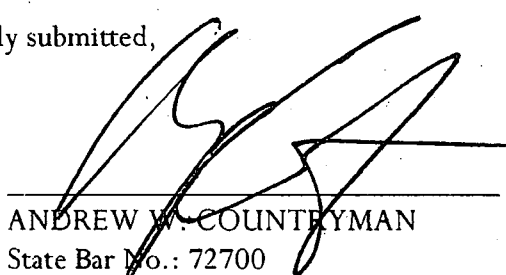
A. No. Id. at p. 72, ln. 7 – 23.

Plaintiff's claim against Mr. Brinson individually fails even if the claim against the company survives.

CONCLUSION

The Complaint alleges a cause of action for breach of contract against these Defendants. There is no issue of fact as to whether a contract existed between either of these Defendants and Plaintiff. One did not, as an insurance agent is not a party to a contract for insurance, and Plaintiff had no other contract than the policies it purchased. There was no contract between these Defendants and Plaintiffs to breach. Further, buying the "wrong" policy would not be a breach of a contract even if one somehow did exist. Regardless of how Plaintiff pleads, this is a bad faith refusal to pay insurance benefits claim to which these Defendants are not proper parties. Therefore, these Defendants ask this Court to grant summary judgment as to Plaintiff's claims against them and other relief as the Court deems just and proper.

Respectfully submitted,

By: 

ANDREW W. COUNTRYMAN

State Bar No.: 72700

Countryman Law Firm

321 Wingo Way, Suite 102

Mount Pleasant, SC 29464

843-253-4477

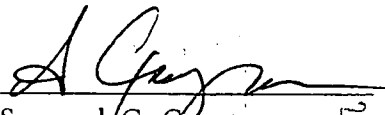
awc@countrymanlawfirm.com

**Lawyer for the Defendants the Brinson
Agency and John Brinson**

I hereby certify that I have this day served a copy of Brief in support of Motion for Summary Judgement of John Brinson and the Brinson Agency on all parties to this matter via email to counsel of record as follows:

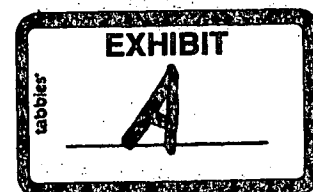
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This 7th day of December, 2017


Suzannah G. Countryman

FILED
2017 DEC -8 PM 1:38
JULIE A. HARRIS
CLERK OF COURT

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON
4 BOUCHELLE, INC.,
5 Plaintiff,
6 vs. CASE NO. 2016-CP-10-04984
7 CANOPIUS US INSURANCE, INC., SENECA SPECIALTY
8 INSURANCE COMPANY, THE BRINSON AGENCY AND JOHN
9 BRINSON,
10 Defendants.
11
12 30(b)(6)
13 DEPOSITION OF: DAVID GLENN BOUCHELLE
14
15 DATE: November 29, 2017
16
17 TIME: 1:10 PM
18
19 LOCATION: Countryman Law Firm
20 321 Wingo Way
21 Suite 102
22 Charleston, SC
23
24 TAKEN BY: Counsel for the Plaintiff
25
26 REPORTED BY: Priscilla Nay,
27 Certified Shorthand Reporter



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31 Suite 102
32 Mount Pleasant, SC 29464
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34 awc@countrymanlawfirm.com

35 (INDEX AT REAR OF TRANSCRIPT)

1 A. No, sir.

2 Q. Okay. Are you the principal or who is
3 the owner of Bouchelle Incorporated?

4 A. I am the president and I am the
5 stockholder.

6 Q. You're the sole stockholder?

7 A. Yes, sir.

8 Q. When did you form Bouchelle, Inc.?

9 From now on I'm going to just say Bouchelle instead
10 of Bouchelle Incorporated is if that's all right.

11 A. That's fine, yeah. It used to be
12 Associated Maintenance Group, Inc., but we changed
13 the name. I think that was done in 2006 or '07.

14 Q. Was it Associated Maintenance Group
15 before '06 or '07?

16 A. Yes.

17 Q. How long have you been in business?

18 A. That company since 2001.

19 Q. What is the nature of Bouchelle's work?

20 A. We are commercial general contractors,
21 building contractors.

22 Q. Have you always been a commercial
23 general contractor?

24 A. Since I was licensed as a commercial
25 general contractor in 1994 or '95.

EXAMINATION

BY MR. COUNTRYMAN:

Q. Mr. Bouchelle, my name is Andy Countryman. I represent Mr. Brinson and The Brinson Agency. Do you need to get that?

A. Yeah. This is actually the school calling me.

(A recess transpired.)

BY MR. COUNTRYMAN:

Q. I just want to get some quick background information first, Mr. Bouchelle. Do you mind if we use first names?

A. David is fine with me.

Q. You can call me Andy --

A. Yeah.

Q. -- and if we need to change that --

A. That's fine.

Q. Are you from North Carolina originally?

A. Yes.

Q. What part?

A. Charlotte.

Q. Did you go to high school there?

A. I did.

Q. Where did you go?

A. West Charlotte and Garinger.

1 Q. Okay. Any education after high school?

2 A. Central in Baymont. It's a community
3 college.

4 Q. Did you get a degree?

5 A. Right there. A BA, business degree.

6 Q. How long have you been licensed as a
7 contractor in South Carolina did you say? I think
8 you said about 1995. Is that right?

9 A. No. That was North Carolina.

10 Q. Okay.

11 A. We did the Rock Hill Post Office
12 renovations for the government, the postal service.

13 Q. I'm from there. When was that?

14 A. You know, the old post office there?

15 Q. Yes.

16 A. Gosh. That was probably '98.

17 Q. Okay. That's about the time that I
18 left. I finished high school there in '98.

19 A. Something like that.

20 Q. So when did you obtain a license in
21 South Carolina?

22 A. To do the Rock Hill job we had to
23 reciprocate to South Carolina to be able to be the
24 GC. Then we didn't have any more jobs in South
25 Carolina. So we let it go in South Carolina. Then

1 we came back and I moved down here.

2 Q. When was that?

3 A. I think it was 2003 or 2004. Something
4 like that.

5 Q. So in the 2003 neighborhood?

6 A. Yeah.

7 Q. That's when you moved down here and
8 since then you've been doing general contracting
9 work in the Charleston area?

10 A. Well, in the beginning I was working
11 with my tools on and just trying to make ends meet,
12 doing whatever. You know, I did handyman stuff. I
13 was trying to get set up like I said.

14 Q. When did you start performing general
15 contracting services as yourself or any company
16 after you moved to South Carolina?

17 When did you start doing that on a
18 regular basis?

19 A. Probably 2006 maybe. I'm not sure.

20 Q. Okay. I think you said earlier that
21 you began obtaining insurance from The Brinson
22 Agency in around 2005. Do you know if that is
23 correct? Can you specify?

24 A. Yeah. I believe we started getting
25 insurance from him so I could work for other people

1 prior to me doing a general contracting job.

2 Q. I believe the earliest application that
3 we have for Bouchelle, Inc. obtaining CGL coverage
4 through The Brinson Agency was that '08/'09
5 application which is Defendant's Exhibit 8.

6 Is it my understanding and is your
7 testimony correct that you obtained for Bouchelle,
8 Inc. CGL coverage from The Brinson Agency for at
9 least a year or two prior to coverage obtained as
10 shown in Exhibit 8?

11 A. Yeah. That would have been underneath
12 the other -- the company's previous name.

13 Q. Okay. So Exhibit 8 was when you
14 applied for insurance for 2008 to 2009. Let's see.
15 It lists the applicant's name as David Bouchelle.
16 It should be Bouchelle Incorporated. I don't see
17 anywhere on here where it lists Bouchelle
18 Incorporated.

19 How are you so sure that 2008/2009 was
20 the first year that you would have obtained
21 coverage for Bouchelle, Inc.?

22 A. The name change or the transfer of
23 ownership of the company.

24 Q. I don't understand the answer. I'm
25 looking at the Secretary of State's website. Maybe

1 this would help. For Bouchelle Incorporated it
2 looks like the Articles of Incorporation were filed
3 on October 5, 2004. It lists a former name of
4 Associated Maintenance Group, Inc.?

5 A. Correct.

6 Q. So does that mean you started operating
7 as Bouchelle, Inc. in 2004?

8 A. No. Bouchelle, Inc. -- we had a name
9 change in, I think, 2006 or '07.

10 Q. The website also lists an amendment
11 filed on November 2nd, 2006 but it doesn't say what
12 that was. Could that have been when the name
13 change took place?

14 A. It could have been. I do not know the
15 exact date.

16 Q. Was it before 2008/2009?

17 A. Yes.

18 Q. All right. So Bouchelle, Inc. was
19 doing general contracting work in the Charleston
20 area before 2008/2009?

21 A. I don't understand your question.
22 Associated Maintenance Group and then the name got
23 changed. So it would have been the same tax ID
24 number, you know.

25 Q. Well, when did you start operating as

1 Bouchelle, Inc.?

2 A. When the name got changed which --
3 probably the amendment you've got there maybe.

4 Q. If that was in 2006 then we're looking
5 at an application for insurance for 2008 and 2009.

6 It would have been at least one year
7 prior year if not two prior years where you would
8 have been operating as Bouchelle, Inc. before you
9 signed or before this application --

10 A. Correct.

11 Q. -- was submitted?

12 Does that sound correct?

13 A. Yeah.

14 Q. Do you know whether you on behalf of
15 Bouchelle, Inc. obtained or sought to obtain CGL
16 coverage from anyone including the Brinson Agency
17 for any year or policy period before 2008/2009 as
18 evidenced in Exhibit 8?

19 A. No. I don't think so.

20 Q. You didn't go to anybody before
21 Mr. Brinson to get coverage for Bouchelle, Inc.
22 before you went to Mr. Brinson?

23 A. No, sir.

24 Q. Correct?

25 A. I'm sorry.

1 A. I would think so, yes.

2 Q. Any reason to think you failed to get
3 any of these policies Mr. Brinson told you?

4 A. I would not think so.

5 Q. You can't identify one as we sit here
6 today? Any of these policies that Mr. Brinson's
7 agency sold you that you failed to receive.

8 A. I would not think that I did not
9 receive them.

10 Q. You can't identify one that you failed
11 to receive, correct?

12 You are unable to identify a specific
13 policy that you failed to receive?

14 A. Say it one more time.

15 Q. Mr. Brinson sold you a number of
16 policies?

17 A. Right.

18 Q. You said you believe you received those
19 policies?

20 A. Right.

21 Q. You can't identify a policy that you
22 did not receive that his office sold you?

23 A. Correct.

24 Q. Okay. At any point during the time
25 period from 2008 to 2014 before this claim arose

1 did you contact Mr. Brinson's agency or anyone else
2 and ask why your coverage was covering carpentry
3 risks and not general contracting risks?

4 A. I called after and I talked to the --
5 Blair or Pam and they -- and they said that I
6 wasn't covered. I called and said --

7 Q. I'm talking about this before this
8 claim arose. Before this damage to this Cross
9 Country project happened did you ever call
10 The Brinson Agency and --

11 A. No.

12 Q. You did not?

13 A. No.

14 Q. Did you ever call anyone and say why do
15 I have carpentry coverage and not general carpentry
16 coverage and --

17 A. No.

18 Q. Let me finish my question so the court
19 reporter -- you never called anybody after you got
20 this policy and said I've got the wrong policy, did
21 you?

22 A. No.

23 Q. Why not?

24 A. I probably did not read them.

25 Q. Okay. Would you agree you have a

Florida Office
1-800-418-2726
Fax 727-572-7909

New York Office
1-877-749-6977
Fax 516-741-2879

Texas Office
1-877-827-2699
Fax 336-584-8880



Post Office Box 286 • Burlington, NC 27216-0286

1-800-334-5579 / Fax 336-584-8880

www.GoTAPCO.com

**"E-Z" RATE
CONTRACTORS
PROGRAM
APPLICATION**

ACCT ID: IRP15-Q

Applicant's Name: BOUCHELLE INC
Mailing Address: 1157 ISLAND VIEW CT MT. PLEASANT SC 29465
Physical Address (if different from mailing address): _____
Website Address: _____
Type of Risk: CARPENTRY
Proposed Effective Dates: From 8/11/2014 To 8/11/2015
Applicant is: ☐ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture ☐ Other (Specify) _____

LIMITS OF LIABILITY REQUESTED	
General Aggregate	\$ 2,000,000
Products & Completed Operations Aggregate	\$ 1,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Damage to Premises Rented to You	\$ 100,000
Medical Expense (any one person)	\$ 5,000
Other Coverages, Restrictions, and/or Endorsements	\$
	Deductible \$

CODE	CLASSIFICATION	# OF OWNERS	# OF EMPLOYEES	EMPLOYEE PAYROLL Excluding Owner(s)
91342	CARPENTRY	1	3	115000

1. Gross receipts current year: 250000 Gross receipts previous year: 250000
2. Years in business: 20 Prior years experience in this type of work: 30
3. Operation is: Artisan Contractor 100 % Indicate type of work performed:
General Contractor _____ % Residential / New _____ %
Subcontractor _____ % Residential / Remodeling 80 %
TOTAL 100% Commercial 20 %
Condos _____ %
Industrial _____ %
Roofing _____ %
TOTAL 100%



4. Exact business description and type of work performed: KITCHEN REMODEL
5. Description of largest job(s): LARGE HOME
6. What licenses held: N/A What states do you operate in? SC
7. Do you now or have you ever acted as a Homebuilder or Residential General Contractor performing new construction? ☐ Yes ☒ No
8. Do you frame residential dwellings? ☐ Yes ☒ No If yes, how many? _____
9. Do you or have you used stucco (EIFS)? NO Any lead, asbestos, mold or radon removal? NO
10. Do you perform excavation work? ☐ Yes ☒ No
If so, do you use "Dig Safe" or a similar method of contacting utilities prior to digging? _____
11. Do you perform any of the following? Explain "Yes" answers to the following questions in the remarks section below:
- | | |
|---|--|
| a. ☐ Yes ☒ No Do you draw plans, designs or specifications? | k. ☐ Yes ☒ No Any work performed in removal of asbestos, lead, mold, PCB? |
| b. ☐ Yes ☒ No Any demolition work? | l. ☐ Yes ☒ No Any work performed on road / bridges / highways / overpass / traffic signals? |
| c. ☐ Yes ☒ No Any discontinued operations? | m. ☐ Yes ☒ No Any structural work performed? |
| d. ☐ Yes ☒ No Any guarantee, warranties or hold harmless agreements? | n. ☐ Yes ☒ No Any explosive materials used? |
| e. ☐ Yes ☒ No Any roofing work performed? | o. ☐ Yes ☒ No Any underground boring or directional drilling? |
| f. ☐ Yes ☒ No Any operation(s) involve discharge fumes, acids, wastes? | p. ☐ Yes ☒ No Any blasting operations? |
| g. ☐ Yes ☒ No Any exposure to radioactive / nuclear materials? | q. ☐ Yes ☒ No Any work on railroad easements? |
| h. ☐ Yes ☒ No Any equipment loaned / rented leased to others? | r. ☐ Yes ☒ No Any mold remediation? |
| i. ☐ Yes ☒ No Any work performed above 3 stories other than interior remodeling? | s. ☐ Yes ☒ No Any controlled burns or burning of debris? |
| j. ☐ Yes ☒ No Does applicant install, service or demonstrate products? | t. ☐ Yes ☒ No Any caisson work performed? |

REMARKS _____

12. Additional Insured: _____
Additional Insured Address: _____
What is the Additional Insured's Interest? _____
13. During the past 3 years has any company ever cancelled, declined or refused to issue similar insurance to applicant? NO
If so, explain _____

14. Previous Insurer: Indicate premium and losses for the past three years. Describe all losses. If none or no prior, indicate below.

Year	Company	Pol.#	Premium	Losses Paid	Losses Reserved	Description
	CANOPIUS	IMAZE	2027.78	0		

15. Any Work subcontracted? NO If yes, PLEASE COMPLETE PAGE 4.

****PLEASE NOTE, IF MORE THAN 25% OF WORK IS SUB-CONTRACTED; CALL FOR A QUOTE.**

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel a policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy is issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a company underwriter at TAPCO Underwriters, Inc.

Applicant's Signature *Paul Brinson* Applicant's Phone# 843-216-9738
 Agency The Brinson Agency Date 8/27/2014
 Agency Address P.O. Box 76
Folly Beach SC 29439
 Agent's Signature *Paul Brinson* Agent's License Number 3901416
 Agent's Phone # 843-762-2086 Agent's Fax # 843-406-0202
 Agent's Email Address _____

FLORIDA FRAUD STATEMENT:

Section 817.234 (1)(b) "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim on an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

TENNESSEE / VIRGINIA FRAUD STATEMENT:

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

Upon requesting quotes and/or placement for the coverage listed herein, the producing retail broker hereby confirms that he/she has performed any and all diligent searches, as may be required by statute, for coverage through licensed carriers or other means of placement. Where allowed by governing statutes, "diligent effort" may not require an actual physical search and declination on each risk, but may be based on the retail producing broker's own experience, opinion and overall knowledge of acceptability in the admitted marketplace.

Premium \$ _____ (Owner)
 Premium \$ _____ (Employees, if any)
 Total Base Premium \$ _____
 Policy Fee \$ _____
 Surplus Lines Tax \$ _____ (On Premium and Fees) Tax applies to Base Premium only in DC, MD and NC
 TOTAL PREMIUM \$ _____

Important: Insurance will be limited to those operations or completed operations described in this policy.

This application may only be used for the "E-Z" Rate Contractor's Program.

COUNTRYMAN LAW FIRM

LITIGATION ♦ MEDIATION

Andrew W. Countryman
321 Wingo Way, Suite 102
Mount Pleasant, S.C. 29464
*Certified S.C. Circuit Court Mediator

awc@countrymanlawfirm.com
www.countrymanlawfirm.com
843.253.4477 office
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December 7, 2017

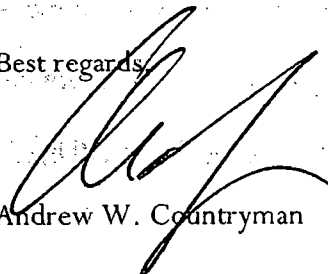
Julie Armstrong
Charleston County Clerk of Court
100 Broad St., Ste. 106
Charleston, SC 29401

Re: Bouchelle v. Brinson, et al.
C/A No.: 2016-CP-10-49844
CLF: 00008 – 00012

Dear Julie:

I enclose a Supplemental Brief in Support of the Motion for Summary Judgment of Defendants the Brinson Agency and John Brinson in this case. Please file it, and I will retrieve a filed copy online. Thanks so much, and please let me know if you have any questions. By copy of this, I am serving counsel for the other parties with the Brief.

Best regards,


Andrew W. Countryman

AWC/sgc
Enclosure
cc: all counsel of record via email

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

vs.

CANOPIUS US INSURANCE, INC., SENECA
SPECIALTY INS. CO., THE BRINSON AGENCY,
AND JOHN BRINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:2016-CP-10-4984

PLAINTIFF'S RESPONSE TO DEFENDANTS
THE BRINSON AGENCY AND JOHN BRINSON'S
MOTION FOR SUMMARY JUDGMENT

FILED
2017 DEC 11 PM 3:21
J. ARMSTRONG
CLERK OF COURT

The Plaintiff, Bouchelle Incorporated, ("Plaintiff"), by and through its' undersigned counsel,
responds to Defendants, The Brinson Agency and John Brinson, ("Defendants"), as follows:

1. Summary judgment shall be denied where there exists genuine issues of material facts. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004).
2. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).
3. Defendants' Motion for Summary Judgment should be denied. There exists genuine issues of material facts and a scintilla of evidence exists to sustain Plaintiff's breach of contract claims. In Defendants' facts set forth in its' Motion for Summary Judgment, it states that Plaintiff is a commercial general contractor that purchased general liability insurance from

Defendants and that Plaintiff knew that Plaintiff had applied for general liability coverage for carpentry services.

4. However, in Plaintiff's Complaint filed with the Charleston County Clerk of Court on September 20, 2016 and at Plaintiff's deposition, Plaintiff testified that the insurance applications, provided by Defendants, did not have his signatures upon the applications for insurance that set forth his company's classification as carpentry services, that Defendants knew Plaintiff was a general contractor, that Defendants made a mistake when they obtained carpentry insurance coverage for Plaintiff and that Plaintiff did not know that Defendants had obtained the incorrect insurance coverage until after the incident that occurred in July, 2015 when Plaintiff was denied coverage because Plaintiff was insured for carpentry services and not for commercial general contracting services. See Deposition Transcript of David Glenn Bouchelle dated November 29, 2017, p. 68, ln. 20 – p. 71, ln. 7; p. 75, ln. 23 – p. 76, ln. 7; p. 91, ln. 8 – p. 92, ln. 25 attached hereto as **Exhibit A**.
5. **Defendants' Motion of Summary Judgment should be denied. Discovery is not yet completed in this matter.** Summary Judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law", Rule 56(c), SCRPC. Defendant John Brinson's deposition has not yet been taken and until his testimony is recorded, under oath, there exists genuine issues as to material facts. Plaintiff has made numerous attempts to depose Defendant Brinson but Defendant Brinson's counsel will not provide dates that are acceptable to him.
6. **Defendants' Requests to Admit were misleading and ambiguous.** Defendants' Request to Admit #1 (Exhibit A) was only an application from 07/18/2008 yet in Request to Admit #2,

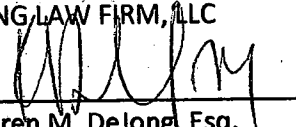
Defendants stated that Exhibit A was a true and accurate copy of the application for insurance that Plaintiff submitted to procure the Canopus policy referenced in the Complaint. The Canopus policy referred to in the Complaint is for the period of August 11, 2014 to August 11, 2015 (See Complaint, Paragraph 7). Defendants' Exhibit A has nothing to do with the policy that is at issue in this lawsuit. Defendants' Request to Admit #3 asks that the Plaintiff admit that Plaintiff applied for and obtained insurance coverage for "carpentry services" from 2008-2015. This statement is ambiguous because it does not define "carpentry services".

7. Plaintiff did send its' Responses to Request to Admit to Defendants' counsel on or about August 14, 2017. See Exhibit B. Defendants have not been prejudiced by the delay in Plaintiff's serving its' Responses to Request to Admit. See Scott v. Greenville Housing Authority, 353 S.C. 639, 579 S.E.2d 151 (S.C. App., 2003).

WHEREFORE, Defendants' Motion for Summary Judgment should be denied.

Dated: December 11, 2017
Mount Pleasant, SC

DEJONG LAW FIRM, LLC

By: 

Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200
Mount Pleasant, SC 29464
Attorney for Plaintiff

I hereby certify that the pleadings have been
Sent to all counsel via email on December 11, 2017 and
Hand delivery on December 12, 2017.

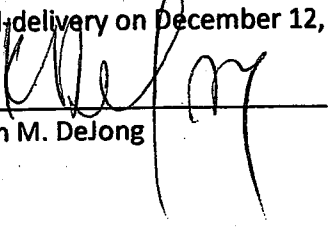

Karen M. DeJong

EXHIBIT A

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 BOUCHELLE, INC.,

4 Plaintiff,

5 vs.

CASE NO. 2016-CP-10-04984

6 CANOPIUS US INSURANCE, INC., SENECA SPECIALTY
7 INSURANCE COMPANY, THE BRINSON AGENCY AND JOHN
BRINSON,

8 Defendants.

9
10 30(b)(6)

11 DEPOSITION OF: DAVID GLENN BOUCHELLE

12 DATE: November 29, 2017

13 TIME: 1:10 PM

14 LOCATION: Countryman Law Firm
15 321 Wingo Way
16 Suite 102
Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: Priscilla Nay,
19 Certified Shorthand Reporter
20
21
22
23
24
25

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF
3 BOUCHELLE, INC.:

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11 ATTORNEYS FOR THE DEFENDANT
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20 ATTORNEYS FOR THE DEFENDANT
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26 ATTORNEYS FOR THE DEFENDANT
27 THE BRINSON AGENCY AND JOHN BRINSON:

28 COUNTRYMAN LAW FIRM
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30 321 Wingo Way
31 Suite 102
32 Mount Pleasant, SC 29464
33 (843) 253-4477
34 awc@countrymanlawfirm.com

35 (INDEX AT REAR OF TRANSCRIPT)

1 A. Yeah, when we were doing handyman stuff
2 and stuff like that.

3 Q. How did you get connected with him such
4 that you came to his house?

5 A. I think through the phone book.
6 Just --

7 Q. Did he not have an office?

8 A. No. He worked out of his house.

9 Q. Do you know when he began to use an
10 office?

11 A. A couple of years later.

12 Q. Is it that office he has now on Folly
13 Road.

14 A. No. I think he had another office
15 before that one.

16 Q. Have you been to see him at the office
17 on Folly Road?

18 A. Yeah.

19 Q. Okay. And you have been to see him at
20 an office other than that as well?

21 A. Yeah.

22 Q. I think your testimony earlier was you
23 thought you had seen Mr. Brinson between one to
24 three times per year since you started getting
25 insurance from his company. Is that right?

1 A. Yeah.

2 Q. You think the first year you applied
3 for insurance with him would have been from that
4 2008/2009 period?

5 A. No. I think we would have probably
6 filed asking for insurance back in '05 for the
7 Associated Maintenance Group, which would have
8 been --

9 Q. Okay. Well --

10 A. Which would have been -- you know, that
11 would have been a lot smaller stuff.

12 Q. For Bouchelle, Inc. it started in 2008?

13 A. Yeah.

14 Q. Yes? Okay.

15 A. I believe. I'm not sure.

16 Q. That's fine. I don't have any evidence
17 that it was before then. Again, the first
18 application I have is this 2008/2009, but I'm
19 just trying to see if you have any knowledge
20 of there being a prior application or prior
21 attempt for Bouchelle obtaining insurance from
22 Mr. Brinson's agency.

23 My understanding is you don't think so.
24 Is that correct?

25 A. Say it one more time.

1 Q. You don't think that there is another
2 application or another time when you on behalf of
3 Bouchelle, Inc. tried to obtain insurance from
4 The Brinson Agency before this 2008/2009 period?
5 This was the first time that you tried
6 as Bouchelle, Inc. To obtain CGL coverage from
7 Mr. Brinson's agency?

8 A. What date in 2008?

9 Q. July 18th was the proposed policy
10 period it looks like based on the stamp -- and you
11 can look at it.

12 It's Exhibit 8, but I think there's
13 probably the insurance carrier's stamp that says
14 August 4th, 2008. So this was apparently submitted
15 July or August of 2008.

16 Are you looking at Exhibit 8?

17 A. I'm looking. I'm trying to think about
18 your question, man.

19 MS. DEJONG: Yes. I'm going to object
20 if you could just rephrase that. Just let --

21 THE WITNESS: I don't know.

22 BY MR. COUNTRYMAN:

23 Q. You don't know whether this is
24 the first application that you submitted through
25 The Brinson Agency for CGL coverage on behalf of

1 Bouchelle, Inc.?

2 A. I don't know.

3 Q. It's not --

4 A. I'm trying to think and --

5 Q. This is the first one that I've been
6 provided. It might be the only one. I'm just
7 trying to find out if you think there was another
8 one before this. That's all. I don't have any
9 information that says there is.

10 A. I don't think so. Under Bouchelle,
11 Inc. I don't think so.

12 Q. This document does not say anything
13 about Bouchelle, Inc. It just says your name.

14 A. Correct. You know, that could be just
15 a mistake by somebody in their office. You know,
16 it's always been -- I'm just -- it's a corporation.
17 I'm an individual. It should never be wrote as
18 an individual. I didn't do business as David
19 Bouchelle.

20 Q. Your testimony is that that is not your
21 signature on the third page of Exhibit 8?

22 A. That does not look like my signature.
23 No, sir.

24 Q. Can you tell me one way or the other
25 whether any of the handwriting on this entire

1 document, Exhibit 8, is yours?

2 A. No, it's not.

3 Q. It is not?

4 A. No, sir.

5 Q. How are you sure?

6 A. Because I write terrible and this is a
7 lot nicer writing than me.

8 Q. You did through Mr. Brinson's agency on
9 behalf of Bouchelle, Inc. apply for and obtain many
10 different insurance policies?

11 A. Yes, sir.

12 Q. How would that typically happen, the
13 application process?

14 A. Sometimes over the phone. Sometimes
15 in the office. Sometimes an e-mail. I don't know.
16 You know, different ways.

17 Q. When it was done in person how would it
18 be done? For example, if there was a paper
19 application like this would Mr. Brinson hand you a
20 copy of it and ask you to fill it out or would he
21 ask you questions and he would write it?

22 How would that process work?

23 A. I'm not sure. He probably asked me
24 questions. That's just not -- I didn't fill this
25 out.

1 Q. You looked at a few different
2 applications today, correct?

3 A. Yes.

4 Q. Would it be fair to say you don't have
5 a specific recollection of the completion of any of
6 these applications?

7 A. I do not have a recollection.

8 Q. Okay. Do you know why you sued
9 Mr. Brinson individually?

10 A. I think that in fairness he asked me
11 questions about, okay -- you know, or he was
12 confused. You know, what do you do? We build
13 things. We're general contractors.

14 Well, he might have been thinking about
15 the workers' comp part. Well, what do you do?
16 Sometimes we build frame-up metal stud walls or we
17 may build a little -- we may do some carpentry
18 formwork and stuff like that.

19 You know, it was workers' comp, general
20 liability. Workers' comp and general liability.
21 In all fairness to him I don't see that -- this
22 doesn't even -- I don't know who put my name on
23 there.

24 It says: David Bouchelle. That's
25 totally wrong. I don't know if it was just a

1 mix-up from his office to another office. I don't
2 know. Anyway, I'm just saying that --

3 Q. You're talking about things that he did
4 during the process of trying to obtain insurance
5 for you?

6 A. What do you mean by that?

7 Q. I'm asking you why you sued him
8 individually and you said --

9 A. Because --

10 Q. -- because he did certain things. I'm
11 asking if those things --

12 A. I just --

13 Q. That he did -- let me finish my
14 question -- that served as the basis of your suit
15 against him were all the things that he did in the
16 process of trying to obtain insurance for you.

17 There were things that he was doing as
18 your insurance agent, correct?

19 A. Yes.

20 Q. He didn't do anything that you're aware
21 of outside of his scope as your insurance agent,
22 correct?

23 A. No.

24 Q. Okay. And you said a minute ago that
25 the name David Bouchelle was wrong. Are you just

1 referring to the fact that on Exhibit 8 it lists
2 David Bouchelle as the applicant instead of
3 Bouchelle, Inc.?

4 A. Yes.

5 Q. All right. What is at 1157 Island View
6 Court in Mount Pleasant?

7 A. My home.

8 Q. Does Bouchelle, Inc. have an office?

9 A. Yes.

10 Q. Where is that located?

11 A. Formerly at that address.

12 Q. Where is it located now?

13 A. It was Long Point Road. Now, it is off
14 of Pleasant Oaks Road.

15 Q. Does Bouchelle, Inc. own any real
16 property?

17 A. No.

18 Q. Any automobiles or heavy equipment?

19 A. No. You mean -- no. We don't own any
20 heavy equipment.

21 Q. Now, how would you make the decision as
22 to whether to go into Mr. Brinson's office or have
23 a phone conversation with him when you would
24 discuss insurance matters with him from time to
25 time from at least 2008 through 2015?

1 A. To drop off a check and to get bound on
2 workers' comp or whatever.

3 Q. Why would you drop off checks instead
4 of sending them in the mail?

5 A. Isn't that because you failed to pay a
6 lot of your policy premiums on time and you got
7 threatened with cancellation notices?

8 A. Sometimes. Life of a general
9 contractor.

10 Q. Are you aware that typically a policy
11 premium for CGL coverage would be more expensive
12 for a general contracting policy than a carpentry
13 policy?

14 A. I don't know.

15 Q. You don't know?

16 A. I don't know how much that would be.

17 Q. Do you understand how insurance agents
18 get paid? How they make their money?

19 A. I'm not an insurance agent. I don't
20 know. I would think a percentage. I don't know.

21 Q. Do you understand they get paid based
22 on the premiums they collect for their carriers
23 from their customers?

24 A. Okay.

25 Q. Does that make sense?

1 A. Yeah.

2 Q. If an insurance policy for general
3 contracting coverage is more expensive than one for
4 carpentry coverage do you know of any reason why an
5 insurance agent like Mr. Brinson would tell an
6 insurance carrier that he was applying on behalf of
7 a customer for carpentry coverage instead of
8 general contracting coverage?

9 A. Say it one more time.

10 Q. Why would Mr. Brinson do that?

11 Why would he apply for carpentry
12 coverage instead of general contracting coverage if
13 he would get paid more as an insurance agent for
14 selling you a general contracting policy?

15 A. I don't know. It must have been a
16 mistake. I don't know. I don't know why he would
17 do that.

18 Q. I believe he's going to say he's going
19 to do it because you told him to do it and because
20 you knew it was cheaper to get carpentry coverage.
21 You're telling me today under oath that's not what
22 happened?

23 A. No. I never told him to put me down as
24 a carpenter and not a general contractor. I've
25 been a general contractor. He asked. He's always

1 asked -- he said, well, what percentage of
2 subcontracting? So -- and he knows -- he's known
3 that I built like different restaurants and stuff
4 like that.

5 He knows that I don't do -- that a
6 carpenter doesn't do that. I just -- I think it
7 was a mistake there.

8 Q. If he knows that and if he gets paid
9 more if he sells you a general contracting policy
10 do you have any reason to explain why he would
11 submit applications for carpentry coverage?

12 A. I have no idea.

13 Q. You don't?

14 A. No.

15 Q. That wouldn't make any sense, would it?

16 A. I don't know.

17 Q. You don't know?

18 A. I can't answer that.

19 Q. Wouldn't it make sense for someone in
20 the business like an insurance agent to try to make
21 the most money possible by selling them more
22 expensive policies?

23 A. That would make sense in any business.

24 Q. Yet time and time again Mr. Brinson
25 according to you, knowing that you do not do

1 carpentry work primarily, applied for you to obtain
2 carpentry coverage? That's your testimony?

3 A. No. Mr. Brinson knows that we did
4 carpentry work as a general -- being a general,
5 too. We did framing and, you know, stuff like
6 that. You know, small stuff. Big stuff we would
7 sub out.

8 So, yeah. I mean, he knows that we did
9 carpentry work. That's what I'm saying. You know,
10 it may have been just -- it may have been just a
11 mistake on his part. I don't know. I don't know
12 the answer to that. It may be a miscommunication
13 about it. Yeah, we build things.

14 Q. But your testimony is that --

15 A. I'm a general contractor.

16 Q. I'm sorry. Go ahead.

17 A. I'm a general contractor.

18 Q. I understand that. Is my understanding
19 correct that your testimony is that according to
20 you Mr. Brinson knew that you were a general
21 contractor?

22 While you may have done some carpentry
23 work he knew you were primarily a general
24 contractor and yet he applied on your behalf year
25 after year for coverage -- for CGL coverage of

1 Q. And that was after --

2 A. I gave him a check on the 17th of July
3 and I think it was \$35,900 because he kept saying
4 that he didn't have the money to get Coastal
5 Concrete to pay them to get started. I said, well,
6 here's you a check. Write them a check and get
7 them started.

8 Q. Okay. So this all happened after the
9 damage --

10 A. Three days after.

11 Q. -- to the building? And you paid the
12 36,000 with the intent that Charleston Wrecking was
13 going to use it to pay Coastal Concrete to start
14 fixing the damage that Charleston Wrecking caused?

15 A. Correct, and that was after meeting
16 with Charleston Wrecking and Coastal Concrete on
17 the job site.

18 Q. Okay.

19 A. Yes, sir.

20 Q. Did you say when you initially talked
21 about this that Charleston Wrecking just took that
22 money?

23 A. Yeah. They never paid Coastal Concrete
24 a dime.

25 Q. Okay. Do you know what they did with

1 the money?

2 A. I have no idea. We're trying to figure
3 that out.

4 Q. Okay. I just wanted to make sure I
5 understood that sequence of events because that was
6 news to me.

7 A. You're correct, Andy.

8 Q. Tell me about the conversation you had
9 with The Brinson Agency after this claim arose and
10 you learned in some form or fashion that there was
11 an issue with the classification of your policy.

12 A. What I remember is I called John and
13 said, why -- I told him that we were denied or
14 something. I can't remember, but it was something
15 like we were denied. He said he was going to call
16 them and find out what's going on. That's what I
17 recollect.

18 He got back with me and said, they
19 said your classification is as a carpenter. I was
20 like -- and I was -- at that point in time you've
21 got to understand that the amount of damage done to
22 that building was a lot.

23 I probably lost my temper and said,
24 well, why? Why is that? Why am I classified like
25 that? What's going on here?

1 Q. What did he tell you?

2 A. I don't remember the whole
3 conversation. It was on the phone.

4 Q. I mean, that's a pretty important part
5 of it. You don't remember what he said as to why
6 it was carpentry coverage?

7 A. He said, you know, I thought you was a
8 carpenter. John, come on, man. You know, I'm a
9 general contractor. You know, that just really got
10 my goat.

11 Then I said, well, my insurance is
12 supposed to be general contractor. You know, he
13 was -- said, well I'm going to work on it or
14 something like that. I mean, I don't remember it
15 verbatim or word for word, Andy.

16 Q. Did he ever say anything to the effect
17 of you knew you were applying for carpentry
18 coverage --

19 A. Huh-uh.

20 Q. -- and not general contracting
21 coverage?

22 A. No.

23 Q. He did not?

24 A. Not that I recollect of the
25 conversation, no.

1 Q. Am I correct there were two phone
2 conversations that y'all had, one where you called
3 him and the second one he got back with you?

4 A. I'm pretty sure that after he called --
5 I think he called -- I think he was going to call
6 Blair.

7 Q. All right.

8 A. I'm not sure.

9 Q. You didn't record any of these?

10 A. No. That's been -- so that would be
11 '15, '16, '17. That's two years ago. I can't
12 remember.

13 Q. Okay. You didn't record any of those
14 conversations?

15 A. No.

16 Q. Okay. Was there any conversation via
17 e-mail or anything else about those issues with
18 Mr. Brinson?

19 A. I don't know. I can't remember. It's
20 two years ago.

21 Q. All right. As we sit here today you
22 would agree with me that -- while it may have come
23 as a surprise to you according to the lawsuit you
24 would agree with me that Bouchelle, Inc. paid for
25 and purchased and was provided CGL coverage.

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT
CASE NO. 2016-CP-10-4984

BOUCHELLE INCORPORATED,)
)
Plaintiff,)

**PLAINTIFF'S RESPONSES TO
DEFENDANTS THE BRINSON
AGENCY AND JOHN BRINSON'S
REQUESTS TO ADMIT**

vs.)

CANOPIUS US INSURANCE, INC.,)
SENECA SPECIALTY INS. CO.,)
THE BRINSON AGENCY and JOHN)
BRINSON,)

Defendants.)

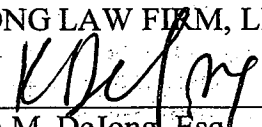
Plaintiff, BOUCHELLE INCORPORATED, in response to Defendant The Brinson
Agency and Defendant John Brinson's Requests to Admit, hereby responds as follows:

1. Plaintiff denies the allegations of Paragraph 1.
2. Plaintiff denies the allegations of Paragraph 2.
3. Plaintiff denies the allegations of Paragraph 3.

Dated: August 14, 2017

By:

DEJONG LAW FIRM, LLC


Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200
Mt. Pleasant, SC 29464-5652
Tel. No. 843-216-6161
karen@dejonglawfirm.com
Attorney for Plaintiff

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-4984

Bouchelle Incorporated
PLAINTIFF(S)

Canopus U.S. Insurance Inc., et al.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendants Brinson Agency and John Brinson's Motion for Summary Judgment filed on September 6, 2017, is Denied upon a finding of a scintilla of evidence giving rise to a genuine dispute of material fact. Defendant Canopus Insurance Inc.'s Motion for Summary Judgment filed on November 13, 2017, is under advisement. However, the record is left open for 30 days from the date of the hearing (December 12, 2017) in order for Plaintiff to take insurance company's 30(b)(6) deposition and to submit affidavit, memoranda, or other materials showing a principal/agent relationship exist between insurance company and insurance broker. Upon submission of such materials, the Defendant Canopus Insurance may submit a reply within 10 days.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

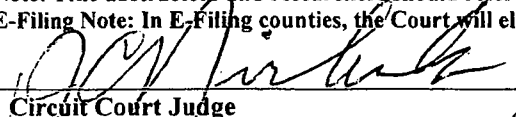
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2117
Judge Code

12/12/2017
Date

) IN THE COURT OF COMMON PLEAS

) NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4984

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FACTS

Plaintiff is a contracting firm based in North Charleston. Compl. Para. 1 (Sep. 20, 2016). Defendant John Brinson owns and operates Defendant the Brinson Agency, an insurance agency on Folly Road on James Island. Through Brinson as Plaintiff's agent, Plaintiff purchased a commercial general liability policy effective August 11, 2014 – August 11, 2015. See Ex. A., Application for Insurance. Defendant Canopus US Insurance, Inc. provided the coverage. This policy application is consistent with other applications Plaintiff submitted throughout the years through Brinson (Plaintiff's insurance agent) to Canopus. See Ex. B, applications.

Year after year, Plaintiff purchased coverage to cover Carpentry only, 100% Artisanal Contractor, 0% of his operations as a general contractor, with no demolition and no subcontractors. Of course, policy premiums were based on this risk covering carpentry activity as opposed to general contracting. For years, Plaintiff applied for, paid premiums for and received policies issued to cover only his work as an artisanal carpenter and never as a general contractor. However, during this time, Plaintiff was working as a general contractor and performing all manners of commercial construction—a risk not covered by any of these policies (and in fact, expressly excluded).

Plaintiff was the general contractor for a project at 7350 Industry Dr. in North Charleston in 2015. Compl., para. 7. Plaintiff retained a subcontractor, Charleston Wrecking, Inc., to perform demolition work at the project. *Id.* at para. 10. Charleston Wrecking had a commercial liability policy which Defendant Seneca Specialty Ins. Co. issued. *Id.* at para. 8.

On or about July 14, 2015, Charleston Wrecking was performing demolition work at the Project when a portion of the structure being demolished fell and caused damage to a wall of a pre-existing building that was not scheduled to be demolished. Plaintiff maintains it presented a claim

under its Canopus policy for damages. Canopus rejected the claim because (a) the policy did not cover Plaintiff for "general contractor" services, but instead for "carpentry services," and (b) Plaintiff was acting as the general contractor for the Project. The Complaint alleges the lack of coverage for general contracting services was a surprise to Plaintiff, who "at no time" authorized these Defendants to procure carpentry coverage instead of general contracting coverage. Plaintiff also alleges Seneca has wrongfully denied a claim made under the policy it issued to Charleston Wrecking.

Plaintiff has sued these Defendants, Canopus and Seneca under breach of contract and bad faith theories. This Motion relates to Plaintiff's causes of action against these Defendants which include: (a) breach of contract and (b) statutory attorney's fees under S.C. Code § 38-59-40. The claim against these Defendants is that they sold Plaintiff a carpentry policy when Plaintiff thought it was purchasing general contracting coverage. As described below, there is no basis for this contention, and Brinson is entitled judgment as a matter of law.

PROCEDURAL POSTURE

Plaintiff filed the Complaint on September 20, 2016. The parties are proceeding under a Scheduling Order entered on November 8, 2017. The case has a discovery deadline of February 28, 2018, and a trial not before date of April 16, 2018. The depositions of representatives of Plaintiff and Canopus have taken place, as has Mr. Brinson's deposition. The court has dismissed Canopus and Seneca on their respective Motions for Summary Judgment. These Defendants are the lone remaining Defendants in the case.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to "expedite disposition of cases which do not require the services of a fact finder." Dawkins v. Fields, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). In ascertaining whether any triable issue of fact exists, the trial court must view all evidence and all inferences that can be reasonably drawn from it in the light most favorable to the non-moving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004). Summary judgment is appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner. Rawlinson Rd. Homeowners Assoc., Inc. v. Jackson, 395 S.C. 25, 33, 716 S.E.2d 337, 342 (Ct. App. 2011).

ARGUMENT

The Complaint alleges a single cause of action against Brinson of breach of contract. It says Plaintiff and these Defendants entered into a contract whereby these Defendants agreed to sell Plaintiff commercial general liability coverage under the category of general contractor, and that these Defendants breached that contract by obtaining coverage for carpentry services without Plaintiff's knowledge or consent. Compl., para. 34.

1. There is no contract between Brinson and Plaintiff

The elements of a breach of contract cause of action are: (a) a binding contract entered into by the parties; (b) breach or unjustified failure to perform the contract; and (c) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). "Generally, any claim or suit by a party to an insurance contract must be based on the terms of the policy as issued." Carolina Bank & Trust Co. v. St. Paul Fire &

Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) citing Home Indemn. Co. v. Harleyseville Mut. Ins. Co., 252 S.C. 452, 166 S.E.2d 819 (1960).

The contract at issue here is the insurance policy Canopus issued to Bouchelle. According to the contract document, the only parties to it are Canopus and Bouchelle, Inc. See Ex. C, the Policy. Brinson is not a party to that insurance contract. South Carolina law has long recognized that an insurance agent is not a party to an insurance contract, and no contractual duties extend to a person (insurance agent) who is not a party to the contract. See Id., Carter v. Amer. Mut. Fire Ins. Co., 279 S.C. 368, 307 S.E.2d 227 (1983) and Nichols v. State Farm Mut. Auto Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983).

David Bouchelle, testifying as the SCRCF 30(b)(6) representative of Plaintiff, admitted Plaintiff had no contract with these Defendants:

Q. There's no contract between Bouchelle, Inc. and Mr. Brinson's agency for these insurance policies, is there?

A. No. Ex. D, Dep., Bouchelle, Inc. 30(b)(6), at p. 84, ln. 3 – 6 (Nov. 29, 2017).

Q. And you know that the insurance carriers and not Mr. Brinson or the Brinson Agency actually provided your liability policy over the years, correct?

A. Yes. Id. at p. 105, ln. 8 – 12.

Q. The agency is not the policy writer?

A. Correct.

Q. The agency does not have the contract to provide insurance with the insured, correct?

A. I do understand that. Id. at p. 139, ln. 1 – 5.

Mr. Bouchelle also admitted Mr. Brinson was his insurance agent and never did anything outside his scope as such:

Q. There were things that he was doing as your insurance agent, correct?

A. Yes.

Q. He didn't do anything that you're aware of outside of his scope as your insurance agent, correct?

A. No. Id. at p. 72, ln. 17 – 23.

Clearly, there is no basis for a breach of contract claim against Brinson arising out of the insurance policy itself.

Plaintiff says he relied on Brinson to obtain proper coverage over the years, and Brinson failed to do that. Plaintiff tries to allege there was a contract between Plaintiff and Brinson whereby Brinson agreed to sell him general carpentry coverage. While creative, this also fails as a matter of law. It is well-established in South Carolina that an insurance agent has no duty to advise an insured at the point of application absent an express or implied undertaking to do so. Gordon v. Fid. & Cas. Co. of N.Y., 238 S.C. 438, 120 S.E.2d 509 (1961) (no relationship of trust and confidence exists between the insurance applicant and the insurance agent).

Brinson procured coverage for Plaintiff as an independent contractor for TAPCO, an MGA (managing general agent). *See* Affidavit of Todd Coleman filed Jan. 29, 2018. Of course, Brinson is the agent of the insured and procured coverage for Plaintiff in this regard. Mr. Brinson confirmed this and testified there was no contract between Brinson and Plaintiff:

Q. Did you have any contract with Mr. Bouchelle or his company?

A. No.

Q. Is it true that the contract in this case is between Mr. Bouchelle's company and the insurance provider?

A. Yes.

Q. And you, as the insurance agent, helped Mr. Bouchelle and his company procure that coverage?

A. Yes.

Q. There was no contract between you and Mr. Bouchelle's company?

A. Yes.

Q. What I said is correct?

A. Yes. Ex. E, Dep. Brinson Agency 30(b)(6), p. 80, ln. 21 – p. 81 – ln. 11 (Jan. 12, 2018).

Finally, there was no contract between Brinson and Plaintiff because of a lack of consideration. As far back as 1886, the law in South Carolina has been that in order to have a binding contract between two parties, there must be the exchange of valuable consideration. Connor v. Renneker, 25 S.C. 514 (1886); see also Hunter v. Mills, 29 S.C. 72, 6 S.E. 907 (1888). Valuable consideration for a contract may consist of some forbearance given or detriment suffered. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996).

The only consideration here was the payment of Bouchelle of the subject insurance premium. Bouchelle did give the check to Brinson. However, "in the absence of an express or implied agreement to the contrary, a check does not constitute payment unless it produced payment in cash, the presumption being the check must be accepted on condition that it be paid." Burns v. Prudence Life Ins. Co., 243 S.C. 515, 134 S.E.2d 769 (1964). This is specifically applicable to insurance premiums, and ordinarily the taking of a check for a premium is conditional upon payment of the check upon presentation. Id. at 520.

Mr. Brinson discussed this process in his deposition. He received premium checks from Bouchelle, and Brinson would forward it to TAPCO, who would procure the coverage. Brinson receives a commission on the sale from TAPCO. Brinson does not receive any payment directly from Bouchelle, the insured. Bouchelle's contract is with the insurance carrier, procured through Brinson. Ex. X, p. 25, ln. 9 – p. 26, ln. 18. Dep. Brinson. Under that contract, the carrier agrees, in exchange for payment of a premium, to insure a particular risk. Brinson's contract is with TAPCO. There is simply no exchange of consideration between Plaintiff and Brinson. As a matter of law, Plaintiff cannot maintain a breach of contract claim against Brinson.

2. Plaintiff's failure to read his policy bars claims against Brinson.

From 2008 - 2014, Plaintiff applied for and obtained general liability coverage for carpentry services through Brinson as the insurance agent. Dep. Bouchelle, Inc. at p. 50, ln. 24 – p. 51, ln. 4. Plaintiff received these policies every year. Each one listed the classification of coverage as being for carpentry services, not general contracting. Plaintiff admits he failed to read these, much less let Brinson know something was wrong with the coverage. Id. at p. 80, ln. 12 – p. 82, ln. 24. It is well settled in South Carolina that one cannot complain of fraud in the misrepresentation of contents of a written instrument in his possession when the truth could have been ascertained by reading the instrument. Reid v. George Washington Life Ins. Co., 234 S.C. 599, 109 S.E.2d 577 (599). One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning. Id.

The Supreme Court applied this reasoning to a similar case against an insurance agent in Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 233 S.E.2d 111 (1977). After the insured property experienced a loss due to a snow and ice storm, the plaintiff made a claim with his fire

insurance carrier. Plaintiff's agent had sold the policy, which specifically excluded this type of loss. The plaintiff sued his agent because the agent allegedly told him that losses caused by such hazards were covered. The court noted the plaintiff had received the policy and others like it and merely failed to read them. According to the court, the "plaintiff has 18 months to inform himself as to the terms, conditions and exclusions of the written contract to which he was a party. He made no effort to do so, and never read the contract." Id. As a result, the court affirmed the dismissal of plaintiff's claim against the agent.

Regardless of the cause of action alleged, the same principle applies here. Plaintiff is an experienced contractor. He applied for and obtained coverage for carpentry services for six years through his agent Brinson. Plaintiff never once read any of the policies, any one of which would have immediately and clearly indicated he had purchased coverage for carpentry services. The law precludes Plaintiff from making a claim against the agent based on the alleged failure to procure the proper policy under these circumstances.

3. Claim for attorney's fees

Plaintiff's other claim that can be read to refer to these Defendants is for attorney's fees under S.C. Code § 38-59-40. This Code section provides for liability of an insurer for attorney's fees when the insurer in bad faith refuses to pay a claim. The Complaint does not allege either of these Defendants is an insurer, and of course, neither is. These Defendants are an insurance agency and insurance agent. Under South Carolina, they cannot be liable for bad faith refusal to pay insurance benefits. As a matter of law, these Defendants cannot be liable to Plaintiff for attorney's fees under S.C. Code § 38-59-40.

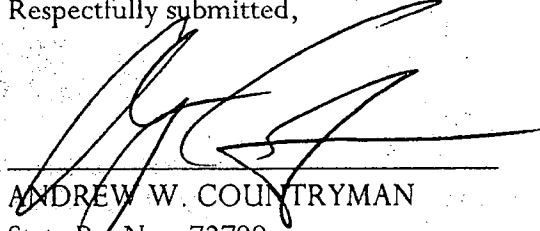
CONCLUSION

Plaintiffs cannot establish the existence of a contract with Brinson. Plaintiff purchased the insurance contract from Canopus, through Brinson (Plaintiff's insurance agent). Plaintiff had no contract with Brinson. The contract for insurance is between the carrier and the insured. The law makes clear the insurance agent is not a party to that contract. Further, there is no evidence to support the allegation that a separate contract between Bouchelle and Brinson existed. Bouchelle simply purchased insurance through Brinson, Bouchelle's agent. Bouchelle's premium payments were forwarded to the carrier. Brinson was paid directly by the carrier, not with Bouchelle's premium(s). Brinson is only paid a commission directly by the carrier. Finally, Plaintiff cannot hold others responsible for his failure to read his policy. In fact, had Plaintiff even given a cursory glance to any of his policies during the six years he purchased carpentry coverage through Brinson, Plaintiff would have seen exactly what coverage he purchased. Under the law, Plaintiff cannot now come back and sue Brinson for this.

Defendants are entitled to summary judgment on all of Plaintiff's claims alleged against them and ask this Court for the same. These Defendants reserve the right to supplement this Motion with supporting brief(s) or memoranda as appropriate.

[signature page to follow]

Respectfully submitted,

By: 

ANDREW W. COUNTRYMAN

State Bar No.: 72700

Countryman Law Firm

321 Wingo Way, Suite 102

Mount Pleasant, SC 29464

843-253-4477

awc@countrymanlawfirm.com

**Lawyer for the Defendants the Brinson
Agency and John Brinson**

Texas Office
1-877-827-2699
Fax 336-584-8880



Post Office Box 286 • Burlington, NC 27216-0286
1-800-334-5579 / Fax 336-584-8880
www.GoTAPCO.com

"E-Z" RATE CONTRACTORS PROGRAM APPLICATION

ACCT ID: JRPH-8

Applicant's Name: BOUCHELLE INC
Mailing Address: 1157 ISLAND VIEW CT MT.PLEASANT SC 29465
Physical Address (if different from mailing address): _____
Website Address: _____
Type of Risk: CARPENTRY
Proposed Effective Dates: From 8/11/2014 To 8/11/2015
Applicant is: ☐ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture ☐ Other (Specify) _____

LIMITS OF LIABILITY REQUESTED.	
General Aggregate	\$ 2,000,000
Products & Completed Operations Aggregate	\$ 1,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Damage to Premises Rented to You	\$ 100,000
Medical Expense (any one person)	\$ 5,000
Other Coverages, Restrictions, and/or Endorsements	\$
	Deductible \$

CODE	CLASSIFICATION	# OF OWNERS	# OF EMPLOYEES	EMPLOYEE PAYROLL Excluding Owner(s)
91342	CARPENTRY	1	3	115000

- | | | | | |
|---------------------------------|--------------------|--|----------------------------------|-----------------|
| 1. Gross receipts current year: | <u>250000</u> | Gross receipts previous year: | <u>250000</u> | |
| 2. Years in business: | <u>20</u> | Prior years experience in this type of work: | <u>30</u> | |
| 3. Operation is: | Artisan Contractor | <u>100</u> % | Indicate type of work performed: | |
| | General Contractor | <u> </u> % | Residential / New | <u> </u> % |
| | Subcontractor | <u> </u> % | Residential / Remodeling | <u>80</u> % |
| | TOTAL | 100% | Commercial | <u>20</u> % |
| | | | Condos | <u> </u> % |
| | | | Industrial | <u> </u> % |
| | | | Roofing | <u> </u> % |
| | | | TOTAL | 100% |



4. Exact business description and type of work performed: KITCHEN REMODEL
5. Description of largest job(s): LARGE HOME
6. What licenses held: N/A What states do you operate in? SC
7. Do you now or have you ever acted as a Homebuilder or Residential General Contractor performing new construction? ☐ Yes ☒ No
8. Do you frame residential dwellings? ☐ Yes ☒ No If yes, how many? _____
9. Do you or have you used stucco (EIFS)? NO Any lead, asbestos, mold or radon removal? NO
10. Do you perform excavation work? ☐ Yes ☒ No
If so, do you use "Dig Safe" or a similar method of contacting utilities prior to digging? _____
11. Do you perform any of the following? Explain "Yes" answers to the following questions in the remarks section below:
- | | |
|---|--|
| a. ☐ Yes ☒ No Do you draw plans, designs or specifications? | k. ☐ Yes ☒ No Any work performed in removal of asbestos, lead, mold, PCB? |
| b. ☐ Yes ☒ No Any demolition work? | l. ☐ Yes ☒ No Any work performed on road / bridges / highways / overpass / traffic signals? |
| c. ☐ Yes ☒ No Any discontinued operations? | m. ☐ Yes ☒ No Any structural work performed? |
| d. ☐ Yes ☒ No Any guarantee, warranties or hold harmless agreements? | n. ☐ Yes ☒ No Any explosive materials used? |
| e. ☐ Yes ☒ No Any roofing work performed? | o. ☐ Yes ☒ No Any underground boring or directional drilling? |
| f. ☐ Yes ☒ No Any operation(s) involve discharge fumes, adds, wastes? | p. ☐ Yes ☒ No Any blasting operations? |
| g. ☐ Yes ☒ No Any exposure to radioactive / nuclear materials? | q. ☐ Yes ☒ No Any work on railroad easements? |
| h. ☐ Yes ☒ No Any equipment loaned / rented leased to others? | r. ☐ Yes ☒ No Any mold remediation? |
| i. ☐ Yes ☒ No Any work performed above 3 stories other than interior remodeling? | s. ☐ Yes ☒ No Any controlled burns or burning of debris? |
| j. ☐ Yes ☒ No Does applicant install, service or demonstrate products? | t. ☐ Yes ☒ No Any caisson work performed? |

REMARKS _____

12. Additional Insured: _____
Additional Insured Address: _____
What is the Additional Insured's Interest? _____
13. During the past 3 years has any company ever cancelled, declined or refused to issue similar insurance to applicant? NO
If so, explain _____

14. Previous Insurer: Indicate premium and losses for the past three years. Describe all losses. If none or no prior, indicate below.

Year	Company	Pol.#	Premium	Losses Paid	Losses Reserved	Description
	CANOPIUS	IMAZE	2027.78	0		

15. Any Work subcontracted? NO If yes, PLEASE COMPLETE PAGE 4.

****PLEASE NOTE, IF MORE THAN 25% OF WORK IS SUB-CONTRACTED; CALL FOR A QUOTE.**

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel a policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy is issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a company underwriter at TAPCO Underwriters, Inc.

Applicant's Signature *Paul Brinson* Applicant's Phone# 843-216-9738
 Agency The Brinson Agency Date 8/27/2014
 Agency Address P.O. Box 76
Folly Beach SC 29439
 Agent's Signature *Paul Brinson* Agent's License Number 3901418
 Agent's Phone # 843-762-2086 Agent's Fax # 843-406-0202
 Agent's Email Address _____

FLORIDA FRAUD STATEMENT:

Section 817.234 (1)(b) "Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree."

TENNESSEE / VIRGINIA FRAUD STATEMENT:

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

Upon requesting quotes and/or placement for the coverage listed herein, the producing retail broker hereby confirms that he/she has performed any and all diligent searches, as may be required by statute, for coverage through licensed carriers or other means of placement. Where allowed by governing statutes, "diligent effort" may not require an actual physical search and declination on each risk, but may be based on the retail producing broker's own experience, opinion and overall knowledge of acceptability in the admitted marketplace.

Premium \$ _____ (Owner)
 Premium \$ _____ (Employees, if any)
 Total Base Premium \$ _____
 Policy Fee \$ _____
 Surplus Lines Tax \$ _____ (On Premium and Fees) Tax applies to Base Premium only in DC, MD and NC
 TOTAL PREMIUM \$ _____

Important: Insurance will be limited to those operations or completed operations described in this policy.

This application may only be used for the "E-Z" Rate Contractor's Program.



Post Office Box 288 • Burlington, NC 27216-0288
1-800-334-5579 / fax 336-584-8880
1-800-418-2728 / fax 727-572-7909 (FLORIDA)
1-800-582-8328 / fax 703-392-3920 (DC, MD, VA)
1-877-827-2889 / fax 336-584-8880 (TX, CA)
www.GoTAPCO.com

**"E-Z" RATE
CONTRACTORS
PROGRAM
APPLICATION**

Binder # DTX12-G

Applicant's Name: Daniel Bauchelle
Mailing Address: 1157 Island View Ct. Mt. Pleasant, SC. 29465
Physical Address (if different from mailing address): _____
Website Address: _____
Type of Risk: Carpentry
Proposed Effective Date: From 7/15/08 to 7/15/09
Applicant is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other (Specify) _____

LIMITS OF LIABILITY REQUESTED	
General Aggregate	\$ <u>2,000,000</u>
Products & Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal & Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence	\$ <u>1,000,000</u>
Damage To Premises Rented to You	\$ <u>50,000</u>
Medical Expense (any one person)	\$ <u>5,000</u>
Other Coverages, Restrictions, and/or Endorsements	\$ _____
Deductible	\$ _____

CODE	CLASSIFICATION	# OF OWNERS	# OF EMPLOYEES	EMPLOYEE PAYROLL Excluding Owner(s)
<u>91340</u>	<u>Carpentry</u>	<u>1</u>	<u>4</u>	<u>100,000</u>

1. Gross receipts current year: 350,000 Gross receipts previous year: 325,000
2. Years in business: 5 Prior years experience in this type of work: 20
3. Operator is: Artisan Contractor 100 % Indicate type of work performed:
General Contractor _____ % Residential / New _____ %
Subcontractor _____ % Residential / Remodeling _____ %
TOTAL 100% Commercial 100 %
Condo _____ %
Industrial _____ %
Roofing _____ %
TOTAL 100%

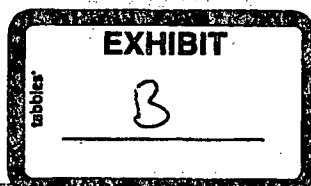
Edition 4/04a
E-Z Rate Contractors

Page 1

Exhibit
A

Tapco Underwriters, Inc.

AUG 04 2008



4. Exact business description and type of work performed: Building Maintenance

5. Description of largest job(s): Large Building

6. What license(s) held: N/A What states do you operate in? SC

7. Do you frame residential dwellings? ☐ Yes ☒ No If yes, how many? _____

8. Do you or have you used stucco (EIFS)? NO Any lead, asbestos, mold or radon removal? NO

9. If performing excavation work, do you use "Dig Safe" or a similar method of contacting utilities prior to digging? yes

10. Do you perform any of the following? Explain "Yes" answers to the following questions in the remarks section below:
- | | | | |
|--|--|--|---|
| a. ☐ Yes ☒ No | Do you draw plans, designs or specifications? | i. ☐ Yes ☒ No | Any work performed above 4 stories other than interior remodeling? |
| b. ☐ Yes ☒ No | Any demolition work? | j. ☐ Yes ☒ No | Does applicant install, service or demonstrate products? |
| c. ☐ Yes ☒ No | Any discontinued operations? | k. ☐ Yes ☒ No | Any work performed in removal of asbestos, lead, mold, PCB? |
| d. ☐ Yes ☒ No | Any guarantee, warranties or hold harmless agreements? | l. ☐ Yes ☒ No | Any work performed on road/bridges/highways/overpass/traffic signals? |
| e. ☐ Yes ☒ No | Any roofing work performed? | m. ☐ Yes ☒ No | Any structural work performed? |
| f. ☐ Yes ☒ No | Any operation(s) involve discharge fumes, acids, wastes? | n. ☐ Yes ☒ No | Any explosive materials used? |
| g. ☐ Yes ☒ No | Any exposure to radioactive/nuclear materials? | | |
| h. ☐ Yes ☒ No | Any equipment loaned/rented loaned to others? | | |

REMARKS _____

11. Additional Insured (include Name/Address): NO
- What is the Additional Insured's interest? _____
12. During the past 3 years has any company ever cancelled, declined or refused to issue similar insurance to applicant? NO
- If so, explain _____
13. Previous insurer: Indicate premium and losses for the past three years. Describe all losses.

Year	Company	Pct. S.	Premium	Losses Paid	Losses Reserved	Description
	<u>NO Prior Carrier No losses</u>					

14. Any Work subcontracted? NO If yes, PLEASE COMPLETE PAGE 4.
- **PLEASE NOTE, IF MORE THAN 25% OF WORK IS SUBCONTRACTED, CALL FOR A QUOTE.**

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a Company Underwriter at TAPCO Underwriters, Inc.

Applicant's Signature David B. Russell Applicant's Phone# 843-971-7805
 Agency THE BRINSON AGENCY Date 7/31/08
 Agency Address PO BOX 76
POLLY BEACH, SC 29480

Agent's Signature J. B. Buser Agent's License Number 3801416
 Agent's Phone# 843-466-0207 Agent's Fax# 843-762-2161
 Agent's Email Address _____

FLORIDA FRAUD STATEMENT: Section 817.234(1)(b), F.S.: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer, files a statement of claim or an application containing any false or misleading information is guilty of a felony of the third degree."	TENNESSEE / VIRGINIA FRAUD STATEMENT: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
--	--

Upon requesting quotes and/or placement for the coverage listed herein, the producing retail broker hereby confirms that he/she has performed any and all diligent searches, as may be required by statute, for coverage through licensed carriers or other means of placement. Where allowed by governing statutes, "diligent effort" may not require an actual physical search and documentation on each risk, but may be based on the retail producing broker's own experience, opinion and overall knowledge of acceptability in the admitted marketplace.

Premium	\$ <u>1873.00</u>	(Owner)
Premium	\$ _____	(Employees, if any)
Total Base Premium	\$ <u>1873.00</u>	
Policy Fee	\$ <u>100.00</u>	
Surplus Lines Tax	\$ <u>114.78</u>	(On Premium and Fees) Tax applies to Base Premium only in DC, MD and NC
TOTAL PREMIUM	\$ <u>2027.78</u>	

Important: Insurance will be limited to those operations or completed operations described in this policy.

This application may only be used for the "E-Z" Rate Contractor's Program.



3/2009 12:10 PM C6100



UNDERWRITERS, INC.

Post Office Box 286 * Burlington, NC 27218-0286
 1-800-334-5579 / fax 336-584-8880
 1-800-418-2726 / fax 727-572-7909 (FLORIDA)
 1-800-652-6326 / fax 703-392-3920 (DC, MD, VA)
 1-877-827-2699 / fax 336-584-8880 (TX, CA)
 www.GoTAPCO.com

"E-Z" RATE CONTRACTORS PROGRAM APPLICATION

Binder # EMVWQX

Applicant's Name: DAVID BOUCHELLE
 Mailing Address: 1157 ISLAND VIEW COURT
MOUNT PLEASANT SC 29465
 Physical Address (if different from mailing address): _____
 Website Address: _____
 Type of Risk: Carpentry
 Proposed Effective Date: From 07/18/09 to 07/18/10
 Applicant is: ☒ Individual ☐ Corporation ☐ Partnership ☐ Joint Venture ☐ Other (Specify) _____

LIMITS OF LIABILITY REQUESTED	
General Aggregate	\$ <u>2,000,000</u>
Products & Completed Operations Aggregate	\$ <u>1,000,000</u>
Personal & Advertising Injury	\$ <u>1,000,000</u>
Each Occurrence	\$ <u>1,000,000</u>
Damage To Premises Rented to You	\$ <u>50,000</u>
Medical Expense (any one person)	\$ <u>5,000</u>
Other Coverages, Restrictions, and/or Endorsements	\$ _____
Deductible	\$ _____

CODE	CLASSIFICATION	# OF OWNERS	# OF EMPLOYEES	EMPLOYEE PAYROLL Excluding Owner(s)
<u>91342</u>	<u>Carpentry</u>	<u>1</u>	<u>4</u>	<u>115,000</u>

1. Gross receipts current year: 250,000 Gross receipts previous year: 310,000
 2. Years in business: 10 Prior years experience in this type of work: 20
 3. Operation is: Artisan Contractor 100 % Indicate type of work performed:
 General Contractor _____ % Residential / New _____ %
 Subcontractor _____ % Residential / Remodeling 100 %
 TOTAL 100% Commercial _____ %
 Condos _____ %
 Industrial _____ %
 Roofing _____ %
 TOTAL 100%

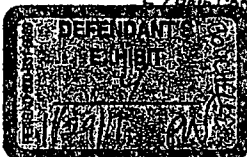
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Edition 4/04a
 E-Z Rate Contractors

Page 1

Tapco Underwriters, Inc.

Exp. Account Number: DTULDG



08/18/2015
**ADDITIONAL INFORMATION TO BE COMPLETED
ONLY IF APPLICANT USES ANY SUBCONTRACTORS**

15. Exact operations of sub contractors used: _____

16. a. Percentage of work subcontracted out _____%

b. Total annual subcontracted costs (labor and materials) \$ _____
(include costs of materials provided by you, a subcontractor, an owner or a bank.)

17. Type of work: General Contractor _____% Construction Manager _____%

18. What percentage of your work is

a) Residential _____% Commercial _____% Industrial _____%
b) New Construction _____% Structural Remodeling/Additions _____% Non-Structural Remodeling _____%

19. List the trades of the subcontractors you use and give the percentage of work they perform:

_____ % _____ % _____ % _____ %
_____ % _____ % _____ % _____ %

20. Do you collect certificates from all subcontractors? ☐ Yes ☐ No What limits are required \$ _____

**PLEASE NOTE THAT UNDER THE ARTISAN PROGRAM ALL SUBCONTRACTORS
MUST PROVIDE CERTIFICATES OF INSURANCE FOR EQUAL LIMITS**

21. Do you require all subcontractors to name you as an additional insured? ☐ Yes ☐ No

22. Do any of the subcontractors you use perform any of the following work?

a. Roofing of any kind? ☐ Yes ☐ No d. Drilling of any kind? ☐ Yes ☐ No
b. Mold/Asbestos removal? ☐ Yes ☐ No e. Spray Painting? ☐ Yes ☐ No
c. Exterior Painting? ☐ Yes ☐ No f. Welding? ☐ Yes ☐ No

23. Have you ever been named in litigation regarding faulty construction defect? ☐ Yes ☐ No

If yes, describe _____

24. Are there any claims or legal actions pending against any of the entities named in the application? ☐ Yes ☐ No

If yes, describe _____



Post Office Box 286 * Burlington, NC 27218-0286
1-800-334-5579 / fax 336-584-8880
1-800-418-2726 / fax 727-872-7909 (FLORIDA)
1-800-552-6326 / fax 703-392-3920 (DC, MD, VA)
1-877-827-2699 / fax 336-584-8880 (TX, CA)
www.GoTAPCO.com

**"E-Z" RATE
CONTRACTORS
PROGRAM
APPLICATION**

Acct ID: GJPND-T

Applicant's Name: Bouchelle, Inc.

Mailing Address: 1157 Island View Court

Physical Address (if different from mailing address): _____

Website Address: _____

Type of Risk: CARPENTRY

Proposed Effective Date: From 8/11/2011 To 8/11/2012

Applicant is: ☐ Individual ☒ Corporation ☐ Partnership ☐ Joint Venture ☐ Other (Specify) _____

LIMITS OF LIABILITY REQUESTED	
General Aggregate	\$ 2,000,000
Products & Completed Operations Aggregate	\$ 1,000,000
Personal & Advertising Injury	\$ 1,000,000
Each Occurrence	\$ 1,000,000
Damage To Premises Rented to You	\$ 50,000
Medical Expense (any one person)	\$ 5,000
Other Coverages, Restrictions, and/or Endorsements	\$
Deductible	\$

CODE	CLASSIFICATION	# OF OWNERS	# OF EMPLOYEES	EMPLOYEE PAYROLL Excluding Owner(s)
91342	CARPENTRY	1	4	115,000

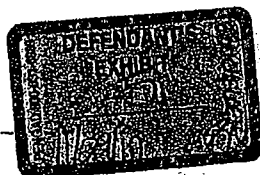
1. Gross receipts current year: 225000 Gross receipts previous year: 180000

2. Years in business: 20 Prior years experience in this type of work: 25

3. Operation is:

Artisan Contractor	<u>100</u> %	Indicate type of work performed:	
General Contractor	_____ %	Residential / New	<u>20</u> %
Subcontractor	_____ %	Residential / Remodeling	<u>80</u> %
TOTAL	100%	Commercial	_____ %
		Condos	_____ %
		Industrial	_____ %
		Roofing	_____ %
		TOTAL	100%

Edition 4/04a
E-Z Rate Contractors



Page 1

Tapco Underwriters, Inc.

4. Exact business description and type of work performed: KITCHEN AND BATH REMODEL
5. Description of largest job(s): LARGE HOME
6. What licenses held: N/A What states do you operate in? SC
7. Do you frame residential dwellings? ☐ Yes ☒ No If yes, how many? _____
8. Do you or have you used stucco (EIFS)? NO Any lead, asbestos, mold or radon removal? NO
9. Do you perform excavation work? ☐ Yes ☒ No
If so, do you use "Dig Safe" or a similar method of contacting utilities prior to digging? _____
10. Do you perform any of the following? Explain "Yes" answers to the following questions in the remarks section below:
- | | | | |
|--|--|--|---|
| a. ☐ Yes ☒ No | Do you draw plans, designs or specifications? | i. ☐ Yes ☒ No | Any work performed above 4 stories other than interior remodeling? |
| b. ☐ Yes ☒ No | Any demolition work? | j. ☐ Yes ☒ No | Does applicant install, service or demonstrate products? |
| c. ☐ Yes ☒ No | Any discontinued operations? | k. ☐ Yes ☒ No | Any work performed in removal of asbestos, lead, mold, PCB? |
| d. ☐ Yes ☒ No | Any guarantee, warranties or hold harmless agreements? | l. ☐ Yes ☒ No | Any work performed on road/bridges/highways/overpass/traffic signals? |
| e. ☐ Yes ☒ No | Any roofing work performed? | m. ☐ Yes ☒ No | Any structural work performed? |
| f. ☐ Yes ☒ No | Any operation(s) involve discharge fumes, acids, wastes? | n. ☐ Yes ☒ No | Any explosive materials used? |
| g. ☐ Yes ☒ No | Any exposure to radioactive/nuclear materials? | | |
| h. ☐ Yes ☒ No | Any equipment loaned/rented/leased to others? | | |

REMARKS _____

11. Additional Insured (Include Name/Address): NONE
What is the Additional Insured's interest? _____
12. During the past 3 years has any company ever cancelled, declined or refused to issue similar insurance to applicant? NO
If so, explain _____

13. Previous Insurer: Indicate premium and losses for the past three years. Describe all losses.

Year	Company	Pol.#	Premium	Losses Paid	Losses Reserved	Description
2010	OMEGA	OUS0090164				

14. Any Work subcontracted? NO If yes, PLEASE COMPLETE PAGE 4.
**PLEASE NOTE, IF ANY WORK IS SUBCONTRACTED, PLEASE CALL FOR A QUOTE.

APPLICANT'S STATEMENT

I hereby certify the information contained in this application is true and I agree that a misrepresentation of any of the facts by me will constitute reason for the Company to void or cancel any policy issued on the basis of this application, and I will hold the Company harmless for the action taken. I also agree that if a policy issued pursuant to this application, the application shall become part of the policy and any renewal or rewrite thereof. I understand that coverage is not in force until bound with a Company Underwriter at TAPCO Underwriters, Inc.

Applicant's Signature David Bruckelle Applicant's Phone# 843-817-2740
 Agency The Brinson Agency Date 8/23/11
 Agency Address P.O. Box 76

Agent's Signature John P. Brinson Agent's License Number 3901416
 Agent's Phone # (843) 762-2086 Agent's Fax # (843) 406-0202
 Agent's Email Address john@brinsoninsurance.com

FLORIDA FRAUD STATEMENT: Section 817.234(1)(b), F.S.: "Any person who knowingly and with intent to injure, defraud, or deceive any insurer, files a statement of claim or an application containing any false or misleading information is guilty of a felony of the third degree."	TENNESSEE / VIRGINIA FRAUD STATEMENT: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.
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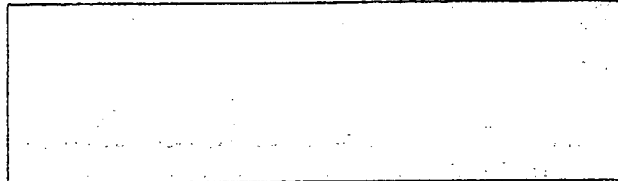
Upon requesting quotes and/or placement for the coverage listed herein, the producing retail broker hereby confirms that he/she has performed any and all diligent searches, as may be required by statute, for coverage through licensed carriers or other means of placement. Where allowed by governing statutes, "diligent effort" may not require an actual physical search and designation on each risk, but may be based on the retail producing broker's own experience, opinion and overall knowledge of acceptability in the admitted marketplace.

Premium \$ _____ (Owner)
 Premium \$ _____ (Employees, if any)
 Total Base Premium \$ _____
 Policy Fee \$ _____
 Surplus Lines Tax \$ _____ (On Premium and Fees) Tax applies to Base Premium only in DC, MD and NC
 TOTAL PREMIUM \$ _____

Important: Insurance will be limited to those operations or completed operations described in this policy.
 This application may only be used for the "E-Z" Rate Contractor's Program.

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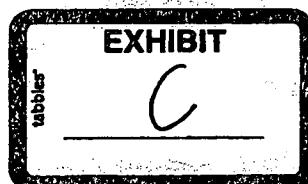
Policy Number : OUS009069353



Agency Information:

Agency Code: 3901416
THE BRINSON AGENCY
759 FOLLY RD
UNIT C
CHARLESTON, SC 29412
Phone Number: (843) 762-2086

INSURED'S COPY



Canopus US_000002

DATE ISSUED August 28, 2014		PREVIOUS NO. OUS009052269													
THIS DECLARATION PAGE IS ATTACHED TO AND FORMS PART OF CERTIFICATE/COVER NOTE PROVISIONS															
ITEM	CERTIFICATE / POLICY NUMBER: OUS009069353														
1	Name of Assured BOUCHELLE, INC. 1157 ISLAND VIEW COURT MOUNT PLEASANT, SC 29465 THE BRINSON AGENCY 759 FOLLY RD UNIT C CHARLESTON, SC 29412		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.												
2	Effective From 12:01am Both Days at Standard Time : August 11, 2014 TO August 11, 2015														
3	Acting upon your instruction, we have effected the insurance with:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; padding: 2px;">NAME OF INSURERS</th> <th style="text-align: left; padding: 2px;">AMOUNT OR PERCENT</th> </tr> <tr> <td style="padding: 5px;">CANOPIUS US INSURANCE, INC.</td> <td style="padding: 5px;">100%</td> </tr> </table>	NAME OF INSURERS	AMOUNT OR PERCENT	CANOPIUS US INSURANCE, INC.	100%	 JRPK								
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CANOPIUS US INSURANCE, INC.	100%														
4	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; padding: 2px;">LIMIT</th> <th style="text-align: left; padding: 2px;">COVERAGE</th> <th style="text-align: left; padding: 2px;">RATE</th> <th style="text-align: left; padding: 2px;">PREMIUM</th> </tr> </thead> <tbody> <tr> <td style="padding: 5px;">\$1,000,000</td> <td style="padding: 5px;">COMMERCIAL GENERAL LIABILITY</td> <td style="padding: 5px;">SEE CGDS01</td> <td style="padding: 5px;">\$1,813</td> </tr> <tr> <td colspan="3" style="padding: 5px; text-align: right;">TOTAL BASE</td> <td style="padding: 5px;">\$1,813</td> </tr> </tbody> </table>			LIMIT	COVERAGE	RATE	PREMIUM	\$1,000,000	COMMERCIAL GENERAL LIABILITY	SEE CGDS01	\$1,813	TOTAL BASE			\$1,813
LIMIT	COVERAGE	RATE	PREMIUM												
\$1,000,000	COMMERCIAL GENERAL LIABILITY	SEE CGDS01	\$1,813												
TOTAL BASE			\$1,813												
5	SPECIAL CONDITIONS See OUS500 (10/07) Schedule of Forms and Endorsements	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="padding: 2px;">TERRORISM PREMIUM</td> </tr> <tr> <td style="padding: 2px;">POLICY FEE</td> <td style="text-align: right; padding: 2px;">\$135.00</td> </tr> <tr> <td style="padding: 2px;">INSPECTION TAX</td> <td style="text-align: right; padding: 2px;">\$116.88</td> </tr> <tr> <td colspan="2" style="padding: 2px;">TOTAL</td> </tr> <tr> <td colspan="2" style="text-align: right; padding: 2px;">\$2,064.88</td> </tr> </table>		TERRORISM PREMIUM		POLICY FEE	\$135.00	INSPECTION TAX	\$116.88	TOTAL		\$2,064.88			
TERRORISM PREMIUM															
POLICY FEE	\$135.00														
INSPECTION TAX	\$116.88														
TOTAL															
\$2,064.88															
6	Countersigned: TAPCO Underwriters, Inc. Burlington, NC														

In witness whereof this covernote has been signed at BURLINGTON, NC this 26 day of August 2014

PAUL372 SC

TAPCO Underwriters, Inc.

by

INSURED

Canopus US_000003

SCHEDULE OF FORMS AND ENDORSEMENTS

POLICY NUMBER:
OUS009069353

NAMED INSURED
BOUCHELLE, INC.

Endorsement No./Edition Date/Form Description

OUS100 09-07	COMMON POLICY DEC
OUS500 10-07	SCHEDULE OF FORMS AND ENDORSEMENTS
TAP-CRF 10-12	CLAIM REPORTING INFORMATION
MOLD EXCL (10-01)	MOLD EXCLUSION
OUS101 10-07	TOTAL OR CONSTRUCTIVE LOSS CAUSE
OUS214 10-07	TERRORISM COVG NOT PURCHASED
OUS255 08-12	GENERAL CLAUSES ENDT
OUS268 10-07	APPLICABLE LAW (U.S.A.) CLAUSE
IL0017 (11-98)	COMMON POLICY CONDITIONS
IL0249 (09-08)	SC CHANGES CANCEL/NONRENEWAL
CGDS01 10-01	CGL COVG PART SUPPLEMENTAL DECLARATIONS
CGDS01-EX 10-01	CGL EXT COVG PART SUPPLEMENTAL DECLARATIONS
ART-GL-01 (08-11)	ADDITIONAL EXCLUSIONS
EZ-EXCL-01 (09-07)	EZ RATE EXCLUSIONS
EXPUN-01 (05-11)	EXCL-PUNITIVE OR EXEMPLARY DAMAGE
TAP-AB-01 (04-11)	ASSAULT AND/OR BATTERY EXCLUSION
TCNY.001 (01-08)	EXCLUSION - NEW YORK
CG0001 (12-04)	COMM GEN LIABILITY COV PART
CG0068 (05-09)	RECORDING & DISTRIBUTION OF MATERIAL OR INFO
CG2136 (03-05)	NEW ENTITIES EXCL
CG2139 (10-93)	CONTRACTUAL LIABILITY LIMITATION
CG2160 (4-98)	YEAR 2000 EXCL
UTS-128g (10-94)	OPTIONAL PROVISIONS ENDT
IL0021 (05-04)	NUCLEAR ENERY LIABILITY EXCL BROAD FORM

ADDITIONAL FORMS

OUS500 (10-07)

INSURED

Canopus US_000004

Claim Reporting Information

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 can contact your agent or notify the TAPCO Claims Department by calling 1-888-437-0373; or emailing claims@gotapco.com; or faxing to 336-538-0094.

How To Report A Claim Directly to TAPCO

Call 1-888-437-0373; or email claims@gotapco.com; or fax to 336-538-0094.

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

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

This insurance does not apply to "bodily injury", "property damage", "personal injury", "advertising injury", "medical payments" arising out of, resulting from, caused by, contributed to, or in any way related to any "mold".

This exclusion applies to all "bodily injury", "property damage", and "medical payments" included in the "products-completed operations hazard". This exclusion also applies to all "bodily injury", "property damage" and "medical payments" which is not included in the "products-completed operations hazard".

This exclusion also applies to any loss, cost or expense arising out of or associated, in any way, with any:

- 1) request, demand, or order that any insured or others abate, mitigate, test for, monitor, remediate, clean up, remove, contain, treat, detoxify, kill, destroy, dispose of, investigate or neutralize, or in any way respond to or assess the presence or effects of "mold"; or
- 2) claim or suit on behalf of any person, entity, or organization, including any governmental authority, for damages because of abating, mitigating, testing for, monitoring, remediating, clean up, removing, containing, treating, detoxifying, killing, destroying, disposing of, investigating, or neutralizing, or in any way responding to, or assessing, the effects of "mold"; or
- 3) any obligation to share with, repay, or indemnify any person, organization or entity, related in any way to items 1) and 2) above.

We will not defend any claim or suit, or pay any damages, loss, expense, cost, or obligation caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold".

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing, individually, or in any combination therewith or with another substance.

Commercial General Liability Total Mold Exclusion
MOLD EXCL (10-01)

Canopus US_000006

THIS ENDORSEMENT CHANGES THE POLICY - PLEASE READ CAREFULLY

The following provision changes coverage afforded by the Policy:

TOTAL "MOLD" EXCLUSION

Notwithstanding anything to the contrary contained in the Policy,:

We will not pay for loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold". Loss, damage, cost, or expense caused directly or indirectly by, arising out of, resulting from, contributed to by, or related in any way to "mold" is excluded regardless of any other cause or event that contributes concurrently, or in any sequence with, the loss, damage, cost or expense.

The following definition is added to the Policy:

"Mold" means any species of fungi, including, but not limited to, mold, yeast, mildew, spores, mold toxins, mycotoxins, mold metabolites, mold antigens, mold allergens, mold-produced antibiotics, or dust or fumes containing any of the foregoing individually, or in any combination therewith or another substance.

Commercial Property Total Mold Exclusion
MOLD EXCL (10-01)

Canopus US_000007

OUS101 (10/07) Total or Constructive Loss

*Entry is optional if shown in the Common Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.

*ATTACHED TO AND FORMING PART OF POLICY NO: OUS009069353	*EFFECTIVE DATE OF ENDORSEMENT: August 11, 2014	*ISSUED TO: BOUCHELLE, INC.
--	--	--------------------------------

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 to the Named Insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above-mentioned Certificate, other than as above stated

**U.S. Terrorism Risk Insurance Act of 2002 as amended
Not Purchased Clause**

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for "insured losses" directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002" as amended ("TRIA") and the Insured has declined or not confirmed to purchase this coverage.

This insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy.

All other terms, conditions, insured coverage and exclusions of this insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this insurance.

OUS214 (10-07)

Canopus US_000009

OUS255 (08/12) General Clauses Endorsement

a) Service of Suit Clause --

This Service of Suit Clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in any Arbitration provision within this Policy. This Clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this contract of insurance (or reinsurance).

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon Drinker Biddle & Reath LLP, 1177 Avenue of the Americas, New York, NY 10036, and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefor, Underwriters hereon hereby 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 hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

b) Electronic Data Endorsement B-

1. Electronic Data Exclusion

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

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

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

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatever nature.

COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

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

Listed Perils:
Fire
Explosion

2. Electronic Data Processing Media Valuation

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

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost

of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

c) Terrorism Exclusion Endorsement

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

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

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

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured. In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

d) Land, Water and Air Exclusion Clause

LAND, WATER AND AIR EXCLUSION

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

e) Seepage and Pollution Exclusion Clause

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION

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

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

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

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

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

f) Debris Removal Endorsement

DEBRIS REMOVAL ENDORSEMENT

THIS ENDORSEMENT CONTAINS PROVISIONS WHICH MAY LIMIT OR PREVENT RECOVERY UNDER THIS POLICY FOR LOSS WHERE COSTS OR EXPENSES FOR DEBRIS REMOVAL ARE INCURRED.

Nothing contained in this Endorsement shall override any Seepage and/or Pollution and/or Contamination Exclusion or any Radioactive Contamination Exclusion or any other Exclusion applicable to this Policy.

Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is cancelled and replaced by the following:

- 1) In the event of direct physical damage to or destruction of property, for which Underwriters hereon agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay (hereinafter referred to as "Damage or Destruction"), this Policy also insures, within the sum insured, subject to the limitations and method of calculation below, and to all the other terms and conditions of the Policy, costs or expenses:
 - (a) which are reasonably and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage or Destruction occurred, of debris which results from the Damage or Destruction; and
 - (b) of which the Assured becomes aware and advises the amount thereof to Underwriters hereon within one year of the commencement of such Damage or Destruction.
- 2) In calculating the amount, if any, payable under this Policy for loss where costs or expenses for removal of debris are incurred by the Assured (subject to the limitations in paragraph 1 above):
 - (a) the maximum amount of such costs or expenses that can be included in the method of calculation set out in (b) below shall be the greater of U.S. \$25,000 (twenty-five thousand dollars) or 10% (ten percent) of the amount of the Damage or Destruction from which such costs or expenses result; and
 - (b) the amount of such costs or expenses as limited in (a) above shall be added to:
 - (i) the amount of the Damage or Destruction; and
 - (ii) all other amounts of loss, which arise as a result of the same occurrence, and for which Underwriters hereon also agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay; and

the resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit (or applicable sub-limit) of this Policy, shall be applied.

g) Radioactive Contamination Exclusion

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

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

h) War and Civil War Exclusion

Notwithstanding anything to the contrary contained herein, this Policy does not cover Loss or Damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

i) Biological or Chemical Materials Exclusion

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

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above mentioned Certificate, other than as above stated.

APPLICABLE LAW (U.S.A.)

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

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

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

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;
 - b. Give you reports on the conditions we find; and
 - c. Recommend changes.
2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.
3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.
4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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.

COMMERCIAL GENERAL LIABILITY COVERAGE PART SUPPLEMENTAL DECLARATIONS

Policy No. OUS009069353 Effective Date August 11, 2014
12:01 A.M., Standard Time

Named Insured BOUCHELLE, INC. Agent No. 3901416

Item 1. Limits of Insurance		
Coverage	Limit of Liability	
Aggregate Limits of Liability	\$ <u>2,000,000</u>	General Aggregate (other than Products/Completed Operations)
	\$ <u>1,000,000</u>	Products/Completed Operations Aggregate
Coverage B - Personal and Advertising Injury Limit	\$ <u>1,000,000</u>	Personal and Advertising Injury Limit
Coverage A - Bodily Injury and Property Damage Liability	\$ <u>1,000,000</u>	Each Occurrence Limit
Damage to Premises Rented to You Limit	\$ <u>100,000</u>	Fire Damage Limit
Coverage C - Medical Payments	\$ <u>5,000</u>	Medical Expense Limit

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:
1157 ISLAND VIEW COURT, MOUNT PLEASANT, SC 29465

Description of Business:
CARPENTRY

Item 3. Forms and Endorsements

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

CGDS01-EX 10-01, ART-GL-01 (08-11), EZ-EXCL-01 (08-07), EXPUN-01 (05-11), TAP-AB-01 (04-11), TCNY.001 (01-08), CG0001 (12-04), CG0088 (05-09), CG2138 (03-05), CG2139 (10-93), CG2180 (4-98), UTS-128g(10-94), IL0021(05-04), COI 07-07

Item 4. Premiums

Coverage Part Premium:	\$ <u>1,813</u>
Other Premium:	\$
Total Premium:	\$ <u>1,813</u>

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

CGDS01 (10/01)

INSURED

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COMMERCIAL GENERAL LIABILITY COVERAGE PART EXTENSION OF SUPPLEMENTAL DECLARATIONS

Policy No. OUS009069353

Effective Date: August 11, 2014

12:01 A.M., Standard Time

Named Insured BOUCHELLE, INC.

Agent No. 3901416

Prem. No. 01	Bldg. No. 01	Class Code 91342	Exposure 115,000	Basis PAYROLL - per \$1000 of Payroll	
Class Description: CARPENTRY				Premises/Operations	
				Rate	Premium
				11.82	\$1,360
				Products/Comp Operations	
				Rate	Premium
				3.94	\$453
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

ART-GL-01

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE			INSURED
	MONTH	DAY	YEAR	
OUS009069353	August	11,	2014	BOUCHELLE, INC.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ALL SECTIONS OF THIS SEVEN (7) PAGE ART-GL-01 APPLY TO, AND MODIFY, YOUR POLICY.**

ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**EXCLUSION - TOTAL POLLUTION**

Exclusion f, under COVERAGE A (Section I) is replaced by the following:

- f. (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 or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of pollutants; or
 - (b) Claim or suit by or on behalf of a government authority for damages because of testing for, monitoring, clearing up, removing, containing, treating, detoxifying or neutralising, or in any way responding to, or assessing the effects of pollutants.

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

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EXCLUSION - ASBESTOS, SILICA DUST, TOXIC SUBSTANCES

The following exclusion is added to COVERAGES A, B, and C (Section I)

This Insurance does not apply to:

- (1) "Bodily injury," "personal injury" or medical payments caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelium or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos fibres or dust or silica dust;
- (2) Any "property damage" due to or arising out of the actual or alleged presence of asbestos or silica dust in any form, including the costs of remedial investigations or feasibility studies, or to the costs of testing, monitoring, cleaning or removal of any property or substance; or
- (3) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments or any other action based upon the insured(s) supervision, removal, instructions, recommendations, warranties (expressed or implied), warnings or advice given, or withheld regarding asbestos fibres or dust or silica dust.
- (4) The installation, manufacture, transportation, storage or disposal of asbestos or goods or products containing asbestos.

The coverage afforded by the policy does not apply to payment for the investigation or defense of any claim or any cost, fine or penalty or for any expense or claim or suit related to any of the above.

ART-GL-01 (08/11)

Page 1 of 6

Canopus US_000019

EXCLUSION - LEAD CONTAMINATION

The following exclusion is added to COVERAGES A, B, AND C (Section I):

This Insurance does not apply to:

- (1) "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of the ingestion, inhalation or absorption of lead in any form;
 - (2) Any loss, cost or expense arising out of any request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralise, or in any way respond to, or assess the effects of lead;
- or
- (3) Any loss, cost or expense arising out of any 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 neutralising, or in any way responding to, or assessing the effects of lead.

EXCLUSION - VOLUNTARY LABOR

The following exclusion is added to COVERAGE A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to any member, associate, affiliated member, or to any person or persons loaned to or volunteering services to you, whether or not paid by you, arising out of or in the course of work performed for you or on your behalf.

EXCLUSION - EMPLOYMENT RELATED PRACTICES

The following is added to COVERAGE A and B (Section I):

This insurance does not apply to "bodily injury" or "personal injury" arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment-related practices, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal injury" as a result of (1) through (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or to repay someone else who must pay damages because of the injury.

EXCLUSION - ABUSE OR MOLESTATION

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of:

- (1) The actual or threatened abuse or molestation by anyone of any person while in the care, custody or control of any insured; or
- (2) The negligent:
 - (a) employment;
 - (b) investigation;
 - (c) supervision;
 - (d) reporting to the proper authorities, or failure to so report; or
 - (e) retention;

of a person for whom any insured is or ever was legally responsible and whose conduct would be excluded by (1) above.

EXCLUSION - COMMUNICABLE DISEASE

The following exclusion is added to COVERAGES A, B and C (Section I):

This insurance does not apply to "bodily injury," "personal injury" or medical payments arising out of claims, accusations or charges brought by or against any insured(s) for actual or alleged damages arising out of a communicable disease no matter how transmitted including, but not limited to, Acquired Immune Deficiency Syndrome (AIDS).

EXCLUSION - PARTICIPANTS

The following exclusion is added to Paragraph 2., Exclusions of Coverage (Section I - Coverages):

This insurance does not apply to "bodily injury," "personal injury" or medical payments to "any person" while practicing for or participating in any circus, concert, demonstration, event, exhibition, race, rodeo, show, contest or any activity of an athletic or sports nature for the events shown in this Schedule.

The following exclusion is added to Paragraph 2., Exclusions of COVERAGE A. Bodily Injury and Property Damage Liability (Section I - Coverages):

This insurance does not apply to "property damage" to property of "any person" defined herein including but not limited to "autos", watercraft, aircraft, animals or any other property of the foregoing.

The following definition is added to DEFINITIONS. (Section V):

"Any person" shall include but is not limited to animal handlers, announcers, attendants, clowns, contestants, entertainers, mechanics, musicians, officials, participants, singers, speakers, stage crews, stock contractors, vendors or their employees, any person employed by or doing volunteer work for you or on your behalf, or any person involved in the promotion, sponsoring or production of the event designated in the Schedule.

PAR EXC 01 (01/04)

EXCLUSION - CLASSIFICATION LIMITATION

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to "bodily injury", "Property damage", "advertising injury", "personal injury" or medical payments for operations which are not classified or shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

ADDITIONAL CONDITIONS**NOTICE TO ALL POLICY HOLDERS**

This insurance does not provide coverage as required by Environmental Protection Agency (EPA) 40 CFR Parts 280 and 281 for underground storage tanks nor any coverage under CERCLA or similar State or Federal Environmental Act(s).

THIS POLICY EXCLUDES COVERAGE FOR POLLUTION AND / OR ACTUAL, ALLEGED OR THREATENED DISCHARGE, DISPERSAL, SEEPAGE, MIGRATION, RELEASE OR ESCAPE OF POLLUTANTS AT ANY TIME.

LIMITATION - OTHER INSURANCE

Other Insurance, under COMMERCIAL GENERAL LIABILITY CONDITIONS (Section IV), item b(3) providing Excess Insurance if the loss arises out of the maintenance or use of aircraft, "autos" or watercraft is ~~deleted~~.

AMENDMENT OF LIQUOR LIABILITY EXCLUSION

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

Exclusion c. of Coverage A (Section I) is replaced by the following:

c. "Bodily Injury" or "Property Damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
 - (a) Requires a license
 - (b) Is for the purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

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EXCLUSION - ELECTROMAGNETIC FIELDS

The following exclusion is added to COVERAGES A, B, C (Section I):

This insurance does not apply to and no duty to defend is provided by us for any claim for "bodily injury", "property damage", "personal injury", "advertising injury" or medical payments which arise out of, or is contributed to either directly or indirectly, by exposure to magnetic fields, electric fields, electromagnetic fields, electronic fields or any other radiation, however caused or generated.

EXCLUSION - INDEPENDENT CONTRACTORS EMPLOYEES OR LEASED WORKERS

This insurance does not apply to "Bodily Injury", "Personal Injury", "Advertising Injury" to:

1. Any employee or leased worker of independent contractors arising out of operations performed for you by said independent contractors or your acts or omissions in connection with general supervision of such operations if you have rejected the obligations of any workers' compensation or similar law, or abrogated, waived or otherwise set aside common rights or defenses generally accorded any employer under any workers' compensation, disability benefits or unemployment compensation law or any similar law; or
2. The spouse, child, parent, brother or sister of that employee or leased worker as a consequence of 1. above.

MINIMUM EARNED PREMIUM ENDORSEMENT

In consideration of the premium charged, it is understood and agreed that minimum earned premium of 25% (twenty-five per cent) applies to this policy.

EXCLUSION - RADON GAS

The following exclusion is added to COVERAGES A, B, and C (Section I):

This insurance does not apply to and no duty to defend is provided by us for:

1. "Bodily injury", "property damage", "personal injury", "advertising injury" or medical payments arising out of the presence of, exposure to, ingestion of, emission or release of radon gas.
2. Any loss, cost or expense arising out of any 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 radon gas; or
3. Any 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 radon gas.

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer, who for any reason, does not satisfy all or part of its obligations.

LSW1001 (8/94)

**EXCLUSION - INJURY TO LEASED WORKERS AND
PRACTICES RELATED TO LEASED WORKERS**

A. The following exclusions are added to paragraph 2., Exclusion, COVERAGE A (Section I):

This Insurance does not apply to:

o. "Bodily Injury" to:

- (1) Any "leased worker" arising out of and in the course of performing his or her duties related to the conduct of your business;
- (2) The spouse, child, parent, brother or sister of that "leased worker" as a consequence of (1) above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

p. "Bodily injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination, recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "bodily injury" as a result of (1) through (3) above.

This exclusion applies:

- (1) Whether the "insured" may be held liable as the party responsible for directing the "leased worker" in the performance of his duties related to the conduct of your business or in any other capacity; and
- (2) To any obligation to share damages with or to repay someone else who must pay damages because of the injury.

B. The following exclusion is added to paragraph 2. Exclusions. COVERAGE B (Section I):

This insurance does not apply to:

c. "Personal injury" or "advertising injury" arising out of any:

- (1) Refusal to lease a worker
- (2) Recommendation to a labor contractor to terminate the duties performed by a "leased worker" which relate to the conduct of your business.
- (3) Coercion, defamation, harassment, humiliation, or discrimination; recommendation to a labor contractor for demotion, evaluation, reassignment, or discipline of a "leased worker" or other leasing-related practices, policies, acts or omission; or
- (4) Consequential "Personal injury" or "advertising injury" as a result of (1) through (3) above.

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

"Leased worker" means a person employed by a labor contractor and leased to you.

EZ-EXCL-01

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	ENDORSEMENT EFFECTIVE MONTH / DAY / YEAR	INSURED
OUS009069353	August 11, 2014	BOUCHELLE, INC.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
ALL SECTIONS OF THIS THREE (3) PAGE EZ-EXCL-01 APPLY TO, AND MODIFY, YOUR POLICY.
ADDITIONAL EXCLUSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - Earth Movement

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" nor do we have any duty to defend any claim, suit, action, demand, arbitration or alternative dispute resolution arising from, attributable or contributed to or aggravated by the movement of land whether caused by or resulting from natural forces or contributed to, in any way, by any work or operations performed by you or any contractor or subcontractor.

"Movement of land" includes but is not limited to any movement of earth or land, whether at the surface or below the surface and includes any movement of earth to a higher or lower level, landslide, mud flow, mud slide, shearing, rising, settling, shifting or shrinking.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED

ART.36 01/02

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - Losses, Claims and Litigation
Preceding Inception of Policy**

This insurance does not apply to any "bodily injury", "property damage", "personal injury" or "advertising injury" nor do we have any duty to defend

1. Any damage, loss, cost or expense which began to occur, in whole or part, before the inception date of this policy and which continues into the policy period regardless of whether any person (including the Insured) knew or had reason to know of any damage, loss, cost or expense;
2. Any claim, suit, action, demand, arbitration, alternative dispute resolution which arose before the inception date of this policy
 - (a) regardless of whether the insured knew of any such claim, suit, action, demand, arbitration or alternative dispute resolution and
 - (b) irrespective of whether ultimate liability or the final amount of damages, loss, cost or expense has or has not been established.

This policy applies only to damage, loss, cost or expense, which first occurs in the policy period.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED

ART.37 01/02

EZ-EXCL-01 (09/07)

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Canopus US_000025

ORAL CONTRACTS EXCLUSION

The Definition of "insured contract" is amended solely to apply to such contracts or agreements which existed in writing prior to an occurrence; In no event will this insurance apply to any allegation of liability assumed by the insured under an oral contract.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED

TPCONT.08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED WORK EXCLUSION - EXTERIOR INSULATION AND FINISH SYSTEMS

This Insurance modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART**PRODUCT/COMPLETED OPERATIONS LIABILITY COVERAGE PART**

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" described as:

1. The design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction, or replacement, of an "exterior insulation and finish system" (commonly referred to as synthetic stucco) or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system.
2. Any work or operation with respect to any exterior component, fixture or feature of any structure if any "exterior insulation and finish system" is used on any part of that structure.

For the purposes of this endorsement, an "exterior

insulation and finish system" means an exterior cladding or finish system used on any part of any structure, and consisting of:

1. A rigid or semi-rigid insulation board made of expanded polystyrene or other materials; and
2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate; and
3. A reinforced base coat; and
4. A finish coat providing surface texture and color.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTORS SPECIAL CONDITIONS

The following has been added to the policy:

CONTRACTORS SPECIAL CONDITIONS

You will obtain certificates of insurance from all independent contractors providing evidence of:

1. limits of liability equal to or greater than the limits provided by this policy; and
2. coverage equal to or greater than the coverages provided by this policy.

Failure to comply with this condition does not alter the coverage provided by this policy. However, should you fail to comply, independent contractors will be considered to be your employees and a premium charge will be made accordingly. The "total cost" of all work sublet will be used as payroll for the work performed.

"Total cost" means the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of the work for all fees, bonuses or commissions paid.

EZ-EXCL-01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIFIED OPERATIONS EXCLUSION - ROOFING

It is agreed no coverage is afforded for any liability or claim that arises out of, is related to, or connected with the following:

Roofing Construction, Repair, or Maintenance

ART Roof 001 (12/02)

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - CONTRACTORS - PROFESSIONAL LIABILITY

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

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) and paragraph 2., Exclusions of COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY (Section I - Coverages):

1. This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
 - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
 - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to paragraph 3. below, professional services include:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
 - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

CG2279 (01/96)

EZ-EXCL-01 (09/07)

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Canopus US_000027

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	NAMED INSURED
OUS009069353	BOUCHELLE, INC.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - PUNITIVE OR EXEMPLARY DAMAGE

The following exclusion is added to COVERAGES A, B and C (Section 1):

This insurance does not apply to a claim of or indemnification for punitive or exemplary damages. If a suit shall have been brought against you for a claim within the coverage provided under the policy, seeking both compensatory and punitive or exemplary damages, then we will afford a defense for such action. We shall not have an obligation to pay for any costs, interest, or damages attributable to punitive or exemplary damages.

EXPUN-01 (05-11)

INSURED

Canopus US_000028

**THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This policy includes the following exclusion for assault and/or battery:

Assault and/or Battery Exclusion

This insurance does not apply to any claim and/or cause of action arising from:

1. An assault and/or battery regardless of culpability or intent; or
2. A physical altercation; or
3. Any act or failure to act to prevent or suppress such assault and/or battery or physical altercation.

The above applies whether caused by the insured, an employee, a patron, or any other person; and whether or not the acts occurred at the premises owned, leased, rented or occupied by the insured.

This exclusion also applies to any claim and/or cause of action seeking:

1. Damages arising from a claim by any other person, firm or organization, asserting rights derived from, or contingent upon, any person asserting a claim arising out of an assault and/or battery or a physical altercation; or
2. Damages for emotional distress, or for loss of society, services, consortium and/or income reimbursement for expenses (including but not limited to medical expenses, hospital expenses, and wages) paid or incurred by such other person, firm or organization; or
3. To have the insured share damages with or repay someone who must pay damages because of such assault and/or battery or physical altercation; or
4. Damages arising out of allegations of negligent hiring, placement, training or supervision, or to any act, error, or omission relating to such assault and/or battery or physical altercation.
5. Damages arising out of failure to provide proper security or safe premises to any person subject to and assault and/or battery or physical altercation.

We are under no duty to defend an insured in any "suit" alleging such damages arising out of any assault and/or battery or physical altercation of any nature whatsoever.

**ALL OTHER TERMS AND CONDITIONS OF THIS POLICY
REMAIN UNCHANGED**

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	NAMED INSURED
OUS009069353	BOUCHELLE, INC.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - NEW YORK

This insurance does not apply, either directly or as assumed by contract, for any lawsuits, actions or any other claim for liability for "bodily injury," "property damage" or "personal injury" arising from or in any way relating to the insured's operations or interest or any other involvement in any work performed in the state of New York.

This exclusion applies to any operations taking place:

1. prior to inception of this policy;
2. during this policy term; or
3. prior to inception of this policy and continuing into this policy term.

TCNY.001 (01/08)

INSURED

Canopus US_000030

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

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

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

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

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

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

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

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any Insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

(i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;

(ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

(e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

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

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III - Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

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

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

m. Damage To Impaired Property Or Property Not Physically Injured

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

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

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

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

n. Recall Of Products, Work Or Impaired Property

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

(1) "Your product";

(2) "Your work"; or

(3) "Impaired property";

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

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III - Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

(1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods - Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of 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.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

- a. **Any Insured**
To any insured, except "volunteer workers".
- b. **Hired Person**
To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. **Injury On Normally Occupied Premises**
To a person injured on that part of premises you own or rent that the person normally occupies.
- d. **Workers Compensation And Similar Laws**
To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. **Athletics Activities**
To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.
- f. **Products-Completed Operations Hazard**
Included within the "products-completed operations hazard".
- g. **Coverage A Exclusions**
Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS - COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I - Coverage A - Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II - WHO IS AN INSURED

- 1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company; you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily Injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
- No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".

2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire Insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

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

If such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

- b. Your fulfilling the terms of the contract or agreement.
9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - b. A sidetrack agreement;
 - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - e. An elevator maintenance agreement;
 - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, 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 a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction, or resurfacing; or
- (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

16. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading" or "unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
 - 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.

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.

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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

2. Exclusions

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

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating system and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

**ENDORSEMENT
NO.**

ATTACHED TO AND FORMING A PART OF POLICY NUMBER	(STANDARD TIME)				INSURED	AGENCY AND CODE
	MO.	DAY	YR.	12:01 A.M. NOON		
OUS009069353	August	11,	2014	X	BOUCHELLE, INC.	THE BRINSON AGENCY 3901416

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL PROVISIONS ENDORSEMENT

In consideration of the premium charged, it is agreed that the following special provisions (indicated by an "X") apply to this policy.

SCHEDULE

☒ **Bodily Injury and Property Damage Liability Deductible Endorsement**

Coverage	Amount and Basis of Deductible	
Bodily Injury Liability	\$ 500	per claimant
Property Damage Liability	\$ 500	per claimant
Personal Injury Liability	\$ 500	per claimant
Advertising Injury Liability	\$ 500	per claimant

☒ **Minimum and Advance Premium Endorsement**
Minimum Premium \$ \$1,813

☒ **Minimum Earned Premium**
Minimum Earned Premium 25 % of the original premium.

BODILY INJURY AND PROPERTY DAMAGE LIABILITY DEDUCTIBLE ENDORSEMENT

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" and "property damage," however caused.):

"Aggregate" limits for such coverages shall not be reduced by the application of such deductible amount.

2. The deductible amounts include all legal and loss adjustment expenses.

1. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages, and the limits of insurance applicable to "each occurrence" for such coverages will be reduced by the amount of such deductible.

3. The deductible amounts stated in the Schedule apply under the Bodily Injury Liability or Property Damage Liability Coverage, respectively, to all damages because of "bodily injury" sustained by one person, or to all damages because of "property damage" sustained by one person, any organization, or association or any individual member of any organization or association as the result of any one "occurrence."

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," 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.

MINIMUM AND ADVANCE PREMIUM ENDORSEMENT

Item b. of the Premium Audit Condition (under SECTION IV-COMMERCIAL GENERAL LIABILITY CONDITIONS) is changed to read:

- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable 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 a minimum premium listed in the Schedule above. For purposes of this policy, the terms advance premium, audit premium, earned premium, and minimum premium are defined as follows:

Advance Premium — The premium that is stated in the policy declarations and payable in full by the first Named Insured at the inception of the policy.

Audit Premium — The premium that is developed by calculating the difference between the Advance Premium and the Earned Premium.

Earned Premium — The premium that is developed by applying the rate(s) scheduled in the policy to the actual premium basis for the policy period.

Minimum premium — The lowest premium for which this insurance will be written for the policy period.

MINIMUM EARNED PREMIUM

If this policy is cancelled at the request of the INSURED, the total retained by the Company shall not be less than the percentage of the original premium listed in the Schedule above.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

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.

1 STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

2 COUNTY OF CHARLESTON

3 BOUCHELLE, INC.,

4 Plaintiff,

5 vs.

CASE NO. 2016-CP-10-04984

6 CANOPIUS US INSURANCE, INC., SENECA SPECIALTY
7 INSURANCE COMPANY, THE BRINSON AGENCY AND JOHN
BRINSON,

8 Defendants.

9
10 30(b)(6)
11 DEPOSITION OF: DAVID GLENN BOUCHELLE

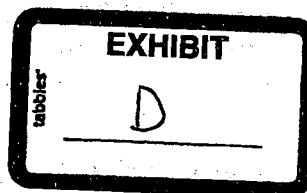
12 DATE: November 29, 2017

13 TIME: 1:10 PM

14 LOCATION: Countryman Law Firm
15 321 Wingo Way
16 Suite 102
Charleston, SC

17 TAKEN BY: Counsel for the Plaintiff

18 REPORTED BY: Priscilla Nay,
19 Certified Shorthand Reporter
20
21
22
23
24
25



1 for identification.)

2 BY MR. DWORJANYN:

3 Q. Do you know why Canopus US has denied
4 coverage?

5 A. My understanding is from talking to Pam
6 or Blair, a third party, that she said that was
7 classified wrong.

8 Q. Because you're classified as --

9 A. Carpentry.

10 Q. -- carpentry?

11 A. Yeah.

12 Q. When is the first time you found out
13 that you were classified as carpentry?

14 A. When the accident happened and I called
15 over there. I said, hey, we've got a problem on a
16 job and the owners -- I need to file a claim before
17 the owners do to cover the costs of these damages
18 because I was a GC. I was the one holding the
19 permit.

20 Q. Right.

21 A. Everybody else worked underneath me.
22 So I knew the owner was going to go after me or my
23 insurance company.

24 Q. All right. In all of these years did
25 you ever read your insurance policies?

1 A. You know, to be honest with you, no. I
2 just paid the premium and I didn't -- you know,
3 exclusions and stuff like that. I -- you know, my
4 wife used to be my office manager.

5 Q. Right.

6 A. You know, she handled almost all of
7 that before she went off to work for someone else.
8 So anyway -- so, yeah, it would just come in. We
9 would make sure we had insurance and pay our
10 payments. We were audited. We'd get audited every
11 year.

12 Q. You always get audited on your workers'
13 comp, right?

14 A. Yeah.

15 Q. Did you get audited on anything else?

16 A. Yeah, general liability.

17 Q. Do you have any audit documents?

18 Do you think you might have any audit
19 documents at your office?

20 A. Probably.

21 Q. Did you ever have a conversation with
22 anyone at The Brinson Agency about being classified
23 in carpentry period?

24 A. Yeah.

25 Q. What conversation did you have?

1 A. I wanted to know why when I'm a general
2 contractor I've been classified as a carpenter. I
3 don't hold a specialty license.

4 Q. What answer did you get?

5 A. I don't remember.

6 Q. Who did you talk to?

7 A. John Brinson.

8 Q. Was there an agreement between you and
9 John Brinson to classify you in carpentry to have
10 lower insurance premiums?

11 A. No.

12 Q. Do you have any idea why The Brinson
13 Agency would have submitted these applications on
14 your behalf?

15 A. Because maybe they was doing my
16 workers' comp. I don't know. I have no idea.

17 Q. But your workers' comp wouldn't have
18 resulted in you being listed as carpentry, would
19 it?

20 A. Huh-uh. No. I mean, it's different
21 categories of work.

22 Q. Right. You list your different
23 salaries and --

24 A. Classifications.

25 Q. Right. Your NCIC codes?

1 A. Correct.

2 Q. Did you believe that Brinson Agency was
3 submitting applications for general liability
4 insurance for you as a general contractor?

5 A. Yes, I did. I did. We have had
6 different -- you know, somebody will call and ask
7 to talk to me. Who's this? It's so-and-so
8 insurance carrier. They ask me what you do.

9 I'll tell them. What percentage of
10 subcontractors do you use? It depends on what
11 year. You know, what jobs we're doing.

12 Who knows who's called me and did phone
13 interviews over the years? You know, I couldn't
14 tell you. It might have been workers' comp. It
15 might have been general liability.

16 Q. Insurance companies might have called
17 you over the years, but I'm interested in whether
18 or not the Brinson Agency -- what your agreement if
19 any with The Brinson Agency was because I'm
20 interested in why these applications were submitted
21 listing you as performing carpentry.

22 A. I could not tell you. It may have been
23 just a mistake on their part. I don't know. I
24 mean, we remodel. We do whatever. I don't know.
25 I don't know. I've always been a licensed general

1 document, Exhibit 8, is yours?

2 A. No, it's not.

3 Q. It is not?

4 A. No, sir.

5 Q. How are you sure?

6 A. Because I write terrible and this is a
7 lot nicer writing than me.

8 Q. You did through Mr. Brinson's agency on
9 behalf of Bouchelle, Inc. apply for and obtain many
10 different insurance policies?

11 A. Yes, sir.

12 Q. How would that typically happen, the
13 application process?

14 A. Sometimes over the phone. Sometimes
15 in the office. Sometimes an e-mail. I don't know.
16 You know, different ways.

17 Q. When it was done in person how would it
18 be done? For example, if there was a paper
19 application like this would Mr. Brinson hand you a
20 copy of it and ask you to fill it out or would he
21 ask you questions and he would write it?

22 How would that process work?

23 A. I'm not sure. He probably asked me
24 questions. That's just not -- I didn't fill this
25 out.

1 Q. You looked at a few different
2 applications today, correct?

3 A. Yes.

4 Q. Would it be fair to say you don't have
5 a specific recollection of the completion of any of
6 these applications?

7 A. I do not have a recollection.

8 Q. Okay. Do you know why you sued
9 Mr. Brinson individually?

10 A. I think that in fairness he asked me
11 questions about, okay -- you know, or he was
12 confused. You know, what do you do? We build
13 things. We're general contractors.

14 Well, he might have been thinking about
15 the workers' comp part. Well, what do you do?
16 Sometimes we build frame-up metal stud walls or we
17 may build a little -- we may do some carpentry
18 formwork and stuff like that.

19 You know, it was workers' comp, general
20 liability. Workers' comp and general liability.
21 In all fairness to him I don't see that -- this
22 doesn't even -- I don't know who put my name on
23 there.

24 It says: David Bouchelle. That's
25 totally wrong. I don't know if it was just a

1 mix-up from his office to another office. I don't
2 know. Anyway, I'm just saying that --

3 Q. You're talking about things that he did
4 during the process of trying to obtain insurance
5 for you?

6 A. What do you mean by that?

7 Q. I'm asking you why you sued him
8 individually and you said --

9 A. Because --

10 Q. -- because he did certain things. I'm
11 asking if those things --

12 A. I just --

13 Q. That he did -- let me finish my
14 question -- that served as the basis of your suit
15 against him were all the things that he did in the
16 process of trying to obtain insurance for you.

17 There were things that he was doing as
18 your insurance agent, correct?

19 A. Yes.

20 Q. He didn't do anything that you're aware
21 of outside of his scope as your insurance agent,
22 correct?

23 A. No.

24 Q. Okay. And you said a minute ago that
25 the name David Bouchelle was wrong. Are you just

1 referring to the fact that on Exhibit 8 it lists
2 David Bouchelle as the applicant instead of
3 Bouchelle, Inc.?

4 A. Yes.

5 Q. All right. What is at 1157 Island View
6 Court in Mount Pleasant?

7 A. My home.

8 Q. Does Bouchelle, Inc. have an office?

9 A. Yes.

10 Q. Where is that located?

11 A. Formerly at that address.

12 Q. Where is it located now?

13 A. It was Long Point Road. Now, it is off
14 of Pleasant Oaks Road.

15 Q. Does Bouchelle, Inc. own any real
16 property?

17 A. No.

18 Q. Any automobiles or heavy equipment?

19 A. No. You mean -- no. We don't own any
20 heavy equipment.

21 Q. Now, how would you make the decision as
22 to whether to go into Mr. Brinson's office or have
23 a phone conversation with him when you would
24 discuss insurance matters with him from time to
25 time from at least 2008 through 2015?

1 carpentry policies? Is that correct, what I just
2 said? That's my understanding of your testimony.

3 A. He understood I was a general
4 contractor and that we did different kinds of work.

5 Q. Okay. And you don't have any
6 explanation whatsoever for the fact that he would
7 have applied for carpentry coverage for you instead
8 of general contracting coverage?

9 A. No.

10 Q. Okay. Yet that happened time after
11 time from at least 2008 through 2014?

12 A. Correct, according to these documents
13 that I see here.

14 Q. You say you didn't see them until
15 today?

16 A. Today. Right.

17 MS. DEJONG: I'm going to object. I
18 don't think that's what he said.

19 BY MR. COUNTRYMAN:

20 Q. When did you first see these documents
21 or these applications?

22 A. I do not know.

23 Q. Did you review them to prepare for this
24 deposition at all?

25 A. Yeah. I mean, I seen these earlier

1 today. I had seen -- I had seen one at one time
2 that -- one of these I seen -- one I saw didn't
3 have my -- that wasn't my signature that I think
4 came to my office. I think. I can't remember.

5 Q. Let me show you one document. I don't
6 have copies, but I can make them. I'll squeeze
7 behind you. This is labeled Brinson Subpoena
8 Response Number 70.

9 I'm just going to use the top page. Is
10 that your signature on that document?

11 A. That is. That is my signature.

12 Q. Okay. I'm going to make that my first
13 exhibit. You can look at the second page and tell
14 me if --

15 A. Okay.

16 Q. Page 2 is Brinson Subpoena Response 71.
17 Is that your signature?

18 A. Yeah. That's my signature.

19 Q. Okay. What about on Page 3 which is
20 Brinson Subpoena Response 72?

21 A. Yeah. Yes.

22 MR. COUNTRYMAN: Okay. We'll mark this
23 as Defendant's 11.

24 (DFT. EXH. 11, Offer of additional
25 uninsured motorist coverage for Bouchelle, Inc.,

1 Page 3, was marked for identification.)

2 MS. DEJONG: Would you mind just
3 identifying this more specifically that these are
4 just signature pages? They don't include a
5 document at all, just --

6 MR. COUNTRYMAN: I have identified them
7 by the Bates Number and it's my deposition. So you
8 have those documents and you can ask him questions
9 about it if you want. I just asked him if those
10 are his signatures.

11 BY MR. COUNTRYMAN:

12 Q. All right, Mr. Bouchelle. So you
13 obtained these carpentry policies through
14 The Brinson Agency from 2008 through 2014, correct?

15 A. I obtained a GL policy, correct.

16 Q. And they were provided coverage for
17 carpentry services?

18 A. That's what it says under their
19 classification, yes.

20 Q. Okay. And did you receive copies
21 of these policies on an annual basis from
22 Mr. Brinson's agency?

23 A. I would think they would have come from
24 the carrier and just been mailed to my office.

25 Q. You did get them?

1 A. I would think so, yes.

2 Q. Any reason to think you failed to get
3 any of these policies Mr. Brinson told you?

4 A. I would not think so.

5 Q. You can't identify one as we sit here
6 today? Any of these policies that Mr. Brinson's
7 agency sold you that you failed to receive.

8 A. I would not think that I did not
9 receive them.

10 Q. You can't identify one that you failed
11 to receive, correct?

12 You are unable to identify a specific
13 policy that you failed to receive?

14 A. Say it one more time.

15 Q. Mr. Brinson sold you a number of
16 policies?

17 A. Right.

18 Q. You said you believe you received those
19 policies?

20 A. Right.

21 Q. You can't identify a policy that you
22 did not receive that his office sold you?

23 A. Correct.

24 Q. Okay. At any point during the time
25 period from 2008 to 2014 before this claim arose

1 did you contact Mr. Brinson's agency or anyone else
2 and ask why your coverage was covering carpentry
3 risks and not general contracting risks?

4 A. I called after and I talked to the --
5 Blair or Pam and they -- and they said that I
6 wasn't covered. I called and said --

7 Q. I'm talking about this before this
8 claim arose. Before this damage to this Cross
9 Country project happened did you ever call
10 The Brinson Agency and --

11 A. No.

12 Q. You did not?

13 A. No.

14 Q. Did you ever call anyone and say why do
15 I have carpentry coverage and not general carpentry
16 coverage and --

17 A. No.

18 Q. Let me finish my question so the court
19 reporter -- you never called anybody after you got
20 this policy and said I've got the wrong policy, did
21 you?

22 A. No.

23 Q. Why not?

24 A. I probably did not read them.

25 Q. Okay. Would you agree you have a

1 responsibility to read a contract to which you
2 are a party? Do you agree with that?

3 A. I agree to the extent that I'm not an
4 insurance guy. I look at a policy and it's got a
5 bunch of insurance verbiage in it and it's --

6 Q. Right. Like it tells you what's
7 covered and not covered, right?

8 A. Exclusions like mold and terrorism and
9 all that.

10 Q. And demolition?

11 A. Yeah. So, you know...

12 Q. I'm not being silly, but you do not
13 know how to read you can comprehend language?

14 A. Oh, yes.

15 Q. You do know how to do that?

16 A. Yes.

17 Q. You did have these policies and you
18 just did not read them, correct?

19 A. That's probably correct.

20 Q. Okay.

21 A. Because once I -- these came in I
22 probably had them filed away and someone in the
23 office that just -- you know.

24 Q. Well, you would agree those insurance
25 policies are contracts between Bouchelle, Inc. and

1 the insurance carriers, correct?

2 A. Yes.

3 Q. There's no contract between Bouchelle,
4 Inc. and Mr. Brinson's agency for these insurance
5 policies, is there?

6 A. No.

7 Q. You did have a chance to read those
8 policies and could have notified someone including
9 Mr. Brinson of any discrepancy and you did not do
10 so, correct?

11 A. Correct.

12 Q. Did you ever have a hard time getting
13 in touch with Mr. Brinson when you had a question
14 for him over the years that you were his insurance
15 customer?

16 A. Sometimes, but he would always call me
17 back the next day or week or somehow.

18 Q. Okay.

19 A. Sometimes he was unavailable, but, you
20 know, not real difficult.

21 Q. How did you come to choose the agency
22 that you now use for your insurance?

23 A. Referred. I actually had met them
24 before on a job site. He does real estate, too.

25 Q. Okay.

1 A. So we looked at a job and then I found
2 out he was an insurance guy.

3 Q. Okay. Now is your CGL coverage for
4 general contracting services?

5 A. Yeah.

6 Q. Is it more expensive now than it was in
7 your years with Brinson?

8 A. I can't answer that, but I know -- I
9 don't think it's that much more.

10 Q. Okay.

11 A. I can't answer the exact number.

12 Q. I believe you said you never gave
13 anyone at The Brinson Agency authority to sign
14 anything for you. Is that correct?

15 A. Not that I remember.

16 Q. Is it possible that you did and just
17 don't recall?

18 A. It's possible, I suppose.

19 Q. Do you know whether any of these
20 applications that we've reviewed today were filled
21 out on the phone, in person, or online?

22 Do you know how many of them specifically
23 were filled out?

24 A. I do not know.

25 Q. Do you have any recollection of

1 A. Actually, I think I do. I think I
2 signed something for her to handle the case.

3 Q. Okay. Would that have been handling
4 just this case or any other case as well if you
5 know?

6 A. I'm not sure.

7 Q. All right. Do you know as we sit here
8 today how much you have paid her in legal fees?

9 A. I do not know.

10 Q. Do you know as we sit here today how
11 much you expect to pay her in legal fees?

12 A. I do not know.

13 Q. I have a job to do. I have to sit
14 here and tell my folks how much your damages are.
15 That's an element of damages. So I have the right
16 to ask questions about them.

17 A. I understand that completely, Andy.
18 That would just be in the breakdown on a line item
19 of costs. You know, that is not be complete
20 because it's not been updated.

21 Any moneys since the last time the cost
22 was updated that has been paid to DeJong Law Firm
23 to handle this case that has not been added or
24 included in I would just have to go back and
25 recalculate and put that back in and then calculate

1 it back up.

2 Q. It would be possible for you to provide
3 an itemization of the damages that you're seeking
4 in this lawsuit?

5 A. Sure. Yes, sir.

6 Q. I'm not being flip when I asked that.
7 I have asked for that multiple times and I haven't
8 received it.

9 A. I understand. I'm not asking for
10 something I cannot prove.

11 Q. Okay. And if and when we get that
12 material -- well, strike that. I would like to ask
13 you questions about those numbers, but it sounds
14 like you're not equipped today to answer those
15 questions. Is that correct?

16 A. I just got told I was coming here
17 yesterday.

18 Q. That's fine. I wanted to --

19 A. No. I'm not equipped, Andy.

20 Q. Okay.

21 A. No.

22 Q. All right. If we are provided those
23 materials and you then become equipped to talk
24 about those numbers I would reserve the right to
25 ask you questions about that. Is that fair?

1 A. That's fair.

2 Q. All right. You're not seeking
3 recovery for anything related to your health?

4 I ask you that because when we get to
5 trial I'm going to get you on the stand and I can't
6 have you say that at that point you're trying to
7 seek recovery for things that happened to your
8 health. If you are I need to ask you about them
9 now. If you're not then I'm not going to ask you
10 about them.

11 I'm not trying to make you
12 uncomfortable. I'm just trying to make sure
13 I know what's going on and what to expect
14 at trial.

15 A. If I could just get this thing settled
16 I would not even -- I would not -- how do you put
17 it -- how did you put -- on the health part.

18 Q. I'm just asking whether you're
19 intending to seek as part of your damages --

20 A. Yeah. If I could settle this I would
21 not seek damages for my health.

22 Q. The way I prepare is to prepare for a
23 trial. The way I do that is to figure out what's
24 going to be said at trial. That's the whole
25 purpose of this exercise.

1 If you're going to elect in a trial
2 that you're seeking recovery for damages then I
3 need to know that here. If you're not then that's
4 fine.

5 A. No.

6 Q. Okay. You're not going to?

7 A. No.

8 Q. All right. And you know that the
9 insurance carriers and not Mr. Brinson or The
10 Brinson Agency actually provided your liability
11 policies over the years, correct?

12 A. Yes.

13 MR. COUNTRYMAN: I don't think I have
14 anything else right now.

15 EXAMINATION

16 BY MR. WILKERSON:

17 Q. I only have a very few questions for
18 you, Mr. Bouchelle. My name is John Wilkerson and
19 I represent Seneca Specialty Insurance Company.

20 A. Yes, sir.

21 Q. Seneca Specialty Insurance Company
22 provides coverage for Charleston Wrecking, Inc.
23 You have sued Seneca Specialty claiming that we
24 have coverage for this loss.

25 Do you understand that?

1 Q. It's specifically referencing a
2 carpentry risk? I mean that's the policy that --

3 A. Yeah, the one I've already before, I
4 think.

5 Q. That's the one that you made the claim
6 for arising out of this incident, correct?

7 A. Yes.

8 Q. All right. That's one that you believe
9 you were likely sent previously but just didn't
10 read, correct?

11 A. Correct.

12 Q. Based on the applications for the
13 insurance policies that we've reviewed would you
14 agree with me that Mr. Brinson obtained that policy
15 for Bouchelle, Inc. and other policies like it --

16 A. Yes.

17 Q. -- and Bouchelle, Inc. paid for those
18 policies, correct?

19 A. Yes.

20 Q. I think you said a minute ago John
21 wrote policies, but do you understand Mr. Brinson
22 does not write policies?

23 The insurance carriers write the
24 policies, correct?

25 A. Yes, I understand.

1 Q. The agent is not the policy writer?

2 A. Correct.

3 Q. The agency does not have the contract
4 to provide insurance with the insured, correct?

5 A. I do understand that.

6 MR. COUNTYMAN: Okay. That's all I
7 have.

8 THE COURT REPORTER: Reading or
9 waiving?

10 MR. DWORJANYN: I didn't ask him about
11 that. You have the right to read and sign your
12 deposition to make sure -- you can't change
13 answers.

14 Like you can't say, oh, I wish I had
15 said yes instead of saying no. If you think the
16 court reporter types something wrong you can say, I
17 don't think this is what I said on this page. Then
18 we can go back look at the -- the thing or you can
19 give up that right.

20 THE WITNESS: When am I supposed to do
21 that?

22 MR. DWORJANYN: When she finishes
23 typing it.

24 THE WITNESS: Like right now?

25 MS. DEJONG: No. Whenever she's done

1 in a few weeks. You always want to review your
2 testimony in case there's a clerical error.

3 THE WITNESS: Okay.

4 MS. DEJONG: We'll read.

5 (The witness, after having been advised
6 of his right to read and sign this transcript, does
7 not waive that right.)

8 THE COURT REPORTER: I was just going
9 to get order information from y'all leave. I
10 apologize. Do you want just a standard order?

11 MR. DWORJANYN: Standard, yes.

12 THE COURT REPORTER: Do y'all have a
13 trial coming up?

14 MR. DWORJANYN: No. We don't have a
15 trial.

16 THE COURT REPORTER: Okay. So regular
17 time.

18 MR. DWORJANYN: Yes.

19 THE COURT REPORTER: Do you want paper
20 exhibits or just scanned?

21 MS. DEJONG: Scanned.

22 THE COURT REPORTER: Scanned.

23 MR. DWORJANYN: Yes.

24 THE COURT REPORTER: Just e-tran for
25 the copy orders?

1 MR. WILKERSON: Just e-tran.

2 MS. DEJONG: Yes.

3 THE COURT REPORTER: Where should I
4 send the errata?

5 MS. DEJONG: You can send it to me, to
6 my e-mail. It's karen@dejonglawfirm.com.

7 MR. COUNTRYMAN: Here is my card. If
8 you could send everything to my assistant that
9 would be great. What's the turn-around time?

10 THE COURT REPORTER: A week to ten days
11 is standard or --

12 MR. COUNTRYMAN: I need this expedited
13 for a hearing coming up. Next week would be great.
14 On Tuesday would be perfect. Just the e-mail.

15 THE COURT REPORTER: Okay. You'll have
16 it Tuesday. Thank you.

17 MR. WILKERSON: And you'll e-mail the
18 exhibits with the e-tran.

19 THE COURT REPORTER: Yes.

20 MR. WILKERSON: Thank you.

21 (The deposition was concluded at 4:18
22 PM.)

23

24

25

STATE OF SOUTH CAROLINA) THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NO. 2016-CP-10-4984
BOUCHELLE INCORPORATED,)
Plaintiffs,)
vs.)
CANOPIUS US INSURANCE,)
INC., SENECA SPECIALTY)
INS. CO., THE BRINSON)
AGENCY, and JOHN BRINSON,)
Defendants.)

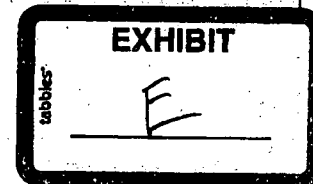
* * * * *

30(b)(6) DEPOSITION OF THE BRINSON AGENCY

DEPOSITION OF: JOHN STAFFORD BRINSON
DATE TAKEN: Friday, January 12, 2018
TIME: 10:00 a.m.
PLACE: Countryman Law Firm
321 Wingo Way, Suite 102
Mt. Pleasant, South Carolina
REPORTED BY: EVE WILBANKS,
Registered Professional
Reporter, Certified LiveNote
Reporter and Notary Public

* * * * *

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1 A P P E A R A N C E S

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8 Karen@dejonglawfirm.com

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10 INC.:

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15 Columbia, South Carolina 29201
16 Pdworjanyn@collinsandlacy.com

17 REPRESENTING THE DEFENDANT SENECA SPECIALTY INS.
18 CO.:

19 JOHN S. WILKERSON, ESQUIRE
20 Turner Padget Graham & Laney
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22 P.O. Box 22129
23 Charleston, South Carolina 29413
24 Jwilkerson@turnerpadget.com

25 REPRESENTING THE DEFENDANT BRINSON AGENCY AND JOHN
BRINSON:

ANDREW W. COUNTRYMAN, ESQUIRE
Countryman Law Firm
321 Wingo Way, Suite 102
Mt. Pleasant, South Carolina 29464
Awc@countrymanlawfirm.com

ALSO PRESENT: DAVID BOUCHELLE

1 A. My understanding of the conversation was
2 that is what he was performing.

3 Q. Do you have anything in writing at
4 all --

5 A. No.

6 Q. -- with regards to him requesting that
7 he be insured for trim carpentry, that that's the
8 service that his company provided?

9 A. No.

10 Q. What is your procedure when renewals
11 come up?

12 A. Our procedure is to send a note -- or a
13 letter to the insured, informing them that the
14 policy is expiring, and, if they would like to
15 continue coverage, to contact our office.

16 Q. And is this what you did for Bouchelle
17 Incorporated?

18 A. Yes.

19 Q. Why weren't those letters produced?

20 A. I don't understand.

21 Q. Do you have a file on Bouchelle
22 Incorporated at your office?

23 A. Yes.

24 Q. Did you produce copies of that file to
25 your attorney?

1 A. What we had in there, I did.

2 Q. All right. And was the renewal letters
3 part of that file?

4 A. No. It's just a standard letter we send
5 to everybody.

6 Q. Who else has worked on the Bouchelle
7 Incorporated file for the years that he's been
8 with The Brinson Agency?

9 A. No one.

10 Q. Janice hasn't worked -- Janet -- wait a
11 minute. Sorry. Janet hasn't worked on the file?

12 A. When you say "worked," I don't
13 understand what you mean by "worked on the file."

14 Q. Um, well, you have a staff. So I want
15 to know, do other people help obtain renewals?

16 A. Well, they would send out the letters.
17 If that's what you mean, yeah. Janet would send
18 out a letter or Rebecca would send out a letter,
19 letting them know that the policy was expiring.

20 Q. At the time that you said Mr. Bouchelle
21 requested in 2015 that he be insured -- the
22 company be insured for building maintenance, did
23 he give you a reason why?

24 A. Because he told me what -- he had
25 changed his operations and what he was doing now

1 was maintaining commercial buildings.

2 Q. For the year 2015, did there come a time
3 when you became aware that a claim was going to be
4 filed by Bouchelle Incorporated?

5 A. Yeah. I guess after that building fell
6 down.

7 Q. How did you find out about it?

8 A. Mr. Bouchelle called me.

9 Q. Did he come in?

10 A. No.

11 Q. And can you recall what the conversation
12 was about?

13 A. Yeah. He had called and asked me to put
14 in a claim.

15 Q. And did you?

16 A. Yes.

17 Q. Where is that claim? Do you have that
18 claim in writing?

19 A. I would imagine I can find it.

20 Q. Did you produce it already to your
21 attorney?

22 A. No.

23 Q. Who did you file the claim -- who did
24 you send the claim to?

25 A. TAPCO.

1 Q. And what was the result of the claim?

2 A. I believe they sent it to Canopus.

3 Q. And was the claim denied?

4 A. I believe so.

5 Q. And do you know why it was denied?

6 A. Yes. Because the claim was for doing
7 general contracting work, which Mr. Bouchelle was
8 not insured for.

9 Q. Tell me how you earn your commission.

10 A. I get commissions from the insurance
11 companies.

12 Q. I'm not that familiar with insurance, so
13 bear with me.

14 A. Sure.

15 Q. So you have a company you obtain general
16 liability insurance for?

17 A. Right.

18 Q. Does the company then give you a check
19 for a premium?

20 A. Which company?

21 Q. Bouchelle Incorporated.

22 A. Oh, yeah. They would give me a check,
23 right, which I forward to the insurance carrier.

24 Q. Was it a year's worth of premium?

25 A. It depends on the -- it depends on the

1 company. Some do that, others don't. A lot of
2 companies will finance the premium through a
3 finance company.

4 Q. So you would receive the check from
5 Bouchelle Incorporated, and you would send it to
6 Canopus?

7 A. I'd send it to TAPCO.

8 Q. Once TAPCO has the check, then what
9 happens?

10 A. I believe that they -- I believe that
11 they pay Canopus.

12 Q. And when do you -- so with regards to
13 Bouchelle Incorporated, how do you earn your
14 commission? How do you get paid?

15 A. I get paid from TAPCO.

16 Q. So the checks -- on the checks, it's
17 written "Canopus" or "TAPCO"?

18 A. "TAPCO."

19 Q. And what is their business relationship
20 with Canopus? I think we've already --

21 A. They're a general agency -- they're a
22 master general agent.

23 Q. Do you receive -- does The Brinson
24 Agency receive any communication or money from
25 Canopus directly?

1 A. No.

2 Q. Under the insurance laws of the state,
3 do you have a duty to audit a company's records,
4 say Bouchelle Incorporated?

5 MR. COUNTRYMAN: Object to the form.

6 A. No.

7 Q. Do you have any duty to make sure that
8 the insurance coverage is adequate?

9 A. No.

10 Q. Now, Mr. Bouchelle has testified that --
11 there was signature pages of application, and Mr.
12 Bouchelle testified that they were not his
13 signature. Can you tell me who signed on his
14 behalf?

15 A. Probably me.

16 Q. Do you recall if he did so throughout
17 the years or --

18 A. Sure.

19 Q. Tell me about certificates of insurance.

20 A. Ma'am?

21 Q. Can you tell me just -- define for me
22 what a certificate of insurance is.

23 A. A certificate of insurance is a document
24 that we would provide to a third party, stating
25 that the -- the insured had insurance through our

1 agency.

2 Q. When would a certificate of insurance be
3 requested by Bouchelle Incorporated?

4 A. They would not request it.

5 Q. Why?

6 A. Because we would not provide it to them.

7 Q. You would not provide a certificate of
8 insurance to Bouchelle Incorporated?

9 A. We would provide a certificate of
10 insurance for Bouchelle Incorporated. However, we
11 would not provide a certificate of insurance to
12 Bouchelle Incorporated.

13 Q. See, I don't know -- just tell me what
14 you mean by that.

15 A. If somebody that Bouchelle Incorporated
16 is doing work for calls us and asks us for a
17 certificate, we will provide them a certificate.
18 We never provide certificates to the insured. The
19 reason being, is in the past, we've had insureds
20 take certificates and use them for years, whitening
21 everything out and saying, Hey, I've got
22 insurance.

23 So we just don't do that. That's not
24 something we do in my office.

25 Q. Do you recollect how many certificates

1 of insurance you have issued -- or you have
2 provided to third parties on behalf of Bouchelle
3 Incorporated?

4 A. Off the top of my head, I'm going to say
5 five, maybe ten.

6 Q. Now, does your company actually issue
7 the certificate of insurance?

8 A. Yes.

9 Q. And what is the -- what does a
10 certificate of insurance do? What is its purpose?

11 A. The purpose of the certificate of
12 insurance is to let the other party know that
13 presently that entity has insurance coverage.

14 Q. Is a third party listed on the
15 certificate of insurance?

16 A. Not always.

17 Q. Are they -- well, are they sometimes
18 listed as additional insureds?

19 A. Yes.

20 Q. What is the difference between listing
21 them and not listing them?

22 A. Well, as an additional insured, they are
23 provided certain coverages under that policy.

24 Q. What is your understanding of the
25 certain coverages?

1 RE-EXAMINATION

2 BY MS. DEJONG:

3 Q. I have one. You had testified earlier
4 that TAPCO pays your commission, correct?

5 A. Yes.

6 Q. And that -- how is the commission rate
7 determined? Who sets it?

8 A. TAPCO.

9 Q. So I'm going to show you Exhibit 2,
10 Canopus US 00240. And if you could just read the
11 first two sentences of that paragraph.

12 A. Number 18?

13 Q. Yeah.

14 A. "TAPCO is compensated on a commission
15 basis by the insurance companies it represents.
16 The commission rate is set by the companies, not
17 by TAPCO. TAPCO also receives fees, bonus
18 commissions and profit" from contingent
19 commissions. "Payment of profit (contingent)
20 commissions depends on a combination of growth,
21 profitability (loss ratio), volume retention..."

22 THE COURT REPORTER: I'm sorry?

23 Q. That's enough.

24 A. I wanted to make sure I gave you
25 everything you wanted.

1 Q. So reading this, it says that it would
2 be Canopus that sets the commission and pays the
3 commission?

4 A. Yes.

5 MR. DWORJANYN: I object to the form of
6 the question. It says what it says. The
7 document speaks for itself.

8 BY MS. DEJONG:

9 Q. You said several times, though, you're
10 the agent for the carrier. Now you're the agent
11 for Bouchelle Incorporated; isn't that a conflict?

12 A. No.

13 Q. Why isn't it a conflict?

14 A. I have direct contracts with a lot of
15 carriers, and I am an agent -- like Travelers, um,
16 Liberty Mutual, Safeco, Progressive. I have all
17 direct contracts with those people. I am the
18 contracted agent for those companies.

19 Q. Do you have a duty to disclose to a
20 possible insured that you do represent the
21 carrier, plus the insured?

22 MR. COUNTRYMAN: Object to the form.

23 A. Well, sure.

24 Q. Did you disclose that to Mr. Bouchelle?

25 A. Sure.

1 Q. Where is your proof?

2 MR. COUNTRYMAN: Object to the form.

3 Argumentative.

4 A. What type of proof?

5 Q. Do you have anything in writing?

6 A. No.

7 MS. DEJONG: I'm good. Thank you.

8 MR. COUNTRYMAN: I'm sorry. I have a
9 couple more follow-ups.

10 RE-EXAMINATION

11 BY MR. COUNTRYMAN:

12 Q. Mr. Brinson, is my understanding correct
13 that you, as the insurance agent who procures
14 coverage, have nothing to do with coverage
15 decisions that any carrier might make?

16 A. That's correct.

17 Q. So in this situation, did you have
18 anything to do with Canopus or Seneca refusing
19 coverage of Mr. Bouchelle's claim?

20 A. No.

21 Q. Did you have any contract with Mr.
22 Bouchelle or his company?

23 A. No.

24 Q. Is it true that the contract in this
25 case is between Mr. Bouchelle's company and the

1 insurance provider?

2 A. Yes.

3 Q. And you, as the insurance agent, helped
4 Mr. Bouchelle and his company procure that
5 coverage?

6 A. Yes.

7 Q. There was no contract between you and
8 Mr. Bouchelle's company?

9 A. Yes.

10 Q. What I said is correct?

11 A. Yes.

12 MR. COUNTRYMAN: That's all I have.

13 MR. DWORJANYN: I've got just --

14 RE-EXAMINATION

15 BY MR. DWORJANYN:

16 Q. Lawyers always say they have a couple of
17 follow-ups, and it's usually not a couple.

18 A. I know.

19 Q. I think it will only be a couple. When
20 Ms. DeJong was just asking you questions, you said
21 that you had contracts with -- directly with
22 certain insurance companies?

23 A. Yes.

24 Q. Like Travelers?

25 A. Yes.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED

Plaintiff,

vs.

CANOPIUS US INSURANCE, INC., SENECA
SPECIALTY INS. CO., THE BRINSON
AGENCY, and JOHN BRINSON,

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4984

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

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E-mail: karen@dejonglawfirm.com Other:

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Address:

Countryman Law Firm

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Mount Pleasant, SC 29464

Phone: 843-253-4477 Fax 844-644-3165

E-mail: awc@countrymanlawfirm.com Other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**

☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Summary Judgment

Estimated Time Needed: 30 min 15 min Court Reporter Needed: ☒ YES ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order:

Signature of Attorney for ☐ Plaintiff ☒ Defendant

2/14/18
Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

BOUCHELLE INCORPORATED,

Plaintiff,

vs.

CANOPIUS US INSURANCE, INC., SENECA
SPECIALTY INS. CO., THE BRINSON AGENCY,
AND JOHN BRINSON,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.:2016-CP-10-4984

**PLAINTIFF'S OPPOSITION TO DEFENDANTS
THE BRINSON AGENCY AND JOHN BRINSON'S
MOTION FOR SUMMARY JUDGMENT**

FILED
2018 MAY 21 PM 1:17
CLERK OF COURT

The Plaintiff, Bouchelle Incorporated, ("Plaintiff"), by and through its' undersigned counsel, opposes Defendants, The Brinson Agency and John Brinson, ("Defendants"), a Motion for Summary Judgment as follows:

1. Summary judgment shall be denied where there exists genuine issues of material facts. In determining whether any triable issues of fact exist, the evidence and all inferences that reasonably can be drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Belton v. Cincinnati Ins. Co., 360 S.C. 575, 578, 602 S.E.2d 389, 391 (2004).
2. In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-S. Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).
3. **Defendants' Motion for Summary Judgment should be denied. There exists genuine issues of material facts and a scintilla of evidence exists to sustain Plaintiff's breach of contract claims as follows:**

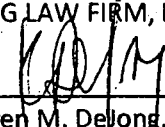
- a. **THE PARTIES DISAGREE UPON THE MATERIAL FACTS OF THIS CASE.** In their Motion for Summary Judgment, Defendants argue that Plaintiff knew he was purchasing general liability coverage for carpentry services from Defendants instead of general liability coverage for his business as a commercial contractor.
- b. In Plaintiff's Complaint and at Plaintiff's deposition, Plaintiff testified that the insurance applications, provided by Defendants, did not have his signatures upon the applications for insurance that set forth his company's classification as carpentry services, that Defendants knew Plaintiff was a general contractor, that Defendants made a mistake when they obtained carpentry insurance coverage for Plaintiff and that Plaintiff did not know that Defendants had obtained the incorrect insurance coverage until after the incident that occurred in July, 2015 when Plaintiff was denied coverage because Plaintiff was insured for carpentry services and not for commercial general contracting services. See Deposition Transcript of David Glenn Bouchelle dated November 29, 2017, p. 91, ln. 8 – p. 92, ln. 25 attached hereto as **Exhibit A.**
- c. More importantly, Defendant Brinson testified at his deposition that he, and not Plaintiff, signed the Plaintiff's name to the insurance renewal applications for carpentry services and sent this document to the insurance company for coverage. Defendant Brinson testified that he had Plaintiff's permission, which he obtained over the phone, to sign Plaintiff's name to the applications, but also admitted that he did not have any written permission from Plaintiff. See Deposition Transcript of John Stafford Brinson dated January 12, 2018, p. 58, ln. 7- p. 59, ln 17 attached hereto as **Exhibit B.**

4. There exists genuine issues as to material fact, namely: as to whether or not Defendants can prove that they had Plaintiff's permission to sign Plaintiff's name to the 2014-2015 insurance renewal application and whether or not Defendants can prove that they obtained carpentry service coverage for the 2014-2015 insurance term, with the Plaintiff's consent.
5. Once Defendant Brinson filled out and signed Plaintiff's name to the insurance renewal application for carpentry service insurance for the years 2014 to 2015, and sent the insurance renewal application to the insurance company for an insurance policy on behalf of Plaintiff, Defendant Brinson became a party to the formation of the insurance contract and its' terms. Therefore, Plaintiff's breach of contract allegations against Defendants is a valid cause of action.

WHEREFORE, Defendants' Motion for Summary Judgment should be denied.

Dated: May 21, 2018
Mount Pleasant, SC

DEJONG LAW FIRM, LLC

By: 

Karen M. DeJong, Esq.
272 West Coleman Blvd., Ste. 200
Mount Pleasant, SC 29464
Attorney for Plaintiff

I hereby certify that the pleadings have been
Sent to all counsel via email on May 21, 2018 and
Hand-delivery on May 21, 2018.

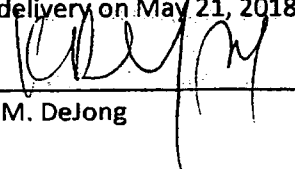

Karen M. DeJong

EXHIBIT A

1 Q. And that was after --

2 A. I gave him a check on the 17th of July
3 and I think it was \$35,900 because he kept saying
4 that he didn't have the money to get Coastal
5 Concrete to pay them to get started. I said, well,
6 here's you a check. Write them a check and get
7 them started.

8 Q. Okay. So this all happened after the
9 damage --

10 A. Three days after.

11 Q. -- to the building? And you paid the
12 36,000 with the intent that Charleston Wrecking was
13 going to use it to pay Coastal Concrete to start
14 fixing the damage that Charleston Wrecking caused?

15 A. Correct, and that was after meeting
16 with Charleston Wrecking and Coastal Concrete on
17 the job site.

18 Q. Okay.

19 A. Yes, sir.

20 Q. Did you say when you initially talked
21 about this that Charleston Wrecking just took that
22 money?

23 A. Yeah. They never paid Coastal Concrete
24 a dime.

25 Q. Okay. Do you know what they did with

1 the money?

2 A. I have no idea. We're trying to figure
3 that out.

4 Q. Okay. I just wanted to make sure I
5 understood that sequence of events because that was
6 news to me.

7 A. You're correct, Andy.

8 Q. Tell me about the conversation you had
9 with The Brinson Agency after this claim arose and
10 you learned in some form or fashion that there was
11 an issue with the classification of your policy.

12 A. What I remember is I called John and
13 said, why -- I told him that we were denied or
14 something. I can't remember, but it was something
15 like we were denied. He said he was going to call
16 them and find out what's going on. That's what I
17 recollect.

18 He got back with me and said, they
19 said your classification is as a carpenter. I was
20 like -- and I was -- at that point in time you've
21 got to understand that the amount of damage done to
22 that building was a lot.

23 I probably lost my temper and said,
24 well, why? Why is that? Why am I classified like
25 that? What's going on here?

1 Q. What did he tell you?

2 A. I don't remember the whole
3 conversation. It was on the phone.

4 Q. I mean, that's a pretty important part
5 of it. You don't remember what he said as to why
6 it was carpentry coverage?

7 A. He said, you know, I thought you was a
8 carpenter. John, come on, man. You know, I'm a
9 general contractor. You know, that just really got
10 my goat.

11 Then I said, well, my insurance is
12 supposed to be general contractor. You know, he
13 was -- said, well I'm going to work on it or
14 something like that. I mean, I don't remember it
15 verbatim or word for word, Andy.

16 Q. Did he ever say anything to the effect
17 of you knew you were applying for carpentry
18 coverage --

19 A. Huh-uh.

20 Q. -- and not general contracting
21 coverage?

22 A. No.

23 Q. He did not?

24 A. Not that I recollect of the
25 conversation, no.

1 Q. Am I correct there were two phone
2 conversations that y'all had, one where you called
3 him and the second one he got back with you?

4 A. I'm pretty sure that after he called --
5 I think he called -- I think he was going to call
6 Blair.

7 Q. All right.

8 A. I'm not sure.

9 Q. You didn't record any of these?

10 A. No. That's been -- so that would be
11 '15, '16, '17. That's two years ago. I can't
12 remember.

13 Q. Okay. You didn't record any of those
14 conversations?

15 A. No.

16 Q. Okay. Was there any conversation via
17 e-mail or anything else about those issues with
18 Mr. Brinson?

19 A. I don't know. I can't remember. It's
20 two years ago.

21 Q. All right. As we sit here today you
22 would agree with me that -- while it may have come
23 as a surprise to you according to the lawsuit you
24 would agree with me that Bouchelle, Inc. paid for
25 and purchased and was provided CGL coverage.

EXHIBIT B

1 A. Uh-huh.

2 Q. But if something is in the file that
3 says otherwise, that would be something that you
4 could talk about and it might spark your memory?

5 Never mind. I'll withdraw that
6 question.

7 Tell me about -- I want to ask you more
8 about the process by which you would submit
9 applications and the process by which you did that
10 for Mr. Bouchelle. Is my understanding correct,
11 that in 2005 or 2006, when you initially applied
12 for coverage on his behalf, was that following a
13 phone call with him?

14 A. Yes.

15 Q. Did you submit an application that you
16 signed for Mr. Bouchelle at that point?

17 A. Yes.

18 Q. And that would have gone to TAPCO?

19 A. Yes.

20 Q. And did you have Mr. Bouchelle's
21 permission to sign his name for you (sic)?

22 A. Yes.

23 Q. Or to sign his name for him?

24 A. Yes, he gave me permission.

25 Q. How would he have done that?

1 A. Over the phone.

2 Q. Do you recall that specifically?

3 A. Yeah.

4 Q. Tell me what was said.

5 A. What was said, I asked David to come in
6 to my office to sign the paper, and he told me,
7 John, I'm really, really busy. I can't get in,
8 but I really do need the coverage.

9 I said, Well, all right. David, are you
10 giving me permission to sign this application for
11 you? And he said, Yes, I am.

12 Q. Is that a common practice that you --

13 A. Yes.

14 Q. -- undergo? It is? Okay. Do you ever
15 get permission in writing from your clients to
16 sign their name?

17 A. No.

18 Q. But is it fair to say that every time
19 you would sign or have someone in your office sign
20 for a client, that you would have that client's
21 expressed permission?

22 A. Yes.

23 Q. And did you, with respect to Mr.
24 Bouchelle?

25 A. Yes.

1 Q. Do you recall any other conversations --
2 I'll withdraw that.

3 So the conversation that you just
4 referenced, was that with respect to the first
5 policy you procured for Mr. Bouchelle?

6 A. Yes.

7 Q. And it looks like, if you glance at the
8 file, there may have been other instances where
9 someone at the office signed for Mr. Bouchelle?

10 A. Sure.

11 Q. For renewals?

12 A. Right.

13 Q. And that would be a common practice?

14 A. Yes.

15 Q. With respect to those renewals, would
16 you have had a similar conversation with Mr.
17 Bouchelle about getting the application or renewal
18 application executed?

19 A. Yes.

20 Q. And tell me about that. Would you
21 indicate that you were going to sign for him or
22 ask him to come in and sign?

23 A. Sure. We certainly would do that: Do
24 you want me to sign this for you, or do you want
25 to stop in?

1 Q. And you let that be the client's
2 decision?

3 A. Absolutely.

4 Q. And is that what happened here with
5 respect to every time you procured coverage for
6 Mr. Bouchelle's company, where his signature is
7 not on the application?

8 A. Yes.

9 Q. Is that a typical practice in the
10 insurance business, to your knowledge?

11 A. Yes.

12 Q. Does your company ever deal with
13 anything like DocuSign or anything like that?

14 A. On occasion.

15 Q. But you didn't with Mr. Bouchelle?

16 A. It's not available through TAPCO.

17 Q. So is it fair to say that Mr. Bouchelle,
18 from 2005 through 2015, knew that he had procured
19 -- or knew that he had carpentry coverage?

20 A. Yes.

21 Q. And he knew that there was not general
22 contracting coverage?

23 A. Yes.

24 Q. And that was something that you two had
25 discussed?

STATE OF SOUTH CAROLINA)

THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

DOCKET NO. 2016-CP-10-4984

BOUCHELLE INCORPORATED)

Plaintiff)

vs.)

THE BRINSON AGENCY and JOHN)
BRINSON)

Defendants)

TRANSCRIPT OF RECORD

June 18, 2018
Charleston, South Carolina

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

KAREN M. DEJONG, ESQ.
Attorney for the Plaintiff

ANDREW W. COUNTRYMAN, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Circuit Court Reporter

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No exhibits were introduced

Bouchelle Incorporated v The Brinson Agency, John Brinson
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PROCEEDINGS

THE COURT: Bouchelle Incorporated versus Canopus Insurance, et al and Brinson.

MR. COUNTRYMAN: Good morning, Your Honor.

THE COURT: Good morning. How are you?

MR. COUNTRYMAN: Doing well.

THE COURT: Good. If y'all could just state your names and the parties you represent before we get started. That would help the court reporter.

MR. COUNTRYMAN: My name is Andy Countryman and I represent the defendants John Brinson and the Brinson Agency.

MS. DEJONG: Karen DeJong, I'm the attorney for the plaintiff, Bouchelle Incorporated.

THE COURT: All right, thank y'all. Mr. Countryman, this is your motion for summary judgment is that correct?

MR. COUNTRYMAN: Yes it is, Your Honor.

THE COURT: All right. I have reviewed the memoranda and exhibits that you submitted through the court but I'm happy to hear from you at this point in time.

MR. COUNTRYMAN: May it please the court, Your Honor?

THE COURT: Yes.

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1 MR. COUNTRYMAN: Again my name is Andy Countryman.
2 I represent two defendants that are the only two
3 defendants remaining in this case; Johnson Brinson and
4 Brinson Agency. Mr. Brinson is an insurance agent who
5 operates his own agency out on Folly Road on James
6 Island. Mr. Brinson sold policies to cover the
7 plaintiff. Those policies were actually offered by the
8 defendant carrier who is no longer in the case; Canopus.
9 The plaintiff is a general contractor. Since 2008
10 plaintiff purchased insurance policies covering his
11 business from Mr. Brinson. Those policies covered
12 plaintiff for carpentry services. Carpentry services
13 policies are less expensive than general contractor
14 policies. It looks to me like Mr. Bouchelle was taking a
15 risk in purchasing cheaper policies. He did this for at
16 least six years.
17 In 2015 plaintiff was operating as a general
18 contractor on a project in North Charleston. An issue
19 happened where a subcontractor knocked over a wall on an
20 adjacent building. Plaintiff made a claim on his policy.
21 That claim was denied by the carrier because the carrier
22 said plaintiff you are operating as a general contractor;
23 your policy covers you for carpentry services only
24 therefore we're not paying. His claim has proceeded
25 through litigation. The insurance carrier defendants

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1 have been dismissed. Plaintiff brought a cause of action
2 against all defendants for breach of contract and bad
3 faith. Again, the insurance carrier defendants were
4 dismissed. Judge Nicholson decided that as a matter of
5 law those carriers didn't have a duty to cover this claim
6 because the policy clearly stated that it was covering
7 carpentry services only and Bouchelle was acting as a
8 general contractor at the time.

9 Mr. Brinson operates his insurance agency and again
10 sold these policies to the plaintiff for six years. Now
11 all of a sudden when this claim arose the plaintiff said
12 I had no idea that I wasn't being covered for general
13 contractor services.

14 Well, if you read the briefing Your Honor you will
15 see that there are some primary grounds that as a matter
16 of law the plaintiff's claim against the defendant's
17 insurance agents and insurance agency failed. The claims
18 fail primarily because an insurance agent cannot be
19 liable for bad faith breach of contract in the state of
20 South Carolina to an insured. That is a cause of action
21 only eligible for insured versus insurers.

22 Judge Nicholson's order determined as a matter of
23 law that Mr. Brinson and his agency were acting as the
24 agent of the insured for purposes of procuring this
25 contract, which means as a matter of law Your Honor there

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1 was no contract between the insurance provider and my
2 client, Mr. Brinson. The only contract at issue was
3 between the insurer, Canopus and the insured who is the
4 plaintiff therefore there can as a matter of law be no
5 breach of contract claim that can stand between the
6 plaintiff here and the insurance agent.

7 And as I researched this issue in preparation for
8 this hearing I found some interesting case law because I
9 thought gosh, it doesn't seem fair that someone could get
10 the same policy for six years in a row and then turn
11 around and claim I didn't know what the policy said. I
12 shouldn't be responsible for having to pay these damages
13 to the subcontractor.

14 Well, my inclination was right. There is specific
15 case law that deals with this exact situation. In the
16 Dow case which is discussed in my brief and I have an
17 extra copy for Your Honor if you would prefer to read it.
18 It deals with essentially a similar insurance situation
19 where an insured claimed 18 months after she received a
20 policy and a claim was denied that she didn't know what
21 was in the policy and she shouldn't be responsible.

22 The insurance carrier should have to pay. Well, the
23 court said no that's not the case. When you get a
24 contract unless there is some reason you shouldn't be
25 expected to understand the contents of a policy or a

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1 contract you're bound by it. That's what happened here.
2 This plaintiff Mr. Bouchelle I took his deposition. He's
3 a college-educated gentleman, extremely nice; he can
4 read. He got these policies every year, year after year.
5 And I asked him did you read the policies. No, I never
6 read them. I'm sorry that he didn't read the policies
7 but each one said that he is being insured for carpentry
8 coverage not general contractor. The law says he cannot
9 after this issue arises six years later come back and
10 make a claim against the person who offered him the
11 contract who was his insurance agent.

12 Plaintiff brings up in her brief a few quote unquote
13 issues of fact that are not really of concern for this
14 motion and I'll explain why. There was some discussion
15 in discovery as to Mr. Brinson's applying on behalf of
16 the plaintiff for these insurance policies. And
17 basically the way it worked was the first time they met
18 they filled out paperwork and then year after year as is
19 kind of typical in that business the agent applied for
20 and submitted applications on behalf of the insured.

21 Now there was some issue as to whether Mr. Brinson
22 signed the policy for Mr. Bouchelle or that Mr. Bouchelle
23 gave Mr. Brinson authorization to do that. That doesn't
24 matter because Mr. Bouchelle knew full well that Mr.
25 Brinson was submitting applications for his insurance

Bouchelle Incorporated v The Brinson Agency, John Brinson
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1 policies on a yearly basis because Mr. Bouchelle was
2 receiving the policies on an annual basis. So it really
3 doesn't matter how it conceived for purposes of argument
4 that Brinson didn't have the authority to sign someone's
5 signature. I think he did but it doesn't matter with
6 respect to this argument because the plaintiff knew that
7 was taking place. The plaintiff knew the insurance agent
8 was applying for policies on his behalf and he received
9 policies year after year.

10 So even if you take that issue of fact as true in
11 favor of the plaintiff it doesn't matter and it doesn't
12 change any of the issues of law that are in play with
13 respect to this motion today. It doesn't change the fact
14 that there is no cause of action for breach of contract
15 between an insured and his insurance agent. It doesn't
16 change the fact that as a matter of law one bound by a
17 contract can't come back years after the fact and
18 complain of the contents of that contract.

19 THE COURT: All right. I'm happy to hear from you.

20 MS. DEJONG: Yes, Your Honor. A few of the
21 statements that counsel made is pure speculation. There
22 are genuine issues as to material facts. The primary one
23 is that Mr. Bouchelle thought he was being insured as a
24 general contractor. The accident took place in 2015.
25 Mr. Brinson testified at his deposition that he signed my

Bouchelle Incorporated v The Brinson Agency, John Brinson
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1 client's name to the insurance application for carpentry
2 services. Mr. Bouchelle says he didn't give permission.
3 There is a genuine issue of material fact. Then going to
4 the conclusion of law regarding breach of contract, once
5 Mr. Brinson admitted that he signed that insurance
6 application on behalf of Mr. Bouchelle, my position
7 without his consent, he then became a party to the
8 contract for insurance.

9 This isn't a typical case which Mr. Countryman cited
10 all those cases regarding bad faith breach of contract,
11 agent of the insured isn't liable; this is not the case
12 scenario in this matter.

13 THE COURT: And what changes that is because you
14 are saying because he signed for him.

15 MS. DEJONG: He admitted it ---

16 THE COURT: --- that's the fact that changes and
17 takes this out of all that case law?

18 MS. DEJONG: Exactly, yes.

19 THE COURT: Okay. Do you have case law that
20 supports that?

21 MS. DEJONG: No, I do not. I just figured that
22 because that is such an issue right now as to what really
23 happened that I think we needed to then go to the breach
24 of contract only. I do offer that as an argument.

25 THE COURT: Okay. I didn't mean to interrupt you

Bouchelle Incorporated v The Brinson Agency, John Brinson
Defendant's Motion for Summary Judgment
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1 or stop you or anything. What about the fact that he was
2 insured under this type of policy for six years or so and
3 hadn't read the policy? Do you assign any creditability
4 to that argument?

5 MS. DEJONG: When I -- when Mr. Brinson was deposed
6 I presented this insurance policy to him to review. And
7 I asked him where does it show that it's for carpentry
8 service? And Mr. Brinson had to go through all these
9 pages to find it in small print.

10 But on this page, on the declaration page it says
11 for general liability insurance. So my client Mr.
12 Bouchelle thought it was general liability insurance for
13 my company as a general contractor. He's always been a
14 general contractor. He's never just done carpentry.
15 He's always been licensed with the State.

16 So that Dec page saying general liability coverage
17 Mr. Bouchelle thought that that protected him until the
18 accident and that's when he found out for the first time
19 it's for carpentry. But truly the carpentry I mean I
20 have to dig through it to find where it says only for
21 carpentry services.

22 THE COURT: All right. Anything else?

23 MR. COUNTRYMAN: Just real quickly Your Honor just
24 to address the first issue that counsel raised regarding
25 the application of the policy on behalf of the insured

Bouchelle Incorporated v The Brinson Agency, John Brinson
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1 there was no issue with respect to consent. The
2 plaintiff was well aware and consented to the fact that
3 the agent was submitting applications on the plaintiff's
4 behalf. There was no problem with that. The insured
5 never said you never had authority to enter these
6 applications on my behalf Mr. Agent. That wasn't the
7 issue. The only issue was did the two discuss the agent
8 specifically signing an application for the man. That's
9 the only issue of fact and that has no bearing whatsoever
10 on the issues at play with respect to this motion.

11 It doesn't change the fact that by law there is no
12 contract that existed between these two parties. And
13 that's supported again by Judge Nicholson's order of law
14 in this case that says the agent was the agent for the
15 insured, which means there can't be a contract between
16 them.

17 And again that changes nothing with respect to the
18 fact that regardless of how long this policy is the law
19 says Mr. Bouchelle is availed of its contents. And by
20 not complaining about them once over six years he can't
21 come back now and complain in the form of a lawsuit
22 against the insurance agent who sold him exactly what
23 this plaintiff intended to purchase.

24 THE COURT: What contract do you think existed
25 between these two parties?

Bouchelle Incorporated v The Brinson Agency, John Brinson
Defendant's Motion for Summary Judgment
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1 MS. DEJONG: The insurance -- I want to talk about
2 the 2014 to 2015 insurance policy because the incident
3 happened within that time period. The insurance
4 application was prepared by the insurance agent and was
5 signed by him. And to say that my guy gave consent is
6 exactly opposite of all the testimony we've seen.

7 It says right here [indicates] that Mr. Brinson
8 testified, I attached it to my opposition, that he -- do
9 you ever give permission writing for your client to sign
10 their name? No. So, what I'm saying is that once that
11 insurance application was filled out by Mr. Brinson as
12 the agent and he signed my client's name to it.

13 THE COURT: But what contract? I'm trying -- as to
14 the breach of contract claim I'm trying...

15 MS. DEJONG: The contract or the insurance
16 contract? The application was the beginning of the
17 formation of the contract for insurance.

18 THE COURT: Okay.

19 MS. DEJONG: And that because Mr. Brinson signed my
20 guy's name without his consent for the wrong insurance
21 coverage he should be bound by that document, by that
22 insurance policy. It was his error that caused this
23 problem.

24 THE COURT: All right. I'll go through and read
25 the response a little more carefully and I'll issue an

Bouchelle Incorporated v The Brinson Agency, John Brinson
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1 opinion probably in the next week.

2 MR. COUNTRYMAN: May I make a quick note just for
3 the record ---

4 THE COURT: --- of course ---

5 MR. COUNTRYMAN: --- on the existence of the
6 contract issue ---

7 THE COURT: --- yes.

8 MR. COUNTRYMAN: In order to have a contract
9 between two parties you have to have consideration; each
10 party has to give something. In the context of an
11 insurance agent and an insured there is no consideration
12 given. The money and the evidence shows in this case
13 went from the plaintiff to the insurance carrier. Mr.
14 Brinson, the agent, was not paid from that money. Mr.
15 Brinson is paid later in bulk from the insurance carrier.

16 So it's not as if Mr. Brinson gets any consideration
17 whatsoever for this insurance contract. There is no
18 basis in fact or law or anything in the world that would
19 make Mr. Brinson a party to this insurance contract.
20 There is no contract as a matter of law between this
21 insured and the insurance agent.

22 THE COURT: Okay. Thank y'all so much.

23 MR. COUNTRYMAN: Thank you, Your Honor.

24 THE COURT: Y'all have a great day.

25 *****END OF TRANSCRIPT OF RECORD*****

Bouchelle Incorporated v The Brinson Agency, John Brinson
Defendant's Motion for Summary Judgment
June 18, 2018

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of Common Pleas for Charleston County, South
Carolina on the 18th day of June, 2018.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

August 2, 2018

Joyce C. Rueger, CVR-M
Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Bouchelle Incorporated,

Plaintiff,

vs.

Canopius US Insurance, Inc., Seneca
Specialty Ins. Co., the Brinson Agency and
John Brinson.

Defendants.

IN THE COURT OF COMMON
PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-4984

**ORDER GRANTING MOTION
FOR SUMMARY JUDGMENT OF
DEFENDANTS THE BRINSON
AGENCY AND JOHN BRINSON**

This matter came before me on the Motion of the Defendants the Brinson Agency and John Brinson (collectively "Brinson"), who asked the Court to grant summary judgment as to Plaintiff's claims via Motion filed February 14, 2018. A hearing took place on June 18, 2018, in Charleston, South Carolina. Counsel for Plaintiff and Defendants John Brinson and the Brinson Agency attended and presented oral argument. Upon considering the parties' pleadings and the lawyers' arguments, I grant the Motion for Summary Judgment.

CONCLUSIONS OF FACT

Plaintiff Bouchelle, Inc. ("Bouchelle") is a contracting firm based in North Charleston that has operated as a commercial general contractor for approximately twenty years. John Brinson owns and operates the Brinson Agency, an insurance agency on Folly Road on James Island. From 2008 - 2014, Bouchelle purchased commercial liability insurance from Canopius US Insurance, Inc. ("Canopius") through Brinson,

Bouchelle's insurance agent. Each policy covered Bouchelle for Carpentry artisan services, not general contracting services. Bouchelle received the declarations pages and policies every year but admittedly never read any of them. Each policy showed coverage for carpentry services, not general contracting services.

Such a policy was in effect in July 2015 (effective policy dates August 11, 2014 – August 11- 2015), Canopus policy # OUS009069353. In the Commercial General Liability Coverage Part, Supplemental Declarations, the "Description of Business" is listed as "CARPENTRY." The extension of Supplemental Declarations lists the class description as "CARPENTRY," and the premium was based on that classification. The policy does not list or classify any other type of work.

In July 2015, Bouchelle was serving as general contractor for a project at 7350 Industry Dr. in North Charleston. Bouchelle retained a subcontractor, Charleston Wrecking, Inc. ("Charleston Wrecking"), to perform demolition work at the project. Charleston Wrecking had a commercial liability policy which Seneca Specialty Ins. Co. ("Seneca") issued. On or about July 14, 2015, Charleston Wrecking was performing demolition work at the Project when a portion of the structure being demolished fell and caused damage to a wall of a pre-existing building that was not scheduled to be demolished. Bouchelle made a claim under its Canopus policy for damages. Canopus rejected the claim because (a) the policy did not cover Bouchelle for "general contractor" services, but instead for "carpentry services," and (b) Bouchelle was acting as the general contractor for the Project. Plaintiff also made a claim with Seneca on Charleston Wrecking's policy. Seneca rejected that claim too.

Bouchelle then filed this lawsuit against Canopus, Seneca, Mr. Brinson and the Brinson Agency. Judge Lee granted Seneca's Motion for Judgment on the Pleadings via an Order entered January 9, 2018. Judge Nicholson granted Canopus' Motion for Summary Judgment via Order entered March 19, 2018, thus leaving Ms. Brinson and the Brinson Agency (collectively "Brinson") as the only remaining Defendants in the case.

The Complaint contains four causes of action: (1) Breach of Contract against "Defendants;" (2) Declaratory Judgment; (3) Statutory Attorney's Fees under S.C. Code § 38-59-40 and (4) Breach of Contract, the only cause of action specifically alleged against Brinson. This first cause of action is for bad faith breach of contract against the insurance carrier Defendants, Canopus and Seneca. The Declaratory Judgment claim is not a claim for damages against Brinson, who is an insurance agent/agency, not an insurer. This cause of action is a request for a ruling from the Court that the claim at issue is covered by the subject policy/policies. The Orders on Canopus' Motion for Summary Judgment and Seneca's Motion for Judgment on the Pleadings dispose of the first Breach of Contract cause of action (against the insurance carrier Defendants) and the Declaratory Judgment claim. These Orders establish that the subject policies do not provide coverage for Bouchelle's loss as claimed and that Canopus and Seneca are not liable to Bouchelle for Bad Faith Breach of Contract. This leaves Bouchelle's Breach of Contract cause of action (specifically against Brinson) and claim for attorney's fees under S.C. Code § 38-59-40 as the only remaining causes of action.

RULINGS OF LAW

1. As a Matter of Law, Bouchelle's Breach of Contract Claim Against Bouchelle Fails.

The elements of a Breach of Contract cause of action are: (a) a binding contract entered into by the parties; (b) breach or unjustified failure to perform the contract; and (c) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). "Generally, any claim or suit by a party to an insurance contract must be based on the terms of the policy as issued." Carolina Bank & Trust Co. v. St. Paul Fire & Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) *citing* Home Indemn. Co. v. Harleyseville Mut. Ins. Co., 252 S.C. 452, 166 S.E.2d 819 (1960).

The contract at issue is the insurance policy Canopius issued to Bouchelle. According to the contract document (the policy), the only parties to it are Canopius and Bouchelle, Inc. Brinson, an insurance agent, is not a party to the insurance contract. An insurance agent is not a party to an insurance contract, and no contractual duties extend to a person (insurance agent) who is not a party to the contract. Carter v. Amer. Mut. Fire Ins. Co., 279 S.C. 368, 307 S.E.2d 227 (1983) and Nichols v. State Farm Mut. Auto Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983). There is no evidence Brinson did anything other than act in his capacity as Bouchelle's insurance agent. As a matter of law, Brinson is not a party to the contract for insurance between Bouchelle and Canopius.

Bouchelle also alleges there was a contract between Bouchelle and Brinson whereby Brinson agreed to sell it general contracting coverage. Bouchelle alleges Brinson knew Bouchelle was operating as a general contractor and intended to obtain general

contracting coverage. Bouchelle says Brinson breached the contract by failing to obtain insurance coverage under the correct classification, which led to Canopi's denial of Bouchelle's claim.

An insurance agent has no duty to advise an insured at the point of application absent an express or implied undertaking to do so. Gordon v. Fid. & Cas. Co. of N.Y., 238 S.C. 438, 120 S.E.2d 509 (1961) (no relationship of trust and confidence exists between the insurance applicant and the insurance agent). Brinson, as Bouchelle's agent, procured coverage for Bouchelle as an independent contractor for TAPCO, an MGA (managing general agent). Bouchelle submitted its premiums to Brinson, who passed them along to TAPCO. The record is devoid of any evidence that a separate contract existed between Bouchelle and Brinson. The record is also devoid of evidence of special trust and confidence between Brinson and Bouchelle.

Further, in order to have a binding contract between two parties, there must be the exchange of valuable consideration. Connor v. Renneker, 25 S.C. 514 (1886); *see also* Hunter v. Mills, 29 S.C. 72, 6 S.E. 907 (1888). Valuable consideration for a contract may consist of some forbearance given or detriment suffered. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). The only exchange of value with respect to Bouchelle's purchase of insurance coverage, was the payment of the subject insurance premium(s). These went to the insurance carrier. There is no evidence that Bouchelle gave anything of value to Brinson that could constitute consideration necessary to show the existence of some separate contract between Bouchelle and Brinson. As a matter of

law, no contract existed between Bouchelle and Brinson that could serve as a basis for a breach of contract claim.

Finally, one cannot complain of fraud in the misrepresentation of contents of a written instrument in his possession when the truth could have been ascertained by reading the instrument. Reid v. George Washington Life Ins. Co., 234 S.C. 599, 109 S.E.2d 577 (599). One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning. Id. In a case with facts similar to this one, the South Carolina Supreme Court dismissed an insured's claims against an insurance carrier for allegedly selling the wrong coverage where the "plaintiff has 18 months to inform himself as to the terms, conditions and exclusions of the written contract to which he was a party. He made no effort to do so, and never read the contract." Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 233 S.E.2d 111 (1977).

Here, Bouchelle applied for and obtained general liability coverage for carpentry services through Brinson as the insurance agent from 2008 – 2014, including the Canopus policy that was in effect in July 2015. Bouchelle received the policies, including the declarations pages, which all listed the classification of coverage as being for carpentry services, not general contracting. This specifically includes the policy in effect in 2015. Bouchelle is an experienced contractor, and its corporate representative, David Bouchelle, is a college-educated gentleman who had the ability to read and comprehend the basis terms of the subject insurance policy. Despite receiving the policies, Bouchelle failed to read any of them over the years or notify Brinson that something was wrong with

the coverage. The law precludes Bouchelle from now making a claim against Brinson, the insurance agent, based on the alleged failure to procure the proper policy.

As a matter of law, Bouchelle's claim for breach of contract against Brinson fails.

2. Bouchelle Cannot Recover Attorney's Fees Against Brinson Under S.C. Code § 38-59-40.

Bouchelle's remaining cause of action, which refers to "the Defendants," is a claim for attorney's fees under S.C. Code § 38-59-40. This Code section provides for liability of an insurer for attorney's fees when the insurer in bad faith refuses to pay a claim. Via the prior Orders entered in this case, Bouchelle's claims for bad faith against the insurance carrier Defendants fail and have been dismissed. Without a claim for bad faith refusal to pay insurance benefits, there can be no claim for attorney's fees under S.C. Code § 38-59-40. Further, the Complaint does not allege Brinson is an insurer. It clearly is not, as Brinson is merely the insurance agent through which Bouchelle purchased the subject policy. Therefore, Brinson cannot be liable for bad faith refusal to pay insurance benefits or for attorney's fees under S.C. Code § 38-59-40. As a matter of law, this claim against Brinson fails as well.

CONCLUSION

Bouchelle's claims against Brinson fail as a matter of law. Therefore, I hereby GRANT Brinson's Motion for Summary Judgment, that ending this case in total.

IT IS SO ORDERED.

_____, 2018

Hon. Jennifer B. McCoy

_____, South Carolina

At Large Circuit Court

Judge

DeJong Law Firm
222 West Coleman Boulevard
Suite 110
Mount Pleasant, SC 29464

Telephone: (843) 216-6161

Fax: (843) 216-300-1080

June 27, 2018

SENT BY EMAIL AND REGULAR MAIL

Hon. Jennifer McCoy
S.C. Circuit Court, Charleston County
100 Broad Street
Charleston, SC 29401-2265

Re: Bouchelle Incorporated vs. Brinson, et al.
Case No. 2016-CP-10-4984

Dear Judge McCoy:

I am receipt of Mr. Countryman's proposed Order Granting Summary Judgment of the Defendants The Brinson Agency and John Brinson.

I respectfully object to the form of this Order. The Order does not address the first, crucial step of any Motion for Summary Judgment, the Order fails to analyze and rule of the material factual dispute between The Brinson Agency/John Brinson and Bouchelle Incorporated.

Evidence was presented, in writing and at oral argument, that for the year 2015-2016, when the accident arose on a job site, John Brinson, insurance agent for Bouchelle Incorporated, testified that he had Bouchelle Incorporated's permission to sign David Bouchelle's name to the insurance application for carpentry services. David Bouchelle, owner of Bouchelle Incorporated, testified that he did not give permission to John Brinson to sign his name to the insurance application for carpentry service, that Bouchelle Incorporated had always been a general contracting company and that on the face of the insurance policy, the policy stated "for general liability insurance". Based upon those facts as presented by Bouchelle Incorporated, he believed that he had the appropriate insurance for a general contracting company.

I ask that the Court determine and rule on the whether there is a scintilla of evidence that would support the opposing party's argument (Bouchelle Incorporated) and incorporate that ruling into the proposed Order.

Otherwise, I will be filing a Motion for Reconsideration, if the Court believes that this procedure is the appropriate remedy.

Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'K. DeJong', written over the printed name.

Karen M. DeJong

KMD:abc

Cc: Andrew Countryman, Esq.

DEJONG LAW FIRM, LLC
222 West Coleman Blvd., Ste. 110
Mount Pleasant, SC 29464
Tel. No. 843-216-6161
Fax No. 843-216-1119

June 28, 2018

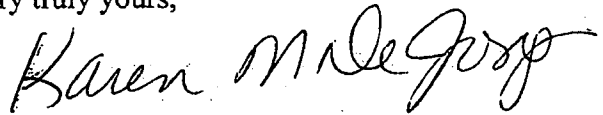
Honorable Julie Armstrong
Charleston County Clerk of Court
100 Broad St., 1st Floor
Charleston, SC 29401

RE: Bouchelle Inc. vs. John Brinson
Case No: 2016-CP-10-4984

Dear Ms. Armstrong:

Enclosed please find one original and one copy of a letter to Judge McCoy. Please file the original and return the date-stamped copy to us in the envelope provided. If you have any questions, please do not hesitate to contact me.

Very truly yours,



Karen M. DeJong

Enclosures
Cc: Andrew Countryman, Esquire

every year but admittedly never read any of them. Each policy showed coverage for carpentry services, not general contracting services.

Such a policy was in effect in July 2015 (effective policy dates August 11, 2014 – August 11, 2015), Canopus policy # OUS009069353. In the Commercial General Liability Coverage Part, Supplemental Declarations, the "Description of Business" is listed as "CARPENTRY." The extension of Supplemental Declarations lists the class description as "CARPENTRY," and the premium was based on that classification. The policy does not list or classify any other type of work.

In July 2015, Bouchelle was serving as general contractor for a project at 7350 Industry Dr. in North Charleston. Bouchelle retained a subcontractor, Charleston Wrecking, Inc. ("Charleston Wrecking"), to perform demolition work at the project. Charleston Wrecking had a commercial liability policy which Seneca Specialty Ins. Co. ("Seneca") issued. On or about July 14, 2015, Charleston Wrecking was performing demolition work at the Project when a portion of the structure being demolished fell and caused damage to a wall of a pre-existing building that was not scheduled to be demolished. Bouchelle made a claim under its Canopus policy for damages. Canopus rejected the claim because (a) the policy did not cover Bouchelle for "general contractor" services, but instead for "carpentry services," and (b) Bouchelle was acting as the general contractor for the Project. Plaintiff also made a claim with Seneca on Charleston Wrecking's policy. Seneca rejected that claim too.

Bouchelle then filed this lawsuit against Canopus, Seneca, Mr. Brinson and the Brinson Agency. Judge Lee granted Seneca's Motion for Judgment on the Pleadings via an Order entered January 9, 2018. Judge Nicholson granted Canopus' Motion for Summary Judgment via Order

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entered March 19, 2018, thus leaving Ms. Brinson and the Brinson Agency (collectively "Brinson") as the only remaining Defendants in the case.

The Complaint contains four causes of action: (1) Breach of Contract against "Defendants;" (2) Declaratory Judgment; (3) Statutory Attorney's Fees under S.C. Code § 38-59-40 and (4) Breach of Contract, the only cause of action specifically alleged against Brinson. This first cause of action is for bad faith breach of contract against the insurance carrier Defendants, Canopus and Seneca. The Declaratory Judgment claim is not a claim for damages against Brinson, who is an insurance agent/agency, not an insurer. This cause of action is a request for a ruling from the Court that the claim at issue is covered by the subject policy/policies. The Orders on Canopus' Motion for Summary Judgment and Seneca's Motion for Judgment on the Pleadings dispose of the first Breach of Contract cause of action (against the insurance carrier Defendants) and the Declaratory Judgment claim. These Orders establish that the subject policies do not provide coverage for Bouchelle's loss as claimed and that Canopus and Seneca are not liable to Bouchelle for Bad Faith Breach of Contract. This leaves Bouchelle's Breach of Contract cause of action (specifically against Brinson) and claim for attorney's fees under S.C. Code § 38-59-40 as the only remaining causes of action.

RULINGS OF LAW

1. As a Matter of Law, Bouchelle's Breach of Contract Claim Against Bouchelle Fails.

The elements of a Breach of Contract cause of action are: (a) a binding contract entered into by the parties; (b) breach or unjustified failure to perform the contract; and (c) damage suffered by the plaintiff as a direct and proximate result of the breach. Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962). "Generally, any claim or suit by a party to an insurance contract

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must be based on the terms of the policy as issued." Carolina Bank & Trust Co. v. St. Paul Fire & Marine Co., 279 S.C. 576, 310 S.E.2d 163 (Ct. App. 1983) citing Home Indemn. Co. v. Harleyseville Mut. Ins. Co., 252 S.C. 452, 166 S.E.2d 819 (1960).

The contract at issue is the insurance policy Canopus issued to Bouchelle. According to the contract document (the policy), the only parties to it are Canopus and Bouchelle, Inc. Brinson, an insurance agent, is not a party to the insurance contract. An insurance agent is not a party to an insurance contract, and no contractual duties extend to a person (insurance agent) who is not a party to the contract. Carter v. Amer. Mut. Fire Ins. Co., 279 S.C. 368, 307 S.E.2d 227 (1983) and Nichols v. State Farm Mut. Auto Ins. Co., 279 S.C. 336, 306 S.E.2d 616 (1983). There is no evidence Brinson did anything other than act in his capacity as Bouchelle's insurance agent. As a matter of law, Brinson is not a party to the contract for insurance between Bouchelle and Canopus.

Bouchelle also alleges there was a contract between Bouchelle and Brinson whereby Brinson agreed to sell it general contracting coverage. Bouchelle alleges Brinson knew Bouchelle was operating as a general contractor and intended to obtain general contracting coverage. Bouchelle says Brinson breached the contract by failing to obtain insurance coverage under the correct classification, which led to Canopus' denial of Bouchelle's claim.

An insurance agent has no duty to advise an insured at the point of application absent an express or implied undertaking to do so. Gordon v. Fid. & Cas. Co. of N.Y., 238 S.C. 438, 120 S.E.2d 509 (1961) (no relationship of trust and confidence exists between the insurance applicant and the insurance agent). Brinson, as Bouchelle's agent, procured coverage for Bouchelle as an independent contractor for TAPCO, an MGA (managing general agent). Bouchelle submitted its premiums to Brinson, who passed them along to TAPCO. The record is devoid of any evidence that

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a separate contract existed between Bouchelle and Brinson. The record is also devoid of evidence of special trust and confidence between Brinson and Bouchelle.

Further, in order to have a binding contract between two parties, there must be the exchange of valuable consideration. Connor v. Renneker, 25 S.C. 514 (1886); *see also* Hunter v. Mills, 29 S.C. 72, 6 S.E. 907 (1888). Valuable consideration for a contract may consist of some forbearance given or detriment suffered. Rickborn v. Liberty Life Ins. Co., 321 S.C. 291, 468 S.E.2d 292 (1996). The only exchange of value with respect to Bouchelle's purchase of insurance coverage, was the payment of the subject insurance premium(s). These went to the insurance carrier. There is no evidence that Bouchelle gave anything of value to Brinson that could constitute consideration necessary to show the existence of some separate contract between Bouchelle and Brinson. As a matter of law, no contract existed between Bouchelle and Brinson that could serve as a basis for a breach of contract claim.

Finally, one cannot complain of fraud in the misrepresentation of contents of a written instrument in his possession when the truth could have been ascertained by reading the instrument. Reid v. George Washington Life Ins. Co., 234 S.C. 599, 109 S.E.2d 577 (599). One entering into a contract should read it and avail himself of every reasonable opportunity to understand its contents and meaning. Id. In a case with facts similar to this one, the South Carolina Supreme Court dismissed an insured's claims against an insurance carrier for allegedly selling the wrong coverage where the "plaintiff has 18 months to inform himself as to the terms, conditions and exclusions of the written contract to which he was a party. He made no effort to do so, and never read the contract." Doub v. Weathersby-Breeland Ins. Agency, 268 S.C. 319, 233 S.E.2d 111 (1977).

JBM/5

Here, Bouchelle applied for and obtained general liability coverage for carpentry services through Brinson as the insurance agent from 2008 – 2014, including the Canopus policy that was in effect in July 2015. Bouchelle received the policies, including the declarations pages, which all listed the classification of coverage as being for carpentry services, not general contracting. This specifically includes the policy in effect in 2015. Bouchelle is an experienced contractor, and its corporate representative, David Bouchelle, is a college-educated gentleman who had the ability to read and comprehend the basis terms of the subject insurance policy. Despite receiving the policies, Bouchelle failed to read any of them over the years or notify Brinson that something was wrong with the coverage. The law precludes Bouchelle from now making a claim against Brinson, the insurance agent, based on the alleged failure to procure the proper policy.

Evidence on record shows that Brinson would submit annual renewal applications for Bouchelle's insurance coverage and that Brinson would sign the applications for David Bouchelle, the company's owner. Mr. Bouchelle maintains he never gave Brinson specific permission to sign Mr. Bouchelle's name for him on the applications. Plaintiff argues this creates a scintilla of fact precluding summary judgment. This is incorrect.

Regardless of whether Mr. Bouchelle gave Brinson specific permission to sign Mr. Bouchelle's name on the applications, Bouchelle knew Brinson was submitting renewal applications on the company's behalf annually. Further, as discussed above, Bouchelle received these policies annually, including one in effect in 2015. Whether Mr. Bouchelle gave Brinson specific permission to sign his name on the applications is not a material fact. Even if the Court accepts as true that Brinson did not have specific permission to sign Mr. Bouchelle's name on the renewal applications, this does nothing to create a basis for a breach of contract claim by Bouchelle against Brinson.

As a matter of law, Bouchelle's claim for breach of contract against Brinson fails.

2. Bouchelle Cannot Recover Attorney's Fees Against Brinson Under S.C. Code § 38-59-40.

Bouchelle's remaining cause of action, which refers to "the Defendants," is a claim for attorney's fees under S.C. Code § 38-59-40. This Code section provides for liability of an insurer for attorney's fees when the insurer in bad faith refuses to pay a claim. Via the prior Orders entered in this case, Bouchelle's claims for bad faith against the insurance carrier Defendants fail and have been dismissed. Without a claim for bad faith refusal to pay insurance benefits, there can be no claim for attorney's fees under S.C. Code § 38-59-40. Further, the Complaint does not allege Brinson is an insurer. It clearly is not, as Brinson is merely the insurance agent through which Bouchelle purchased the subject policy. Therefore, Brinson cannot be liable for bad faith refusal to pay insurance benefits or for attorney's fees under S.C. Code § 38-59-40. As a matter of law, this claim against Brinson fails as well.

CONCLUSION

Bouchelle's claims against Brinson fail as a matter of law. Therefore, I hereby GRANT Brinson's Motion for Summary Judgment, that ending this case in total.

IT IS SO ORDERED.

June 28, 2018
Charleston, South Carolina

J. McCoy
Hon. Jennifer B. McCoy
At Large Circuit Court Judge

JPB 4/17