THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Hon. Larry B. Hyman, Circuit Court Judge

RECEIVED
DEC 31 2018
SC Court of Appeals

Appellate Case No. 2018-000735

Kenneth A. Davis As Personal Representative
Of The Estate of Kenneth Miles Davis ..... Respondent

v.

Cole Austin Dunn and John Richard Smith ..... Appellants

RECORD ON APPEAL

VOLUME 2 OF 3

J. Dwight Hudson, Esquire
SC Bar # 2753
Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
Attorney For: Appellants

Ellis R. Lesemann, Esq.
J. Taylor Powell Esq.
SC Bar # 100211
Lesemann & Associates LLC
418 King Street, Suite 301
Charleston, SC 29403

Attorney For: Respondent

INDEX

VOLUME I (pp.1 - 350)

		OFFICIAL RECORD PAGE NOS - ***BOTTOM RIGHT***
I.	**Orders:**	
A.	Form 4 Order	1
B.	Order Re Motions	4
II.	**Pleadings:**	
A.	Summons & Complaint	25
B.	Answer & Counterclaims	35
C.	Respondent's Motion To Dismiss Counterclaims	186
D.	Appellants' Motion To Dismiss And To Reform	197
E.	Affidavit of Cole Dunn	198
F.	Affidavit of John Richard Smith	200
G.	Respondent's Memorandum In Opposition To Appellants' Motion To Dismiss	202
H.	Appellants' Memorandum Supporting Motion To Dismiss	303

VOLUME II (pp. 351 - 700)

G.	Notice Of Appeal	458

III. Transcript:

A. Transcript of Motion Hearings Held On 09.12.2017 483

IV. Exhibits:

A. Re Summons & Complaint 510

B. Re Answer & Counterclaims 511

C. Re Respondent's Motion To Dismiss Counterclaims 643

D. Re Respondent's Memorandum In Opposition To Appellants' Motion To Dismiss 648

VOLUME III (pp. 701 - 1005)

E. Re Appellants' Memorandum Supporting Motion To Dismiss & Reform 728

IV. Other:

A. Tyger River Demand Letter of January 30, 2017 860

B. Tyger River Acceptance Letter of January 31, 2017 864

C. Emails Re Preparation of Approval Documents 866

D. Letter of June 7, 2017 From Respondent's Counsel 872

E. Letter of June 12, 2017 From Appellants' Counsel 924

F. Letter of June 13, 2017 From Respondent's Counsel 926

G.	Approval Order	930
H.	Approval Petition	934
I.	Approval Covenant	940
J.	SCFB/PCIC Declarations Page & Policy	945
V.	**Certificate Of Counsel:**	1005

Please accept this letter in the spirit of negotiation in which it is intended and know that it is our hope and desire to reach a rapid and amiable conclusion of this case. Should you have any questions or require any further information, please do not hesitate to contact me. I look forward to hearing from you soon.

With best regards,

J. Taylor Powell

JTP/
Enclosures

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EXHIBIT A

STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

ELECTRONICALLY FILED - 2017-11-28 03:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

DEATH CERTIFICATION

STATE FILE NUMBER: 139-16-036306 AMENDED

DECEDENT'S NAME: KENNETH MILES DAVIS
SEX: MALE
AKA's: NA
SOCIAL SECURITY NUMBER: 656-09-0540
ARMED FORCES: NO
DATE OF BIRTH: JUNE 28, 2000
AGE: 16 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL-EMERGENCY ROOM/OUTPATIENT
COUNTY OF DEATH: HORRY
NAME AND ADDRESS OF PLACE OF DEATH: CONWAY MEDICAL CENTER, CONWAY, SC 29526
PLACE OF DISPOSITION: CHRISTIAN FELLOWSHIP CHURCH CEMETERY
DISPOSITION LOCATION: GALIVANTS FERRY, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
PLACE OF BIRTH: SOUTH CAROLINA
MARITAL STATUS: NEVER MARRIED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: KENNETH ALAN DAVIS
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LAURA JOHNSON
INFORMANT'S NAME: KENNETH DAVIS
RELATIONSHIP: FATHER
MAILING ADDRESS: 2683 GARNER ROAD, AYNOR, SC, 29511
FUNERAL HOME: JOHNSON FUNERAL HOME OF AYNOR, INC, 290 NINTH AVE, AYNOR, SC, 29511
FUNERAL DIRECTOR: JEREMY JOHNSON
LICENSE NUMBER: 2629
EMBALMER'S NAME: NA
LICENSE NUMBER: NA
ACTUAL OR PRESUMED DATE OF DEATH: OCTOBER 09, 2016
MANNER OF DEATH: HOMICIDE
ACTUAL OR PRESUMED TIME OF DEATH: 1916
CAUSE OF DEATH - PART I:
SHOT GUN WOUND TO THE HEAD

OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? YES
AUTOPSY PERFORMED? NO
AUTOPSY AVAILABLE? NA
DATE OF INJURY: OCTOBER 09, 2016
TIME OF INJURY: 1815
INJURY AT WORK? NO
PLACE OF INJURY: RESIDENCE
LOCATION OF INJURY: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
HOW THE INJURY OCCURRED?
ACCIDENTAL DISCHARGE OF 12 GAUGE SHOTGUN IN CLOSE PROXIMITY TO INDIVIDUAL.
CERTIFIER NAME AND TITLE: DEPUTY CORONER MICHELLE MCSPADDEN
LICENSE NUMBER: NA
CERTIFIER'S ADDRESS: 2560 N MAIN ST #3, CONWAY, SC, 29526
DATE FILED: OCTOBER 11, 2016
DATE OF ISSUANCE: OCTOBER 13, 2016
SPECIAL INSTRUCTIONS:
MANNER OF DEATH AMENDED BY: DHEC 627 PER MICHELLE MCSPADDEN, DEPUTY CORONER

SC05460683

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

MISREPRESENTATION OR FRAUD: VOIDS THIS CERTIFICATE

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EXHIBIT B

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF: HORRY	)	**CERTIFICATE OF APPOINTMENT**
	)	
IN THE ESTATE OF: **KENNETH MILES DAVIS,** DECEASED	)	CASE NUMBER 2017ES2600072

This is to certify that

KENNETH A DAVIS

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
- ☐ SUCCESSOR PERSONAL REPRESENTATIVE
- ☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the 12th day of January 2017, is in full force and effect.

RESTRICTIONS:

Executed this 12th day of January 2017.

Janice F. Collins, Administrative Assistant

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

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EXHIBIT C

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AGENCY I.D.
SC0260400

INCIDENT REPORT

CASE NUMBER: 160937 8 | NCIC INQ. | NCIC ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM
1. Manslaughter / Involuntary manslaughter - N - None/Unknown	☒ YES ☐ NO	☐ YES ☒ NO	20		☒ Individual ☐ Business ☐ Financial ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.
	☐ YES ☐ NO	☐ YES ☐ NO			
	☐ YES ☐ NO	☐ YES ☐ NO			

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): 2683 GARNER RD | ZIP CODE: 29511 | WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: OCC. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO
10/09/2016	18:00		10/09/2016	18:20	10/09/2016	18:17	18:23	22:16	

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
[redacted]	AQ	X S O U	W	F	51	N	H: B:	H: B:

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO
[redacted]	Galivants Ferry S.C.		29544	

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT	RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
[redacted]	AO	X S O U	W	M	16	N	H: B:	H: B:

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.
		BRO		

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO
[redacted]	Aynor S.C.		29511	

VISIBLE INJURY (VICT. 1): ☐ YES ☐ NO ☐ EXPLAIN | COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO

VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☒ | DRUGS: ☐ YES ☐ NO ☐ UNK ☒ | TYPE:

TWO-MAN VEH: ☐ | ONE-MAN VEH: ☐ | DETECTIVE/EMPLMT: ☐ | OTHER: ☐ | ALONE: ☐ | ASSISTED: ☐ | J - This Jurisdiction | S - State | O - Out of State | U - Unknown

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☒ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
Dunn, Cole Austin	W	M	17	N	[redacted]	5' 7"		BRO	BLU

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.:

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO
[redacted]	Galivants Ferry S.C.		29544	

SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☒ | DRUGS: ☐ YES ☐ NO ☐ UNK ☒ TYPE: | ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO ☐ | TOTAL # ARRESTED: 1 | DATE/TIME OF OFFENSE: 10/9/2016 6:00:00 PM | DATE/TIME OF ARREST: 10/9/2016 12:00:00 AM

NARRATIVE

On 10-9-16 I responded to 2683 Garner Rd located in the Aynor section of Horry County in reference to a shooting. When I arrived along with several other officers the victim was located lying beside a white in color Chevrolet truck. The victim had a gun shot wound [redacted] and E2 was giving him CPR. At the time that BMS personnel was arriving on location a crime scene was being established. [redacted] I located the complainant who said she was near the house when she heard a shot. [redacted] The complainant called 911 and waited for help. Violent crimes along with CSI were notified and arrive at the incident location and took over the investigation. I did transport the subject to the HCDC after Detective Hemingway advised him that he was being charged with the death of the victim. There were other family members of the victim at the residence at the time of the incident but had left for the hospital before there information could be gathered for the report.

PROPERTY/EST.

	JURISDICTION OF THEFT, LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY, LAW ENFORCEMENT AGENCY	TOTAL VALUE
TYPE (GROUP)			
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			

ADMINISTRATIVE

SUBJECT IDENTIFIED: ☒ YES ☐ NO | SUBJECT LOCATED: ☒ YES ☐ NO | ☒ ACTIVE ☐ UNFOUNDED | ☐ ADM. CLOSED | ☒ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER | ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ ANYWAY - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Tindall, Matthew W	10/09/2016	383			

FOLLOW-UP INVESTIGATION: ☐ YES ☒ NO | OFFICER:

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EXHIBIT D

JOHNSON FUNERAL HOME
290 9th Avenue
Aynor, South Carolina 29511
(843) 358-5800

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED 34

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve. If you selected arrangements such as a direct cremation or immediate burial, if we charged for embalming, we will explain why below.

DECEASED: Kenneth Miles Davis No.
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT: 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055	
Embalming	~~750~~	
Other preparation of body	195	
		2,950

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325	
Use of Facilities & Staff for Funeral Ceremony		
Use of Facilities & Staff for Memorial Service		
Use of Equipment & Staff for Graveside Service		
Use of Equipment & Staff for Church Service	415	
		740

3. Transportation:

Transfer of Remains to Funeral Home	250	
Hearse	245	
Limousine		
Sedan		
Service / Utility Vehicle	195	
		690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED: 3670 ~~4,420~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Steel Grey	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$4,251

C. SPECIAL CHARGES

CASH ADVANCES

Certified Copies of Death Certificate (3) @ $ each	$ 18
Clergy	
Musician	
Paid Newspaper Notice: Sun News	369.72
Cemetery: Grave Dissing	750
Other: Vault Setup	415
Bloome's Florist	561.75
TOTAL CASH ADVANCES	$ 1,364.67

We charge you for our services in obtaining: (specify cash advance items)

7921

SUMMARY

Total Funeral Home Charges	$ ~~8,671~~
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 257.57
Total Cash Advances	$ 1,364.67
GRAND TOTAL	$ ~~10,333.24~~ 9,583.24

Less Credits and Payments

	~~2500~~
	~~750~~
Total Credits	$
BALANCE DUE	$ ~~7,083.24~~

Billing To: ~~$ 7,083.24~~

$6,333.24

DISCLOSURES

Reason for embalming:

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than

If any payment is not paid when due, an unanticipated LATE CHARGE of % per month (ANNUAL PERCENTAGE RATE %) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in

34

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DECEASED
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055
Embalming	~~750~~
Other preparation of body	195
	2,700

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325
Use of Facilities & Staff for Funeral Ceremony	
Use of Facilities & Staff for Memorial Service	
Use of Equipment & Staff for Graveside Service	
Use of Equipment & Staff for Church Service	415
	740

3. Transportation:

Transfer of Remains to Funeral Home	250
Hearse	245
Limousine	
Sedan	
Service / Utility Vehicle	195
	690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED	3670 ~~4,120~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Sterling	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$4,251

C. SPECIAL CHARGES

☐ Forwarding remains to: ☐ Receiving remains from:

Immediate Burial	
Direct Cremation	
Other	
TOTAL OF SPECIAL CHARGES	$

TOTAL FUNERAL HOME CHARGES (This total does not include Cash Advances)	6,961
	7,921

Musician	
Paid Newspaper Notice: Stow Press	369.92
Cemetery Grove Dissin	750
Other Vault Setup	415
Bloomers Florist	561.75
TOTAL CASH ADVANCES	$ 1,369.67

We charge you for our services in obtaining (specify cash advance items)

SUMMARY	
Total Funeral Home Charges	$ 7921 ~~8,671~~
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 217.57
Total Cash Advances	$ 1,369.67
GRAND TOTAL	~~$10,937.24~~ 9,583.24
Less Credits and Payments	- 2500
	- 750
Total Credits	$
BALANCE DUE	$ ~~7,833.24~~
Billing To	$ ~~7,083.24~~
	$6,333.24

DISCLOSURES

Reason for embalming

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than
If any payment is not paid when due, an unanticipated LATE CHARGE of ___% per month (ANNUAL PERCENTAGE RATE ___%) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge, in the event I default in payment to this funeral establishment. I agree to pay reasonable attorney's fees and court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for the charges set forth in this Statement and that this is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a copy of this Statement.

Signed Dated

Social Security Number

Signed Dated

ACCEPTANCE. This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement.

By

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EXHIBIT C

South Carolina Farm Bureau Mutual Insurance Company
Rick Lamar, CPCU, AIC • *District Claims Manager*

724 Knox Abbott Drive
Cayce, SC 29033
Toll-Free: 1.800.799.7500
Phone: 803.936.4254
Fax: 803.936.4633
rlamar@scfbins.com
www.scfbins.com

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January 31, 2017

CERTIFIED - RETURN RECEIPT REQUESTED

J. Taylor Powell
Lesemann & Associates, LLC
80 Alexander ST, Second Floor
Charleston SC 29403

RE: Insured: Charlotte Smith
Claim No.: 487128
Date of Accident: 10/9/16
Your Client: Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis

Dear Mr. Powell:

Your letter dated January 30, 2017 to Jonathan Graham has come to my attention.

You made a demand on behalf of your client for the liability limits of $300,000, and med pay coverage of $5,000 for a Covenant Not to Execute. This would allow your client to pursue and collect any other liability insurance policies, should any be located.

South Carolina Farm Bureau Mutual Insurance Company, hereinafter known as the Company, accepts your demand and will make payment for a Covenant Not to Execute.

We are having local counsel, Dwight Hudson, to draw up this Covenant to protect our insureds.

Jonathan Graham will be in touch with your office, and will be making payment once we have an acceptable Covenant.

Please advise should you have any questions regarding this correspondence. The Company appreciates the information that you have provided and looks forward to working with you to the conclusion of this matter.

Very sincerely yours,

District Claims Manager

RL:ap

cc: Jonathan Graham
Senior Claims Adjuster

J. Dwight Hudson
Attorney at Law
PO Box 70218
Myrtle Beach SC 29572

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EXHIBIT D

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Taylor Powell

From: Taylor Powell
Sent: Thursday, February 09, 2017 12:16 PM
To: mgraham@hudsonlawoffice.com
Subject: Estate of Miles Davis v. Cole Austin Dunn

Mary Anne,

I spoke to Dwight on Tuesday and he told me that you would be handling this wrongful death approval hearing.

I can prepare the Petition and Proposed Order, and have those to you for your review next week.

Please send me your draft of a Covenant not to Execute against Cole Dunn or his Mother Charlotte Smith that carves out the ability for me to pursue any other liability coverage should I find it, once you have it finalized.

Also please let me know what your schedule is the next 2 weeks, if there is a day that either 9:30 am or 1:00 pm would work for you to handle this hearing. I clerked for Judge Hyman and will be able to get him to work us in any time in the next 2 weeks while he is in Conway.

I look forward to hearing from you soon,

J. Taylor Powell
Lesemann & Associates LLC
80 Alexander Street, Second Floor
Charleston, SC 29403
Phone: (843) 724-5155
Mobile: (704) 807-8781
Email: jtp@lalawsc.com
Website: www.lalawsc.com

STATEMENT OF CONFIDENTIALITY:
The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering the e-mail to the intended recipient, be advised you have received this message in error and that any use, dissemination, forwarding, printing, or copying is strictly prohibited. Please call Lesemann & Associates immediately at (843) 724-5155 and destroy all copies of this message and any attachments. You will be reimbursed for reasonable costs incurred in notifying us.

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EXHIBIT E

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Taylor Powell

From: Mary Anne Graham
Sent: Wednesday, February 22, 2017 10:41 AM
To: 'Taylor Powell'
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Fw docs w edits/additions and following up re hearing
Attachments: Petition for Settlement Approval - HLO changes.docx; Order Approving Settlement - HLO changes.docx; Covenant.doc

Taylor:

Enclosed are the docs with our edits/additions. Have you heard about the hearing on Monday?

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham
P.O. Box 70218
2513 North Oak Street
Suite 210, Waverly Centre
Myrtle Beach, SC 29577
T: 843.692.9889
F: 843.692.9190
E: mgraham@hudsonlawoffice.com

From: Mary Anne Graham [mailto:mgraham@hudsonlawoffice.com]
Sent: Thursday, February 16, 2017 6:46 AM
To: 'Taylor Powell'
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Re availability for hearing 1.27.17

Taylor:

I'm about to review this one. Somehow, the assignment email made it to the firm, but not to me. I spoke with Jonathan Graham a couple of days ago and he forwarded it. I'll take a look at that material and your drafts. I'll get back to you as to any edits and to forward our Covenant. I let Jonathan know we would probably be requesting a check shortly.

In the interim, Dwight already has a Summary Judgment Motion during the afternoon session (1pm) on 2.27 before Judge Culbertson. If you set the hearing for that session, it will surely work for Dwight's schedule. It'll also give us a few days to get the pleadings set and to hopefully have the check in hand.

With best regards, I remain

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham

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EXHIBIT F

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Taylor Powell

From: Mary Anne Graham
Sent: Thursday, March 09, 2017 2:30 PM
To: Taylor Powell
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Reply re Covenant change and check

Taylor:

I believe that change to the Covenant is fine – I emailed Jonathan Graham about the check and believe that it will be in hand by the time of next Wednesday's hearing –

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham
P.O. Box 70218
2513 North Oak Street
Suite 210, Waverly Centre
Myrtle Beach, SC 29577
T: 843.692.9889
F: 843.692.9190
E: mgraham@hudsonlawoffice.com

From: Taylor Powell [mailto:jtp@lalawsc.com]
Sent: Thursday, March 09, 2017 10:38 AM
To: Mary Anne Graham
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Reply re hearing dates the week of 3.13

Good morning Mary Anne,

I just wanted to follow up to confirm that you will have the check at the approval hearing on March 15th at 9:00.

I also wanted to run a potential change in the language of the covenant by you.

Paragraph 12 currently reads:

This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage or from any other source for the Claim.

I would like to make the following changes so that it will read:

This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT G

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT
KENNETH A DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS, DECEASED, Plaintiff, vs. COLE AUSTIN DUNN & CHARLOTTE SMITH, Defendants.	Case No.: 2017-CP-26-617 **ORDER APPROVING WRONGFUL DEATH SETTLEMENT**

This matter was presented upon the attached verified Petition of the Personal Representative(s) of the Estate of Kenneth Miles Davis, deceased, in which Petition this Court is requested to authorize and approve a settlement of the matter. I have inquired into the matter, and have considered the same, and I am of the opinion that, under all of the circumstances, the settlement is reasonable and proper, and should be authorized and approved by this Court.

It is the opinion of the Petitioner and of the beneficiaries and heirs-at-law that the settlement is a proper one, and that it should be authorized and approved. The Petitioner has set forth in detail in the verified Petition the reasons why they feel the settlement should be authorized and approved, and the terms and provisions of the settlement. I am of the opinion that the reasons are sufficiently established, and that the settlement is justified, and that it should be approved by this Court.

Based on the available evidence of conscious pain and suffering, this Court finds that the sum of One Thousand and no/100 Dollars ($1,000.00) allocated for conscious pain and suffering

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

is proper under the facts and circumstances of this case and approve the same.

It would serve no useful purpose to further repeat in this Order the matters set forth in the Petition as to why the settlement should be approved, and the terms of the settlement. It is sufficient to state that the parties, through their attorneys, have agreed upon a settlement as to the present claims presented against Homeowner's policy 412831 and its coverage for the Defendants. Under the terms of the settlement, South Carolina Farm Bureau Mutual Insurance Company, its named insured and the Defendants are to be given a COVENANT NOT TO EXECUTE which will fully and completely release the referenced policy ONLY as to any and all claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, as a result of the accident which occurred on October 9, 2016, as hereinabove referred to including claims for wrongful death, conscious pain and suffering, medical expenses and any and all other claims which in any wise relate to the aforesaid accident. However, this Order specifically preserves the right of the Personal Representatives to file suit or litigation but insurance carrier, South Carolina Farm Bureau will not and does not have any further responsibility or obligation in connection with any such litigation and has no obligation to Answer or defend the action, as it will have protected its insured(s) with a Covenant Not to Execute.

The Court is mindful that all available coverage from this carrier and this policy is being paid through this settlement and is of the opinion that the settlement is therefore, reasonable, fair and proper and should be authorized and approved.

IT IS, THEREFORE:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

ORDERED, ADJUDGED AND DECREED that the settlement herein referred to, and more particularly set forth in the verified Petition be and the same is hereby authorized and approved. The Personal Representative is hereby authorized and directed to settle the present claims presented against Homeowner's policy 41283 and its coverage for the Defendants, encompassing claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, for the sum of THREE HUNDRED FIVE THOUSAND AND NO/100 ($ 305,000.00) DOLLARS, including but not limited to any claims for wrongful death and conscious pain and suffering, doctor's bills, hospital bills, ambulance bills, medical expenses, funeral expenses, and the like. As to the stated policy, the settlement shall be full, and complete, and Defendant's carrier and its insured shall be given a Covenant Not To Execute that also releases the policy (ONLY). This Covenant Not to Execute will allow Petitioner to pursue and collect upon any additional liability insurance policies insuring Defendants should any be located.

ORDERED, ADJUDGED AND DECREED that upon payment of the above sum by South Carolina Farm Bureau Mutual Insurance Company on behalf of its named insured and the Defendants, via a check payable to the Personal Representative and his attorneys, Lesemann & Associates LLC, the Personal Representative is hereby authorized and directed to execute and deliver a Covenant Not To Execute on behalf of the beneficiaries and heirs-at-law, and such Covenant Not To Execute, when so executed and delivered, shall be valid and effectual forever as to South Carolina Farm Bureau Mutual Insurance Company, its stated policy and its named insured and the Defendants - subject to the terms of this Order preserving the Plaintiff's rights to pursue any other available coverage or source of payment.

ORDERED, ADJUDGED AND DECREED that it shall not be incumbent upon the Carrier to trace the distribution of these funds and that this settlement is full, final and complete

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

as to the said carrier, which has no obligation as to any subsequent litigation filed by the Petitioner, as the carrier's named insured and the Defendants will be protected by the Covenant Not to Execute approved herein.

ORDERED, ADJUDGED AND DECREED that the total settlement proceeds are to be apportioned as follows:

Wrongful Death with the Personal Representative making payment to the heirs of the deceased as provided by S.C. Code 15-51-10 *et seq.*	$	304,000.00
Survival	$	1,000.00
Total	$	305,000.00

Lesemann & Associates as attorneys for the Petitioner shall be paid attorney's fees $90,000.00 and costs of $50.00 from the wrongful death proceeds.

ORDERED, ADJUDGED AND DECREED that the settlement herein referred to be, and the same is hereby authorized and approved by this Court, and it is.

SO ORDERED this the 15 day of ~~February~~ March, 2017.

Presiding Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT H

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)
) **COVENANT NOT TO EXECUTE**
COUNTY OF HORRY)

This COVENANT is made this 15th day of March, 2017 by and between **KENNETH A. DAVIS**, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE **ESTATE OF KENNETH MILES DAVIS** (hereinafter referred to as "Payees") and **COLE AUSTIN DUNN, CHARLOTTE SMITH and SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY** (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns:

WHEREAS, decedent KENNETH MILES DAVIS was shot, mortally injured, and subsequently passed away from those injuries, on October 9, 2016 in the Aynor area of Horry County, S.C. (hereinafter referred to as the "Incident" or the "Claim"); and

WHEREAS, Payees subsequently made a claim against Payors for wrongful death, survival, bodily injuries, medical expenses, pain and suffering, grief, loss of companionship, funeral expenses, and any and all other damages allegedly suffered by Payees as a result of the Incident; and

WHEREAS at the time of the Accident, SCFB had in effect a Homeowner's Policy for named insured, Charlotte Smith, being policy number 412831, with liability coverage in the amount of Three Hundred Thousand Dollars ($300,000.00) and medical payment coverage of Five Thousand Dollars ($5,000.00) per occurrence.(Hereinafter referred to as the "Policy"); and

WHEREAS, Payors acknowledge that Payees have a substantial claim against Payors for damages allegedly arising out of the Incident and Payees allege that the value of the Claim will exceed the amount of coverage available under the policy; and

WHEREAS, Payors wish to limit their liability or exposure for damages that might exceed the coverage available under the Policy;

NOW THEREFORE, for and in consideration of the payment of the sum of $305,000.00 by Payors ($300,000 in Homeowner's liability insurance coverage and $5,000 in medical payment coverage under Policy # 412831, and for other good and valuable consideration, Payees agree, promise and covenant as follows:

1. Payees and their attorney acknowledge receipt of such payment.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2. Payees hereby promise and covenant for themselves, their heirs, executors, administrators, legal representatives, and assigns, not to execute against Payors, their heirs, executors, administrators, legal representatives, successors or assigns on any judgment that may be obtained by Payees for the wrongful death, survival, bodily injury, medical expenses, pain and suffering, grief, funeral expenses and other damages allegedly sustained as a result of the Incident.

3. SCFB maintains that under the Policy the funds being paid hereunder represent all available insurance coverage under the Policy for the Claim. Payees contend that their damages exceed the amount of this coverage.

4. Payees hereby covenant and promise that if they should obtain a judgment against Payors, they will not execute on said judgment and that, upon a final determination of whether any additional insurance or other benefits will be paid for the Claim, Payees by their attorney, will cause the judgment to be marked and entered as satisfied.

5. Should Payees or their attorney fail or refuse to mark and enter any judgment obtained against Payors as satisfied as provided hereinabove, Payees hereby authorize the Clerk of Court to mark and enter the judgment as satisfied upon receiving a copy of this Covenant.

6. Payees agree that the payment made by Payors is in compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of Payors or of any other person hereby benefiting from this Covenant.

7. Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.

8. Payees hereby represent that they understands that Payors may continue to cooperate and assist in the defense of the Claim.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. Payees hereby agree that should there be any liens, whether by statute, contract, or otherwise for workers compensation benefits, goods, services, or health care services provided to Payees, Payees by their attorney will cause the provider(s) to be reimbursed from the proceeds of this settlement to the extent required by law and should the provider(s) assert a common law, statutory or contractual lien against Payors, their heirs, executors, administrators, legal representatives, successors, or assigns, Payees will indemnify and hold harmless Payors, their heirs, executors, administrators, legal representatives, successors, and assigns from any and all such claims, demands, actions or causes of action of whatsoever kind or nature, and will reimburse Payors for reasonable attorneys' fees incurred in defending any such action brought by a purported lienholder.

10. Payees acknowledge that they rely wholly upon their own judgment, belief, and knowledge as to the nature, extent, and duration of his/her injuries, medical expenses, pain and suffering and damages and the possibility of recovery for the Claim, and that, in making this Covenant, they have relied upon no representations or statements made by Payors, or by their agents or representatives regarding these injuries or damages or any other matter.

11. Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.

12. **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This**

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Covenant Not To Execute does not constitute a release of any claim or of any party.

13. It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. However, Payees and their attorney agree that, in compliance with the Court's Order approving this settlement, such litigation will not involve SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY as this settlement is full, final and complete as to SCFB. Payees agree that SCFB has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this Covenant Not To Execute.

IN WITNESS WHEREOF, we have her unto set our hands and seals in the presence of the below named witnesses on the date set forth below.

IN THE PRESENCE OF:

CAUTION. READ BEFORE SIGNING. THIS IS A FULL, FINAL AND COMPLETE COVENANT NOT TO EXECUTE

Kenneth A. Davis,
Personal Representative of
The Estate of Kenneth Miles Davis

Attorney Certification

I, the undersigned attorney for the Payees, hereby certify/certifies that the contents, meaning and final effect of the foregoing Covenant have been carefully and fully explained to them, it is my opinion that Payees fully understand, accept and intend to enter this agreement; and I certify that I have recommended that my clients, the Payees, execute the Covenant.

J. Taylor Powell, Esquire

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Attorney for Payees

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT I

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) 788-7133 Fax:(800) 578-7223

Print Date: March 06, 2017

FIREARMS TRACE SUMMARY

Trace Number: T20170034909 Request Date: January 31, 2017 Completion Date: February 02, 2017

JILL DOMOGAUER
HORRY COUNTY POLICE DEPARTMENT
2560 NORTH MAIN STREET
CONWAY, SC 25926
PHONE: (843) 915-5350 Ext:

Badge No: 453
Investigation No: 16-093978

FIREARM INFORMATION

Manufacturer: BROWNING
Model: BPS
Caliber: 12
Serial Number: 01528ZZ121
Type: SHOTGUN
Country: JAPAN
Importer: BROWNING ARMS COMPANY - BAC
Obliterated:
Identifying Marks:
NIBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 10/09/2016
Time to Crime: 1762 days
2638 GARNER RD
AYNOR, SC 29511
Possessor: COLE AUSTIN DUNN
DOB:
POB:

PURCHASER INFORMATION

Purchase Date: 12/13/2011
JOHN RICHARD SMITH
2340 HWY 1153
GALIVANTS FERRY, SC 29544
DOB: 08/17/1974
POB: MADISON, WV UNITED STATES
Race: WHITE Height: 5 ft 11 in
Sex: Male Weight: 210 lbs
ID 1: SC DRIVER'S LICENSE: 004182851
ID 2:

DEALER INFORMATION

FFL: 15700555
SCHOFIELD ACE HARDWARE
155 S CASHUA DR
FLORENCE, SC 29502
Phone: (843) 669-6393 Ext: Ship-To-Date: 12/30/2010

Contact the local ATF office for additional information.

ADMINISTRATIVE INFORMATION

SUMMARY OF RESULTS

THIS FIREARM WAS TRACED TO A PURCHASER. FOR ANY QUESTIONS, PLEASE CONTACT ATF NATIONAL TRACING CENTER, FIREARMS TRACING BRANCH AT 1-800-788-7133.

Additional Remarks:

Not Certified Copy

The information in this report must be validated prior to use in any criminal proceedings.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT J

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FOR THE FIFTEENTH JUDICIAL CIRCUIT
KENNETH A. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS;	Case No. 2017-CP-26-_____
Plaintiff,	**SUMMONS**
vs.	
COLE AUSTIN DUNN & JOHN RICHARD SMITH,	
Defendants.	

TO: THE ABOVE-NAMED DEFFENDANTS:

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

Respectfully submitted,

By: s/J. Taylor Powell
Ellis R. Lesemann
erl@lalawsc.com
J. Taylor Powell
jtp@lalawsc.com
LESEMANN & ASSOCIATES, LLC
80 Alexander Street, Second Floor
Charleston, SC 29403
Phone: (843) 724-5155

Attorneys for Plaintiff

May 9, 2017
Charleston, South Carolina

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA COUNTY OF HORRY KENNETH A. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS, Plaintiff, vs. COLE AUSTIN DUNN & JOHN RICHARD SMITH, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT Case No. 2017-CP-26-_____ **COMPLAINT** **(Jury Trial Demanded)**

COMES NOW Plaintiff Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis ("Plaintiff"), by and through his undersigned counsel, stating his Complaint against Defendants as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Horry, State of South Carolina and is the duly appointed Personal Representative of the Estate of Kenneth Miles Davis ("Decedent"), Plaintiff's deceased son.

2. Upon information and belief, Defendant John Richard Smith ("Smith") is a citizen and resident of the County of Horry, State of South Carolina, and at all times relevant to this Complaint was the step-father, legal guardian, caregiver, and provider for minor Defendant Cole Austin Dunn.

3. Upon information and belief, Defendant Cole Austin Dunn ("Dunn") is a citizen and resident of the County of Horry, State of South Carolina, and at all times relevant to this Complaint was a minor and the step-child of Defendant Smith.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

4. The wrongful death that is the subject of this litigation occurred in the County of Horry, State of South Carolina.

FACTUAL ALLEGATIONS

5. On or about October 9, 2016, Decedent and Defendant Dunn were socializing on the property of Decedent's parents located at 2683 Garner Road Aynor, South Carolina.

6. At the above mentioned place and time, Defendant Dunn did knowingly possess a 12 gauge automatic shotgun. This shotgun was purchased by Defendant Smith as evidenced by the Firearms Trace Summary provided by the Bureau of Alcohol, Tobacco, Firearms, and Explosives that is attached as Exhibit A.

7. On or about October 9, 2016, at approximately 6:00 p.m., Defendant Dunn was observed negligently handling the 12 gauge automatic shotgun. Defendant Dunn was waiving the shotgun around and not observing proper safety precautions.

8. Decedent warned Defendant Dunn to stop waiving the shotgun around and to put the weapon down multiple times.

9. Defendant Dunn and Decedent were standing on opposite sides of an open pickup truck door when Defendant Dunn negligently and carelessly discharged the shotgun. The shotgun was loaded with buckshot, which traveled through the rear window of the pickup truck and struck Decedent in his face.

10. After firing the shotgun at Decedent, Defendant Dunn did hear Decedent fall to the ground and later observed Decedent bleeding from his head.

11. After Decedent fell to the ground and was bleeding from his head, Defendant Dunn ran away in a panic, and was later apprehended by law enforcement.

12. As a result of the above-mentioned acts, Decedent did suffer and endure physical pain and die. Further, the statutory heirs have suffered to following injuries:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a) pecuniary loss;

b) mental shock and suffering;

c) wounded feelings,

d) grief and sorrow;

e) loss of companionship;

f) loss of Decedent's experience, knowledge and judgment; and

g) funeral expenses.

FOR A FIRST CAUSE OF ACTION
(Negligence – Defendant Dunn)

13. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

14. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant Dunn's, careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

a) in failing to keep a proper look out while discharging a firearm;

b) in discharging a firearm in the general direction or vicinity of another human being;

c) in discharging a firearm in close proximity to another human being;

d) in discharging a firearm without a clear view of the firearm's path;

e) in failing to observe and appreciate the conditions, weather, atmosphere, and wind directly preceding and during the acts that resulted in the death Decedent; and

ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

f) in failing to appreciate and understand the particular firearm's range and power.

15. Defendant Dunn's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the incident and resulted in the death of Decedent.

16. The Plaintiff is informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of Defendant Dunn, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

17. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Dunn that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Dunn for actual damages in an appropriate amount, as well as punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Supervision – Defendant Smith)

18. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

19. At all times relevant to this Complaint, Defendant Smith knew or should have known that seventeen-year old Defendant Dunn, did not have the experience or training to safely handle firearms.

20. Defendant Smith knew or should have known that allowing Defendant Dunn to have unsupervised access to a firearm, owned by Defendant Smith, was extremely dangerous to

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

the general public, especially those around him, and it was foreseeable that he would injure another unless reasonable steps were taken to supervise and control him.

21. Defendant Smith owed a duty to the Plaintiff, and to the general public, to exercise reasonable care to control his minor step-child so as to:

a) Prevent him from negligently harming others, or

b) From so conducting himself as to create an unreasonable risk of bodily harm to others.

22. Defendant Smith knew or had reason to know that he had the ability to control his step-child and knew or should have known of the necessity and opportunity of exercising such control.

23. Defendant Smith failed to perform this duty in that he failed to exercise control over Defendant Dunn by:

a) Not securing the shotgun that was used to kill decedent in a gun safe, which would have prevented Defendant Dunn from having unsupervised access to the shotgun;

b) Failing to train and/or instruct Defendant Dunn on how to safely handle a firearm;

c) Allowing Defendant Dunn to possess, carry, and use firearms with no experience or training; and

d) Purchasing the firearm that was used to kill decedent for Defendant Dunn.

24. The injuries and damages incurred by the Plaintiff and the heirs of Decedent were directly and proximately caused by the aforementioned negligent acts of Defendant Smith.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

25. Therefore as a proximate result of the negligence of Defendant Smith allowing his minor step-child unsupervised access to a shotgun, Defendant Dunn fired an automatic 12 gauge shotgun while his line of sight was obstructed and without properly checking his surroundings. Because of his lack of experience and education regarding gun use, Defendant Dunn failed to appreciate the danger of firing a shotgun in such conditions, and this failure proximately flowing from Defendant Smith allowing such an inexperienced minor to have unsupervised access to the shotgun, resulted in the death of Kenneth Miles Davis.

26. The Plaintiff is informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of Defendant Smith, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

27. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Smith that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Smith for actual damages in an appropriate amount, as well as punitive damages.

FOR A THIRD CAUSE OF ACTION
(Negligent Entrustment – Defendant Smith)

28. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

29. At all times relevant to this Complaint, Defendant Dunn was incompetent, unfit, inexperienced, or reckless when it came to his ability to safely handle firearms.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

30. At all times relevant to this Complaint, Defendant Smith knew or should have known that seventeen-year old Defendant Dunn was incompetent, unfit, inexperienced, or reckless when it came to his ability to safely handle firearms.

31. On or about October 9, 2016, Defendant Smith entrusted Defendant Dunn with the shotgun, a dangerous instrument.

32. The entrustment by Defendant Smith of the shotgun to Defendant Dunn created an appreciable risk of harm to others, including decedent.

33. The entrustment by Defendant Smith of the shotgun to Defendant Dunn was grossly negligent.

34. The Plaintiff is informed and believes that as a direct and proximate result of the negligent entrustment by Defendant Smith of the shotgun to Defendant Dunn, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the Decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

35. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Smith that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Smith for actual damages in an appropriate amount, as well as punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action and for such other and further relief as the Court may deem just and proper.

(Signature page to follow)

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Respectfully submitted,

By: s/ J. Taylor Powell
Ellis R. Lesemann
erl@lalawsc.com
J. Taylor Powell
jtp@lalawsc.com
LESEMANN & ASSOCIATES LLC
80 Alexander Street, Second Floor
Charleston, SC 29403
Phone: (843) 724-5155

Attorneys for Plaintiff

May 9, 2017
Charleston, South Carolina

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Myrtle Beach, SC 29577
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June 12, 2017

J. Taylor Powell Esq.
Lesemann & Associates LLC
80 Alexander Street
Second Floor
Charleston, SC 29403

Re: Kenneth A. Davis as Personal Representative of the Estate of Kenneth Miles Davis v. Cole Austin Dunn and John Richard Smith
Case Number: 2017-CP-26-02910

Dear Taylor:

We are replying to your letter of yesterday, June 7, 2017, so that you can properly advise your client and dismiss this lawsuit Your letter indicates that you have filed this action seeking to hold Mr. Smith personally liable for the tragic death of Cole Dunn. The letter appears void of a reference to Mr. Dunn, so we ask you to reply and confirm that you will be dismissing Mr. Dunn as a party to this lawsuit.

Your letter indicates that you will be pursuing a claim against John Richard Smith, and further indicates an effort to collect for this claim from homeowner's carrier Farm Bureau. I find that confusing, since Farm Bureau had a policy for the household with a single limit of $300,000.00 and it paid that limit in exchange for a Covenant. Farm Bureau only owes its coverage limit once, and that has been collected.

As to Mr. Smith's potential liability, he was not listed by name in the covenant as he was not a named defendant in the pleadings you drafted, but based upon our firm's efforts and additions, Mr. Smith is protected by reference in the covenant and in the court order. The subject Farm Bureau (Palmetto Casualty) policy is enclosed and is incorporated by reference herein. I direct your attention to the insuring agreement and definitions 1, 2 and 3, all of which appear on Page 1 of the policy. Under the policy, Mr. Smith is both an insured and a named insured.

Both the Covenant and the Court Order protect the named insured, as your correspondence acknowledges and confirms. Mr. Dunn is a named party and he is an insured. As your letter states, you drafted the petition and the order, and we requested edits to include additional language that protects Mr. Smith, as does the Covenant. Your correspondence references Mrs. Smith as the named insured, and it discusses a strategy that you employed in an effort to exclude

Mr. Smith from the approval action and from protection by the covenant and the order, and it appears that strategy was based on an incorrect assumption that Mrs. Smith was the sole named insured. Your reading of the policy will confirm that, as noted above, Mr. Smith is a named insured and therefore, again, he is protected by the covenant and the order.

As a practicing attorney, you are surely aware that a homeowner's policy has a single limit for an insured household. Despite that, you deliberately concocted a scheme to attempt to extort an additional policy limit from the same insured household. You failed to further your scheme by reading the policy. Farm Bureau and this office have consistently dealt in good faith with you and it is regrettable that our good faith was met with subterfuge.

This letter is to advise that we demand that you dismiss this action and immediately cease all attempts to collect any judgment from Mr. Dunn or Mr. Smith, and all threats at such collection. Our Answer will raise counterclaims and will demand all costs and attorney fees associated with the necessity of defending this lawsuit and responding to your unfounded demands. **If we do not receive a reply from you by the close of business on Thursday, June 15th, we will file an Answer inclusive of the Counterclaims noted, along with an accompanying Motion to bring this to the Court's attention and to seek a full dismissal.**

We await and expect your prompt dismissal of this action and your reply to us confirming the same.

J. Dwight Hudson, Esq.
J. Dwight Hudson, Esq.
Hudson Law Offices

JDH: mag
Enclosure(s): as stated

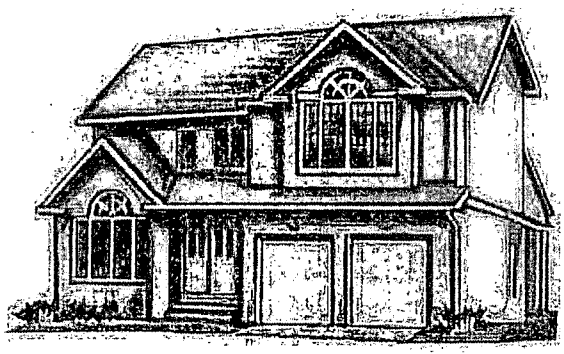
ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Palmetto Casualty
INSURANCE COMPANY

Homeowners Policy Form 3
Special Form Policy Provisions

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.



Post Office Box 2124
West Columbia, SC
29171

724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-6700

Policy conditions require immediate notice of any accident or claim.

This policy does not cover any FLOOD claim.

To report an accident or claim, call toll-free, at 1-800-799-7500.

FORM # FB-8390 EDITION 10/2010

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PALMETTO CASUALTY INSURANCE COMPANY

Homeowner's Policy
Form 3
Your Quick Reference

DECLARATIONS PAGE
- Policy Period
- Your Name and Address
- Residence Premises
- Property Location
- Coverages, Amounts
- Deductibles
- Mortgagee Identification

COUNTY MEMBERSHIP PROVISIONS ..... **Page 1**
AGREEMENT ..... **Page 1**
DEFINITIONS ..... **Page 1**
SECTION I PROPERTY COVERAGES ..... **Page 5**
Coverage A - Dwelling ..... **Page 5**
Coverage B - Other Structures ..... **Page 6**
Coverage C - Personal Property ..... **Page 7**
Coverage D - Loss of Use ..... **Page 9**
Additional Coverages ..... **Page 10**
SECTION I – PERILS INSURED AGAINST ..... **Page 18**
SECTION I – EXCLUSIONS ..... **Page 23**
SECTION I – CONDITIONS ..... **Page 28**
SECTION II – LIABILITY COVERAGES ..... **Page 35**
Coverage E - Personal Liability ..... **Page 35**
Coverage F - Medical Payments to Others ..... **Page 36**
SECTION II – EXCLUSIONS ..... **Page 36**
SECTION II – ADDITIONAL COVERAGES ..... **Page 47**
SECTION II – CONDITIONS ..... **Page 51**
SECTION I and II – CONDITIONS ..... **Page 53**
PALMETTO CASUALTY PARTICIPATING CONDITIONS ..... **Page 57**

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ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

COUNTY MEMBERSHIP PROVISIONS

1. As a prerequisite to your purchase of this policy and any renewal of this insurance, you must make application to be a member of and maintain your membership in the applicable county Farm Bureau agricultural organization and affiliated state Farm Bureau agricultural organization (hereinafter collectively known as "Farm Bureau Federation").

2. Your failure to apply for membership and to maintain your membership with the applicable Farm Bureau Federation as our sponsoring organization, including but not limited to your failure to pay the required membership dues to the Farm Bureau Federation, shall require us to cancel or nonrenew your policy.

3. Dues payable to the Farm Bureau Federation are in consideration of membership in the Farm Bureau Federation and other agriculture-related services from Farm Bureau Federation and:

   a. are not in consideration of coverage under this policy; and

   b. are not payable to Palmetto Casualty Insurance Company, South Carolina Farm Bureau Mutual Insurance Company, or any other insurer named on the Declarations.

AGREEMENT

Relying on the facts "**you**" have given "**us**," "**we**" will provide the insurance described in this policy for the limits shown in the latest Declarations in return for the premium and "**your**" compliance with all applicable provisions of this policy. This policy is not complete without the Declarations.

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

1. In this policy, "**you**" and "**your**" refer to the "**named insured**" shown in the Declarations and the spouse if a resident of the same household.

2. "**We**," "**us**" and "**our**" refer to the Company providing this insurance.

3. "**Insured**" means:

   a. **you** and residents of **your** household who are:

      (1) **your** relatives; or

      (2) other persons under the age of 21 and in the care of any person named above.

   b. a student enrolled in school full-time as defined by that school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

      (1) 24 and **your** relative; or

      (2) 21 and in **your** care or the care of the person listed in a. (1) above.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Under Section II, **insured** also means:

c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by **you** or any person included in 3a or 3b above. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without consent of the owner, is not an **insured**;

d. with respect to any vehicle to which this policy applies, persons while engaged in **your** employ or that of any person included in 3a or 3b above.

4. "**Actual cash value**" means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.

5. "**Bodily injury**" means bodily harm, sickness or disease, including required care, loss of services and death resulting there-from. It does not include **personal injury**.

6. "**Business**" means a full-time, part-time or occasional trade, profession or occupation, whether permanent or temporary, including farming. It also includes any other activity engaged in for money or other compensation, except the following:

a. volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;

b. providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

c. the rendering of home day care services to a relative of an **insured**.

7. **"Coverage territory"** means all parts of the world.

8. **"Electronic Data"** means information facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, servers, cells, data processing devices, or any other media which are used with electronically controlled equipment.

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

10. **"Fungi"** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by any fungus, but does not include any fungus that is, is on, or is contained in, any goods or products intended for consumption.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

11. "**Insured location**" means:

a. the **residence premises**;

b. the part of other premises, other structures and grounds used by **you** as a residence and:

(1) which is shown in the Declarations or by Endorsement; or

(2) which is acquired by **you** during the current policy period for **your** use as a residence;

c. any premises used by **you** in connection with a premises in 11a or 11b above;

d. any part of a premises:

(1) not owned by an **insured**; and

(2) where an **insured** is temporarily residing;

e. up to 100 acres total of any and all vacant land, owned by or rented to an **insured**. This does not include:

(1) farm land;

(2) land held for **business** purposes; or

(3) land away from the **residence premises** unless the location is listed on a policy endorsement;

f. land owned by or rented to an **insured** on which a one, two, three or four family dwelling is being built as a residence for an **insured**;

g. individual or family cemetery plots or burial vaults of an **insured**; or

h. any part of a premises occasionally rented to an **insured** for other than **business** use.

12. "**Motor vehicle**" means:

a. a self-propelled land or amphibious vehicle; or

b. any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in **a.** above.

13. "**Occurrence**" means an accident, a happening or event, or continuous or repeated exposure to conditions, which unexpectedly and unintentionally results in **bodily injury** or **property damage** during the policy period. All such injury or damage that is attributable directly or indirectly:

a. to one cause; or

b. to one series of similar causes; or

c. to substantially the same general conditions existing at or emanation from one premises or location;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

shall be deemed one **occurrence** and shall be treated as one **occurrence**, irrespective of the period of time during which such injury or damage occurs on the premises or location at which such injury or damage occurs.

14. "**Personal Injury**" means injury arising out of one or more of the following:

    a. false arrest, detention or imprisonment, malicious prosecution;

    b. libel, slander, defamation of character; or

    c. invasion of privacy, or wrongful eviction by a person from or wrongful entry by a person into or onto a room, dwelling or premises that another person occupies, by or on behalf of its owner, landlord, or lessor.

    However, **personal injury** does not include actual, alleged, threatened, or witnessing of humiliation, embarrassment or alienation of affection.

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

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

17. "**Recreational vehicle**" means a 2-, 3- up to 8-wheeled or tracked land or amphibious vehicle that is unlicensed and not subject to **motor vehicle** registration, powered by a petroleum fuel engine or electric motor, used off public roads or highways for personal pleasure or recreation.

18. "**Residence employee**" means an employee of an **insured,** or an employee leased to an **insured** by an agreement with a labor leasing firm, who performs duties, including household or domestic services, in connection with the maintenance or use of the **residence premises**. This includes employees who perform similar duties elsewhere for **you**.

    This does not include employees while performing duties in connection with the **business** of an **insured**.

19. "**Residence premises**" means:

    a. the one family dwelling where **you** reside;

    b. the two, three or four family dwelling where **you** reside in at least one of the family units; or

    c. that part of any other building where **you** reside;

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

    Residence premises includes other structures and grounds at the location specified in the Declarations.

20. "**Sexual harm**" means the actual, alleged, threatened, attempted, or coerced involvement in, or witnessing of, verbal or physical molestation, rape, abuse, assault, or harassment.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

21. **"Terrorism"** means activities against persons, organizations or property of any nature:

a. that involve the following or preparation for any of the following:

(1) use or threat of force or violence;

(2) commission or threat of a dangerous act; or

(3) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. when one or both of the following applies:

(1) the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social, or economic objectives or to express (or express opposition to) a philosophy or ideology.

SECTION I – PROPERTY COVERAGES

COVERAGE A – DWELLING

We cover:

1. the Dwelling on the **residence premises** shown in the Declarations, principally used as **your** private residence, including structures attached to the Dwelling; and

2. materials and supplies located on or next to the **residence premises** used to construct, alter or repair the Dwelling or Other Structures on the **residence premises;** but

3. **We** do not cover:

a. land, including land on which the Dwelling is located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;

b. water in any form, whatsoever;

c. structures, whether or not attached to the Dwelling, for loss caused directly or indirectly by windstorm or hail, to the following:

(1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;

(2) pool cages and similar structures; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. driveways, patios, pools, pavement surrounding a pool, or sidewalks, except as covered under Coverage B – Other Structures, below.

COVERAGE B – OTHER STRUCTURES

We cover other structures on the **residence premises** set apart from the dwelling by clear space. This also includes:

1. structures connected to the dwelling by only a fence, utility line or similar connection;
2. fences, property line and similar walls, including sea walls;
3. structures, including the property in or on the structure, located in whole or in part in or over water;
4. outdoor equipment, including equipment used to service the **residence premises**;
5. outdoor antennas, except satellite dish antenna systems or related equipment, whether or not attached to a building; and
6. swimming pools; but
7. **We** do not cover:
   a. land, including land on which the Other Structures are located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;
   b. water in any form, whatsoever;
   c. structures, whether or not attached to the Dwelling or Other Structure, for loss caused directly or indirectly by windstorm or hail, to the following:
      (1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;
      (2) pool cages and similar structures;
   d. structures used in whole or in part for **business**, including storage;
   e. farm barns or outbuildings used in whole or in part as a farm barn or farm shed; or
   f. other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; or
   g. satellite dish antenna systems or related equipment, for more than $500, unless specifically endorsed on the policy.

Use of this coverage does not reduce the Coverage A limit of liability.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

COVERAGE C – PERSONAL PROPERTY

We cover:

A. Personal property usual or incidental to the occupancy of the **residence premises** as a dwelling and owned or used by an **insured** while it is anywhere in the world. At **your** request, and after a loss, **we** will cover personal property owned by:

1. others while the property is on the part of the **residence premises** occupied by an **insured**;
2. a guest of the **residence employee**, while the property is in any residence occupied by an **insured.**

B. **Limit For Property At Other Residences**

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

1. moved from the **residence premises** because the **residence premises** are being repaired, renovated or rebuilt and are not fit to live in or store property in; or
2. in a newly acquired principal residence for 30 days from the time you begin to move the property there.

C. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability or the limit of liability for personal property away from the **residence premises**. Perils Insured Against for Coverage C apply. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. $200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, scrip, stored value cards, and smart cards.
2. $1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material.
3. $1,000 on watercraft of all types, including their trailers, furnishings, equipment and outboard motors.
4. $1,000 on trailers not used with watercraft.
5. $2,000 for loss by theft of property away from the **residence premises**, in or on any

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. **motor vehicle**;

b. motorized land conveyance; or

c. watercraft.

This limitation does not apply if there is forcible entry into the **motor vehicle**, motorized land conveyance or watercraft, when the doors, windows, other openings and compartments are closed and locked and there are visible marks of forcible entry; or if the **motor vehicle** is stolen and not recovered within 30 days.

6. $1,000 for loss by theft of jewelry, watches, furs, precious and semi-precious stones.

7. $2,000 for loss by theft of firearms.

8. $2,500 loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewter-ware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.

9. $250 on property away from the **residence premises** used primarily for any **business** purpose. However, this coverage does not apply to equipment described in paragraph 11 below.

10. $2,000 on property on the **residence premises** used primarily for **business** purposes. However, this coverage does not apply to equipment described in paragraph 11 below.

11. $2,500 on **electronic data** processing equipment and the recording or storage media used with that equipment and which is owned by or leased to any **insured**.

12. $2,000 on any one article and $7,500 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article including paintings.

13. $500 for **recreational vehicles** not subject to **motor vehicle** registration or other motorized land conveyances not subject to **motor vehicle** registration.

Property Not Covered. We do not cover:

1. articles separately described and specifically insured in this or other insurance, or specifically excluded elsewhere in this insurance policy;

2. animals, birds or fish;

3. **motor vehicles** and any other motorized land conveyances, except as provided in "Special Limits," paragraph 13 above, or specifically listed in an endorsement and an additional premium paid. This includes:

   a. equipment and accessories; or

   b. any device or instrument for the transmitting, recording, receiving or reproduction of sound, signals, or pictures which is operated by power from the electrical system of **motor vehicles** or any other motorized land conveyances, including:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1) accessories or antennas;

(2) tapes, wires, records, discs or other media for use with any such device or instrument; or

(3) radar detection devices;

while in or upon the vehicle, or land conveyance;

c. **We** do cover vehicles or conveyances not subject to **motor vehicle** registration which are:

(1) lawns or garden tractors, with a 30 horsepower rating or less, but not **recreational vehicles**; or

(2) designed or used to assist the handicapped.

4. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;

5. hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, hovercraft and air cushion vehicles;

6. property of roomers, boarders and other tenants, except property of roomers and boarders related to an **insured**;

7. property in an apartment regularly rented or held for rental to others by an **insured**;

8. property rented or held for rental to others off the **residence premises**;

9. books of account, drawings, or other paper records, pertaining to a **business**;

10. credit cards, debit cards, fund transfer cards, or access devices used for deposits, withdrawals or transfer of funds except as provided in Additional Coverages 3;

11. satellite dish antenna systems or related equipment, except as provided under Coverage B, or by endorsement; or

12. land, including land on which personal property is located; nor do **we** cover water in any form.

COVERAGE D – LOSS OF USE

The limit of liability for Coverage D is the total limit for all the coverages that follow.

1. **Additional Living Expense**. If a loss covered under this Section makes that part of the **residence premises** where **you** reside uninhabitable, **we** cover the necessary increase in living expenses incurred by **you** so that **your** household can maintain its normal standard of living. Payment will be for the shortest time required to repair or replace the damage or, if **you** permanently relocate, the shortest time required for **your** household to

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

settle elsewhere. But in any event, that time will not exceed 365 consecutive days from the date of loss.

2. **Fair Rental Value**. If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by **you** uninhabitable, **we** cover the fair rental value of that part of the **residence premises** rented to others or held for rental by **you**, less any expenses that do not continue while the premises are uninhabitable. Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental. But in any event, that time will not exceed 365 consecutive days from the date of loss.

3. **Prohibited Use**. If a civil authority prohibits **you** from using the **residence premises** as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, **we** cover **your** incurred Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for no more than 14 consecutive days from the date use was prohibited. However, if use is prohibited for less than 14 days, we cover for 2 days more than the prohibition was enforced, but not for more than 14 days total.

The periods of time under 1, 2 and 3 above are not limited by expiration of this policy, but the date of loss must be during the policy period.

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

ADDITIONAL COVERAGES

Unless specifically stated otherwise, the Loss Deductible Clause applies to each Additional Coverage below.

1. **Arson Award. We** will pay, at **our** option, up to $5,000 for information which leads to an arson, vandalism, or malicious mischief conviction in connection with a loss covered by this policy. Regardless of the number of persons providing information, our limit shall not be increased.

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

2. **Collapse**.

   a. For this Additional Coverage:

      (1) collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.

      (2) a building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.

      (3) a part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building; or

      (4) a building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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

(1) Perils Insured Against in Coverage C – Personal Property, in this policy. These perils apply to covered buildings and personal property for loss insured by this additional coverage;

(2) decay that is hidden from view, unless the presence of such decay is known to an **insured** prior to collapse;

(3) insect or vermin damage that is hidden from view, unless the presence of such damage is known to an **insured** prior to collapse;

(4) weight of contents, equipment, animals or people;

(5) weight of ice, sleet, snow or rain which collects on a roof; or

(6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

c. Loss to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b (2), (3), (4), (5) and (6) unless the loss is a direct result of collapse of a building or any part of a building.

d. Collapse does not include settling, cracking, shrinking, bulging or expansion.

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

f. The loss deductible clause applies to this Additional Coverage.

3. **Credit Card, Debit Card, Fund Transfer Card, or Access Device, Forgery and Counterfeit Money**. All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated, is considered to be one loss.

a. **We** will pay up to $1,000 for:

(1) the legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or debit cards issued to or registered in an **insured's** name;

(2) loss resulting from theft or unauthorized use of a fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an **insured's** name;

(3) loss to an **insured** caused by forgery or alteration of any check or negotiable instrument; and

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) loss to an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

b. Defense provisions:

(1) **we** may investigate and settle any claim or suit that **we** decide is appropriate. **Our** duty to defend a claim or suit ends when the amount **we** pay for the loss equals our limit of liability;

(2) if a suit is brought against an **insured** for liability under the Credit Card, Debit Card, or Fund Transfer Card or Access Device coverage, **we** will provide a defense at **our** expense by counsel of **our** choice; and

(3) **we** have the option to defend at **our** expense an **insured** or an **insured's** bank against any suit for the enforcement of payment under the Forgery coverage.

c. **We** do not cover use of credit card, debit card, fund transfer card, or access device:

(1) by a resident of **your** household;

(2) by a person who has been entrusted with either type of card or access device; or

(3) if an **insured** has not complied with all terms and conditions under which the cards are issued or to the devices accessed.

(4) arising out of **business** use or dishonesty of an **insured**.

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

4. **Damage from Fungi.** If a Peril Insured Against causes covered water damage to a covered item, then **we** will pay up to 2% of the Coverage A item limit of liability for all incurred costs applicable to Coverages A, C, and D only for direct physical loss to covered property caused by, resulting from, contributed to, or aggravated by **fungi**. This 2% limit applies per **occurrence** for item coverages (A, C, and D only) combined and not separately for each coverage. For all incurred damages and for all **occurrences** during a policy period, **we** will not pay more than 3% of the limit for Coverage A for that item. Our limit includes all costs associated, or alleged to be associated, with "Damage from **Fungi**," including but not limited to surveys, tests, remediation, and repairs.

No Damage from **Fungi** coverage applies to any **Other Structures,** Coverage B. This coverage does not increase the limit of liability applying to any coverage. The Loss Deductible Clause applies to this Additional Coverage.

5. **Debris Removal**. **We** will pay **your** reasonable expense for the removal of:

a. debris of covered property if a Peril Insured Against causes the loss;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. ash, dust or particles from a volcanic eruption that has caused direct loss to a covered building or covered property contained in a building; or

c. fallen trees from the **residence premises** if:

(1) coverage is not afforded under Additional Coverages 11, Trees, Shrubs, and Other Plants for the peril causing the loss; or

(2) the tree is not covered by this policy;

provided the tree damages property insured under Coverages A or B, and a Peril Insured Against under Coverage C causes the tree to fall. **Our** limit of liability for this coverage will not be more than $500 in the aggregate for any one loss.

d. **We** will also pay **your** reasonable expense, up to $500 for the removal from the **residence premises** of:

(1) **your** tree(s) felled by the peril of Windstorm or Hail or Weight of Ice, Snow or Sleet; or

(2) a neighbor's tree(s) felled by a Peril Insured Against under Coverage **C;**

provided the tree(s):

(3) damage(s) a covered structure; or

(4) does not damage a covered structure, but:

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

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

e. In the event of a total loss of the **residence premises, we** will pay up to an additional 5% of Coverage A-Dwelling limit for debris removal provided the damaged property is repaired or replaced at the **residence premises**.

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

f. **We** do not cover any expenses for:

(1) extracting any **pollutant** from land, soil, or water on or under any **residence premises** or other land that **you** own, lease, rent, or use;

(2) removing, restoring, or replacing polluted land, soil, or water;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) removing covered property or debris of covered property contaminated by any **pollutant** or hazardous material unless the contamination occurred due to a Peril Insured Against at the **residence premises**; nor

(4) costs to comply with any ordinance, law, regulatory, or court order that requires any **insured** or any others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

6. **Fire Department Service Charge.** **We** will pay up to $250 for **your** liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. **We** do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

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

7. **Loss Assessment.** **We** will pay up to $1,000 for **your** share of any loss assessment charged during the policy period against **you** by a corporation or association of property owners. This only applies when the assessment is made as a result of each direct loss to property, owned by all members collectively, caused by a Peril Insured Against under Coverage A – Dwelling, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

a. This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

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

c. This coverage is additional insurance. No deductible applies to this coverage. The limit of $1,000 is the most **we** will pay with respect to any one loss, regardless of the number of assessments.

8. **Property Removed.** **We** insure covered property against direct loss from any cause while being removed from a **residence premises** endangered by a Peril Insured Against under Coverage C- Personal Property and for no more than 30 consecutive days while removed. This coverage does not increase the limit of liability that applies. **Your** property remaining at the **residence premises** is insured against loss caused by a Peril Insured against for Coverage C, Personal Property. The Loss Deductible Clause applies to this Additional Coverage.

9. **Reasonable Repairs.** **We** will pay the reasonable cost **you** incur for necessary repairs made solely to protect covered property from further

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

damage if a Peril Insured Against causes the loss. This coverage does not increase the limit of liability that applies to the property being repaired. This does not relieve you of any duties listed under Section I, Conditions, Duties After Loss, nor extend the reporting time limit established also under Section I, Conditions, Suit Against Us. The Loss Deductible Clause applies to this Additional Coverage.

10. **Refrigerated Products.** **We** will pay up to $1,000 under Coverage C to cover the contents of refrigerated units on the **residence premises** for loss due to power failure or mechanical failure. If mechanical or power failure is known to **you**, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power or mechanical failure shall not include:

    a. removal of a plug from an electrical outlet; or

    b. turning off an electrical switch unless caused by a Peril Insured Against.

    This coverage does not increase the limit of liability that applies to the covered property. The Loss Deductible Clause applies to this Additional Coverage.

11. **Trees, Shrubs and Other Plants.** **We** cover trees, shrubs, plants or lawns on the **residence premises** for loss caused only by the following Perils Insured Against: Fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned or operated by a resident of the **residence premises**, vandalism or malicious mischief, or theft. **We** do not cover loss caused in any other way.

    The limit of liability for this coverage will not be more than 5% of the limit of liability that applies to the dwelling, or more than $500 for any one tree, shrub or plant. **We** do not cover property grown for **business** purposes.

    This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

12. **Ordinance or Law.**

    a. **We** will pay up to 5% of the limit of liability that applies to Coverage A for increased costs **you** incur due to the enforcement of any law or ordinance that regulates or requires:

        (1) construction, demolition, remodeling, renovation, or repair of that part of a covered building or other structure damaged by a Peril Insured Against;

        (2) demolition and reconstruction of the undamaged portion of a covered building or other structure, when that building or other structure must be totally demolished due to damage caused by a Peril Insured Against to another portion of that covered building or other structure;

        (3) remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

that part of the covered building or other structure damaged by a Peril Insured Against.

b. This coverage may be used to pay for any increased costs incurred to remove debris from the construction, demolition, remodeling, renovation, repair, or replacement of property indicated in a. above.

c. **We** do not cover:

(1) loss in value to any covered building or other structure due to requirements of any ordinance or law; or

(2) costs to comply with any ordinance or law that requires any **insured** or any others to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage applies only to loss to **your** dwelling on the **residence premises** covered by Coverage A – Dwelling. This coverage does not apply to any other structure whatsoever.

This coverage is additional coverage. The Loss Deductible Clause applies to this Additional Coverage.

13. **Glass Or Safety Glazing Material**

a. **We** cover:

(1) the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;

(2) the breakage of glass, glass seals or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and

(3) the direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

(1) to covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or

(2) on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property. The Loss Deductible Clause applies to this Additional Coverage.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

14. **Grave Markers**

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

This coverage does not increase the limits of liability that apply to the damaged covered property. The Loss Deductible Clause does not apply to this Additional Coverage.

15. **Water Backup and Sump Discharge or Overflow.**

a. **We** will pay up to $2,500 for direct physical loss, not caused by the negligence of any **insured**, to property covered under Section I caused by:

(1) water, or water-borne material, that backs up through sewers or drains; or

(2) water, or water-borne material, that overflows or is discharged from a sump, sump pump or related equipment even if such overflow or discharge results from the mechanical breakdown of the sump pump or related equipment.

b. This Additional Coverage does not apply to loss caused by:

(1) flood, surface water, floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams or other bodies of water, or spray from any of these, whether or not driven by wind;

(2) water, or water-borne material, which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment which is the direct or indirect result of flood, or other circumstance listed in b(1) above;

(3) water, or water-borne material, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure which is the direct or indirect result of flood; or

(4) mud, pluff mud, mudslide or mudflow,

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

This coverage does not increase the limits of liability for Coverages A, B, C or D stated in the policy Declarations, policy changes, or endorsements. Except as stated under Additional Coverages 4, Damage From **Fungi** above, **we** do not cover indirect, subsequent, consequential, or concurrent loss cause by **fungi** in any sequence to a loss caused by water back-up and sump pump discharge or overflow.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Direct loss by fire or explosion due to water backup and sump discharge or overflow is covered. The Loss Deductible Clause applies to this Additional Coverage.

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING AND COVERAGE B – OTHER STRUCTURES

We insure against risks of direct physical loss to property described in Coverages A and B, if that loss is a physical loss to property.

However, **we** do not insure loss as follows:

1. excluded under Section I – Exclusions
2. involving collapse, other than as provided in Additional Coverage 2;
3. caused by:
   a. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system, or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
      (1) maintain heat in the building; or
      (2) shut off the water supply and drain all systems and appliances of water.

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

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

   b. freezing, thawing, pressure or weight of water, ice, hail, snow or sleet, whether driven by wind or not, to a:
      (1) fence, pavement, deck, patio or swimming pool;
      (2) footing, foundation, retaining wall or bulkhead or any other structure or device that supports all or part of a building or other structure;
      (3) pier, wharf or dock; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) sump, sump pump or related equipment or a gutter, downspout, roof drain, or similar fixtures or equipment;

c. theft in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied;

d. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

e. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning, guttering, or automatic fire protective sprinkler system or from within a household appliance;

f. mold, fungus or wet rot. Subject to Additional Coverage 4, **we** insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of the dwelling if such loss results from the accidental discharge or overflow of water or steam from within:

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

(2) a storm drain, or water, steam or sewer pipes, off the **residence premises**.

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

g. caused by:

(1) wear and tear, marring, deterioration;

(2) inherent vice, latent defect, mechanical breakdown;

(3) the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not, in whole or in part:

i. caused by or resulting from;

ii. contributed to by; or

iii. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss, subject to Additional Coverage 4, Damage from **Fungi**.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) smog, smoke from agricultural smudging or industrial operations;

(5) release, discharge or dispersal of contaminants or **pollutants**;

(6) settling, cracking, shrinking, bulging or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings; or

(7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, **we** cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. **We** do not cover loss to the system or appliance from which this water escaped.

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in Section I – Exclusions.

1. **Fire or lightning.**

2. **Windstorm or hail.**

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

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

3. **Explosion.**

4. **Riot or civil commotion.**

5. **Aircraft,** including self-propelled missiles and spacecraft.

6. **Vehicles.** This peril includes damage to **your** property caused by a vehicle. It does not include damage to **your** personal property caused by **your motor vehicle, your recreational vehicle**, or collision damage to any **motor vehicle you** own, rent or lease, including **recreational vehicles.**

7. **Smoke**, meaning sudden and accidental damage from smoke including emission of smoke, soot, fumes, or vapors from a boiler, furnace, or related equipment. This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief.**

   This peril does not include loss to property on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Also, this peril does not include loss to any computer, computer system, network, hardware, program, **electronic data**, information repository, microchip, integrated circuit, or similar device unless there are visible signs of physical damage to the exterior of the computer, equipment, computer system, or non-computer equipment.

9. **Theft**, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

   This peril does not include loss caused by theft:

   a. committed by an **insured**;

   b. in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied; or

   c. from that part of a **residence premises** rented by an **insured** to someone other than an **insured.**

   d. of **electronic data**.

   This peril does not include loss caused by theft that occurs off the **residence premises** of:

   a. property while at any other residence owned by, rented to, or occupied by an **insured**, except while an **insured** is temporarily living there. Property of a student who is an **insured** is covered while residing away from **your residence premises** at a residence away from home;

   b. watercraft of all types, and their furnishings, equipment and outboard motors;

   c. trailers and campers.

10. **Falling Objects**.

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

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

11. **Weight of ice, snow or sleet** which causes damage to property contained in the building.

    We do not cover loss:

    a. to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock, or gutter; or

    b. caused by settling, cracking, shrinking, bulging, or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

12. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

    This peril does not include loss:

    a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months, or years;

    b. to a Dwelling, Other Structure, or Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

    c. on the **residence premises**, if the dwelling has been vacant or unoccupied for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

    d. to the system or appliance from which the water or steam escaped;

    e. caused by or resulting from freezing except as provided in the peril of Freezing, #14 below;

    f. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**;

    However, that portion of Section I – Exclusion 3. Water Damage, that applies to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. **Sudden and accidental tearing apart, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water, but not a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

    This peril does not include loss:

    a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

    b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

    c. caused by or resulting from freezing except as provided in the peril of Freezing, #14 below.

14. **Freezing** of a plumbing, heating air conditioning or automatic fire protective sprinkler system or of a household appliance, but not gutters, downspouts, roof drain, or similar fixtures or equipment, sump, sump pump or related equipment.

    This peril does not include loss:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot or **fungi**;

c. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**;

15. **Sudden and accidental damage** from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

SECTION I – EXCLUSIONS

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

1. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided elsewhere under this policy, that:

   a. requires or regulates the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion 1.a. does not apply to the amount of coverage that may be provided for in Section I – Property Coverages, Additional Coverages, Ordinance or Law;

   b. results in a loss in value to property; or

   c. requires any **insured** or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**.

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

2. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; any volcanic eruption; landslide; mudflow; erosion, earth sinking, sinkhole, contracting, expanding, rising or shifting, caused by any act of nature or resulting from human or animal forces unless direct loss by:

   a. fire;

   b. explosion;

   c. breakage of glass or safety glazing material which is part of a building, storm door or storm window; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. theft,

ensues and then **we** will pay only for the ensuing loss.

Also, **we** do not cover any loss or damage caused by growth or decay of trees, roots, plants or vines.

3. **Water Damage**, meaning damage from:

a. flood, surface water or any other substance(s) or object(s) on or from the surface of the ground regardless of its source, any floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams, or other bodies of water or spray from any of these, whether or not driven by wind;

b. water, or water-borne matter that backs up through sewers or drains or that overflows or is discharged from a sump, sump pump or related equipment; or

c. water, or water-borne matter, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure; or

d. mud, pluff mud, mudslide, or mudflow;

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

Direct loss by fire, explosion or theft resulting from water damage is covered. Loss caused by **Water Damage** to watercraft, their trailers, furnishings, equipment, and outboard motors, covered by this policy or its endorsement, is covered.

4. **Exclusion for Mold and Fungi.** Other than as stated in Section I - Additional Coverages, Damage from **Fungi**, **we** do not cover the presence growth, proliferation, spread, or any activity of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not, in whole or in part:

a. caused by or resulting from;

b. contributed to by; or

c. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss.

5 **Power Failure** or interruption, meaning the failure or interruption of power or other utility service if the failure takes place off the **residence premises**. But, if a Peril Insured Against ensues on the **residence premises**, **we** will pay only for that ensuing loss caused by a Peril Insured Against.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

6. **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

7. **War and Military Action Exclusion.**

We will not pay for loss or damage caused by the following, listed below. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Excluded are:

a. war, including undeclared civil war;

b. warlike action by a military force, including action to hinder or defend against an actual, expected, or threatened attack, by any government, sovereign, or other authority using military personnel or other agents;

c. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or

d. destruction, seizure or use for a military purpose.

If there is any action that comes within the terms of this exclusion and involves nuclear reaction or radiation or radioactive contamination, then this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

8. **Terrorism Exclusion.** Regardless of the amount of damage and losses, this exclusion applies to any and all incidents of **terrorism**:

a. that involve the use, release or escape of pathogenic or poisonous biological or chemical materials;

b. that could cause the release or escape of pathogenic or poisonous biological or chemical materials; or

c. that directly or indirectly result in nuclear reaction or radiation or radioactive contamination.

We will not pay for loss or damage caused directly or indirectly by **Terrorism**, including action to hinder or defend against an actual, expected or threatened incident of **Terrorism**. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

But if **Terrorism** results in fire, **we** will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property.

With respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes the **Terrorism** Exclusion.

In the event of an act of **Terrorism** that involves nuclear reaction or radiation, or radioactive contamination, this **Terrorism** Exclusion supersedes the Nuclear Hazard Exclusion.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I – Conditions.

10. **Governmental Action**

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

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

11. **We** do not insure under any coverage for loss resulting from one or more of the items below:

a. conduct, act, failure to act, or decision of any person, group, organization, or governmental body whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

(1) planning, zoning, development surveying, siting;

(2) design, specifications, workmanship, construction, grading, compaction;

(3) materials used in construction or repair; or

(4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the **residence premises**.

However, **we** do insure for any ensuing covered loss from items a. and b. unless the ensuing loss is itself a loss excluded by this section.

12. **We** do not insure for loss under any coverage regardless of whether one or more of the items listed in paragraph 11 above:

a. directly or indirectly cause, contribute to or aggravate the loss; or

b. occur before, at the same time, or after the loss or any other cause of the loss.

However, **we** do insure for ensuing covered loss from items 11a and 11b unless the ensuing loss is itself a loss excluded by this section.

13. **Asbestos, Lead, or Silica Presence or Removal**. This policy does not insure covered property for damage, loss of use, or expenses arising from:

a. actual or attempted removal of any asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica, or dust from any of these, unless the asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica is itself damaged by a peril insured against;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. demolition or increased cost of reconstruction, repair, or debris removal, attributable to the enforcement of any law, ordinance or regulation concerning asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica; or

c. any governmental direction or request declaring that asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica present in, part of, or utilized by any undamaged portion of the **insured's** property can no longer be used for the purpose for which it was intended or installed and must be modified, covered, sealed, protected, or removed.

14. **Pollutants and Pollution Exclusion.** **We** do not insure for loss, cost, or expense:

a. which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, by any person, organization or governmental authority; and

b. arising out of any:

(1) request, demand or order that any **insured** or others test for, monitor, clean-up, remove, remedy, repair, contain, treat, detoxify or neutralize, or in any other way respond to, or assess the effects of **pollutants**; or

(2) claim or suit by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, remedying, repairing, containing, treating, detoxifying or neutralizing, or in any other way responding to, or assessing the effects of **pollutants**.

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

15. **We** do not insure covered property for damage, loss of use, or expenses caused by radon gas, radium, any other radioactive substance, any gas, or any sound or light. **We** do not cover the cost of any investigations, fines, or other costs related to radon gas, radium, any other radioactive substance, any gas, or any sound or light.

16. **We** do not insure for loss or damage arising directly or indirectly out of:

a. loss of, alteration of, or damage to; or

b. a reduction in the functionality, availability or operation of any computer, computer system, network, hardware, software, program, **electronic data**, information, repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of an **insured** or others; and

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

c. **we** will not cover, pay for, or reimburse **you** or anyone else for any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided to correct, determine, prevent, rectify, or test for any actual, alleged or potential problems described in subparagraphs a. and b. above; but

d. **we** will pay for direct physical loss or damage to covered property caused by a Peril Insured Against, Section I, Coverage C – Personal Property. However, this exception does not apply to any loss or damage that is:

(1) otherwise excluded in Section I – Exclusions; or

(2) caused by the peril of **Vandalism or Malicious Mischief**, unless there are visible signs or physical damage to the exterior of such computer system, computer equipment or non-computer equipment.

e. With respect to loss or damage excluded by this paragraph, if a peril listed in Section I – Perils Insured Against for Coverage C – Personal Property ensues, **we** will pay for the direct physical loss or damage caused by such ensuing peril.

17. **Collapse**, other than as provided in **Additional Coverages**.

18. **We** do not insure under any coverage for loss resulting from weather conditions. This exclusion applies only if weather conditions contribute in any way with a cause or event excluded in items 1 through 16 above.

19. **Prejudgment Interest**. This policy does not pay prejudgment interest.

20. **Intentional Acts**, meaning any loss arising out of any act committed, or where there was a conspiracy to commit an act:

a. by or at the direction of any **insured**;

b. with the intent to cause a loss; and

c. in any domestic dispute between **insureds**, family members, or others.

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

21. **Intentional Loss**. If **you** or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then the policy is void and **we** will not pay **you** or any other **insured** for this loss.

SECTION I – CONDITIONS

1. **Insurable Interest and Limit of Liability**. Even if more than one person has an insurable interest in the property covered, **we** will not be liable in any one loss:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. to any **insured** for more than the amount of the **insured's** interest at the time of loss; or

b. for more than the applicable limit of liability.

2. **Your Duties After Loss.** In case of a loss to covered property, **you** or your representative must see that the following are done:

a. immediately notify the police or other appropriate law enforcement agency in any case of loss where a crime is suspected;

b. immediately notify the credit card or fund transfer card company in case of loss under Credit Card, Debit Card, or Fund Transfer Card coverage;

c. give prompt notice to **us** or **our** agent;

d. (1) protect the property from further damage;

(2) make reasonable and necessary repairs to protect the property; and

(3) keep an accurate record of repair expenses;

(4) cooperate with **us** in the investigation and settlement of any claim;

e. prepare an inventory of damaged personal property showing the quantity, description, how, when, and where acquired, **actual cash value** and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

f. as often as **we** reasonably require of **you**, any other **insured**, or any other person seeking coverage:

(1) allow **us**, or **our** designee(s) to inspect the damaged property;

(2) allow **us** to secure, and retain, at **our** expense, evidence relating to the loss;

(3) provide **us** with records and documents **we** request and permit **us** to make copies; and

(4) allow us to obtain from **you**, and any other person seeking coverage, separate recorded statements; and

(5) submit, separate and apart from any other **insured** to examination(s) under oath, if **we** require by any person named by **us** and sign and swear to it;

g. send to **us**, within 60 days after **our** request, **your** signed, sworn proof of loss which sets forth, to the best of **your** knowledge and belief:

(1) the time and cause of loss;

(2) the interest of the **insured** and all others in the property involved and all mortgages or liens on the property;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) other insurance, service agreements, or warranty provisions which may cover the loss;

(4) changes in title or occupancy of the property during the term of the policy;

(5) specifications of damaged buildings and detailed repair estimates;

(6) the inventory of damaged personal property described in 2e above;

(7) receipts for additional living expense incurred and records that support the fair rental value loss; and

(8) evidence or affidavit that supports a claim under the Credit Card, Debit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. **Loss Settlement.**

The terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in Section I – Additional Coverages, "Ordinance or Law." Covered property losses are settled as follows:

a. (1) Personal property;

(2) Awnings, carpeting, household appliances, fences, property lines, sea walls, outdoor equipment, outdoor antennas and swimming pools, whether or not attached to buildings; and

(3) Other structures that are not buildings, including grave markers and mausoleums;

(4) Buildings not permanently attached to, or otherwise forming part of the realty;

at **actual cash value** at the time of loss but not more than the amount required to repair or replace.

b. Buildings permanently attached to or otherwise forming a part of the realty, under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

(1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, **we** will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:

(a) the limit of liability under this policy that applies to the building;

(b) the replacement cost of that part of the building damaged for like construction and use of the same premises; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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

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

(a) the **actual cash value** of that part of the building damaged; or

(b) that proportion of the cost to repair or replace, without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

(3) To determine that amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, **we** do not include the value of:

(a) excavations, foundations, footings, piers, devices or any supports which are below the undersurface of the lowest basement floor;

(b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and

(c) underground flues, pipes, wiring and drains.

(4) **We** will pay no more than the **actual cash value** of the damage, up to the policy limit, until actual repair or replacement is completed.

(5) **You** may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an **actual cash value** basis. **You** may then make claim within 180 days after loss for any additional liability on a replacement cost basis.

We do not guarantee an exact decorative match in texture or color for any roofing, exterior or interior building material, furniture or upholstery.

4. **Loss to a Pair or Set**. In case of loss to a pair or set, **we** may elect to:

a. repair or replace any part to restore the pair or set to its value before the loss;

b. pay the difference between **actual cash value** of the property before and after the loss; or

c. pay in any loss involving part of a series of panels or pieces the reasonable cost of

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1). replacing or repairing the damaged part to match the remainder as closely as possible; or

(2). providing an acceptable decorative effect as may be necessary. However, **we** do not guarantee exact replacement availability. In the event of damage to a part, **we** are not liable for the value of or the repair or replacement of the entire series of panels or pieces.

5. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

6. **Appraisal.** If **you** and **we** fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of loss. If the appraisers submit a written report of an agreement to **us**, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by **you** and **us**.

7. **Other Insurance And Service Agreement.**

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

a. other insurance, **we** will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or

b. a service agreement, then this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

8. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within three years after the date of loss.

9. **Our Option.** **We** may repair or replace any part of the property damaged or stolen with equivalent property. Any property **we** pay for or replace becomes **our** property at **our** option.

10. **Loss Payment.** **We** will adjust all losses with **you**. **We** will pay **you** unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after **we**

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. reach an agreement with **you**; or

b. receive **your** proof of loss and reach an agreement with **you**; or

c. there is an entry of a final judgment; or

d. there is a filing of an appraisal award with **us**.

11. **Abandonment of Property.** **We** need not accept any property abandoned by an **insured**.

12. **Mortgagee Clause.**

The word **mortgagee** includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and **you**, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If **we** deny **your** claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. notifies **us** of any change in ownership, occupancy or substantial change in risk within 90 days of when the mortgagee becomes aware of such change;

b. pays any premium due under this policy on demand if **you** have neglected to pay the premium; and

c. submits a signed, sworn statement of loss within 60 days after receiving notice from **us** of **your** failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If the policy is cancelled or not renewed by **us**, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If **we** pay the mortgagee for any loss and deny payment to **you**:

a. **we** are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

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

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

13. **Loss Payable Clause**

If the Declarations show a loss payee for certain listed insured personal property and if **we** decide to cancel or not renew this policy, that loss payee will be notified in writing.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

14. **No Benefit to Bailee.** **We** will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provisions of this policy.

15. **Nuclear Hazard Clause.**

    a. **Nuclear Hazard** means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

    b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I.

    c. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the **nuclear hazard** is covered.

16. **Unearned Premium Clause.** If a loss under **your** policy is payable or has been paid, the Company has the option to:

    a. reduce **your** coverage by any sum up to the amount of the loss and refund to **you** within 30 days of **our** notice to **you** of the reduction in coverage the pro rata unearned premium as of the time of the loss; or

    b. retain the unearned premium and maintain **your** policy without regard to the loss; or

    c. terminate **your** policy and within 30 days of **our** notice refund to **you** any pro rata unearned premium as of the time of the loss.

17. **Valuation Clause.** For the perils of fire and lightning, **you** and **we** agree that the value of the building described in this policy is, and hereby fix the amount of insurance to be carried on the building as, the amount shown for Coverage A – Dwelling, on the Declarations of this policy. These agreed values are established for insurance purposes only. At any date the building is under construction, the maximum amount of insurance shall be the proportion of the value of the building that the **actual cash value** of the building, on that date, bears to the value of the building when completed.

18. **Loss Deductible Clause.** In case of loss under Coverages A, B, or C, the deductible stated on **your** latest Declarations will be applied per **occurrence** and will be deducted from the amount of the loss. This loss deductible clause shall not apply to the: Arson Award; Credit Card, Debit Card, Fund Transfer Card or Access Device; Forgery and Counterfeit Money; Fire Department Service Charge; Loss Assessment; and Grave Markers coverages.

19. **Change in Ownership, Renting or Leasing.** This policy does not apply if:

    a. there is a change in ownership of the dwelling to a person or organization, other than an **insured**;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. **you** rent or lease the dwelling to a person, other than an **insured** unless **you** notify **us** in writing of the change, rental or lease within 30 days.

20. **Report Increased Values.** **You** agree to notify **us** within 90 days of the start of any building valued at $5,000 or more or any additions to or remodeling of buildings that increases their value by $5,000 or more, and pay any additional premium for the increased value. If **you** fail to notify **us** within 90 days, or pay the additional premium, **we** will not cover any increased values. **We** must receive **your** notification and agree to any amount of increase before any claim occurs.

21. **Concealment Or Fraud.**

We will not provide coverage to any **insureds** under this policy if, whether before or after a loss, any **insured** has, or has conspired to have:

1. intentionally concealed or misrepresented any material fact or circumstance;
2. engaged in fraudulent conduct; or
3. made false statements;

relating to this insurance.

SECTION II – LIABILITY COVERAGES

COVERAGE E – PERSONAL LIABILITY

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

1. pay up to **our** limit of liability for the damages for which the **insured** is legally liable. Damages include prejudgment interest awarded against an **insured**; and

2. have the right and duty to provide a defense at **our** expense by counsel of **our** choice, even if the suit is groundless, false or fraudulent. **We** may investigate, settle, deny, or defend any claim or suit that **we** decide is appropriate. However, **we** will have no duty to defend any suit seeking damages for **bodily injury** or **property damage** to which this insurance does not apply. **Our** duty to settle or defend ends when the amount **we** pay for damages resulting from the **occurrence** equals **our** limit of liability.

   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.**

   Property damage that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the **occurrence**

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

that caused it. For the purposes of this Section, **electronic data** is not tangible property. **We** will not cover any loss, loss of use, deletion, corruption, or degradation of performance of any other **electronic data** equipment or material caused by **your** ownership, use, or operation of any **electronic data** equipment, material, or instructions, whether the damage or consequences was intentional or not.

This insurance applies to **bodily injury** and **property damage** only if:

a. the **bodily injury** or **property damage** is caused by an **occurrence** which takes place in the **coverage territory**; and

b. the **bodily injury** or **property damage** occurs during the policy period of this policy.

The amount **we** will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY and on the policy Declarations.

COVERAGE F – MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses that are incurred within three years from the date of an accident causing **bodily injury**. **We** will make these payments regardless of fault. Necessary medical expenses means reasonable charges for first aid administered at the time of the accident, medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to **you**, any other **insured,** or regular residents of **your** household except **residence employees**. As to others, this coverage applies only:

1. to a person on the **insured location** with the permission of an **insured**; or

2. to a person off the **insured location**, if the **bodily injury**:

   a. arises out of a condition on the **insured location** or the ways immediately adjoining;

   b. is caused by the lawful activities of an **insured**;

   c. is caused by a **residence employee** in the course of the **residence employee's** employment by an **insured**; or

   d. is caused by an animal owned by or in the care of an **insured**, but not a **business** animal (including a farm animal) nor a dangerous exotic animal.

3. to a **residence employee** if the **occurrence** causing **bodily injury** occurs off the **insured location** and arises out of or in the course of the **residence employee's** employment by an **insured**.

These payments will not exceed the applicable limits of liability. This coverage applies only to **occurrences** in the **coverage territory** during the policy period.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – EXCLUSIONS

1. **Coverage E – Personal Liability and Coverage F – Medical Payments to Others** do not apply to **bodily injury** or **property damage**:

   a. resulting from intentional acts or directions of **you** or any **insured**. The expected, unexpected, or unintended results of these acts or directions are not covered even if the resulting **bodily injury** or **property damage**:

      (1) is of a different kind, quality or degree than initially expected or intended; or

      (2) is sustained by a different person, entity, real or personal property, than initially expected or intended.

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

   b. arising out of or in connection with **business** pursuits of an **insured** or the rental or holding for rental of any part of any premises by an **insured**, whether or not the **business** is owned or operated by an **insured** or employs an **insured**.

      This Exclusion 1. applies but is not limited to, an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**.

      This exclusion does not apply to:

      (1) the rental or holding for rental of any **insured location**:

         (a) on an occasional basis if used only as a residence;

         (b) in part, unless intended for use as a residence by more than two roomers or boarders; or

         (c) in part, as an office, school studio or private garage; or

      (2) an **insured** under the age of 21 years involved in a part-time or occasional, self-employed **business** with no **employees**;

   c. resulting from any **insured's** regularly providing home day care services, or foster parenting services, at any time to a person or persons other than any **insured**, in return for which any **insured** receives monetary or other compensation or any other consideration. The providing of such services in exchange for such compensation is a **business**. Mutual exchange of home day care services, however, is not considered compensation.

   d. arising out of the rendering of or failure to render professional services of any nature, even if covered by another policy.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

e. arising out of any act or omission that occurs at, on, or in connection with a premises:

(1) owned or controlled by any **insured**;

(2) rented to any **insured**; or

(3) rented to others by any **insured**;

that is not an **insured location**.

f. arising out of:

(1) the ownership, lease, rental, maintenance, use, loading or unloading of **motor vehicles**, **recreational vehicles**, or any other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an **insured**;

(2) the entrustment by an **insured** of a **motor vehicle**, **recreational vehicle** or any other motorized land conveyance to any person;

(3) maintenance or use of any **motor vehicle**, **recreational vehicle**, or any other motorized land conveyance;

(a) on any highway or public road;

(b) on another's land, whether owned, leased, or rented, without expressed permission;

(c) on public or private lands where these conveyances are prohibited, whether posted or not;

(d) in any prearranged or organized race, speed trial, time trial or any other similar contest; or

(4) vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a conveyance excluded in paragraph (1), (2), or (3) above.

This exclusion does not apply to:

(1) a trailer not towed by or carried on a motorized land conveyance;

(2) a motorized golf cart while being used to play golf on a golf course;

(3) a vehicle, **recreational vehicle** or conveyance not subject to **motor vehicle** registration:

(a) while being used to assist a handicapped person;

(b) while in dead storage on an **insured location**; or

(c) which is a lawn or garden tractor, with no more than a 30 horsepower engine rating, that is not used in any **business** and is not a **recreational vehicle**.

(d) which is powered by electrical current supplied by battery and was not built or modified after manufacture to exceed a speed of 15 miles per hour on level ground.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

g. arising out of:

(1) the ownership, maintenance, use, loading or unloading of a watercraft described below;

(2) the entrustment by an **insured** of a watercraft described below to any person; or

(3) vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a watercraft described below.

Watercraft:

(1) with inboard or inboard-outdrive motor power owned by an **insured**;

(2) with inboard or inboard-outdrive motor power of more than 50 horsepower rented to an **insured**;

(3) that is a sailing vessel, with or without auxiliary power, 26 feet or more in length owned by or rented to an **insured**;

(4) powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by an **insured**. But, outboard motors of more than 25 total horsepower are covered for the policy period if:

(a) **you** acquire them prior to the current policy period and:

(i) **you** declare them at the current policy inception; or

(ii) **your** intention to insure is reported to **us** in writing within 45 days after **you** acquire the outboard motors;

(b) **you** acquire them during the current policy period and **your** intention to insure is reported to **us** in writing within 45 days after **you** acquire the outboard motors; or

(5) designated as a jet ski, air boat, air cushion, hovercraft, personal watercraft or similar type of craft, unless endorsed on this policy.

This exclusion does not apply while the watercraft is stored.

h. arising out of:

(1) the ownership, maintenance, use, operation, loading or unloading of any aircraft or hovercraft by any **insured** or any other person;

(2) the leasing, or rental of an aircraft or hovercraft by any **insured**, including any aircraft loaned to any **insured**;

(3) the entrustment by any **insured** of an aircraft to any person; or

(4) vicarious liability whether or not statutorily imposed for the actions of a child or minor using an aircraft or hovercraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

people, cargo, photographic, video or electronic equipment. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles.

i. all other damages actually or alleged to be caused, directly or indirectly, happened through, or in consequence of:

(1) war, including undeclared war;

(2) warlike action by a military force or military personnel, including action in hindering or defending against an actual, threatened, or expected attack, by any government, sovereign, or other authority using military personnel or other agents;

(3) civil war, insurrection, rebellion, revolution, usurped power, or action taken by governmental authority to hinder or defend against any of these;

(4) destruction, seizure or use for a military purpose; or

(5) **terrorism**, including any action taken to hinder or defend against an actual, threatened, or expected incident of **terrorism**;

regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

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

j. arising from **sexual harm** committed, caused, instigated, or directed or alleged to have been committed, caused, instigated, or directed by:

(1) **you**, any **insured**, any covered person, or anyone; or

(2) **your**, any **insured's** or any covered person's employee or agent whether or not such **bodily injury, personal injury,** or **property damage** is:

(a) intended;

(b) expected; or

(c) foreseeable;

by anyone.

(3) This exclusion also applies to **bodily injury, personal injury,** or **property damage** arising from the negligent:

(a) employment, hiring, contracting, and/or retention by anyone of a person who commits **sexual harm**;

(b) investigation of, or reporting or failure to report to the proper authorities, a person:

i) employed;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ii) hired;

iii) contracted; or

iv) retained;

by **you,** any **insured,** covered person, or anyone and who commits or is alleged to have committed **sexual harm.**

(c) failure of any **insured** or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:

i) involvement in;

ii) instigation of; or

iii) continuation of;

sexual harm by:

i) any **insured**;

ii) any **insured's** agent; or

iii) any person employed, hired, contracted, and/or retained by any **insured**;

(4) supervision of a person who commits **sexual harm**;

(5) entrustment of a person to any other person who commits **sexual harm**;

(6) allowing, by anyone, of any other person to be in the presence of any person who commits **sexual harm**;

(7) failure by anyone to take action to stop any other person from being in the presence of any person who commits **sexual harm,** including but not limited to failure to warn such other or any person; and

(8) failure of anyone to prevent the commission of **sexual harm**.

k. Abuse or Molestation

Bodily injury, personal injury, or **property damage** arising out of:

(1) Any actual, alleged, attempted or threatened abuse or molestation, other than **sexual harm,** by anyone of any person;

(a) any **insured**; or

(b) any **insured's** employee or agent;

whether or not such **bodily injury, personal injury,** or **property damage** is:

(a) intended;

(b) expected; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(c) foreseeable;

by anyone.

(2) Any negligent:

(a) employment;

(b) investigation;

(c) supervision;

(d) reporting to the proper authorities, or failure to so report; or

(e) retention;

of a person whose conduct would be excluded by paragraph (1) above;

(3) Any negligent entrustment of a person to another person whose conduct would be excluded by paragraph (1) above; or

(4) Any negligent:

(a) allowing, by anyone, of any other person to be in the presence of any person whose conduct would be excluded by paragraph (1) above;

(b) failure by anyone to take action to stop any other person from being in the presence of any person whose conduct would be excluded by paragraph (1) above; or

(c) failure by anyone to prevent conduct, which would be excluded by paragraph (1) above.

l. resulting from any **insured's** conduct, act, failing to act, or decision whether intentional, wrongful, negligent, or without fault while acting as a participant, member, officer, director, advisor, or trustee of any group, board, organization, or government body, whether or not elected.

This exclusion does not apply to **loss assessment** provided under **Section II – Additional Coverages**, paragraph 4.

m. arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, insects, rust, mold, mildew, wet rot or dry rot, any other **fungi**, other organism, sickness, condition or illness, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage by:

(1) **you**;

(2) any members of **your** household;

(3) anyone **you** employ;

(4) any other person acting on **your** behalf or at **your** direction; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(5) property belonging to any of those listed above (1) – (4).

n. arising out of corporal punishment or physical or mental abuse, or arising out of **personal injury** except as covered by Section II, Additional Coverages.

o. arising out of acts committed, or alleged to have been committed, by any **insured** that causes **personal injury**, **bodily injury** to, or damages property of, any other **insured** under the provisions of this policy.

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

q. arising out of:

(1) ownership, possession, controlling, keeping, harboring, or breeding or knowingly permitting any other person to own, possess, control, keep, harbor, or breed any dangerous exotic animal on any **insured location**. The presence of any government agency permit does not negate this exclusion and this policy does not serve as evidence of liability insurance coverage for exotic animal owners, possessors, or breeders.

(2) the use of any livestock or other animal in, or while in practice or preparation for, a prearranged racing, speed, or strength contest, or prearranged stunting activity. But this exclusion applies only to **occurrences** arising out of such contests or activities that take place at the site designated for the contest or activity.

r. arising from any nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

s. arising from loss, cost or expense, whether direct or indirect, and whether or not environmental:

(1) which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, by any person, organization or governmental authority;

(2) or arising out of any:

(a) request, demand or order that any **insured** or others test for, monitor, clean-up, remove, remedy, repair, contain, treat, detoxify or neutralize, or in any other way respond to, or assess the effects of **pollutants**, asbestos, lead, radium, radon, insects, rust, bacteria, mold, mildew, wet rot or dry rot, or any **fungi**; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(b) fine, claim or suit by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, remedying, repairing, containing, treating, detoxifying or neutralizing, or in any other way responding to, or assessing the effects of **pollutants,** asbestos, lead, radium, radon, insects, rust, bacteria, mold, mildew, wet rot or dry rot, or any other **fungi**.

(c) supervision, instruction, disclosures, or failures to disclose, recommendations, warning, or advice given, or which allegedly should have been given, in connection with **bodily injury, personal injury,** or **property damage** from any consequence of rust, mold, **fungi**, bacteria, wet or dry rot or other microbes or the activities described in subpart (a) above; or

(d) obligation to share with or repay another who must pay damages because of **bodily injury, personal injury,** or **property damage** of the type described above in this paragraph. This applies regardless of any other cause that contributed directly or indirectly, concurrently or in any sequence to the **bodily injury** or **property damage**.

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

(3) any asbestos material or substitute, material containing lead, or silica in any form, or dust from any of these; or

(4) radon gas, radium, any other radioactive substance, any gas, any sound or light, all or any occurring at or emanating from any location.

We do not cover expenses incurred for investigation or defense of any claim or suit, clean-up costs, any other costs, fines, or penalties whatsoever related to (1), (2), (3), or (4) above.

t. arising out of the sale or transfer of real property or any enclosed, inhabitable living space, including but not limited to the following:

(1) known or unknown property, building, construction, or structural defects;

(2) actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, insects, rust, mold, mildew, wet rot or dry rot, any other **fungi**, other organism, sickness, condition or illness, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage by:

(a) **you**;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP260291O

(b) any members of **your** household;

(c) anyone **you** employ;

(d) any other person acting on **your** behalf or at **your** direction; or

(3) known or hidden defects in the plumbing, heating, air conditioning, or electrical systems;

(4) known or unknown soil conditions or drainage problems; or

(5) concealment or misrepresentation of any known defects.

u. arising from damage, deletion, corruption, loss, loss of use or degradation of performance of any other **electronic data** equipment, software, or material of any kind caused by **your** use or operation of any **electronic data** equipment, software, material, or instructions however caused.

Exclusions d., e., f., g., and h., do not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by an **insured**.

2. **Coverage E – Personal Liability**, does not apply to:

a. liability:

(1) for **your** share of any loss assessment charged against all members of an association, corporation or community of property owners, except as provided by Section II – Additional Coverages, **4. Loss Assessment**; or

(2) under any contract or agreement, whether written or unwritten, entered into by an **insured.**

b. **property damage** to property owned by an **insured**.

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

d. **bodily injury** to any person eligible to receive any benefits voluntarily provided, or required to be provided, by an **insured** under any:

(1) workers' compensation law;

(2) non-occupational disability law;

(3) occupational disease law;

(4) unemployment compensation law; or

(5) any similar law.

e. **bodily injury** or **property damage** for which an **insured** under this policy:

(1) is also an **insured** under a nuclear energy liability policy; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(2) would be an **insured** under that policy but for the exhaustion of its limit of liability.

f. **bodily injury** to **you** or any **insured** within the meaning of part a. or b. of **insured** as defined.

g. **bodily injury** to **you** or an **insured** as defined under Definitions **5.a.** or **b.**

This exclusion also applies to any claim made or suit brought against **you** or an **insured**:

(1) to repay; or

(2) share damages with;

another person who may be obligated to pay damages because of **bodily injury** to an **insured**.

3. **Coverage F – Medical Payments to Others**, does not apply to **bodily injury**:

a. to a **residence employee** if the **bodily injury**:

(1) occurs off the **insured location**; and

(2) does not arise out of or in the course of the **residence employee's** employment by an **insured**.

b. to any person eligible to receive any benefits voluntarily provided, or required to be provided, under any:

(1) workers' compensation law;

(2) non-occupational disability law; or

(3) occupational disease law.

(4) unemployment compensation law; or

(5) any similar law.

c. from any:

(1) nuclear reaction;

(2) nuclear radiation; or

(3) radioactive contamination;

all whether controlled or uncontrolled or however caused.

d. to any person, other than a **residence employee** of an **insured**, regularly residing on any part of the **insured location**.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – ADDITIONAL COVERAGES

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

1. **Claim Expenses**. **We** pay:
   a. expenses **we** incur and costs taxed against an **insured** in any suit **we** defend;
   b. premiums on bonds required in a suit **we** defend, but not for bond amounts more than the limit of liability for Coverage E. **We** need not apply for or furnish any bond;
   c. reasonable expenses incurred by an **insured** at **our** request, including actual loss of earnings (but not loss of other income) up to $100 per day, for assisting **us** in the investigation or defense of a claim or suit;
   d. interest on the entire judgment which accrues after entry of the judgment and before **we** pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. **First Aid Expenses**. **We** will pay reasonable expenses for immediate first aid administered within 24 hours of an accident to others, incurred by an **insured**, for **bodily injury** covered under this policy. **We** will not pay for first aid to **you** or any other **insured**.
3. **Damage to Property of Others**. When **you** have property of others entrusted to or loaned to **you**, or under **your** temporary control, **we** will pay limited benefits if **you** damage or destroy it accidentally.
   a. **We** will pay the lesser of:
      (1) replacement cost at the time of loss;
      (2) full cost of repairs; or
      (3) $500 in any one **occurrence**.
   b. **We** will not pay for **property damage**:
      (1) for any amount recoverable under Section I of this policy;
      (2) caused intentionally by any **insured** who is 13 years of age or older;
      (3) to property owned by an **insured**;
      (4) to property owned by or rented to a tenant of an **insured** or a resident of **your** household; or
      (5) arising out of:
         (a) an **insured's business** pursuits;
         (b) any act or omission in connection with a premises owned, rented or controlled by an **insured**, other than the **insured location**; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(c) the ownership, maintenance, or use of aircraft, hovercraft, watercraft, **recreational vehicle**, **motor vehicles** or any other motorized land conveyances.

This exclusion does not apply to a motorized land conveyance or **recreational vehicle** designed for recreational use off public roads, not subject to motor vehicle registration and not owned or leased by, or rented to or by, or available for the regular use of any **insured**.

(d) damage, deletion, corruption, loss, loss of use or degradation of performance of any other **electronic data** equipment or material caused by **your** use or operation of any **electronic data** equipment, material, or instructions however caused.

4. **Loss Assessment**. **We** will pay up to $1,000 for **your** share of any loss assessment charged during the policy period against **you** by a corporation or association of property owners, when the assessment is made as a result of:

a. each **occurrence** to which Section II of this policy would apply;

b. liability for each act of a director, officer or trustee in the capacity as a director, officer or trustee, provided:

(1) the director, officer or trustee is elected by the members of a corporation or association of property owners; and

(2) the director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

We do not cover loss assessments charged against **you** or a corporation or association of property owners by any governmental body. For covered losses, **we** will not pay more than $1,000 per **occurrence** or per act and not more than $1,000 during the policy period.

Section II – Coverage E – Personal Liability Exclusion 2.a.(1) does not apply to this coverage.

5. **Personal Injury**. **We** will pay up to $25,000 for loss or damages caused by **personal injury,** unless a higher limit of liability for this specific coverage is provided by endorsement and an additional premium paid. This limit applies to one event and to all events for these damages in a policy period.

Also, **Loss Assessment** listed immediately above this paragraph is amended to pay up to $1,000 only for **your** share of loss assessment charged during this policy period against **you** by a corporation or association of property owners when the assessment is made as a result of **personal injury** not excluded elsewhere in this policy or by endorsement. This coverage applies only to loss assessments charged against **you** as an owner or tenant of the **residence premises**.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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

Regardless of the number of assessments, the most **we** will pay for loss arising out of **personal injury** is $1,000.

This Additional Coverage does not apply to **personal injury**:

a. alleged, or harm caused by, any humiliation, embarrassment, alienation of affection, or **sexual harm**;

b. caused by a willful violation of a penal law or ordinance committed by or with the knowledge or consent of any **insured**;

c. (1) to a person arising out of any:

(a) refusal to employ that person;

(b) termination of that person's employment;

(c) employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person; or

(2) injury to the spouse, child, parent, brother, or sister of that person as a result of **personal injury** to that person at whom any of the employment-related practices described in paragraphs (a) through (c) above is directed.

This exclusion applies:

(1) whether the **insured** may be liable as an employer or in other capacity, and

(2) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

d. arising from any civic or public activities performed for pay by an **insured**; or

e. to **you** or any **insured** within the meaning of part **a.** or **b.** of **insured** as defined, caused by **you** or any other **insured** under the provisions of this policy.

f. (1) arising out of oral or written publication of material, if done by or at the direction of the **insured** with knowledge of its falsity;

(2) arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

(3) for which an insured has assumed liability in any contract or agreement. This exclusion does not apply to:

(a) liability for damages that the **insured** would have in the absence of the contract or agreement;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(b) a written indemnity obligation **you** assumed directly relating to the ownership, maintenance or use of the **residence premises**.

g. acts, attempts, coercion or threats of sexual or physical molestation, abuse, assault, harassment or harm caused, instigated or directed by any **insured**;

h. exposure to or transmission of any disease, sickness or illness to another from any **insured**;

i. caused by or at the direction of any **insured** with the knowledge that the act would violate the rights of another and would inflict **personal injury**;

j. arising out of or in connection with any **business** conducted from an **insured location** or engaged in by any **insured**, whether or not the **business** is owned or operated by an **insured** or employs an **insured**. This applies to, but is not limited to, any act or omission regardless of its nature or circumstance, involving any service or duty rendered, promised, owed, or implied to be provided because of the nature of the business. But this exclusion does not apply to the rental or holding for rental of a covered item:

(1) occasionally if used only as a residence; or

(2) in part as an office, school, studio, or private garage endorsed elsewhere on this policy.

k. arising from any **insured's** conduct, act, failure to act, or decision whether intentional, wrongful, negligent, or without fault while acting as a participant, member, officer, director, advisor, or trustee of any group, board, organization, or government body, whether or not elected.

l. arising from the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**, at any time;

m. arising from any loss, cost, or expense due to:

(1) a request, demand or order that any **insured** or others test for, monitor, clean-up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, **pollutants**, or

(2) claim or suit by or on behalf of any governmental authority for damages because of testing for, monitoring, clean-up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – CONDITIONS

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

   Our total liability under Coverage F for all medical expense payable for **bodily injury** as the result of one accident will not be more than the limit of liability for Coverage F as shown in the Declarations. This limit is the same regardless of the number of **insureds**, persons or organizations making claims or bringing suits, claims made or persons injured.

2. **Annual Aggregate Limits.** **Our** total liability under Coverage E, Coverage F, and Additional Coverages, **Personal Injury** (and any endorsed higher limits for **Personal Injury**) for all incurred damages resulting during a policy period will not be more than three times the respective limit of liability for Coverages E and F combined, as shown in **your** Declarations.

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

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

   a. give prompt written notice to **us** or **our** agent as soon as is practical, which sets forth:

      (1) the identity of the policy and **insured**;

      (2) reasonably available information on the time, place and circumstances of the accident or **occurrence**; and

      (3) names and addresses of any claimants and witnesses;

   b. immediately forward to **us** every notice, demand, summons or other process relating to the accident or **occurrence**;

   c. at **our** request, help **us**:

      (1) to make settlement;

      (2) to enforce any right of contribution or indemnity against any person or organization who may be liable to an **insured**;

      (3) with the conduct of suits and attend hearings and trials;

      (4) to secure and give evidence and obtain the attendance of witnesses;

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. under the coverage, Damage to Property of Others, submit to **us** within 60 days after the loss a sworn statement of loss, and show the damaged property if in the **insured's** control;

e. the **insured** will not, except at the **insured's** own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the **bodily injury**;

f. cooperate with **us** in the investigation, settlement or defense of any claim or suit;

g. as often as **we** reasonably require, submit to examination(s) under oath, separate and apart from others and sign and swear to it.

5. **Duties of an Injured Person – Coverage F – Medical Payments to Others.**

The injured person will:

a. give **us** written proof of claim, under oath if required as soon as is practical; and

b. authorize **us** to obtain copies of medical reports and records.

c. submit to a physical exam by a doctor of **our** choice when and as often as **we** reasonably require.

A representative of the injured person may perform a. and b. above.

6. **Payment of Claim – Coverage F – Medical Payments to Others.** Payment under this coverage is not an admission of liability by an **insured** or **us**.

7. **Suit Against Us**. No action can be brought against **us** unless there has been full compliance with all the policy provisions of this Section.

No one will have the right to join **us** as a party to any action against an **insured**. Also, no action with respect to Coverage E can be brought against **us** until the obligation of the **insured** has been determined by final judgment or agreement signed by **us**.

8. **Bankruptcy of an Insured**. Bankruptcy or insolvency of an **insured** will not relieve **us** of **our** obligations under this policy.

9. **Other Insurance – Coverage E – Personal Liability**. This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION I AND II – CONDITIONS

1. **Policy Period.** This policy applies only to loss which occurs during the policy period.

2. **Concealment or Fraud.** If **you** or any other **insured** under this policy has intentionally concealed or misrepresented any material fact or circumstance, or made false statements or engaged in fraudulent conduct relating to this insurance, whether before or after a loss, then this policy is void as to **you** and any other **insured**.

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

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

   a. a subsequent edition of this policy; or

   b. an amendatory endorsement.

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

5. **Membership.** Membership in the Farm Bureau Federation is a condition precedent to coverage and that coverage may be cancelled or nonrenewed for failure to maintain current membership in the Farm Bureau Federation.

6. **Cancellation.**

   a. **You** may cancel this policy at any time by returning it to **us** or by notifying **us** in writing of the future date cancellation is to take effect.

   b. When the policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When **you** request cancellation, or if **we** cancel, the return premium will be pro rata.

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

   d. **We** may cancel this policy by notifying **you** in writing. This cancellation notice may be delivered to **you**, or mailed to **you** at **your** mailing address shown in the Declarations, or the last known address. Proof of mailing will be sufficient proof of notice. The written notification will be according to South Carolina law and mailed or delivered:

      (1) 10 days in advance of the date of cancellation if the reason is for nonpayment of:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(a) any premium due **us**; or

(b) annual membership dues to the South Carolina Farm Bureau Federation.

(2) at least 30 days before the date cancellation takes effect if this policy has been in effect for :

(a) less than 120 days and is not a renewal with **us**, **we** may cancel for any reason;

(b) more than 120 days, and is not a renewal with **us**, **we** may cancel for :

(i) misrepresentation of fact, fraud or withholding of material when the policy was obtained or when a claim was submitted;

(ii) substantial change or increased hazard in the risk **we** originally agreed to insure;

(iii) substantial breach of **your** contractual duties, conditions or warranties;

(iv) loss of **our** reinsurance covering a significant portion of **your** policy, or if the continuation of **your** policy would imperil **our** solvency or place **us** in violation of the insurance laws of this state; or

(v) any other reason lawfully permitted.

7. **Non-Renewal. We** may elect not to renew this policy for any lawful reason, including nonpayment of membership dues to the South Carolina Farm Bureau Federation. **We** may do so by delivering to **you**, or mailing to **you** at **your** mailing address shown in the Declarations, or the last known address, a written notice and the precise reason for nonrenewal. Proof of mailing will be sufficient proof of notice.

a. If this policy was written for a term of one year or less, **we** may elect not to renew this policy by giving written notification at least:

(1) 60 days before the expiration date of the policy if such date is on or after November 1 and before June 1; or

(2) 90 days before the expiration date of this policy if such date is on or after June 1 and before November 1.

b. If this policy was written for a term of more than one year or for an indefinite term, **we** may elect not to renew this policy by giving written notification at least:

(1) 60 days before the anniversary date of the policy if such date is on or after November 1 and before June 1; or

(2) 90 days before the anniversary date of the policy if such date is on or after June 1 and before November 1.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

8. **Automatic Termination.** If **we** offer to renew or continue this policy and **you** or **your** representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that **you** have not accepted **our** offer. Then, a new application, subject to underwriting rules and payment of premium, may be required to obtain new coverage.

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

10. **Subrogation.** An **insured** may waive in writing before a loss all rights of recovery against any person. **You** must furnish the request for waiver to **us** and **we** must agree to it in writing for it to apply. If not waived, **we** may require an assignment of rights of recovery for a loss to the extent that payment is made by **us.**

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

    If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** shall be subrogated to that right. That person shall:

    a. do whatever is necessary to enable **us** to exercise **our** rights, and do nothing after loss to prejudice them;

    b. reimburse **us** to the extent of **our** payment if a recovery from another person or party responsible for the loss has been made; and

    c. be required to repay **us** if any settlement or judgment duplicates **our** payments.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

11. **Death.** If any person named in the Declarations or the spouse, if a resident of the same household, dies:

    a. **we** insure the legal representative of the deceased but only with respect to the **residence premises** and property of the deceased covered under the policy at the time of death;

    b. **insured** includes:

        (1) any member of **your** household who is an **insured** at the time of **your** death, but only while a resident of the **residence premises**; and

        (2) with respect to **your** property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

12. **Payment of Premium.** Checks, debit card, and credit card account numbers in payment of **your** premium are accepted subject to collection. If any form of payment is returned to **us** uncollected for any reason, **your** premium is considered unpaid.

    If the check **you** gave **us** for payment of any premium due is returned unpaid, **we** are entitled to collect a lawful bad check fee. This fee is not considered premium and **your** payment of it does not reinstate this policy or provide any past or future coverage.

13. **Audit and Inspection Clause.** At **our** option, **we** may inspect **your** property and operations at any time. **We** do not assume any liability by exercising **our** right to inspect or audit. By **our** making any inspection or audit, **we** make no representation that **your** property or operations are safe, not harmful to health, or comply with any law, rule or regulation.

14. **Grace Period**. This grace period applies only to the premium due at the renewal inception date and does not apply to any subsequent payments due on **your** part of any installment or premium finance plan, nor any additional premium due to a policy change after renewal. If **your** premium due for renewal (including unpaid membership fees) is received by the Company within 15 days, exclusive of the due date, **your** policy will provide continuous protection without a lapse in coverage. After 15 days, the policy will expire as of the due date and an application for a new policy may be required.

15. **Fair Credit Reporting Act Statement.** At **our** option, **we** may conduct a credit investigation or obtain credit information on **you,** any **insured** or future **insured,** under this policy. This report will be used for underwriting purposes to determine if an offer of coverage will be made; if coverage may continue; or to determine rates, terms, or any other condition.

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

PARTICIPATING CONDITIONS

For Policies Issued in Palmetto Casualty Insurance Company Only.

While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of this **Company** in accordance with the dividends declared by the Board of Directors on this and like policies.

IN WITNESS WHEREOF, this **Company** has caused this policy to be signed by its President and Secretary and countersigned on the **Declarations** page by a duly authorized representative of this **Company**.

President

Secretary

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

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June 13, 2017

VIA ELECTRONIC MAIL AND USPS
J. Dwight Hudson, Esq.
2513 North Oak Street, Suite 210
Waverly Centre
Myrtle Beach, SC 29577

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis v. Cole Austin Dunn & John Richard Smith*
Case No.: 2017-CP-26-2910

Dear Mr. Hudson:

I am writing in response to your letter received yesterday, June 12, 2017, in order to inform you and South Carolina Farm Bureau ("Farm Bureau") that there will be no dismissal of this action. It is unclear to me what authority you are seeking to rely upon when you demand that I dismiss this action, as this litigation was specifically contemplated by the Covenant Not to Execute and discussed on the record at the hearing approving the initial settlement from Farm Bureau. Paragraph 12 of the Covenant Not to Execute specifically states:

> **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party.**

Until discovery is complete in the filed case against Cole Austin Dunn ("Dunn"), Plaintiff will not be in a position to know whether or not any other liability insurance coverage is available to Dunn. Even if Plaintiff is not able to locate any other liability insurance available to Dunn, Plaintiff has the ability, as well as the legal right to pursue the lawsuit against Dunn all the way to a jury verdict. The only right relating to Dunn that has been surrendered is the right to personally execute upon a judgment against Dunn. John Richard Smith ("Mr. Smith") was not a party to the Covenant Not to Execute, thus he is not able to assert any of the protections that the Covenant Not to Execute provides to Dunn and Charlotte Smith ("Mrs. Smith"). Paragraph 13 of the Covenant Not to Execute specifically states:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit.

Clearly my client has every legal right to bring and prosecute his lawsuit against Dunn and Mr. Smith; thus there will be no dismissal of this action as demanded by your June 12th correspondence.

Also, the second paragraph of your June 12th letter is incorrect. We are pursuing the case against Mr. Smith. We have not sued Farm Bureau. It is Mr. Smith, not my client, who will have the right and ability to pursue claims for negligence and bad faith against Farm Bureau after we obtain a substantial jury verdict against Mr. Smith. If Mr. Smith so choses, he will be free to assign his claims to my client in order to satisfy any judgment obtained against him. If Mr. Smith does not voluntarily assign his claims against Farm Bureau to my client, I would be able to initiate supplemental proceedings and seek a judicial assignment of Mr. Smith's claims to my client, among other assets. Regardless of who is pursuing the claims, Farm Bureau exposed itself to liability for its failure to protect Mr. Smith as its insured. You state that Farm Bureau only owed its coverage limit once, which has been collected. This is only partially correct. Farm Bureau owed a duty to defend and protect **ALL** of its insureds, which included Mr. Smith. Farm Bureau's failure to require that Mr. Smith be included as a party to the Covenant Not to Execute has exposed him to substantial personal liability.

The Third paragraph of your June 12th letter is also incorrect. Mr. Smith is not referenced in the Order Approving Wrongful Death Settlement or the Covenant Not to Execute. Your reliance upon the insuring agreement and definitions 1, 2, and 3 is also misguided. The definitions that you seek to rely upon state as follows:

1. In this policy, "**you**" and "**your**" refer to the "**named insured**" shown in the Declarations and the spouse if a resident of the same household.

2. "**We**," "**us**" and "**our**" refer to the Company providing insurance.

3. "**Insured**" means:

   a. **you** and residents of **your** household who are:

      1) **your** relatives; or

      2) other persons under the age of 21 and in the care of any person named above.

   b. a student enrolled in school full-time as defined by hat school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

      1) 24 and **your** relative; or

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2) 21 and in **your** care or the care of the person listed in a.(1) above.

Nothing contained in the above listed definitions defines Mr. Smith as a named insured. In fact, the opposite is true. "Named insured" is not defined anywhere in the definitions of the relevant policy, and in fact the only time the words "named insured" appear together within the entire generic homeowner's policy that you provided with your letter is where the above listed definitions appear on page 1, and then again on page 57 where the policy states:

> **While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of the Company in accordance with the dividends declared by the Board of Directors on this and like policies.**

"Named Insured" is not a defined term anywhere in Farm Bureau's policy, and only Mrs. Smith is identified as a "named insured" within the policy. Absent ambiguity, in South Carolina the language of an insurance policy is given its plain, ordinary, and popular meaning. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 637, 594 S.E.2d 455, 458 (2004). It is abundantly clear that the only named insured as it relates to this matter is Mrs. Smith, as evidenced by her name being the only one that appears anywhere on the declarations page of the Farm Bureau policy. Mr. Smith is **NOT** a named insured on Farm Bureau's policy, and is thus **NOT** protected by the Order Approving Wrongful Death Settlement or the Covenant Not to Execute.

Your allegation that I "concocted" a scheme in an attempt to extort an additional policy limit from Farm Bureau is another mischaracterization of the facts. It was Farm Bureau's failure to protect their insured, by not requiring Mr. Smith's inclusion as a party to the Covenant Not to Execute, that has now exposed Mr. Smith and Farm Bureau to substantial liability, not any decision made by me or my client. I represent the family of Kenneth Miles Davis, a teenager who was recklessly killed as a result of the negligence of Dunn, Mrs. Smith, and Mr. Smith. It is quite irresponsible for you to rebuff our efforts on behalf of his family in this manner.

I will not be dismissing this action as your letter demands, and if this case proceeds all the way to a jury verdict and I am able obtain a judgment against Dunn and Mr. Smith on behalf of my client, I will seek to enforce and collect upon that judgment in every way allowed by law, other than as limited by the Covenant Not to Execute. You are free to assert any counterclaims that the law and the evidence supports on behalf of your clients, consistent with Rule 11 SCRCP, although I fail to see how any such counterclaims could be brought in good faith.

Our invitation remains open should Farm Bureau be interested in a serious mediation of this case. As stated in my June 7, 2017 correspondence, we will agree to use Karl Folkens at a date that is convenient to all parties. If this is the desire of Farm Bureau please respond to this letter in writing by close of business on June 23, 2017.

Although I am sure you are aware of your duties and obligations in regard to this correspondence, I would request that you do the following:

ELECTRONICALLY FILED - 2017 Jul 28 3:37 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

i. Inform Mr. Smith of this correspondence and invitation to mediate this matter by providing a copy to him and informing him that the failure of Farm Bureau to mediate this matter may subject him to a substantial jury verdict and judgment;

ii. Advise Mr. Smith that if Farm Bureau declines the invitation to mediate this matter and a jury verdict is reached, that his own assets, both current and future, will be subject to judgment and collections, as a result of Farm Bureau's failure to protect him with a Covenant Not to Execute;

iii. Advise Mr. Smith that it is in his best interests to hire a personal attorney independent of Farm Bureau to provide advice as to what his rights are at this stage of the litigation, as well as what future obligations he may have if Farm Bureau fails to accept the invitation to mediate this case; and

iv. Clarify to Mr. Smith that he, as the insured, has adverse interests to those of Farm Bureau in this matter if the invitation to mediate this matter is refused.

I look forward to hearing from you.

With best regards,

J. Taylor Powell

JTP/

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
APR 20 2018
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Hon. Larry B. Hyman, Circuit Court Judge

Case No: 2017CP2602910

Kenneth A. Davis As Personal Representative
Of The Estate of Kenneth Miles Davis ..... Respondent

v.

Cole Austin Dunn and John Richard Smith ..... Appellants

NOTICE OF APPEAL

Cole Austin Dunn and John Richard Smith appeal from the Order of the Honorable Larry B. Hyman denying Appellants' converted Summary Judgment Motion and granting Respondent's converted Summary Judgment Motion dated April 9, 2018 and recorded April 9, 2018. Appellants received notice of the entry of the Order and the Order via the Court's E-filing system on April 9, 2018. A copy of the said Order appealed from is attached hereto and incorporated by reference herein.

Dated: April 19, 2018

/s/ J. Dwight Hudson

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Attorney(s) For Respondent

STATE OF SOUTH CAROLINA COUNTY OF HORRY KENNETH A. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS, Plaintiff, vs. COLE AUSTIN DUNN and JOHN RICHARD SMITH, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTEENTH JUDICIAL CIRCUIT Case No. 2017-CP-26-02910 **ORDER**

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SC Court of Appeals

This matter came before the Court on September 12, 2017, for hearing of the four pending motions: (1) Defendants' Motion to Dismiss Plaintiff's Complaint; (2) Defendants' Motion to Dismiss Defendant Cole Austin Dunn as a Party; (3) Defendants' Motion to Reform the Covenant Not to Execute; and (4) Plaintiff's Motion to Dismiss Defendants' Counterclaims. Present at the hearing were counsel for Defendants, J. Dwight Hudson, Esquire and Mary Anne Graham, Esquire, and counsel for Plaintiff, J. Taylor Powell, Esquire. Both Plaintiff and Defendants presented matters outside of the pleadings with respect to each motion, by consent and without objection, which has converted the motions into motions for summary judgment.

In view of the entire record and applicable law, as set forth more fully below, the Court rules as follows on the pending motions: (1) Defendants' converted motion for summary judgment on Plaintiff's Complaint is DENIED; (2) Defendants' converted motion for summary judgment on the inclusion of Defendant Cole Austin Dunn as a party is DENIED; (3) Defendants' converted motion for summary judgment seeking reformation of the covenant not to execute is DENIED; DENIED; and (4) Plaintiff's converted motion to summary judgment on Defendants' counterclaims is GRANTED.

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises from the tragic death of Kenneth Miles Davis ("Decedent"), who was only sixteen years old at the time of his passing. On October 9, 2016, Cole Austin Dunn ("Dunn") and Decedent were at the property were Decedent lived with his parents (Plaintiff's Complaint ¶ 5). Dunn was in possession of a loaded 12-gauge shotgun and was waving it around. Decedent said "Whoa, man!" indicating that Dunn should stop his behavior. Dunn responded "[i]t ain't loaded," just before he accidentally activated the trigger and shot Decedent in the face at point blank range. Decedent was transported to Conway Medical Center and pronounced dead. (Plaintiff's Complaint ¶¶ 7-12).

At all times relevant to Plaintiff's Complaint, Dunn lived with his mother, Charlotte Smith ("Mrs. Smith") at 2340 Highway 1115 in Galivants Ferry, South Carolina ("Smith Residence"). Mrs. Smith obtained homeowners' insurance on the residence through South Carolina Farm Bureau Insurance Company ("Farm Bureau"). Mrs. Smith was the only named insured listed upon the declarations page of the Farm Bureau policy. *See* Exhibit A to Plaintiff's Memorandum in Opposition to Defendants' Motions.

Decedent's father, Kenneth A. Davis, was appointed as the Personal Representative of Decedent's estate. Mr. Davis retained Mr. Powell and the firm of Lesemann & Associates LLC to pursue claims for wrongful death and survival damages on behalf of the estate. Prior to the filing of this action, on January 30, 2017, Mr. Powell sent a "*Tyger River*" demand letter to Farm Bureau Insurance Company, stating that Plaintiff would grant a Covenant Not to Execute upon any judgment that Plaintiff may obtain against Dunn or Mrs. Smith in exchange for Farm Bureau paying policy limits of $300,000.00 in liability coverage and $5,000.00 in medical payment coverage under the Farm Bureau policy. *See* Mr. Powell's January 30, 2017 Letter, attached to

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Defendants' Answer and Counterclaims. On January 31, 2017, Farm Bureau sent a letter to Mr. Powell confirming that Farm Bureau had accepted Plaintiff's demand and would pay its policy limits in exchange for a Covenant Not to Execute. Farm Bureau also indicated that it would be hiring Mr. Hudson as its local counsel to draft the Covenant Not to Execute. *See* Farm Bureau's January 31, 2017 Letter. The documents were drafted and presented to counsel for Plaintiff, who requested certain revisions in the wording that were accepted and implemented by counsel for Defendants.

On March 15, 2017, Plaintiff and his counsel signed the Covenant Not to Execute drafted by counsel for Defendants. *See* Covenant Not to Execute at p. 4. After the Covenant Not to Execute was signed, this Court conducted a settlement approval hearing. The Court reviewed Plaintiff's Petition for Approval of a Wrongful Death Settlement, and asked questions of Plaintiff to ensure the propriety of the proposed settlement under S.C. Code § 15-51-42. The proposed settlement was approved, and the Court signed an Order Approving Wrongful Death Settlement, which was filed March 28, 2017. *See* Order Approving Wrongful Death Settlement filed March 28, 2017.

The Covenant Not to Execute, as drafted and signed, did not include a release of any party. On the contrary, the Covenant Not to Execute included language confirming that it merely provided Payors with "freedom from the threat of execution upon any judgment that may be obtained against them." *See* Covenant Not to Execute at ¶ 11. The Covenant Not to Execute also included a provision specifically confirming that it did "not constitute a release of any claim or of any party." *Id.*, at ¶ 12.

On May 9, 2017, Plaintiff filed a Summons and Complaint against Dunn and John Richard Smith ("Mr. Smith"), collectively referred to as ("Defendants"). Mrs. Smith was not

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

named as a party. Mr. Smith, Dunn's stepfather, purchased and entrusted the 12-guage shotgun to Dunn, who was 17 years old on the date when Decedent was shot and killed. Within the Complaint, Plaintiff alleged that the proximate causes of Decedent's death were negligence on the part of Dunn and Mr. Smith. On June 23, 2017, Defendants filed their Answer and Counterclaims against Plaintiff. Thereafter, Defendants filed its three pending motions. On July 24, 2017, Plaintiff filed a Motion to Dismiss Defendants' Counterclaims. Both Plaintiff[1] and Defendants[2] filed supporting and opposing memoranda, which included evidence outside of the pleadings without objection. The Court has carefully considered all filings, evidence, and arguments of counsel at the hearing. Neither party requested the opportunity to conduct further discovery on the issues presented to the Court within the pending motions, all of which had been filed more than 30 days prior to the September 17, 2017, hearing.

LEGAL STANDARD

The South Carolina Rules of Civil Procedure provide for the potential conversion of motions to dismiss into motions for summary judgment, provided that the moving party complies with Rule 56 and the non-moving party is afforded a reasonable opportunity to introduce evidentiary matters. *Johnson v. Dailey*, 318 S.C. 318, 321, 457 S.E.2d 613, 615 (1995). Specifically, Rule 12(b) states as follows:

> If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated

[1] Items which Plaintiff's counsel presented without objection in support of or in opposition to the pending motions included: (1) the Farm Bureau policy declarations page and Homeowner's Insurance Policy; (2) Mr. Powell's January 30, 2017 Tyger River Demand Letter to Farm Bureau; (3) Farm Bureau's January 31, 2017 letter; and Response to Plaintiff Counsel's January 30, 2017 Tyger River Demand Letter; and (4) the Covenant Not to Execute.

Conversely, items which Defendants' counsel presented in support of or in opposition to the pending motions included: (1) Counsel for Plaintiff's June 7, 2017 letter; (3) Counsel for Defendants' June 12, 2017 letter; (4) Counsel for Plaintiff's June 13, 2017 letter; (5) Counsel for Plaintiff's February 9, 2017 email; (6) Affidavit of John Richard Smith; and (7) Affidavit of Cole Austin Dunn.

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

> as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material pertinent to such a motion by Rule 56.

Rule 12(b), SCRCP. On this basis, each motion filed in this case was converted, by consent, into a motion for summary judgment and shall therefore be resolved under Rule 56, SCRCP.

Motions for summary judgment should be granted where "there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." SCRCP Rule 56(c). Summary judgment is appropriate when "plain, palpable and undisputed facts exist on which reasonable minds cannot differ." *Thompkins v. Festival Ctr. Grp. I*, 306 S.C. 193, 194, 410 S.E.2d 593, 593-94 (Ct. App. 1991).

LEGAL ANALYSIS

I. Defendants' Converted Motion for Summary Judgment on Plaintiff's Claims against Mr. Smith is Denied

In response to Plaintiffs' Complaint, Defendants have sought summary judgment on the claims asserted against Mr. Smith on the alleged basis that he is a "named insured" under the Farm Bureau Policy. Even if this would be a potential basis for summary judgment, which it is not, Mr. Smith is not a named insured. Nothing contained in the definitions listed in the Farm Bureau policy defines Mr. Smith as a "named insured." The term "named insured" is not a defined term anywhere in Farm Bureau's policy, and only Mrs. Smith is identified as a "named insured" within the policy. Absent ambiguity, in South Carolina the language of an insurance policy is given its plain, ordinary, and popular meaning. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 637, 594 S.E.2d 455, 458 (2004). It is clear to this Court that the only named insured is Mrs. Smith. On this basis, Mr. Smith is not a named insured on Farm Bureau's policy, and is thus not immune from suit on the basis of either the Order Approving Wrongful Death Settlement or the Covenant Not to Execute.

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

In addition to the fact that Mr. Smith is not a named insured, neither he, nor any party, received a release of claims as a result of the Covenant Not to Execute. The Covenant Not to Execute, which was drafted by counsel for Defendants, is not a release. Instead, the Covenant Not to Execute is simply a covenant not to execute upon any judgment as might be against the Payors, as that term is defined in the Covenant Not to Execute:

> **Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction** and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.

See Covenant Not to Execute at ¶ 11 (emphasis added). It is clear to this Court that the Covenant Not to Execute was never intended to function as a Release of any causes of action or of any potential tortfeasor. Reasonable minds cannot differ as to the plain meaning of this language.

Defendants then argue the Covenant Not to Execute should be treated as a release of Mrs. Smith and Mr. Dunn, and that the alleged release of these tortfeasors should be construed as a release of all other joint tortfeasors under South Carolina law. This argument is incorrect, both factually and legally. The relevant section of the South Carolina Contribution Among Tortfeasors Act, S.C. Code § 15-38-50, states as follows:

> When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:
>
> (1) it does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide, but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and
>
> (2) it discharges the tortfeasor to whom it is given from all liability for contribution to any other tortfeasor.

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

See S.C. Code § 15-38-50. As noted above, Paragraph 12 of the Covenant Not to Execute states that the Covenant Not to Execute does not diminish Payee's rights to recover from any other source, such as Mr. Smith. Furthermore, the Covenant Not to Execute specifically confirms that it is not a release. Finally, even if it were a release, it would "not discharge any of the other tortfeasors from liability," but rather would only serve to "reduce the claim against the others" in accordance with S.C. Code § 15-38-50. It is clear to this Court that the Covenant Not to Execute was never intended to discharge any potential source of recovery for Decedent's wrongful death, and specifically never intended to discharge Mr. Smith.

With regard to the claims against Mr. Dunn, Defendants' arguments also fail. Specifically, Defendants reliance upon *Tyger River Pine Co. v. Maryland Casualty Co.* and its progeny is misplaced. Defendants argue that the *Tyger River* doctrine recognizes that an insurer has one contract and one group of insureds protected by that contract to whom a carrier owes a duty, and that it does not hold that an insurer owes a severable duty to individual insureds and a separate policy limit to each. This argument by Defendants is not supported by South Carolina law. The duty to defend is separate and distinct from the obligation to pay a judgment rendered against the insured. *American Casualty Co. v. Howard,* 187 F.2d 322, 327 (4th Cir.1951). Although these duties are related in the sense that the duty to defend depends on an initial or apparent potential liability to satisfy the judgment, the duty to defend exists regardless of the insurer's ultimate liability to the insured. *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 654, 661 S.E.2d 791, 796 (2008). Our Supreme Court has held a tender of policy limits does not relieve an insurer's duty to defend its insured. *Nationwide Mutual Ins. Co. v. Simmonds,* 315 S.C. 404, 434 S.E.2d 277 (1993).

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Plaintiff, in his demand to Farm Bureau, was very specific in what he was demanding and what he was willing to give up in order for Farm Bureau to accept his demand. Plaintiff's *Tyger River* timed demand clearly stated in the first paragraph that Plaintiff would accept Farm Bureau's policy limits:

> In exchange for a Covenant Not to Execute, which would specifically allow Plaintiff to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn.

In the first paragraph of the second page of Plaintiff's *Tyger River* timed demand letter Plaintiff reiterated:

> For clarification purposes, I am requesting that you tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) on behalf of Charlotte Smith and Cole Dunn. Upon receipt, I will provide you with a Covenant Not to Execute, that specifically allows for my client to pursue and collect on any other liability insurance policies should any be located, as to all claims against Charlotte Smith and Cole Dunn.

It is clear that Plaintiff's demand, if accepted, would only exempt Dunn and Mrs. Smith from the execution of any judgment that Plaintiff might obtain. Nothing contained in the correspondence from Plaintiff's counsel or in Farm Bureau's reply to that correspondence supports a conclusion that there was any other intention.

Defendants also incorrectly argue that summary judgment should be granted on Plaintiff's claims under the preclusion doctrines of *res judicata* and collateral estoppel, which are two distinct doctrines. Under *res judicata*, a final judgment on the merits in a prior action will preclude the parties and their privies from bringing a second action based on the same claim that either was or could have been litigated in the prior action. The doctrine of collateral estoppel, on the other hand, deals with preclusion of the second action is based upon a different claim and the judgment in the

first action precludes re-litigation of only those issues actually and necessarily litigated and determined in the first suit.

Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties." *Judy v. Judy,* 393 S.C. 160, 172, 712 S.E.2d 408, 414 (2011). "Res judicata's fundamental purpose is to ensure that no one should be twice sued for the same cause of action." *Yelsen Land Co. v. State,* 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012). The doctrine requires three essential elements: (1) the judgment must be final, valid and on the merits; (2) the parties in the subsequent action must be identical to those in the first; and (3) the second action must involve matter properly included in the first action. *Town of Sullivan's Island v. Felger*, 318 S.C. 340, 344, 457 S.E.2d 626, 628 (Ct. App. 1995). In order to successfully assert collateral estoppel, the party seeking issue preclusion must show that the issue was actually litigated and directly determined in the prior action, and that the matter or fact directly in issue was necessary to support the first judgment. *Richburg v. Baughman,* 290 S.C. 431, 351 S.E.2d 164 (1986); *Beall v. Doe,* 281 S.C. 363, 371, 315 S.E.2d 186, 191 (Ct.App.1984).

Here, neither *res judicata* nor collateral estoppel is applicable to the settlement approval hearing that occurred on March 15, 2017, that Defendants have argued was a prior action. The settlement approval hearing was merely a statutory requirement that Plaintiff and Farm Bureau had to comply with before any wrongful death settlement proceeds could be paid to Plaintiff. There was no trial on the merits of the case, but rather the approval of a settlement that itself specifically contemplated and authorized future litigation relating to the underlying events. No issues were litigated or directly determined in the settlement approval hearing. The settlement approval hearing did not result in a final judgment on the merits, nor are the parties to that

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

settlement approval identical to the present action, nor did the prior settlement approval hearing involve the identical subject matter as the present action. Neither Dunn nor Mrs. Smith were sued in conjunction with the prior settlement approval hearing. The only parties that have been sued in any matter arising from the wrongful death of Decedent are Dunn and Mr. Smith, who have been sued in the present action only. No party or entity has been sued twice after having been involved in a prior action that was heard and decided on the merits. For these reasons, neither *res judicata* nor collateral estoppel are applicable in any way to the present action. Defendants' argument that Plaintiff's Complaint is barred by the doctrines of *res judicata* and collateral estoppel fails.

Defendants then argue that this action is barred by the doctrine of equitable estoppel on the grounds that Plaintiff falsely invoked *Tyger River*, and promised that the settlement would protect Farm Bureau's insureds without ever intending that it would protect Dunn or Mr. Smith, and that Plaintiff and his counsel acted in a dishonest manner and were part of some deliberately deceitful scheme. This argument fails. Where an agreement is clear on its face and unambiguous, the court's only function is to interpret its lawful meaning and the intent of the parties as found within the agreement. *Stevens & Wilkinson of S.C., Inc. v. City of Columbia*, 409 S.C. 568, 577, 762 S.E.2d 696, 700 (2014). The South Carolina Supreme Court has held a party cannot avoid the parol evidence rule simply by claiming he thought the contract he signed meant something other than what it said, and that quasi-contractual remedies such as equitable estoppel are inapplicable when the parties are bound by an express contract. *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017).

An unambiguous, written contract is inherently incompatible with the doctrine of equitable estoppel. To succeed on a claim for equitable estoppel, a party must prove "lack of knowledge, and the means of knowledge, of the truth as to the facts in question." *Strickland*, 375 S.C. at 84,

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

650 S.E.2d at 470. However, an unambiguous contract is, by definition, capable of only one reasonable interpretation. *See Carolina Ceramics, Inc.*, 251 S.C. at 155–56, 161 S.E.2d at 181 (stating that a contract is *ambiguous* if it is "capable of being understood in more senses than one"). Therefore, a party to an unambiguous contract cannot prove lack of knowledge or the means of acquiring knowledge of the contract's meaning, which bars an equitable estoppel claim in the first instance. *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 604, 799 S.E.2d 912, 918 (2017).

The Covenant Not to Execute is a clear and unambiguous contractual document, which was drafted by counsel for Farm Bureau and which Plaintiff signed and Dunn, Mrs. Smith, and Farm Bureau were Payors. The first paragraph of the Covenant Not to Execute states:

> This COVENANT is made this 15th day of March, 2017 by and between Kenneth A. Davis, individually and as Personal Representative of the Estate of Kenneth Miles Davis (hereinafter referred to as "Payees") and Cole Austin Dunn, Charlotte Smith and South Carolina Farm Bureau Mutual Insurance Company (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns.

As Dunn, Mrs. Smith, and Farm Bureau were all parties to the Covenant Not to Execute, they are prohibited from asserting any claims for equitable estoppel. Only Mr. Smith has the legal right to assert any claim for equitable estoppel, but upon consideration of all of the evidence, Mr. Smith's claim for equitable estoppel is without merit.

The elements of equitable estoppel as related to the party being estopped are: (1) conduct which amounts to a false representation, or conduct which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention that such conduct shall be acted upon by the other party; and (3) actual or constructive knowledge of the real facts by the party. The party asserting estoppel must show: (1) lack of knowledge, and the means of knowledge, of the truth as to the facts in question; (2) reliance upon the conduct of the party to be estopped; and (3) a prejudicial change of

position in reliance on the conduct of the party to be estopped. *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916–17 (2017).

Defendants argue that Plaintiff and his counsel acted in a dishonest manner to induce a settlement under false pretenses, and have somehow participated in some sort of deliberately deceitful scheme to extort Farm Bureau. The truth of the matter is that Plaintiff and his counsel have done exactly what they represented to Farm Bureau and Counsel for Defendants, and have done so at every step of the way. Furthermore, Plaintiff never made any representations of any kind to Mr. Smith prior to filing suit and serving him with a copy of the Summons and Complaint, as the record does not reflect any contact occurred between Plaintiff or Plaintiff's counsel and Mr. Smith regarding the Farm Bureau policy, the *Tyger River* demand, the response from Farm Bureau, the preparation or execution of the Covenant Not to Execute, the Order Approving Wrongful Death Settlement. The record does not reflect that Mr. Smith took any action, or refrained from taking any action, on the basis of any conduct by Plaintiff. As a result, there is no basis upon which Mr. Smith could base a claim for estoppel against Plaintiff.

The Covenant Not to Execute, which was drafted by counsel for Defendants, specifically stated that the Covenant Not to Execute does not diminish Payee's rights to recover from any other source, such as Mr. Smith due to his specific negligence that led to the wrongful death of the decedent Kenneth Miles Davis:

> This Covenant Not to Execute is not intended to and DOES NOT diminish, impair or limit Payee's rights, if any, to recover additional funds from other insurance coverage or from any other source for the Claim.

Paragraph 13 of the Covenant Not to Execute, goes on to state that:

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

> It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. (emphasis added)

The fact that Mr. Smith is not named or protected by the Covenant Not to Execute was not the result of any misrepresentations made by Plaintiff or his counsel. It results from the plain wording of the document. At all times relevant to the facts contained in Plaintiff's Complaint, both Farm Bureau and counsel for Defendants had the ability to properly and thoroughly investigate all potential claims that could be made against any of Farm Bureau's potential insureds as a result of Dunn shooting and killing the Decedent, and the full range of the potential defendants in light of the underlying facts of the case. It would seem clear that Dunn, Mrs. Smith, and Mr. Smith were each aware that Mr. Smith was the original purchaser of the shotgun that resulted in the shooting death of Decedent. Neither Plaintiff nor Plaintiff's counsel engaged in any conduct that would support a belief on the part of Mr. Smith, or Farm Bureau, that Plaintiff intended to release Mr. Smith or intended him to be protected by the Covenant Not to Execute. For these reasons, the Court denies summary judgment to Mr. Smith on the claims asserted by Plaintiff against Mr. Smith in this case.

II. Defendants' Motion to Dismiss Cole Austin Dunn as a Party is Denied and Summary Judgment on this Issue is Granted in Favor of Plaintiff

Defendants argue that Dunn is a "sham" defendant against whom Plaintiff has no cause of action. Defendants argue that because Plaintiff cannot recover from Dunn personally, based upon the terms of the Covenant Not to Execute, and because there is no coverage from which Plaintiff could conceivably collect, that this Court should dismiss Dunn as a party to this action. Whether or not there is any insurance coverage from which Plaintiff could collect upon any judgment obtained against Dunn has no bearing on his viability as a defendant in the case. Plaintiff's

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Complaint pleads facts which, when viewed in a light most favorably to Plaintiff would support a cause of action against Dunn. The mere fact that Plaintiff has agreed not to execute upon a judgment against Dunn does not affect Plaintiff's fundamental right to pursue a judgment against Dunn. Covenants Not to Execute are relatively common. Defendants' argument that Dunn is a "sham" defendant fails. Summary judgment on this argument is denied.

III. Defendants' Motion to Reform the Covenant Not to Execute is Denied

In their Motion to Reform the Covenant Not to Execute, Defendants argue that the Covenant Not to Execute should be reformed on the grounds that Defendants made a unilateral mistake in not including Mr. Smith as a party to the Covenant Not to Execute, and that such a mistake was induced by the fraud, deceit, and misrepresentation of Plaintiff and his counsel. This argument is without merit.

It is clear from the actions of Plaintiff that the mistake made by Farm Bureau and/or counsel for Defendants in failing to include Mr. Smith as a party to the Covenant Not to Execute was not a mutual mistake, and it was not a unilateral mistake of the kind that would permit reformation of the Covenant Not to Execute to include a party that was not included. The filing of the present action, and the multiple correspondences between Plaintiff's counsel and counsel for Defendants makes it clear that Plaintiff never intended to include Mr. Smith as a party to the Covenant Not to Execute. Furthermore, there is nothing to suggest that Plaintiff ever induced Defendants, Farm Bureau, or Defendant's counsel into believing that Mr. Smith was considered a party.

A court of equity may reform a contract where the mistake is not mutual but unilateral and has been induced by the fraud, deceit, misrepresentation, concealment or imposition in any form of the party opposed in interest to the reformation without negligence on the part of the party claiming the right. *See, e.g., Shaw v. Aetna Casualty and Surety Insurance Co.*, 274 S.C. 281,

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1980). First and foremost, if Farm Bureau or counsel for Defendants intended to include Mr. Smith as a party to the Covenant Not to Execute, they failed to do so. They also failed to ever make any such alleged intention known to Plaintiff or his counsel. Defendants' claim that their failure to include Mr. Smith as a party to the Covenant Not to Execute was somehow induced by Plaintiff and his counsel is wholly unsupported by the facts. This Court finds that any mistake in failing to include Mr. Smith as a Party to the Covenant Not to Execute falls squarely on the shoulders of Farm Bureau and counsel for Defendants, as they were the ones in the best position to fully investigate all potential sources of liability for Decedent's wrongful death prior to drafting and entering into the Covenant Not to Execute. There is no basis for reforming the covenant on the basis of mutual mistake or unilateral mistake, and summary judgment is granted to Plaintiff on this issue.

IV. Summary Judgment is Granted in Favor of Plaintiff as to Defendants' Counterclaims

The Court finds that summary judgment in favor of Plaintiff is proper on each of Defendants' counterclaims. As an initial matter, Defendant John Richard Smith was not a party to the Covenant Not to Execute, and therefore cannot assert contract-based counterclaims of any kind. Summary judgment on those claims asserted by Mr. Smith is granted to Plaintiff on this basis.

The contract-based counterclaims asserted by Dunn also fail. The only contractual document involving Plaintiff is the Covenant Not to Execute given by Plaintiff, as Payee, and Cole Austin Dunn, Charlotte Smith, and South Carolina Farm Bureau Mutual Insurance Company, as Payors. Defendants have failed to identify a specific provision in the Covenant Not to Execute that Plaintiff allegedly breached. In order to state a claim for breach of contract, Defendants must present competent allegations regarding each of the following elements: (1) a binding contract

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

entered into by the parties; (2) a breach or unjustifiable failure to perform the contract; and (3) damage suffered as a direct result of the breach. *See Fuller v. E. Fire & Cas. Ins. Co.*, 240 S.C. 75, 89, 124 S.E.2d 602, 610 (1962).

The plain terms of the Covenant Not to Execute preclude defendants' counterclaim for breach of contract. The Covenant Not to Execute, which was drafted by Defendants' counsel in this case with limited input from counsel for Plaintiff, contains multiple provisions that preclude Defendants' counterclaims. First, Paragraph 7 of the Covenant Not to Execute includes an integration clause confirming that it represents the only agreement between Plaintiff and the Payors:

> Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.

Next, Paragraph 11 of the Covenant Not to Execute confirms that the Covenant Not to Execute is "NOT a release." Rather, the Covenant Not to Execute is a covenant not to execute any judgment:

> Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.

Additionally, Paragraph 12 of the Covenant Not to Execute states that the Covenant Not to Execute does not diminish Payee's rights to recover from any other source, such as Defendant Richard Smith due to his specific negligence that led to the wrongful death of the decedent Kenneth Miles Davis:

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

> This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payee's rights, if any, to recover additional funds from other insurance coverage or from any other source for the Claim.

The above-cited provisions of the Covenant Not to Execute could not be more clear that Plaintiff was reserving the right to pursue claims and agreed only to not execute on any judgment against Payors Cole Austin Dunn and Charlotte Smith.

Defendants allege that by filing this action that Plaintiff has breached the terms of the Covenant Not to Execute. This allegation is quickly dispelled by reading Paragraph 13 of the Covenant Not to Execute, which specifically states:

> It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit.

Based on the plain terms of the contractual document, it is not possible for Defendants to state a claim for breach of contract when Plaintiff has done exactly what the Covenant Not to Execute contemplated and allowed Plaintiff to do, which was to file suit for the wrongful death of Decedent.

Regarding the counterclaim for breach of contract accompanied by fraudulent act, there are no competent allegations of fraudulent intent or fraudulent acts accompanying the non-existent alleged breach of contract. Defendants have failed to identify a specific provision in the Covenant Not to Execute that Plaintiff allegedly breached, thus they are not able to satisfy the first element of a cause of action for breach of contract accompanied by fraudulent act. Additionally, Defendants fail to present well-pled allegations of any fraudulent intent or fraudulent act that accompanied any breach of contract, rendering the counterclaim for breach of contract accompanied by fraudulent act subject to summary judgment. To maintain an action for breach of contract accompanied by a fraudulent act, a plaintiff must prove three elements: "(1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making;

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

and (3) a fraudulent act accompanying the breach." *See RoTec Servs., Inc. v. Encompass Servs., Inc.*, 359 S.C. 467, 470, 597 S.E.2d 881, 883 (Ct. App. 2004), citing *Conner v. City of Forest Acres*, 348 S.C. 454, 465-66, 560 S.E.2d 606, 612 (2002).

Merely doing what a contract allows to be done is not actionable as a breach of the implied covenant of good faith and fair dealing. Defendants' counterclaim for breach of the covenant of good faith and fair dealing against Plaintiff also fails as a matter of law because such a claim does not arise when the party alleged to be in breach merely did what the contract allowed him to do, which in this case is to file suit and seek a recovery. Under well-settled law in South Carolina, "there is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do." *See Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995), *citing First Federal Savings and Loan Ass'n. of South Carolina v. Dangerfield,* 307 S.C. 260, 414 S.E.2d 590 (Ct.App.1992); *see also Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (same) *and Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) (same).

Contrary to Defendants' assertions, there exists no common law duty of good faith and fair dealing between Plaintiff and Defendants. Specifically, there is no independent cause of action relating to the implied covenant of good faith and fair dealing under South Carolina law. *See, e.g., RoTec Services, Inc. v. Encompass Services, Inc.*, 359 S.C. 467, 472, 597 S.E.2d 881, 884 (2004) (the implied covenant of good faith and fair dealing does not constitute a standalone cause of action separate from breach of contract). As Defendants' counterclaim for breach of contract fails as a matter of law, their counterclaim for breach of the implied covenant of good faith and fair dealing also fails as a matter of law. Again, as noted above, it is not a breach of the implied covenant of

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

good faith and fair dealing when a party does something that the relevant contract permits that party to do. *See Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995), *citing First Federal Savings and Loan Ass'n. of South Carolina v. Dangerfield*, 307 S.C. 260, 414 S.E.2d 590 (Ct.App.1992); *see also Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (same) *and Hotel & Motel Holdings, LLC v. BJC Enterprises, LLC*, 414 S.C. 635, 653, 780 S.E.2d 263, 273 (Ct. App. 2015) (same).

With regard to Defendant's alleged counterclaim under Rule 11, SCRCP, it is clear that Rule 11 is not a cause of action. In relevant part, Rule 11 of the South Carolina Rules of Civil Procedure requires that every pleading of a party represented by an attorney shall be signed by at least one attorney who is admitted to practice law in South Carolina, and that the signature of such an attorney constitutes a certificate by him that he has read the pleading and that to the best of his knowledge that there is good ground to support it, and that it is not interposed for delay. The filing of the Complaint to seek damages for the wrongful death of Decedent is not sanctionable. Any violation of Rule 11, whether real or imagined, is addressed by motion, not by counterclaim, as there is no cause of action for "Rule 11 sanctions." For these reasons, Defendants' counterclaim for SCRCP Rule 11 violations fails as a matter of law.

CONCLUSION

Based upon the foregoing, the evidence, pleadings and memoranda in the record, and arguments of counsel, it is hereby ordered that:

(1) Defendants' converted motion for summary judgment on Plaintiff's Complaint is DENIED;

(2) Defendants' converted motion for summary judgment on the inclusion of Defendant Cole Austin Dunn as a party is DENIED;

(3) Defendants' converted motion for summary judgment seeking reformation of the covenant not to execute is DENIED; and

(4) Plaintiff's converted motion to summary judgment on Defendants' counterclaims is GRANTED.

IT IS SO ORDERED.

ELECTRONICALLY FILED - 2018 Apr 09 12:38 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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Horry Common Pleas

Case Caption:	Kenneth A Davis , plaintiff, et al VS Cole Austin Dunn , defendant, et al
Case Number:	2017CP2602910
Type:	Order/Summary Judgment

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-04-09 11:58:24 page 21 of 21

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Hon. Larry B. Hyman, Circuit Court Judge

Case No: 2017CP2602910

Kenneth A. Davis As Personal Representative
Of The Estate of Kenneth Miles Davis ..... Respondent

v.

Cole Austin Dunn and John Richard Smith ..... Appellants

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APR 20 2018
SC Court of Appeals

PROOF OF SERVICE

I certify that on April 19, 2018 I have served the Notice of Appeal on counsel and the Trial Judge by depositing the same in US Mail, sufficient postage prepaid, and have served it and filed it with the Horry County Clerk of Court as noted below:

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CLERK OF COURT:

The Hon. Renee N. Elvis
Horry County Clerk of Court
Filed & Served Via The Court's E-filing system

TRIAL JUDGE:

The Honorable Larry B. Hyman, Jr.
Chief Administrative Judge
1301 Second Avenue, Ste. 3B76
Conway, SC 29526

Dated: April 19, 2018

/s/ J. Dwight Hudson

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	15th JUDICIAL CIRCUIT
COUNTY OF HORRY	)	
	)	
KENNETH A. DAVIS, et al.,	)	CASE NO. 2017-CP-26-02910
	)	
PLAINTIFFS,	)	TRANSCRIPT OF RECORD
	)	
VS.	)	
	)	
COLE AUSTIN DUNN, et al.,	)	
	)	
DEFENDANTS.	)	
	)	

September 12, 2017

Charleston, South Carolina

B E F O R E:

The Honorable Larry B. Hyman, Jr.

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

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John Dwight Hudson, Esquire
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I N D E X

HEARING -- 03

EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT -- 27

If you need an additional copy of this transcript or a sealed transcript or if opposing counsel requires a copy of the transcript, you should contact the court reporter.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

THE COURT: Davis vs. Dunn. It looks like we have a motion to dismiss and a summary judgment motion.

MR. POWELL: Your Honor, there's actually four motions pending this; three of which are Mr. Hudson's, one of which is mine.

We can kind of give you a little bit about each and decide how you best want to attack it.

THE COURT: Okay.

MR. POWELL: Mr. Hudson has a motion to dismiss the plaintiff's complaint, a motion to dismiss Dunn as a party to the action.

THE COURT: What is the basis of your motion to dismiss, Mr. Hudson; is it a 12(b)(4) or (6) ---

MR. HUDSON: That is part of it, Your Honor. It is fairly ---

THE COURT: Rule 12 motion?

MR. HUDSON: Yes, among other things. It really ---

THE COURT: Motion for summary ---

MR. HUDSON: --- it is kind of complicated. It has to do with -- actually Your Honor heard a wrongful death settlement. And it has progressed -- or regressed from there I should say. And a subsequent complaint was filed after the settlement. And our counterclaim ---

THE COURT: Okay.

MR. HUDSON: --- includes motions to dismiss under

all of the -- all of the grounds. And it is fairly extensive. Fairly extensive briefs have been filed by both parties.

THE COURT: I see ---

MR. HUDSON: Your Honor should have them all. Everything is of record.

THE COURT: I did. And this is the case where the young boys -- the hunting accident?

MR. HUDSON: Tragic. They were really actually cleaning up after a hurricane and had the Browning shotgun. And it ---

THE COURT: Okay.

MR. HUDSON: Didn't know it was loaded and it discharged and the young Sarvis (ph) boy was killed.

THE COURT: Okay. Now I have a motion to dismiss, motion for summary judgment.

There are two other motions? Do we want to go ahead and hear them?

MR. POWELL: There is also -- I guess it depends on how you rule on the Whites Hudson -- or Dwight's motion to dismiss.

It is I believe an and/or motion to reform the covenant to include Mr. Smith as a party to that document and then my motion to dismiss his counterclaims.

MR. HUDSON: Your Honor, it is ---

THE COURT: Okay.

MR. HUDSON: --- all of their motions -- motions that is probably 95 percent overlapping. So it is all ---

THE COURT: Okay.

MR. HUDSON: --- basically one.

THE COURT: Well, Mr. -- Mr. Hudson, just jump right in.

MR. HUDSON: All right.

Your Honor, this does come about as a result of a wrongful death settlement over that particular event. South Carolina Farm Bureau is the carrier. And at issue, a policy to the named insured Charlotte Smith.

Residing in her household was her husband and the young Dunn boy's stepfather, a Richard Smith. They had been married for quite some time. These folks live out there in the Galivants Ferry, Aynor area.

We went through the settlement. No particular problems. The policy is a typical homeowner's policy. Among the insureds and also named insureds is the resident spouse of the named insured. And then ---

MR. POWELL: I would like to object, Your Honor. That is not what the policy says and that is not what the case ---

THE COURT: Well, I read the brief and it named Ms.

Dunn I think, right ---

MR. HUDSON: Charlotte ---

THE COURT: --- as insured?

MR. HUDSON: Charlotte -- Charlotte Smith.

THE COURT: Yes, Smith. Smith. I'm sorry.

MR. HUDSON: Right. That's right. And, well, this is our position. He can speak. But this is our position. The policy speaks for itself who are the insureds. And at the end of the day this is nothing but a play on words basically by the plaintiffs now in this action who have brought this suit after accepting the wrongful death ---

THE COURT: Let me ask you this, Mr. Hudson. How clear could this matter be than I saw the offer of settlement, Tyger River letter, that was sent by plaintiff clearly said that they would covenant and release Ms. Smith and Mr. Dunn. It clearly says so.

And then I go and I look at the covenants. And it came before me for approval. And again we talked only about Ms. Smith and Mr. Dunn.

That was the young man's name; wasn't it Mr. Dunn?

MR. HUDSON: That is correct.

THE COURT: Dunn. We only talk about that. Now how can we now say, well, it was just a misunderstanding? We went through a hearing, the document prep, the document

preps making the offer.

MR. HUDSON: Well, Your Honor ---

THE COURT: It is very clear.

MR. HUDSON: --- the -- it is -- it is clearly and developed, and the intentions of Farm Bureau were in clear the entire time. And I am sure opposing counsel knew exactly what was going on. It has turned into a little game of words.

It is a -- the purpose and intent was always for Farm Bureau to protect its insured. Your insureds are more than who they say your insureds are ---

THE COURT: Let me ask you this.

MR. HUDSON: --- in the policy.

THE COURT: Didn't you pay your limits?

MR. HUDSON: We did.

THE COURT: Why are you still in it?

MR. HUDSON: That is why we are here today; he has sued -- he has sued -- he has sued us again.

And here again he wrote the Tyger River letter on Ms. Smith and accusing her of negligent entrustment in addition to the boy who was 16, 17 ---

THE COURT: And y'all paid.

MR. HUDSON: --- at the time was negligent. Now he has brought this without ever mentioning anything about Mr. Smith the stepfather ---

THE COURT: Did you think about ---

MR. HUDSON: --- as being -- having negligent entrustment.

THE COURT: Did you think about it?

MR. HUDSON: Did we think about what?

THE COURT: Did you think about it?

MR. HUDSON: Your Honor, here is the way we have approached these things and we do it over the years. It is insurance. Everybody knows it is the -- it is the insurance company insureds. We do not go down and list -- and it is broad under the residents of the household ---

THE COURT: Well, who would know better who your insureds were than you?

MR. HUDSON: That is correct. So we say Farm Bureau and the insureds, and the policy is there and whoever is there.

We do not and have we ever listed the six or eight people who might be insureds technically under that policy by residing in the household, age groups. We don't do it. You don't have time to do it. And everybody knows those are insureds.

And in this case it was always known that Mr. Smith was the husband and he was not only an insured he was basically a named insured according to the definitions of

the policies.

This -- this is just a play on words in what is an insured and what is not. And it is abundantly clear through Your Honor's order, through everything that has to do with Farm Bureau, that Farm Bureau was releasing its insureds.

If we are not here on the Tyger River and that is what he sent then it is going to revert back to pre-Tyger River where the insurance companies are going to always defend because they can and maybe they will luck up and come up with less coverage or less of a verdict.

This was -- and he admits it. Opposing counsel admits it. It was prearranged to try to do this without using these magic words. It has always been Farm Bureau's position that the insureds and the parties were insureds.

And actually in this there's no parties. The suit was not filed before this wrongful death. We went ahead and paid the coverage, the medical, everything. And they accepted it.

In all of the language Your Honor's order is replete. The petition is replete. And the covenant ends with: This covenant is not intended to limit or impair the personal representative to file suit however payees and their attorney agree that in compliance with the

court's order approving this settlement such litigation will not involve South Carolina Farm Bureau Mutual Insurance Company as this settlement is a full, final, and complete as to South Carolina Farm Bureau. Payee has agreed that South Carolina Farm Bureau has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this covenant not to execute.

That is in the covenant. That's -- ends the covenant. It is capitalized in the Farm Bureau. And then the letter we received after this -- he files suit it says Farm Bureau is under a duty, they have to come in and defend and they have to pay their coverage again.

MR. POWELL: That is not what the letter said, Your Honor ---

MR. HUDSON: That is exactly what the letter says. You go read the letter. That is what it says.

THE COURT: I am looking at the Tyger River letter, and the Tyger River letter very clearly says that this settlement offer involved Charlotte Smith and Cole Dunn.

And it speaks in terms -- it says very clearly: This should properly protect any claim that Charlotte Smith and Cole Dunn will have against Farm Bureau Insurance for bad faith handling of this claim at the time of an excess verdict.

And it very clearly says that the offer is made for

the benefit of Farm Bureau, Charlotte Smith, and Cole Dunn.

I mean ---

MR. HUDSON: Well, he can't ---

THE COURT: --- why would you not address Mr. Smith in this matter -- in these documents? I mean ---

MR. HUDSON: Like I say, we typically -- he was -- we typically don't list everybody in the household that would have the benefit of being an insured under the policy.

In this -- in that Tyger River -- and I think that is what you were reading from just now. The bottom of Page 25 on our brief. It would be, I don't know, Page 3 of 4 on the letter.

He says: We are submitting this demand letter with the hope that we can resolve this matter within your insured's limits of liability coverage by affording Farm Bureau Insurance Company the opportunity to protect their insureds - and then says - by settling this case.

Well, Your Honor, we are talking about all of the insureds. I grant it we did not go down and list everybody in that household that would be entitled to be protected, nor should we have to.

It is known. He had the policy. He knows the policy. He knows what insureds is. He is a lawyer. He

is well experienced. And the insureds are what is included in this matter.

THE COURT: Mr. ---

MR. HUDSON: I have never listed everybody in the household.

THE COURT: I understand. Mr. Hudson, though, look at this -- at this January 30th Tyger River settlement letter. This is the most comprehensive Tyger River letter I have ever seen. Look what it says.

It gives the facts of the case. And then it speaks specifically, specifically, to the liability as to Cole Dunn and then liability as to Charlotte Smith and specifically says what this is releasing them for.

How clear could it be that this offer is made to release Cole Dunn and Charlotte Smith? I mean it doesn't even mention Mr. Smith.

MR. HUDSON: Your Honor, I would say that is just playing games with names. We know the insureds and how the policies operate. And the fact that he didn't name them was probably just a little play on words that he maybe could try to pull a stunt like this.

THE COURT: How many more -- how clearer could he be when he sets out each person's liability, the basis for the liability, and what they are being released for, when he sets out each one?

MR. HUDSON: He hadn't filed a complaint, Your Honor. He has got Charlotte Smith and he is claiming her as negligent entrustment.

THE COURT: Yes.

MR. HUDSON: Well, we have got the stepfather over here that is now being sued for negligent entrustment.

THE COURT: And he could be guilty of that. I don't know. He could be.

MR. HUDSON: He is a stepfather, ---

THE COURT: He could be.

MR. HUDSON: --- and I am not sure of the parental rights; this, that, and the other. But ---

THE COURT: He would have to prove that.

MR. HUDSON: But -- but don't you have to bring -- let me -- let's approach it from this angle. These are all out of the same factual situation, immediately related, close in point in time. All of these folks he would have to bring an action against all of them.

THE COURT: Well, didn't he do that?

MR. HUDSON: He can't pick and choose among three or four defendants. It is not like he is suing the gun manufacturer separately.

THE COURT: Didn't he do that when you asked for the -- and I think it was a partial settlement, wasn't it?

MR. POWELL: That is correct, Your Honor.

THE COURT: Did he say they were going to ---

MR. HUDSON: It was a covenant.

THE COURT: That is what a covenant is for. You look for other coverages and other people.

MR. HUDSON: And it states that in there: Other policies; no way is Farm Bureau to be involved whatsoever.

THE COURT: And of course Farm Bureau may not have any other obligation. The question here is whether or not he can bring an action against Mr. Smith. That is the question.

MR. POWELL: And, Your Honor, as to Cole Dunn. We have sued him as well knowing that he is protected by the covenant, but the covenant doesn't prohibit us from filing an action; it prohibits us from collecting against him personally.

THE COURT: Yes.

MR. POWELL: And the covenant itself takes out all considerations of the Tyger River letter or anything ahead of time ---

MR. HUDSON: Your Honor, ---

MR. POWELL: --- because ---

MR. HUDSON: Can I finish?

THE COURT: Yes.

MR. HUDSON: Can I finish my argument if you don't mind.

MR. POWELL: Yes.

MR. HUDSON: Thank you very much.

Your Honor, that's -- in this context and in this factual scenario Cole Dunn is just a sham defendant. He has already -- they have already paid the entire limits. Farm Bureau ---

THE COURT: We see them every day.

MR. HUDSON: --- has paid the entire limits. Farm Bureau is protected. And yet they are coming in here to say Farm Bureau -- they are switching hats. All of a sudden Farm Bureau has got this duty to Mr. Smith. They do not. He was a named insured and he was to be included. He is an insured. He is a party. He is a named insured. All of the above.

And all of the language and all of the documents, the petition, Your Honor's order, the covenant, release Farm Bureau and by implication and expressly really we think by the terminology of insureds releases all residents of the household and named insureds under the terms of the policy.

Otherwise you are playing games and if you get out and just say Tyger River means nothing.

THE COURT: Well ---

MR. HUDSON: Tyger River came about I think because of this.

THE COURT: Mr. Hudson, I think you are being a little insincere with me here when you say it is a sham defendant. We see it every day.

You enter into a covenant so you can still bring your action. He can still bring his action against Cole Smith. And that was known when you entered into a covenant not to execute. It simply means we will not execute against Mr. Dunn.

It doesn't mean we won't get a judgment against him. It does mean we will satisfy it. It does mean that we won't try to execute in any way against him. But we see those every day here.

I mean that is the purpose of a covenant not to execute so you can do that.

MR. HUDSON: I understand that, Your Honor. I understand that.

And we are basically talking about here most probably they might have been going after the gun manufacturer or something like that, not the insureds under this Farm Bureau policy.

It is replete and explicit that Farm Bureau and its insureds are released. All of these are given a covenant, and all of these are included.

THE COURT: At what point is Mr. Smith mentioned, named, in any document?

MR. POWELL: The summons ---

MR. HUDSON: We don't ---

MR. POWELL: --- and complaint.

MR. HUDSON: --- have to, Your Honor. He is an insured. He is an insured. Everybody ---

THE COURT: Well, that ---

MR. HUDSON: --- is referring to insurance ---

THE COURT: That is your policy. It doesn't protect you under the law.

If you don't name him -- what if it was later determined that Mr. Smith encouraged him to do it, something of that nature; are you saying he couldn't bring an action against Mr. Smith?

MR. HUDSON: Well, Your Honor, clearly the intent, the intent, was to include all insureds ---

THE COURT: I don't ---

MR. HUDSON: --- without listing them.

THE COURT: --- see that. I don't see that.

MR. HUDSON: And ---

THE COURT: I don't see that. Because you don't say -- you name Ms. Smith. You name Mr. Dunn. You say who they are. He explicitly sets out what they did wrong and what is being settled and why it is being settled.

And I hear that at the settlement hearing. But there's no mention of Mr. Smith.

MR. HUDSON: Well, Your Honor, why wasn't Mr. Smith brought up if this is not just subterfuge and a play and a -- and really ---

THE COURT: Mr. Hudson, how many times have you been sitting on a bench in the backyard at the end of a trial drinking a beer and said: We could have done that.

MR. HUDSON: That doesn't apply here, Your Honor, not what -- not so ever. This will be the first time ---

THE COURT: I asked you have you ever had it happen.

MR. HUDSON: No, ---

THE COURT: You have never ---

MR. HUDSON: --- I have not ---

THE COURT: --- had that happen?

MR. HUDSON: Not like this. Not like this.

THE COURT: Not precisely like this?

MR. HUDSON: No, I wouldn't condone this whatsoever. This is ---

THE COURT: Well, that might have been exactly what happened.

MR. HUDSON: Well, we are turning things I think, Your Honor, into -- again, clearly it is the insureds -- plaintiff's counsel knew the insureds under the policy. In fact, I am confident knew that Mr. Smith was an

insured ---

THE COURT: Did he have ---

MR. HUDSON: --- under the policy.

THE COURT: --- a duty to protect Mr. Smith?

MR. HUDSON: Say again.

THE COURT: Did Mr. Powell or Mr. Lesemann have a duty to protect Mr. Smith?

MR. HUDSON: I still couldn't hear you.

THE COURT: Did they have a duty to protect Mr. Smith?

MR. HUDSON: Did they have a duty?

THE COURT: To protect him, yes.

MR. HUDSON: Well, I wouldn't think -- no, I wouldn't think a duty to protect Mr. Smith; ---

THE COURT: Well ---

MR. HUDSON: --- but he has a duty ---

THE COURT: And they didn't.

MR. HUDSON: He has -- he has a duty to list who all he is claiming with ---

THE COURT: He did.

MR. HUDSON: --- Farm Bureau if anybody did anything specifically wrong.

THE COURT: And he did. He said this is what ---

MR. HUDSON: I ---

THE COURT: --- we are settling for.

MR. HUDSON: I totally disagree Your Honor.
THE COURT: Okay. Well ---
MR. HUDSON: He knew -- he knew Mr. -- this is all conjured up from the beginning. He admits it in his letter. It is basically ---
THE COURT: Where does he say that?
MR. HUDSON: --- a fraud on the courts.
THE COURT: Where does he say that in his letter?
(WHEREUPON, Mr. Hudson confers with assistant to retrieve letter.)
MR. HUDSON: It is intentional. In fact he uses those words.
MR. POWELL: We are not denying it was always our intent to sue Mr. Smith, Your Honor. But it was never ---
MR. HUDSON: Well, let me ---
MR. POWELL: --- our intent to protect him with the covenant.
MR. HUDSON: Let me finish. Okay. Here we go.
THE COURT: It sounds like it was their plan.
MR. HUDSON: Page 4 of 4 on the -- Page 4 of 4.
THE COURT: Of what?
MR. HUDSON: I am trying -- June 7th, 2017, letter. First full paragraph. Second paragraph I guess technically: This was an intentional decision on the

part of our client, as Mr. Smith has separate and independent liability for the events that led to the death of Kenneth Miles Davis. Mr. Smith purchased the shotgun that shot and killed Mr. Davis. Excerpt ---

THE COURT: You didn't know that?

MR. HUDSON: Say again.

THE COURT: You didn't know that?

MR. HUDSON: Did I know that?

THE COURT: Uh-huh.

MR. HUDSON: At the time, no, I didn't know who had bought the shotgun.

THE COURT: You didn't ask, Mr. -- Mr. Hudson? Did anybody from Farm Bureau ask? Did anybody from Farm Bureau explore this to see if there was any liability for anyone else?

MR. HUDSON: Your Honor, this was -- it is a stepfather and the mother; and the boy had to go ---

THE COURT: I am aware of that.

MR. HUDSON: The boy had many years experience and he had had a gun training course. So nobody ---

THE COURT: And he may not be able to make out that case. But he has a right to bring it.

MR. HUDSON: He shouldn't even be -- have that opportunity. This -- this -- if we have to play these games it is going to be a tough way to settle cases.

There is no way -- he -- it was intentional. It just -- say it was an intentional. Basically ---

THE COURT: We always intended to bring this action against him, his ---

MR. HUDSON: Exactly.

THE COURT: --- his liability is separate and distinct.

And in your covenant not to execute and all of your documents they make it very clear we are only settling as to these two people.

MR. HUDSON: That is not so, Your Honor. It is very clear that Farm Bureau and its insureds that he is an insured.

THE COURT: Well, the names ---

MR. HUDSON: The documents are implicit ---

THE COURT: --- specifically were ---

MR. HUDSON: --- and they are very clear on that.

THE COURT: Okay. That's good. All right. Now what else have we got?

What did you have, Mr. Powell?

MR. POWELL: Well, let me just to make -- so is Your Honor denying Mr. Hudson's motion to dismiss ---

THE COURT: Absolutely.

MR. POWELL: --- the complaint?

THE COURT: I am denying. I think there are

material issues of fact and I think it does set -- set forth a cause of action. And I think it is properly brought.

MR. POWELL: And that is also as to Dunn as a party? That was a separate motion that was made.

THE COURT: Pardon?

MR. POWELL: There was a separate motion to dismiss Dunn as a sham party. I just wanted to make sure that ---

THE COURT: I will not dismiss him.

MR. POWELL: Okay. And then Mr. Hudson also had a motion to reform the covenant not to execute, to include Mr. Smith on that document.

THE COURT: I will deny that.

MR. POWELL: Okay. And then, Your Honor, we had my motions to dismiss Mr. Hudson's counterclaims.

THE COURT: Which are?

MR. POWELL: One second, Your Honor, here.

There are four counterclaims. But essentially -- one of them is Rule 11 violations. And it is pretty clear that that is not a cause of action and that any Rule 11 violations if they exist are properly brought by a motion and not a counterclaim.

THE COURT: All right.

MR. POWELL: His other three all stem from breach of

contract. There is the first counterclaim is breach of contract. And our position is they have failed to identify any specific provision of the covenant that has been breached.

His second counterclaim is breach of contract accompanied by a fraudulent act. Our position is if there is no breach of contract then the breach of contract accompanied by a fraudulent act must also fail.

And then he has got -- both -- he has pled both a contractual and a common law duty, a breach of the covenant of good faith and fair dealing; but the South Carolina Court of Appeals has already held that there is no independent cause of action relating to the implied covenant and good faith and fair dealing, that it only arises under a breach of contract.

So if the breach of contract action if Your Honor rules that there has been no breach that the contract, the contract being the covenant not to execute, specifically anticipated the filing of the lawsuit then there -- then his other counterclaims also must fail.

THE COURT: Mr. Hudson, do you really want to argue insurance issues in this matter, this case; or do you want to sever?

MR. HUDSON: Do I want to what?

THE COURT: Sever your counterclaims. Do you want

to talk about insurance in an action like this?

MR. HUDSON: Well, Your Honor, the -- it sounds like you denied all of those motions that were in the counterclaim. They are essentially in the form of motions. So it sounds like you have denied them to where they are no longer a part of it.

THE COURT: No, those are -- Mr. Taylor's -- Mr. Powell's motions who dismissed your counterclaims.

MR. HUDSON: And my counterclaims are basically in the motion to dismiss.

THE COURT: Okay.

MR. HUDSON: So as far as the counterclaims in the format that they are in ---

THE COURT: Okay.

MR. HUDSON: --- in the complaint I think they can be eliminated from there because they are in the motion.

THE COURT: All right. Very well. And that will be my ruling. Okay.

MR. POWELL: Thank you, Your Honor.

THE COURT: I deny the motions to -- under 12 -- Rule 12 or motions for summary judgment. Will go to trial. Thank you.

Mr. Powell, if you will prepare an order for me and submit it to Elizabeth.

MR. POWELL: Yes, Your Honor.

THE COURT: With signatures.

Thank you.

(WHEREUPON, the hearing concluded.)

(NOTE: Please contact the court reporter for additional copies or certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official 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 all proceedings had and evidence introduced in the captioned case, relative to appeal, in the court for South Carolina Carolina, on September 12, 2017.

I do further certify that I am neither of kin, Counsel, nor interest to any party hereto.

Phyllis Norton

PHYLLIS NORTON, CVR

Date: September 15, 2017

Certified Transcript Provided For: J. Dwight Hudson
Certification Reference #091517C

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) 788-7133 Fax:(800) 578-7223

Print Date: March 06, 2017

FIREARMS TRACE SUMMARY

Trace Number: T20170034909 **Request Date:** January 31, 2017 **Completion Date:** February 02, 2017

JILL DOMOGAUER
HORRY COUNTY POLICE DEPARTMENT
2560 NORTH MAIN STREET
CONWAY, SC 25926
PHONE: (843) 915-5350 Ext:

Badge No: 453
Investigation No: 16-093978

FIREARM INFORMATION

Manufacturer: BROWNING
Model: BPS
Caliber: 12
Serial Number: 01528ZZ121
Type: SHOTGUN
Country: JAPAN
Importer: BROWNING ARMS COMPANY - BAC...
Obliterated:
Identifying Marks:
NIBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 10/09/2016
Time to Crime: 1762 days
2638 GARNER RD
AYNOR, SC 29511
Possessor: COLE AUSTIN DUNN
DOB:
POB:

PURCHASER INFORMATION

Purchase Date: 12/13/2011
JOHN RICHARD SMITH
2340 HWY 1115
GALIVANTS FERRY, SC 29544
DOB: 08/17/1974
POB: MADISON, WV UNITED STATES
Race: WHITE **Height:** 5 ft 11 in
Sex: Male **Weight:** 210 lbs
ID 1: SC DRIVER'S LICENSE: 004182851
ID 2: :

Contact the local ATF office for additional information.

DEALER INFORMATION

FFL: 15700555
SCHOFIELD ACE HARDWARE
155 S CASHUA DR
FLORENCE, SC 29502
Phone: (843) 669-6393 Ext: **Ship-To-Date:** 12/30/2010

ADMINISTRATIVE INFORMATION

SUMMARY OF RESULTS

THIS FIREARM WAS TRACED TO A PURCHASER. FOR ANY QUESTIONS, PLEASE CONTACT ATF NATIONAL TRACING CENTER, FIREARMS TRACING BRANCH AT 1-800-788-7133.

Additional Remarks:

Uncontrolled Unclassified Information

ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

The information in this report must be validated prior to use in any criminal proceedings.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
KENNETH A DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS, DECEASED,	)	Case No.: 2017-ES-26-0072
Plaintiff,	)	**ORDER APPROVING WRONGFUL DEATH SETTLEMENT**
vs.	)	
COLE AUSTIN DUNN & CHARLOTTE SMITH,	)	
Defendants.	)	

This matter was presented upon the attached verified Petition of the Personal Representative(s) of the Estate of Kenneth Miles Davis, deceased, in which Petition this Court is requested to authorize and approve a settlement of the matter. I have inquired into the matter, and have considered the same, and I am of the opinion that, under all of the circumstances, the settlement is reasonable and proper, and should be authorized and approved by this Court.

It is the opinion of the Petitioner and of the beneficiaries and heirs-at-law that the settlement is a proper one, and that it should be authorized and approved. The Petitioner has set forth in detail in the verified Petition the reasons why they feel the settlement should be authorized and approved, and the terms and provisions of the settlement. I am of the opinion that the reasons are sufficiently established, and that the settlement is justified, and that it should be approved by this Court.

Based on the available evidence of conscious pain and suffering, this Court finds that the sum of One Thousand and no/100 Dollars ($1,000.00) allocated for conscious pain and suffering

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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is proper under the facts and circumstances of this case and approve the same.

It would serve no useful purpose to further repeat in this Order the matters set forth in the Petition as to why the settlement should be approved, and the terms of the settlement. It is sufficient to state that the parties, through their attorneys, have agreed upon a settlement as to the present claims presented against Homeowner's policy 412831 and its coverage for the Defendants. Under the terms of the settlement, South Carolina Farm Bureau Mutual Insurance Company, its named insured and the Defendants are to be given a COVENANT NOT TO EXECUTE which will fully and completely release the referenced policy ONLY as to any and all claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, as a result of the accident which occurred on October 9, 2016, as hereinabove referred to including claims for wrongful death, conscious pain and suffering, medical expenses and any and all other claims which in any wise relate to the aforesaid accident. However, this Order specifically preserves the right of the Personal Representatives to file suit or litigation but insurance carrier, South Carolina Farm Bureau will not and does not have any further responsibility or obligation in connection with any such litigation and has no obligation to Answer or defend the action, as it will have protected its insured(s) with a Covenant Not to Execute.

The Court is mindful that all available coverage from this carrier and this policy is being paid through this settlement and is of the opinion that the settlement is therefore, reasonable, fair and proper and should be authorized and approved.

IT IS, THEREFORE:

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ORDERED, ADJUDGED AND DECREED that the settlement herein referred to, and more particularly set forth in the verified Petition be and the same is hereby authorized and approved. The Personal Representative is hereby authorized and directed to settle the present claims presented against Homeowner's policy 412831 and its coverage for the Defendants, encompassing claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, for the sum of THREE HUNDRED FIVE THOUSAND AND NO/100 ($ 305,000.00) DOLLARS, including but not limited to any claims for wrongful death and conscious pain and suffering, doctor's bills, hospital bills, ambulance bills, medical expenses, funeral expenses, and the like. As to the stated policy, the settlement shall be full, and complete, and Defendant's carrier and its insured shall be given a Covenant Not To Execute that also releases the policy (ONLY). This Covenant Not to Execute will allow Petitioner to pursue and collect upon any additional liability insurance policies insuring Defendants should any be located.

ORDERED, ADJUDGED AND DECREED that upon payment of the above sum by South Carolina Farm Bureau Mutual Insurance Company on behalf of its named insured and the Defendants, via a check payable to the Personal Representative and his attorneys, Lesemann & Associates LLC, the Personal Representative is hereby authorized and directed to execute and deliver a Covenant Not To Execute on behalf of the beneficiaries and heirs-at-law and such Covenant Not To Execute, when so executed and delivered, shall be valid and effectual forever as to South Carolina Farm Bureau Mutual Insurance Company, its stated policy and its named insured and the Defendants - subject to the terms of this Order preserving the Plaintiff's rights to pursue any other available coverage or source of payment.

ORDERED, ADJUDGED AND DECREED that it shall not be incumbent upon the Carrier to trace the distribution of these funds and that this settlement is full, final and complete

as to the said carrier, which has no obligation as to any subsequent litigation filed by the Petitioner, as the carrier's named insured and the Defendants will be protected by the Covenant Not to Execute approved herein.

ORDERED, ADJUDGED AND DECREED that the total settlement proceeds are to be apportioned as follows:

Wrongful Death: with the Personal Representative making payment to the heirs of the deceased as provided by S.C. Code 15-51-10 *et seq.*	$	304,000.00
Survival:	$	1,000.00
Total:	$	305,000.00

Lesemann & Associates as attorneys for the Petitioner shall be paid attorney's fees $90,000.00 and costs of $50.00 from the wrongful death proceeds.

ORDERED, ADJUDGED AND DECREED that the settlement herein referred to be, and the same is hereby authorized and approved by this Court; and it is

SO ORDERED this the 15 day of ~~February~~ March, 2017.

Presiding Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COVENANT NOT TO EXECUTE

This COVENANT is made this 15th day of March, 2017 by and between **KENNETH A. DAVIS**, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE **ESTATE OF KENNETH MILES DAVIS** (hereinafter referred to as "Payees") and **COLE AUSTIN DUNN, CHARLOTTE SMITH and SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY** (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns.

WHEREAS, decedent KENNETH MILES DAVIS was shot, mortally injured, and subsequently passed away from those injuries, on October 9, 2016 in the Aynor area of Horry County, S.C. (hereinafter referred to as the "Incident" or the "Claim"); and

WHEREAS, Payees subsequently made a claim against Payors for wrongful death, survival, bodily injuries, medical expenses, pain and suffering, grief, loss of companionship, funeral expenses, and any and all other damages allegedly suffered by Payees as a result of the Incident; and

WHEREAS at the time of the Accident, SCFB had in effect a Homeowner's Policy for named insured, Charlotte Smith, being policy number 412831, with liability coverage in the amount of Three Hundred Thousand Dollars ($300,000.00) and medical payment coverage of Five Thousand Dollars ($5,000.00) per occurrence.(Hereinafter referred to as the "Policy"); and

WHEREAS, Payors acknowledge that Payees have a substantial claim against Payors for damages allegedly arising out of the Incident and Payees allege that the value of the Claim will exceed the amount of coverage available under the policy; and

WHEREAS, Payors wish to limit their liability or exposure for damages that might exceed the coverage available under the Policy;

NOW THEREFORE, for and in consideration of the payment of the sum of $305,000.00 by Payors ($300,000 in Homeowner's liability insurance coverage and $5,000 in medical payment coverage under Policy # 412831, and for other good and valuable consideration, Payees agree, promise and covenant as follows:

1. Payees and their attorney acknowledge receipt of such payment.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2. Payees hereby promise and covenant for themselves, their heirs, executors, administrators, legal representatives, and assigns, not to execute against Payors, their heirs, executors, administrators, legal representatives, successors or assigns on any judgment that may be obtained by Payees for the wrongful death, survival, bodily injury, medical expenses, pain and suffering, grief, funeral expenses and other damages allegedly sustained as a result of the Incident.
3. SCFB maintains that under the Policy the funds being paid hereunder represent all available insurance coverage under the Policy for the Claim. Payees contend that their damages exceed the amount of this coverage.
4. Payees hereby covenant and promise that if they should obtain a judgment against Payors, they will not execute on said judgment and that, upon a final determination of whether any additional insurance or other benefits will be paid for the Claim, Payees by their attorney, will cause the judgment to be marked and entered as satisfied.
5. Should Payees or their attorney fail or refuse to mark and enter any judgment obtained against Payors as satisfied as provided hereinabove, Payees hereby authorize the Clerk of Court to mark and enter the judgment as satisfied upon receiving a copy of this Covenant.
6. Payees agree that the payment made by Payors is in compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of Payors or of any other person hereby benefiting from this Covenant.
7. Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.
8. Payees hereby represent that they understands that Payors may continue to cooperate and assist in the defense of the Claim.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

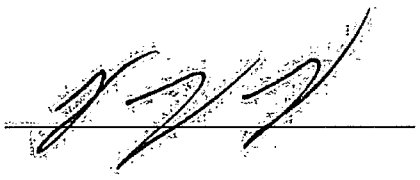
9. Payees hereby agree that should there be any liens, whether by statute, contract, or otherwise for workers compensation benefits, goods, services, or health care services provided to Payees, Payees by their attorney will cause the provider(s) to be reimbursed from the proceeds of this settlement to the extent required by law and should the provider(s) assert a common law, statutory or contractual lien against Payors, their heirs, executors, administrators, legal representatives, successors, or assigns, Payees will indemnify and hold harmless Payors, their heirs, executors, administrators, legal representatives, successors, and assigns from any and all such claims, demands, actions or causes of action of whatsoever kind or nature, and will reimburse Payors for reasonable attorneys' fees incurred in defending any such action brought by a purported lienholder.
10. Payees acknowledge that they rely wholly upon their own judgment, belief, and knowledge as to the nature, extent, and duration of his/her injuries, medical expenses, pain and suffering and damages and the possibility of recovery for the Claim, and that, in making this Covenant, they have relied upon no representations or statements made by Payors, or by their agents or representatives regarding these injuries or damages or any other matter.
11. Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.
12. **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This**

Covenant Not To Execute does not constitute a release of any claim or of any party.

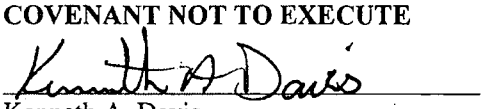
13. It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. However, Payees and their attorney agree that, in compliance with the Court's Order approving this settlement, such litigation will not involve SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY as this settlement is full, final and complete as to SCFB. Payees agree that SCFB has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this Covenant Not To Execute.

IN WITNESS WHEREOF, we have her unto set our hands and seals in the presence of the below named witnesses on the date set forth below.

IN THE PRESENCE OF:



CAUTION. READ BEFORE SIGNING. THIS IS A FULL, FINAL AND COMPLETE COVENANT NOT TO EXECUTE



Kenneth A. Davis,
Personal Representative of
The Estate of Kenneth Miles Davis

Attorney Certification

I, the undersigned attorney for the Payees, hereby certify/certifies that the contents, meaning and final effect of the foregoing Covenant have been carefully and fully explained to them, it is my opinion that Payees fully understand, accept and intend to enter this agreement; and I certify that I have recommended that my clients, the Payees, execute the Covenant.

J. Taylor Powell, Esquire

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Attorney for Payees

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

J. TAYLOR POWELL
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80 ALEXANDER STREET, SECOND FLOOR
CHARLESTON, SOUTH CAROLINA 29403

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WEBSITE: www.lalawsc.com

January 30, 2017

SETTLEMENT COMMUNICATION – INADMISSIBLE UNDER S.C.R.E. 408

Mr. Jonathan Graham
Farm Bureau Insurance Company
Senior Claims Adjuster
3873 West Highway 501
Conway, SC 29526

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, deceased v. Cole Dunn, et al.*

Your Insured: Charlotte Smith & Cole Dunn
Policy No.: HO 0412831

Dear Jonathan:

I am contacting you pursuant to *Tyger River Pine Company v. Maryland Casualty Company*, 170 S.C. 286, 170 S.E. 346 (1933) and its progeny to inform you that my client, Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, will agree to accept Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This would include a payment by Farm Bureau Insurance Company in the amount of $300,000.00 representing the policy limit for personal liability protection and a payment in the amount of $5,000.00 representing the policy limit of medical payments to others under Farm Bureau Insurance Company's Policy No.: HO 0412831 at issue in this matter in exchange for a Covenant not to Execute, which would specifically allow for my client to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831.

Please tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) by close of business on February 15, 2017, at which time this offer will expire. This is your opportunity to settle this case within the policy limits in order to protect your insureds and Farm Bureau Insurance Company from the likelihood of an excess verdict. If $305,000.00 is not tendered by the close of business on February 15, 2017, I will withdraw this time sensitive offer to settle within the policy limits and proceed against Charlotte Smith and Cole Dunn. This is not a negotiation tool, nor will this offer be available after February 15, 2017. This should properly perfect any claim that Charlotte Smith and Cole Dunn will

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

have against Farm Bureau Insurance Company for a bad faith handling of this claim at the time of an excess verdict, which we will request that they assign to Mr. Davis as the Personal Representative of the Estate of Kenneth Miles Davis subsequent to that verdict.

For clarification purposes, I am requesting that you tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) on behalf of Charlotte Smith and Cole Dunn. Upon receipt, I will provide you with a Covenant not to Execute, that specifically allows for my clients to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831. Although I am sure you are aware of your duties and obligations in regard to this correspondence, I would like to suggest that you do the following:

i. Inform your insureds of this demand by providing a copy to them and informing them that the failure of Farm Bureau Insurance Company to comply with it may subject them to an excess judgment;

ii. Advise your insureds that if Farm Bureau Insurance Company declines to accept this demand and a jury verdict is reached that is in excess of the available coverage, that your insured's own assets, both current and future, will be subject to judgment and collections;

iii. Advise your insureds that it is in their best interests to hire a personal attorney independent of the insurance carriers to provide advice as to what their rights are at this stage of the litigation, as well as what future obligations they may have if their insurance carrier fails to comply with this demand; and

iv. Clarify to your insureds that Charlotte Smith and Cole Dunn, as the insureds, have adverse interests to those of Farm Bureau Insurance Company in this matter if the offer is refused.

FACTS OF THE CASE

As you may know, the decedent, Kenneth Miles Davis, was tragically killed as the result of an accidental shooting on October 9, 2016. Cole Dunn was in possession of a Browning 12 gauge shotgun when he accidentally discharged a round of 00 Buckshot that struck the Decedent in the face. This accidental shooting occurred on the property of Decedent's parents, at 2683 Garner Road, Aynor, SC 29511. The Decedent was taken by ambulance to Conway Hospital, where he was pronounced dead. A copy of Decedent's death certificate is attached as Exhibit A. A copy of the Certificate of Appointment that names Kenneth A. Davis as the Personal Representative of his son's estate is attached as Exhibit B.

LIABILITY AS TO COLE DUNN

Cole Dunn was arrested and charged with Negligent Homicide. Liability is not in dispute. Prior to the accidental discharge of the shotgun, Cole Dunn was waiving the firearm around in a reckless manner. The Decedent was heard telling Dunn to stop waiving the shotgun

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

around and was attempting to walk to a point of safety when Dunn accidentally fired the shotgun. A redacted copy of the incident report is attached as Exhibit C.

LIABILITY AS TO CHARLOTTE SMITH

The liability against Charlotte Smith is clear. **But for Charlotte Smith negligently entrusting her son with a loaded shotgun and actively enabling an irresponsible and reckless teenager to possess the loaded shotgun, the Decedent would still be alive.**

ACTUAL AND OTHER DAMAGES

Under the circumstances of this case, we believe that a substantial award of actual and compensatory damages will be made. A copy of Decedent's funeral bill of $6,333.24 is attached as Exhibit D. There are a number of other cases that we think are illustrative of the type of award that will be granted if this case proceeds to trial. For example, the South Carolina Supreme Court, in affirming a $3,000,000.00 jury verdict in a wrongful death case in 1996, held that even in an instance when no evidence of pecuniary loss was introduced at trial, both parents testified to their grief, shock, and sense of loss, which supported the amount of the verdict. In the absence of pecuniary loss, the $3,000,000.00 verdict was to compensate the parents of a 12-year-old boy for these intangible damages which cannot be determined by any fixed measure. *Knoke v. South Carolina Dept. of Parks, Recreation and Tourism*, 324 S.C. 136 (1996), 478 S.E. 2d 256.

Kenneth Miles Davis was very close to both of his parents, Kenneth and Laura Davis. The Decedent was also very close to his three sisters, Harley, Faith, and Eden. The Decedent's parents are both pastors at their church in Conway, SC, and the Decedent was very involved in this church and would often give sermons himself, even though he was only 16 years old. The Decedents' family, with whom he was very close, had to bear the mental shock of finding out that their perfectly healthy family member was dead at the age of 16. As a result of this accident The Decedents' parents and sisters had to plan his funeral, something that no parent or family member should ever have to endure in these sort of circumstances.

CONCLUSION

As set forth above, our demand to settle for Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This is a reasonable demand in view of all of the circumstances, including the obvious liability and significant damages.

We are submitting this demand letter with the hope that we can resolve this matter within your insured' limits of liability coverage by affording Farm Bureau Insurance Company the opportunity to protect their insureds and themselves by settling this case. It is our hope that Charlotte Smith and Cole Dunn will consult with their counsel that is independent from Farm Bureau Insurance Company in order to fully understand the circumstances of this settlement demand. Upon doing so, I would imagine they will recognize that it is in their best interests to instruct Farm Bureau Insurance Company to resolve this matter by accepting this demand and eliminating this sizeable financial risk.

Please accept this letter in the spirit of negotiation in which it is intended and know that it is our hope and desire to reach a rapid and amiable conclusion of this case. Should you have any questions or require any further information, please do not hesitate to contact me. I look forward to hearing from you soon.

With best regards,

J. Taylor Powell

JTP/
Enclosures

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

South Carolina Farm Bureau Mutual Insurance Company
Rick Lamar, CPCU, AIC • *District Claims Manager*

724 Knox Abbott Drive
Cayce, SC 29033
Toll-Free: 1.800.799.7560
Phone: 803.936.4264
Fax: 803.936.4633
rlamar@scfbins.com
www.scfbins.com

E-FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

January 31, 2017

CERTIFIED - RETURN RECEIPT REQUESTED

J. Taylor Powell
Lesemann & Associates, LLC
80 Alexander ST, Second Floor
Charleston SC 29403

RE: Insured: Charlotte Smith
Claim No.: 487128
Date of Accident: 10/9/16
Your Client: Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis

Dear Mr. Powell:

Your letter dated January 30, 2017 to Jonathan Graham has come to my attention.

You made a demand on behalf of your client for the liability limits of $300,000, and med pay coverage of $5,000 for a Covenant Not to Execute. This would allow your client to pursue and collect any other liability insurance policies, should any be located.

South Carolina Farm Bureau Mutual Insurance Company, hereinafter known as the Company, accepts your demand and will make payment for a Covenant Not to Execute.

We are having local counsel, Dwight Hudson, to draw up this Covenant to protect our insureds.

Jonathan Graham will be in touch with your office, and will be making payment once we have an acceptable Covenant.

Please advise should you have any questions regarding this correspondence. The Company appreciates the information that you have provided and looks forward to working with you to the conclusion of this matter.

Very sincerely yours,

District Claims Manager

RL:ap

cc: Jonathan Graham
Senior Claims Adjuster

J. Dwight Hudson
Attorney at Law
PO Box 70218
Myrtle Beach SC 29572

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

J. TAYLOR POWELL
EMAIL: jtp@lalawsc.com

80 ALEXANDER STREET, SECOND FLOOR
CHARLESTON, SOUTH CAROLINA 29403
TELEPHONE (843) 724-5155

DIRECT: (843) 203-1029
WEBSITE: www.lalawsc.com

June 7, 2017

VIA ELECTRONIC MAIL AND FEDEX

J. Dwight Hudson, Esq.
2513 North Oak Street, Suite 210
Waverly Centre
Myrtle Beach, SC 29577

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis v. Cole Austin Dunn & John Richard Smith.*
Case No.: 2017-CP-26-2910

Dear Mr. Hudson:

As you know, this firm represents the Plaintiff, Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, in the above-referenced matter. Service of the Summons and Complaint upon each Defendant in this case was achieved on May 24, 2017. I am writing in response to your voicemail received yesterday, June 6, 2017, in order to provide you with an understanding of this action so that you can best advise your clients and South Carolina Farm Bureau.

On October 9, 2016, Kenneth Miles Davis was shot and killed by Cole Austin Dunn ("Dunn"). At the time of the shooting, Dunn lived with his mother, Charlotte Smith ("Ms. Smith"), and his step-father, John Richard Smith ("Mr. Smith"), at their residence at 2340 Highway 1115 in Galivants Ferry, South Carolina. Dunn, Ms. Smith, and Mr. Smith continue to reside at this address. At all relevant times, South Carolina Farm Bureau provided homeowners insurance relating to this residence and these occupants under Policy # HO 0412831 ("Policy"), with Charlotte Smith as the named insured on the policy. A copy of the declarations page is attached as Exhibit A. Dunn and Mr. Smith are additional insureds under the Policy, based on its terms.

On January 30, 2017, I sent a demand letter to Jonathan Graham, the senior claims adjuster for South Carolina Farm Bureau ("Farm Bureau") on behalf of my client. A copy of the demand letter is attached as Exhibit B. This demand was specific and was repeated four times within the body of the letter. Within the letter, I stated that my client would agree to accept South Carolina Farm Bureau's personal liability limits of $300,000.00 and medical payments limits of $5,000.00 in exchange for providing a Covenant Not to Execute as to "Charlotte Smith and Cole Dunn."

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

On January 31, 2017, I received a letter from Rick Lamar, the district claims manager for Farm Bureau, informing me that Farm Bureau had accepted my demand and will make a payment in exchange for a Covenant Not to Execute. A copy of this letter is attached as Exhibit C. In his letter, Mr. Lamar advised that Farm Bureau would have your firm, as local counsel, draw up the Covenant Not to Execute. Mr. Lamar further advised that Farm Bureau would make payment once they have received an acceptable Covenant Not to Execute.

Thereafter, I spoke to you and was informed that Mary Anne Graham, an attorney in your office, would be handling the drafting of the pleadings and the approval of this wrongful death settlement. On February 9, 2017, I emailed Ms. Graham to introduce myself and to inform her that I could draft the Petition for Approval and the proposed Order Approving the Settlement, and asked her to send me a copy of the Covenant Not to Execute against Cole Dunn and Charlotte Smith, which carved out the ability to pursue any other liability insurance as to Cole Dunn and Charlotte Smith, should any be located. A copy of this email is attached as Exhibit D.

I then sent my proposed Petition for Approval and proposed Order Approving the Wrongful Death Settlement to Ms. Graham. On February 16, 2017, Ms. Graham emailed me that she would review my proposed pleadings and would get back to me with any edits to the pleadings that I had prepared, and would send me the Covenant Not to Execute. On February 22, 2017, Ms. Graham emailed me her proposed changes to the pleadings that I had prepared, as well as the Covenant Not to Execute that she had prepared. A copy of this email exchange is attached as Exhibit E.

On March 9, 2017, I emailed Ms. Graham and requested the following change be made to the Covenant Not to Execute:

Paragraph 12 currently reads:

> **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage or from any other source for the Claim.**

I would like to make the following changes so that it will read:

> **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party. (emphasis added)**

Ms. Graham then sent a reply email confirming this change to the Covenant Not to Execute was acceptable. A copy of this email exchange is attached at Exhibit F. The effect of this additional language is to confirm that other potentially responsible parties, such as Mr. Smith, were not included as part of the Covenant Not to Execute.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

On March 15, 2017, the Honorable Larry B. Hyman, Jr. presided over a settlement approval hearing. Judge Hyman reviewed my client's Petition for Approval of the Wrongful Death Settlement, and signed the Order Approving Wrongful Death Settlement that is attached as Exhibit G. Page three of Judge Hyman's Order specifically stated:

> **The Personal Representative is hereby authorized and directed to settle the present claims presented against Homeowner's Policy 412831 and its coverage for the Defendants, encompassing claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis. (emphasis added)**

The Defendants referenced in Judge Hyman's Order are "Cole Austin Dunn" and "Charlotte Smith," as those are the only named Defendants listed in the caption of the Petition for Approval of the Wrongful Death Settlement and Judge Hyman's Order Approving Wrongful Death Settlement. Judge Hyman's Order further states:

> **ORDERED, ADJUDGED AND DECREED that upon payment of the above sum by South Carolina Farm Bureau Mutual Insurance Company on behalf of its named insured and the Defendants, via a check payable to the Personal Representative and his attorneys, Lesemann & Associates LLC, the Personal Representative is hereby authorized and directed to execute and deliver a Covenant Not To Execute on behalf of the beneficiaries and heirs-at-law and such Covenant Not To Execute, when so executed and delivered, shall be valid and effectual forever as to South Carolina Farm Bureau Mutual Insurance Company, its stated policy and its named insured and the Defendants (emphasis added)**

Judge Hyman's Order, which was drafted by myself and Ms. Graham in your office, approved the wrongful death settlement and ordered my client to execute and deliver a Covenant Not to Execute as to South Carolina Farm Bureau, its named insured, and the Defendants. As discussed above Ms. Smith was the named insured under South Carolina Farm Bureau, and the *only* Defendants referenced were Dunn and Ms. Smith.

On March 15, 2017, just prior to walking into the courtroom for the wrongful death settlement approval hearing, my client signed the Covenant Not to Execute. A copy of the signed Covenant Not to Execute is attached as Exhibit H. The Covenant Not to Execute was made by and between Kenneth A. Davis, individually and as Personal Representative of the Estate of Kenneth Miles Davis, the Payees, and Cole Austin Dunn, Charlotte Smith, and South Carolina Farm Bureau, the Payors. Paragraph 12 of the Covenant Not to Execute specifically states:

> **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially**

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party.

It is clear that Mr. Smith was not a party to the Covenant Not to Execute.

This was an intentional decision on the part of our client, as Mr. Smith has separate and independent liability for the events that led to the death of Kenneth Miles Davis. Mr. Smith purchased the shotgun that shot and killed Kenneth Miles Davis with, as evidenced by the Firearms Trace Summary performed by the U.S. Bureau of Alcohol, Tobacco, Firearms, and Explosives, attached as Exhibit I. As set forth in the Complaint, Mr. Smith was negligent in his supervision of his step-son and in the entrustment of his shotgun to his step-son, who is a minor. A copy of the Summons and Complaint is attached as Exhibit J.

At all times relevant to the wrongful death of Kenneth Miles Davis, Mr. Smith was married to and resided with Ms. Smith at 2340 Highway 1115 in Galivants Ferry, South Carolina. Mr. Smith is and was at all times an insured under the Policy, such that the Policy provides coverage for the separate and independent negligence of Mr. Smith.

On this basis, Farm Bureau has a duty to defend and indemnify Mr. Smith under the Policy. If Farm Bureau fails to uphold these duties, it will result in legal claims against Farm Bureau on Mr. Smith's behalf, who is exposed to a significant potential verdict. If the claim is not resolved and we receive a jury verdict against Mr. Smith, we are likely to seek assignment of these claims against Farm Bureau.

If Farm Bureau is interested in a serious mediation of this case, we will agree to use Karl Folkens at a date that is convenient to all parties. If this is the desire of Farm Bureau please respond to this letter in writing by close of business on June 23, 2017.

I look forward to hearing from you.

With best regards,

J. Taylor Powell

JTP/
Enclosures

cc: Jonathan Graham, Senior Claims Adjuster
Rick Lamar, District Claims Manager

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT A

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

HOMEOWNER POLICY DECLARATIONS

PALMETTO CASUALTY INSURANCE COMPANY
PO BOX 2124, WEST COLUMBIA, SC 29171-2124

Policy Form: **HO3 (10/2010)** Policy Number: **HO 0412831** Dec No.: **10.000**

The Declarations of the policy indicated herein are subject to all other terms and conditions of the policy and replace all previously issued declarations, if any. This Declaration Page becomes a permanent part of your policy. Please attach it to your policy booklet.

THIS DECLARATION PAGE IS EFFECTIVE **10/23/2015** TO **10/23/2016** AT 12:01 A.M. EASTERN STANDARD TIME AND FOR EACH SUCCEEDING POLICY PERIOD OF 12 MONTHS HEREAFTER AS THE RENEWAL PREMIUM IS PAID ON OR BEFORE THE EXPIRATION DATE OF THE CURRENT TERM AND ACCEPTED BY THE COMPANY.

Named Insured and Address

CHARLOTTE SMITH
2340 HIGHWAY 1115
GALIVANTS FERRY, SC 29544-6832

Agent Information

DAVID C JORDAN
HORRY-CONWAY **(843) 365-8580**
3873 W HIGHWAY 501 CONWAY, SC 29526-4443

Policy Premium	Premium Paid By
$2,155.84	INSURED

Please refer to your policy booklet for all definitions, coverages, perils insured against, exclusions, and policy conditions.

Covered Items	Limit Of Liability	SC Valuation Clause	Section I Deductible	Premium
POLICY DISCOUNTS: NONE				
POLICY ENDORSEMENT NONE				
ITEM 1: RESIDENCE PREMISES INCLUDES THE AREA WITHIN 250 FEET OF THE MASONRY OWNER OCCUPIED DWELLING LOCATED AT 2340 HIGHWAY 1115 GALIVANTS FERRY, SC 29544 6832				
ITEM 1 IS SUBJECT TO THE FOLLOWING PREMIUM ADJUSTMENTS: NONE				
ITEM 1 COVERAGES:				
A - DWELLING PROTECTION:	[redacted]	[redacted]	[redacted]	$2,155.84
B - OTHER STRUCTURES PROTECTION:	[redacted]			
C - PERSONAL PROPERTY PROTECTION:	[redacted]			
D - LOSS OF USE PROTECTION:	[redacted]			
E - PERSONAL LIABILITY PROTECTION:	$300,000			
F - MEDICAL PAYMENTS TO OTHERS PROTECTION - EACH OCCURRENCE:	$5,000			
DAMAGE TO PROPERTY OF OTHERS PROTECTION: ANNUAL AGGREGATE LIMIT OF 3 TIMES COVERAGE E AND COVERAGE F APPLIES	$500			
ITEM 1 IS SUBJECT TO THE FOLLOWING ENDORSEMENTS:				
EN0216 - PREMISES ALARM OR FIRE PROTECTION SYSTEM				
HO0290 - PERSONAL PROPERTY REPLACEMENT COST				
EN0313 - NAMED STORM DEDUCTIBLE ENDORSEMENT				
IMPORTANT NOTICE *THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR NAMED STORM OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.*				
EN0207 - INFLATION PROTECTION				
MORTGAGEE DITECH FINANCIAL LLC				
** CONTINUED ON NEXT PAGE **				

026-000 HO 0412831-2 SLA

F095A (04/99)

11-13-2015
Date Prepared

Authorized Representative

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT B

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

J. TAYLOR POWELL
EMAIL: jtp@lalawsc.com

80 ALEXANDER STREET, SECOND FLOOR
CHARLESTON, SOUTH CAROLINA 29403
TELEPHONE (843) 724-5155

DIRECT: (843) 203-1029
WEBSITE: www.lalawsc.com

January 30, 2017

SETTLEMENT COMMUNICATION – INADMISSIBLE UNDER S.C.R.E. 408

Mr. Jonathan Graham
Farm Bureau Insurance Company
Senior Claims Adjuster
3873 West Highway 501
Conway, SC 29526

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, deceased v. Cole Dunn, et al.*

Your Insured: Charlotte Smith & Cole Dunn
Policy No.: HO 0412831

Dear Jonathan:

I am contacting you pursuant to *Tyger River Pine Company v. Maryland Casualty Company*, 170 S.C. 286, 170 S.E. 346 (1933) and its progeny to inform you that my client, Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, will agree to accept Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This would include a payment by Farm Bureau Insurance Company in the amount of $300,000.00 representing the policy limit for personal liability protection and a payment in the amount of $5,000.00 representing the policy limit of medical payments to others under Farm Bureau Insurance Company's Policy No.: HO 0412831 at issue in this matter in exchange for a Covenant not to Execute, which would specifically allow for my client to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831.

Please tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) by close of business on February 15, 2017, at which time this offer will expire. This is your opportunity to settle this case within the policy limits in order to protect your insureds and Farm Bureau Insurance Company from the likelihood of an excess verdict. If $305,000.00 is not tendered by the close of business on February 15, 2017, I will withdraw this time sensitive offer to settle within the policy limits and proceed against Charlotte Smith and Cole Dunn. This is not a negotiation tool, nor will this offer be available after February 15, 2017. This should properly perfect any claim that Charlotte Smith and Cole Dunn will

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

have against Farm Bureau Insurance Company for a bad faith handling of this claim at the time of an excess verdict, which we will request that they assign to Mr. Davis as the Personal Representative of the Estate of Kenneth Miles Davis subsequent to that verdict.

For clarification purposes, I am requesting that you tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) on behalf of Charlotte Smith and Cole Dunn. Upon receipt, I will provide you with a Covenant not to Execute, that specifically allows for my clients to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831. Although I am sure you are aware of your duties and obligations in regard to this correspondence, I would like to suggest that you do the following:

i. Inform your insureds of this demand by providing a copy to them and informing them that the failure of Farm Bureau Insurance Company to comply with it may subject them to an excess judgment;

ii. Advise your insureds that if Farm Bureau Insurance Company declines to accept this demand and a jury verdict is reached that is in excess of the available coverage, that your insured's own assets, both current and future, will be subject to judgment and collections;

iii. Advise your insureds that it is in their best interests to hire a personal attorney independent of the insurance carriers to provide advice as to what their rights are at this stage of the litigation, as well as what future obligations they may have if their insurance carrier fails to comply with this demand; and

iv. Clarify to your insureds that Charlotte Smith and Cole Dunn, as the insureds, have adverse interests to those of Farm Bureau Insurance Company in this matter if the offer is refused.

FACTS OF THE CASE

As you may know, the decedent, Kenneth Miles Davis, was tragically killed as the result of an accidental shooting on October 9, 2016. Cole Dunn was in possession of a Browning 12 gauge shotgun when he accidentally discharged a round of 00 Buckshot that struck the Decedent in the face. This accidental shooting occurred on the property of Decedent's parents, at 2683 Garner Road, Aynor, SC 29511. The Decedent was taken by ambulance to Conway Hospital, where he was pronounced dead. A copy of Decedent's death certificate is attached as Exhibit A. A copy of the Certificate of Appointment that names Kenneth A. Davis as the Personal Representative of his son's estate is attached as Exhibit B.

LIABILITY AS TO COLE DUNN

Cole Dunn was arrested and charged with Negligent Homicide. Liability is not in dispute. Prior to the accidental discharge of the shotgun, Cole Dunn was waiving the firearm around in a reckless manner. The Decedent was heard telling Dunn to stop waiving the shotgun

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

around and was attempting to walk to a point of safety when Dunn accidentally fired the shotgun. A redacted copy of the incident report is attached as Exhibit C.

LIABILITY AS TO CHARLOTTE SMITH

The liability against Charlotte Smith is clear. **But for Charlotte Smith negligently entrusting her son with a loaded shotgun and actively enabling an irresponsible and reckless teenager to possess the loaded shotgun, the Decedent would still be alive.**

ACTUAL AND OTHER DAMAGES

Under the circumstances of this case, we believe that a substantial award of actual and compensatory damages will be made. A copy of Decedent's funeral bill of $6,333.24 is attached as Exhibit D. There are a number of other cases that we think are illustrative of the type of award that will be granted if this case proceeds to trial. For example, the South Carolina Supreme Court, in affirming a $3,000,000.00 jury verdict in a wrongful death case in 1996, held that even in an instance when no evidence of pecuniary loss was introduced at trial, both parents testified to their grief, shock, and sense of loss, which supported the amount of the verdict. In the absence of pecuniary loss, the $3,000,000.00 verdict was to compensate the parents of a 12-year-old boy for these intangible damages which cannot be determined by any fixed measure. *Knoke v. South Carolina Dept. of Parks, Recreation and Tourism,* 324 S.C. 136 (1996), 478 S.E. 2d 256.

Kenneth Miles Davis was very close to both of his parents, Kenneth and Laura Davis. The Decedent was also very close to his three sisters, Harley, Faith, and Eden. The Decedent's parents are both pastors at their church in Conway, SC, and the Decedent was very involved in this church and would often give sermons himself, even though he was only 16 years old. The Decedents' family, with whom he was very close, had to bear the mental shock of finding out that their perfectly healthy family member was dead at the age of 16. As a result of this accident The Decedents' parents and sisters had to plan his funeral, something that no parent or family member should ever have to endure in these sort of circumstances.

CONCLUSION

As set forth above, our demand to settle for Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This is a reasonable demand in view of all of the circumstances, including the obvious liability and significant damages.

We are submitting this demand letter with the hope that we can resolve this matter within your insured' limits of liability coverage by affording Farm Bureau Insurance Company the opportunity to protect their insureds and themselves by settling this case. It is our hope that Charlotte Smith and Cole Dunn will consult with their counsel that is independent from Farm Bureau Insurance Company in order to fully understand the circumstances of this settlement demand. Upon doing so, I would imagine they will recognize that it is in their best interests to instruct Farm Bureau Insurance Company to resolve this matter by accepting this demand and eliminating this sizeable financial risk.

Please accept this letter in the spirit of negotiation in which it is intended and know that it is our hope and desire to reach a rapid and amiable conclusion of this case. Should you have any questions or require any further information, please do not hesitate to contact me. I look forward to hearing from you soon.

With best regards,

J. Taylor Powell

JTP/
Enclosures

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT A

STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-16-036306 **AMENDED**

DECEDENT'S NAME: *KENNETH MILES DAVIS*
SEX: MALE
AKA's: NA
SOCIAL SECURITY NUMBER: 656-09-0540
ARMED FORCES: NO
DATE OF BIRTH: JUNE 28, 2000
AGE: 16 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- EMERGENCY ROOM/OUTPATIENT
COUNTY OF DEATH: HORRY
NAME AND ADDRESS OF PLACE OF DEATH: CONWAY MEDICAL CENTER, CONWAY, SC 29526
PLACE OF DISPOSITION: CHRISTIAN FELLOWSHIP CHURCH CEMETERY
DISPOSITION LOCATION: GALIVANTS FERRY, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
PLACE OF BIRTH: SOUTH CAROLINA
MARITAL STATUS: NEVER MARRIED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: KENNETH ALAN DAVIS
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LAURA JOHNSON
INFORMANT'S NAME: KENNETH DAVIS
RELATIONSHIP: FATHER
MAILING ADDRESS: 2683 GARNER ROAD, AYNOR, SC, 29511
FUNERAL HOME: JOHNSON FUNERAL HOME OF AYNOR, INC, 290 NINTH AVE, AYNOR, SC, 29511
FUNERAL DIRECTOR: JEREMY JOHNSON
LICENSE NUMBER: 2629
EMBALMER'S NAME: NA
LICENSE NUMBER: NA
ACTUAL OR PRESUMED DATE OF DEATH : OCTOBER 09, 2016
MANNER OF DEATH : HOMICIDE
ACTUAL OR PRESUMED TIME OF DEATH: 1916
CAUSE OF DEATH - PART I
SHOT GUN WOUND TO THE HEAD

OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? YES **AUTOPSY PERFORMED?** NO **AUTOPSY AVAILABLE?** NA
DATE OF INJURY: OCTOBER 09, 2016 **TIME OF INJURY:** 1815 **INJURY AT WORK?** NO
PLACE OF INJURY: RESIDENCE
LOCATION OF INJURY: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
HOW THE INJURY OCCURRED?
ACCIDENTAL DISCHARGE OF 12 GAUGE SHOTGUN IN CLOSE PROXIMITY TO INDIVIDUAL
CERTIFIER NAME AND TITLE: DEPUTY CORONER MICHELLE MCSPADDEN **LICENSE NUMBER:** NA
CERTIFIER'S ADDRESS: 2560 N MAIN ST #3, CONWAY, SC, 29526
DATE FILED: OCTOBER 11, 2016
DATE OF ISSUANCE: OCTOBER 13, 2016
SPECIAL INSTRUCTIONS :
MANNER OF DEATH AMENDED BY: DHEC 627 PER MICHELLE MCSPADDEN, DEPUTY CORONER

SC05460683

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT B

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
	)	
COUNTY OF: HORRY	)	**CERTIFICATE OF APPOINTMENT**
	)	
IN THE ESTATE OF:	)	
KENNETH MILES DAVIS,	)	CASE NUMBER 2017ES2600072
DECEASED		

This is to certify that

KENNETH A DAVIS

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
- ☐ SUCCESSOR PERSONAL REPRESENTATIVE
- ☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the 12th day of January 2017, is in full force and effect.

RESTRICTIONS:

Executed this 12th day of January 2017.

Janice F. Collins, Administrative Assistant

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT C

AGENCY I.D.
SC0260400

INCIDENT REPORT

CASE NUMBER: 160937 8

NCIC: INQ. ENTD.

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Manslaughter / Involuntary manslaughter - N - None/Unknown	■ YES ☐ NO	☐ YES ■ NO	20	
	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ■ Individual ☐ Business ☐ Financial ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): 2683 GARNER RD

ZIP CODE: 29511

WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE?	24 HR. CLOCK
10/09/2016	18:00		10/09/2016	18:20

DISPATCH DATE/TIME 24 HR. CLOCK

DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME
10/09/2016	18:17	18:23	22:16

LOCATION NO:

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE): [redacted]

RELATIONSHIP TO SUBJECT: AQ

RESIDENT	RACE	SEX	AGE	ETH.
X S O U	W	F	51	N

DAYTIME PHONE: H B

EVENING PHONE: H B

ADDRESS: [redacted]

CITY: Galivants Ferry S.C.

STATE:

ZIP CODE: 29544

LOCATION NO:

VICTIM'S NAME (LAST, FIRST, MIDDLE): [redacted]

RELATIONSHIP TO SUBJECT: AQ

RESIDENT	RACE	SEX	AGE	ETH.
X S O U	W	M	16	N

DAYTIME PHONE: H B

EVENING PHONE: H B

HEIGHT	WEIGHT	HAIR	EYES
		BRO	

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC:

ADDRESS: [redacted]

CITY: Aynor S.C.

STATE:

ZIP CODE: 29511

LOCATION NO:

VISIBLE INJURY (VICT.#1): ☐ YES NO ☐ EXPLAIN

COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES NO ☐

VICTIM (NO. 1) USING: ALCOHOL ☐ YES NO ☐ UNK ■ DRUGS: ☐ YES NO ☐ UNK ■ TYPE:

TWO-MAN VEH. ☐ ONE-MAN VEH. ☐ DETECTIVE/SPLASMT. ☐ OTHER ☐ ALONE ☐ ASSISTED ☐

J - This Jurisdiction S - State O - Out of State U - Unknown

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ■ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE): Dunn, Cole Austin

RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
W	M	17	N	[redacted]	5' 7"		BRO	BLU

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC:

ADDRESS: [redacted]

CITY: Galivants Ferry S.C

STATE:

ZIP CODE: 29544

LOCATION NO:

SUBJECT (NO. 1) USING: ALCOHOL ☐ YES NO ☐ UNK ■ DRUGS: ☐ YES NO ☐ UNK ■ TYPE:

ARRESTED NEAR OFFENSE SCENE ☐ YES NO ☐ TOTAL # ARRESTED: 1

DATE/TIME OF OFFENSE: 10/9/2016 6:00:00 PM

DATE/TIME OF ARREST: 10/9/2016 12:00:00 AM

NARRATIVE

On 10-9-16 I responded to 2683 Garner Rd located in the Aynor section of Horry County in reference to a shooting. When I arrived along with several other officers the victim was located lying beside a white in color Chevrolet truck. The victim had a gun shot wound [redacted] and E2 was giving him CPR. At the time that EMS personnel was arriving on location a crime scene was being established. [redacted] I located the complainant who said she was near the house when she heard a shot. [redacted] The complainant called 911 and waited for help. Violent crimes along with CSI were notified and arrive at the incident location and took over the investigation. I did transport the subject to the HCDC after Detective Hemingway advised him that he was being charged with the death of the victim. There were other family members of the victim at the residence at the time of the incident but had left for the hospital before there information could be gathered for the report.

PROPERTY EST.

	JURISDICTION OF THEFT: LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY: LAW ENFORCEMENT AGENCY	TOTAL VALUE
TYPE (GROUP)			
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			

ADMINISTRATIVE

SUBJECT IDENTIFIED ■ YES ☐ NO

SUBJECT LOCATED ■ YES ☐ NO

■ ACTIVE ☐ ADM. CLOSED ☐ UNFOUNDED

■ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER

☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT / NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Tindall, Matthew W	10/09/2016	588			

FOLLOW-UP INVESTIGATION ☐ YES ■ NO OFFICER

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT D

JOHNSON FUNERAL HOME
290 9th Avenue
Aynor, South Carolina 29511
(843) 358-5800

STATEMENT OF FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

DECEASED Kenneth Miles Davis No.
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055
Embalming	~~750~~
Other preparation of body	185
	2,990

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325
Use of Facilities & Staff for Funeral Ceremony	
Use of Facilities & Staff for Memorial Service	
Use of Equipment & Staff for Graveside Service	
Use of Equipment & Staff for Church Service	415
	740

3. Transportation:

Transfer of Remains to Funeral Home	250
Hearse	245
Limousine	
Sedan	
Service / Utility Vehicle	195
	690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED 3670 ~~4,420~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Sterling	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$ 4,351

C. SPECIAL CHARGES

CASH ADVANCES

Certified Copies of Death Certificate
(3) @ $ each $ 18
Clergy
Musician
Paid Newspaper Notice
Sun News 369.92
Cemetery Grave Dissing 750
Other Vault Setup 415
Bloomers Florist 561.75
TOTAL CASH ADVANCES $ 1,369.67

We charge you for our services in obtaining: (specify cash advance items)

79.21

SUMMARY

Total Funeral Home Charges	$ ~~8,671~~
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 217.57
Total Cash Advances	$ 1,369.67
GRAND TOTAL	$ ~~10,333.24~~ 9,587.24
Less Credits and Payments	~~2500~~
	~~750~~
Total Credits	$
BALANCE DUE ▶	$ ~~7853.24~~
Billing To	$ ~~7,083.24~~
	$6,333.24

DISCLOSURES

Reason for embalming

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than
If any payment is not paid when due, an unanticipated LATE CHARGE of % per month (ANNUAL PERCENTAGE RATE %) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

DECEASED
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055	
Embalming	~~750~~	
Other preparation of body	195	
		2,950

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325	
Use of Facilities & Staff for Funeral Ceremony		
Use of Facilities & Staff for Memorial Service		
Use of Equipment & Staff for Graveside Service		
Use of Equipment & Staff for Church Service	415	
		740

3. Transportation:

Transfer of Remains to Funeral Home	250	
Hearse	245	
Limousine		
Sedan		
Service / Utility Vehicle	195	
		690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED 3670 ~~3,920~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Sterling	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$4,251

C. SPECIAL CHARGES

☐ Forwarding remains to: ☐ Receiving remains from

Immediate Burial	
Direct Cremation	
Other	
TOTAL OF SPECIAL CHARGES	$

TOTAL FUNERAL HOME CHARGES ~~$8,671~~ 7,921
(This total does not include Cash Advances)

Musician
Paid Newspaper Notice
Serve News 369 92
Cemetery Grave Dig 8 750
Other Vault Setup 415
Bloomers Florist 561 75
TOTAL CASH ADVANCES $ 1,369.67

We charge you for our services in obtaining: (specify cash advance items)

SUMMARY

Total Funeral Home Charges	$ ~~8,671~~ 7,921
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 217.57
Total Cash Advances	$ 1,369.67
GRAND TOTAL	$ ~~10,933.24~~ 9,508.24
Less Credits and Payments	~~2500~~
	~~750~~
Total Credits	$
BALANCE DUE	$ ~~7,683.24~~
Billing To	$ ~~7,083.24~~
	$6,333.24

DISCLOSURES

Reason for embalming

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than

If any payment is not paid when due, an unanticipated LATE CHARGE of % per month (ANNUAL PERCENTAGE RATE %) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in payment to this funeral establishment, I agree to pay reasonable attorney's fees and court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for the charges set forth in this Statement and that this is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a copy of this Statement.

Signed Dated
Social Security Number

Signed Dated

ACCEPTANCE This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement.

By

ELECTRONICALLY FILED - 2017 Jun 23 2:24 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT C

South Carolina Farm Bureau Mutual Insurance Company
Rick Lamar, CPCU, AIC • *District Claims Manager*

724 Knox Abbott Drive
Cayce, SC 29033
Toll-Free: 1.800.799.7500
Phone: 803.936.6254
Fax: 803.936.6633
rlamar@scfbins.com
www.scfbins.com

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

January 31, 2017

CERTIFIED - RETURN RECEIPT REQUESTED

J. Taylor Powell
Lesemann & Associates, LLC
80 Alexander ST, Second Floor
Charleston SC 29403

RE: Insured: Charlotte Smith
Claim No.: 487128
Date of Accident: 10/9/16
Your Client: Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis

Dear Mr. Powell:

Your letter dated January 30, 2017 to Jonathan Graham has come to my attention.

You made a demand on behalf of your client for the liability limits of $300,000, and med pay coverage of $5,000 for a Covenant Not to Execute. This would allow your client to pursue and collect any other liability insurance policies, should any be located.

South Carolina Farm Bureau Mutual Insurance Company, hereinafter known as the Company, accepts your demand and will make payment for a Covenant Not to Execute.

We are having local counsel, Dwight Hudson, to draw up this Covenant to protect our insureds.

Jonathan Graham will be in touch with your office, and will be making payment once we have an acceptable Covenant.

Please advise should you have any questions regarding this correspondence. The Company appreciates the information that you have provided and looks forward to working with you to the conclusion of this matter.

Very sincerely yours,

Rick Lamm

District Claims Manager

RL:ap

cc: Jonathan Graham
Senior Claims Adjuster

J. Dwight Hudson
Attorney at Law
PO Box 70218
Myrtle Beach SC 29572

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT D

Taylor Powell

From: Taylor Powell
Sent: Thursday, February 09, 2017 12:16 PM
To: mgraham@hudsonlawoffice.com
Subject: Estate of Miles Davis v. Cole Austin Dunn

Mary Anne,

I spoke to Dwight on Tuesday and he told me that you would be handling this wrongful death approval hearing.

I can prepare the Petition and Proposed Order, and have those to you for your review next week.

Please send me your draft of a Covenant not to Execute against Cole Dunn or his Mother Charlotte Smith that carves out the ability for me to pursue any other liability coverage should I find it, once you have it finalized.

Also please let me know what your schedule is the next 2 weeks, if there is a day that either 9:30 am or 1:00 pm would work for you to handle this hearing. I clerked for Judge Hyman and will be able to get him to work us in any time in the next 2 weeks while he is in Conway.

I look forward to hearing from you soon,

J. Taylor Powell
Lesemann & Associates LLC
80 Alexander Street, Second Floor
Charleston, SC 29403
Phone: (843) 724-5155
Mobile: (704) 807-8781
Email: jtp@lalawsc.com
Website: www.lalawsc.com

STATEMENT OF CONFIDENTIALITY:
The information contained in this electronic message and any attachments to this message are intended for the exclusive use of the addressee(s) and may contain confidential or privileged information. If you are not the intended recipient, or the person responsible for delivering the e-mail to the intended recipient, be advised you have received this message in error and that any use, dissemination, forwarding, printing, or copying is strictly prohibited. Please call Lesemann & Associates immediately at (843) 724-5155 and destroy all copies of this message and any attachments. You will be reimbursed for reasonable costs incurred in notifying us.

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EXHIBIT E

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Taylor Powell

From:	Mary Anne Graham
Sent:	Wednesday, February 22, 2017 10:41 AM
To:	'Taylor Powell'
Subject:	RE: Estate of Miles Davis v. Cole Austin Dunn - Fw docs w edits/additions and following up re hearing
Attachments:	Petition for Settlement Approval - HLO changes.docx; Order Approving Settlement _ HLO changes.docx; Covenant.doc

Taylor:

Enclosed are the docs with our edits/additions. Have you heard about the hearing on Monday?

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham
P.O. Box 70218
2513 North Oak Street
Suite 210, Waverly Centre
Myrtle Beach, SC 29577
T: 843.692.9889
F: 843.692.9190
E: mgraham@hudsonlawoffice.com

From: Mary Anne Graham [mailto:mgraham@hudsonlawoffice.com]
Sent: Thursday, February 16, 2017 6:46 AM
To: 'Taylor Powell'
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Re availability for hearing 1.27.17

Taylor:

I'm about to review this one. Somehow, the assignment email made it to the firm, but not to me. I spoke with Jonathan Graham a couple of days ago and he forwarded it. I'll take a look at that material and your drafts. I'll get back to you as to any edits and to forward our Covenant. I let Jonathan know we would probably be requesting a check shortly.

In the interim, Dwight already has a Summary Judgment Motion during the afternoon session (1pm) on 2.27 before Judge Culbertson. If you set the hearing for that session, it will surely work for Dwight's schedule. It'll also give us a few days to get the pleadings set and to hopefully have the check in hand.

With best regards, I remain

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT F

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Taylor Powell

From: Mary Anne Graham
Sent: Thursday, March 09, 2017 2:30 PM
To: 'Taylor Powell'
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Reply re Covenant change and check

Taylor:

I believe that change to the Covenant is fine – I emailed Jonathan Graham about the check and believe that it will be in hand by the time of next Wednesday's hearing –

J. Dwight Hudson, Esq.
By: Mary Anne Graham, Esq.
Hudson & Graham
P.O. Box 70218
2513 North Oak Street
Suite 210, Waverly Centre
Myrtle Beach, SC 29577
T: 843.692.9889
F: 843.692.9190
E: mgraham@hudsonlawoffice.com

From: Taylor Powell [mailto:jtp@lalawsc.com]
Sent: Thursday, March 09, 2017 10:38 AM
To: Mary Anne Graham
Subject: RE: Estate of Miles Davis v. Cole Austin Dunn - Reply re hearing dates the week of 3.13

Good morning Mary Anne,

I just wanted to follow up to confirm that you will have the check at the approval hearing on March 15th at 9:00.

I also wanted to run a potential change in the language of the covenant by you.

Paragraph 12 currently reads:

This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage or from any other source for the Claim.

I would like to make the following changes so that it will read:

This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT G

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
KENNETH A DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS, DECEASED, Plaintiff, vs., COLE AUSTIN DUNN & CHARLOTTE SMITH, Defendants.,	)	Case No.: 2017-CP-26-01871 **ORDER APPROVING WRONGFUL DEATH SETTLEMENT**

This matter was presented upon the attached verified Petition of the Personal Representative(s) of the Estate of Kenneth Miles Davis, deceased, in which Petition this Court is requested to authorize and approve a settlement of the matter. I have inquired into the matter, and have considered the same, and I am of the opinion that, under all of the circumstances, the settlement is reasonable and proper, and should be authorized and approved by this Court.

It is the opinion of the Petitioner and of the beneficiaries and heirs-at-law that the settlement is a proper one, and that it should be authorized and approved. The Petitioner has set forth in detail in the verified Petition the reasons why they feel the settlement should be authorized and approved, and the terms and provisions of the settlement. I am of the opinion that the reasons are sufficiently established, and that the settlement is justified, and that it should be approved by this Court.

Based on the available evidence of conscious pain and suffering, this Court finds that the sum of One Thousand and no/100 Dollars ($1,000.00) allocated for conscious pain and suffering

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

is proper under the facts and circumstances of this case and approve the same.

It would serve no useful purpose to further repeat in this Order the matters set forth in the Petition as to why the settlement should be approved, and the terms of the settlement. It is sufficient to state that the parties, through their attorneys, have agreed upon a settlement as to the present claims presented against Homeowner's policy 412831 and its coverage for the Defendants. Under the terms of the settlement, South Carolina Farm Bureau Mutual Insurance Company, its named insured and the Defendants are to be given a COVENANT NOT TO EXECUTE which will fully and completely release the referenced policy ONLY as to any and all claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, as a result of the accident which occurred on October 9, 2016, as hereinabove referred to including claims for wrongful death, conscious pain and suffering, medical expenses and any and all other claims which in any wise relate to the aforesaid accident. However, this Order specifically preserves the right of the Personal Representatives to file suit or litigation but insurance carrier, South Carolina Farm Bureau will not and does not have any further responsibility or obligation in connection with any such litigation and has no obligation to Answer or defend the action, as it will have protected its insured(s) with a Covenant Not to Execute.

The Court is mindful that all available coverage from this carrier and this policy is being paid through this settlement and is of the opinion that the settlement is therefore, reasonable, fair and proper and should be authorized and approved.

IT IS, THEREFORE:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

ORDERED, ADJUDGED AND DECREED that the settlement herein referred to, and more particularly set forth in the verified Petition be and the same is hereby authorized and approved. The Personal Representative is hereby authorized and directed to settle the present claims presented against Homeowner's policy 412831 and its coverage for the Defendants, encompassing claims arising out of or in connection with the injuries to and death of Kenneth Miles Davis, deceased, for the sum of THREE HUNDRED FIVE THOUSAND AND NO/100 ($ 305,000.00) DOLLARS, including but not limited to any claims for wrongful death and conscious pain and suffering, doctor's bills, hospital bills, ambulance bills, medical expenses, funeral expenses, and the like. As to the stated policy, the settlement shall be full, and complete, and Defendant's carrier and its insured shall be given a Covenant Not To Execute that also releases the policy (ONLY). This Covenant Not to Execute will allow Petitioner to pursue and collect upon any additional liability insurance policies insuring Defendants should any be located.

ORDERED, ADJUDGED AND DECREED that upon payment of the above sum by South Carolina Farm Bureau Mutual Insurance Company on behalf of its named insured and the Defendants, via a check payable to the Personal Representative and his attorneys, Lesemann & Associates LLC, the Personal Representative is hereby authorized and directed to execute and deliver a Covenant Not To Execute on behalf of the beneficiaries and heirs-at-law and such Covenant Not To Execute, when so executed and delivered, shall be valid and effectual forever as to South Carolina Farm Bureau Mutual Insurance Company, its stated policy and its named insured and the Defendants - subject to the terms of this Order preserving the Plaintiff's rights to pursue any other available coverage or source of payment.

ORDERED, ADJUDGED AND DECREED that it shall not be incumbent upon the Carrier to trace the distribution of these funds and that this settlement is full, final and complete

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Mar 28 3:10 PM - HORRY - COMMON PLEAS - CASE#2017CP2601871

as to the said carrier, which has no obligation as to any subsequent litigation filed by the Petitioner, as the carrier's named insured and the Defendants will be protected by the Covenant Not to Execute approved herein.

ORDERED, ADJUDGED AND DECREED that the total settlement proceeds are to be apportioned as follows:

Wrongful Death: with the Personal Representative making payment to the heirs of the deceased as provided by S.C. Code 15-51-10 *et seq.*	$	304,000.00
Survival:	$	1,000.00
Total:	$	305,000.00

Lesemann & Associates as attorneys for the Petitioner shall be paid attorney's fees $90,000.00 and costs of $50.00 from the wrongful death proceeds.

ORDERED, ADJUDGED AND DECREED that the settlement herein referred to be, and the same is hereby authorized and approved by this Court; and it is

SO ORDERED this the 15 day of ~~February~~ March, 2017.

Presiding Judge of the Fifteenth Judicial Circuit

Conway, South Carolina

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT H

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COVENANT NOT TO EXECUTE

This COVENANT is made this 15th day of March, 2017 by and between **KENNETH A. DAVIS**, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE **ESTATE OF KENNETH MILES DAVIS** (hereinafter referred to as "Payees") and **COLE AUSTIN DUNN, CHARLOTTE SMITH and SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY** (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns.

WHEREAS, decedent KENNETH MILES DAVIS was shot, mortally injured, and subsequently passed away from those injuries, on October 9, 2016 in the Aynor area of Horry County, S.C. (hereinafter referred to as the "Incident" or the "Claim"); and

WHEREAS, Payees subsequently made a claim against Payors for wrongful death, survival, bodily injuries, medical expenses, pain and suffering, grief, loss of companionship, funeral expenses, and any and all other damages allegedly suffered by Payees as a result of the Incident; and

WHEREAS at the time of the Accident, SCFB had in effect a Homeowner's Policy for named insured, Charlotte Smith, being policy number 412831, with liability coverage in the amount of Three Hundred Thousand Dollars ($300,000.00) and medical payment coverage of Five Thousand Dollars ($5,000.00) per occurrence.(Hereinafter referred to as the "Policy"); and

WHEREAS, Payors acknowledge that Payees have a substantial claim against Payors for damages allegedly arising out of the Incident and Payees allege that the value of the Claim will exceed the amount of coverage available under the policy; and

WHEREAS, Payors wish to limit their liability or exposure for damages that might exceed the coverage available under the Policy;

NOW THEREFORE, for and in consideration of the payment of the sum of $305,000.00 by Payors ($300,000 in Homeowner's liability insurance coverage and $5,000 in medical payment coverage under Policy # 412831, and for other good and valuable consideration, Payees agree, promise and covenant as follows:

1. Payees and their attorney acknowledge receipt of such payment.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2. Payees hereby promise and covenant for themselves, their heirs, executors, administrators, legal representatives, and assigns, not to execute against Payors, their heirs, executors, administrators, legal representatives, successors or assigns on any judgment that may be obtained by Payees for the wrongful death, survival, bodily injury, medical expenses, pain and suffering, grief, funeral expenses and other damages allegedly sustained as a result of the Incident.
3. SCFB maintains that under the Policy the funds being paid hereunder represent all available insurance coverage under the Policy for the Claim. Payees contend that their damages exceed the amount of this coverage.
4. Payees hereby covenant and promise that if they should obtain a judgment against Payors, they will not execute on said judgment and that, upon a final determination of whether any additional insurance or other benefits will be paid for the Claim, Payees by their attorney, will cause the judgment to be marked and entered as satisfied.
5. Should Payees or their attorney fail or refuse to mark and enter any judgment obtained against Payors as satisfied as provided hereinabove, Payees hereby authorize the Clerk of Court to mark and enter the judgment as satisfied upon receiving a copy of this Covenant.
6. Payees agree that the payment made by Payors is in compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of Payors or of any other person hereby benefiting from this Covenant.
7. Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.
8. Payees hereby represent that they understands that Payors may continue to cooperate and assist in the defense of the Claim.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. Payees hereby agree that should there be any liens, whether by statute, contract, or otherwise for workers compensation benefits, goods, services, or health care services provided to Payees, Payees by their attorney will cause the provider(s) to be reimbursed from the proceeds of this settlement to the extent required by law and should the provider(s) assert a common law, statutory or contractual lien against Payors, their heirs, executors, administrators, legal representatives, successors, or assigns, Payees will indemnify and hold harmless Payors, their heirs, executors, administrators, legal representatives, successors, and assigns from any and all such claims, demands, actions or causes of action of whatsoever kind or nature, and will reimburse Payors for reasonable attorneys' fees incurred in defending any such action brought by a purported lienholder.

10. Payees acknowledge that they rely wholly upon their own judgment, belief, and knowledge as to the nature, extent, and duration of his/her injuries, medical expenses, pain and suffering and damages and the possibility of recovery for the Claim, and that, in making this Covenant, they have relied upon no representations or statements made by Payors, or by their agents or representatives regarding these injuries or damages or any other matter.

11. Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.

12. **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This**

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Covenant Not To Execute does not constitute a release of any claim or of any party.

13. It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. However, Payees and their attorney agree that, in compliance with the Court's Order approving this settlement, such litigation will not involve SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY as this settlement is full, final and complete as to SCFB. Payees agree that SCFB has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this Covenant Not To Execute.

IN WITNESS WHEREOF, we have her unto set our hands and seals in the presence of the below named witnesses on the date set forth below.

IN THE PRESENCE OF:

CAUTION. READ BEFORE SIGNING. THIS IS A FULL, FINAL AND COMPLETE COVENANT NOT TO EXECUTE

Kenneth A. Davis,
Personal Representative of
The Estate of Kenneth Miles Davis

Attorney Certification

I, the undersigned attorney for the Payees, hereby certify/certifies that the contents, meaning and final effect of the foregoing Covenant have been carefully and fully explained to them, it is my opinion that Payees fully understand, accept and intend to enter this agreement; and I certify that I have recommended that my clients, the Payees, execute the Covenant.

J. Taylor Powell, Esquire

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Attorney for Payees

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT I

DEPARTMENT OF JUSTICE
BUREAU OF ALCOHOL, TOBACCO, FIREARMS AND EXPLOSIVES
NATIONAL TRACING CENTER

Phone:(800) 788-7133 Fax:(800) 578-7223

Print Date: March 06, 2017

FIREARMS TRACE SUMMARY

Trace Number: T20170034909 **Request Date:** January 31, 2017 **Completion Date:** February 02, 2017

JILL DOMOGAUER
HORRY COUNTY POLICE DEPARTMENT
2560 NORTH MAIN STREET
CONWAY, SC 25926
PHONE: (843) 915-5350 Ext:

Badge No: 453
Investigation No: 16-093978

FIREARM INFORMATION

Manufacturer: BROWNING
Model: BPS
Caliber: 12
Serial Number: 01528ZZ121
Type: SHOTGUN
Country: JAPAN
Importer: BROWNING ARMS COMPANY - BAC
Obliterated:
Identifying Marks:
NTBIN:
Gang Name:

RECOVERY INFORMATION

Recovery Date: 10/09/2016
Time to Crime: 1762 days

2638 GARNER RD
AYNOR, SC 29511
Possessor: COLE AUSTIN DUNN
DOB:
POB:

PURCHASER INFORMATION

Purchase Date: 12/13/2011

JOHN RICHARD SMITH
2340 HWY 111 S
GALIVANTS FERRY, SC 29544
DOB: 08/17/1974
POB: MADISON, WV UNITED STATES
Race: WHITE
Sex: Male
ID 1: SC DRIVER'S LICENSE: 004182851
ID 2: :
Height: 5 ft 11 in
Weight: 210 lbs

Contact the local ATF office for additional information.

DEALER INFORMATION

FFL: 15700555

SCHOFIELD ACE HARDWARE
155 S CASHUA DR
FLORENCE, SC 29502
Phone: (843) 669-6393 Ext:
Ship-To-Date: 12/30/2010

ADMINISTRATIVE INFORMATION

SUMMARY OF RESULTS

THIS FIREARM WAS TRACED TO A PURCHASER. FOR ANY QUESTIONS, PLEASE CONTACT ATF NATIONAL TRACING CENTER, FIREARMS TRACING BRANCH AT 1-800-788-7133.

Additional Remarks:

The information in this report must be validated prior to use in any criminal proceedings.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

EXHIBIT J

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
KENNETH A. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS,)	Case No. 2017-CP-26-_____
)	
Plaintiff,)	**SUMMONS**
)	
vs.)	
)	
COLE AUSTIN DUNN & JOHN RICHARD SMITH,)	
)	
Defendants.)	

TO: THE ABOVE-NAMED DEFFENDANTS:

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

Respectfully submitted,

By: s/ J. Taylor Powell
Ellis R. Lesemann
erl@lalawsc.com
J. Taylor Powell
jtp@lalawsc.com
LESEMANN & ASSOCIATES LLC
80 Alexander Street, Second Floor
Charleston, SC 29403
Phone: (843) 724-5155

Attorneys for Plaintiff

May 9, 2017
Charleston, South Carolina

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF HORRY)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
)	
KENNETH A. DAVIS, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF KENNETH MILES DAVIS,)	Case No. 2017-CP-26-_____
)	
Plaintiff,)	**COMPLAINT (Jury Trial Demanded)**
)	
vs.)	
)	
COLE AUSTIN DUNN & JOHN RICHARD SMITH,)	
)	
Defendants.)	

COMES NOW Plaintiff Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis ("Plaintiff"), by and through his undersigned counsel, stating his Complaint against Defendants as follows:

PARTIES AND JURISDICTION

1. The Plaintiff is a citizen and resident of the County of Horry, State of South Carolina and is the duly appointed Personal Representative of the Estate of Kenneth Miles Davis ("Decedent"), Plaintiff's deceased son.

2. Upon information and belief, Defendant John Richard Smith ("Smith") is a citizen and resident of the County of Horry, State of South Carolina, and at all times relevant to this Complaint was the step-father, legal guardian, caregiver, and provider for minor Defendant Cole Austin Dunn.

3. Upon information and belief, Defendant Cole Austin Dunn ("Dunn") is a citizen and resident of the County of Horry, State of South Carolina, and at all times relevant to this Complaint was a minor and the step-child of Defendant Smith.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

4. The wrongful death that is the subject of this litigation occurred in the County of Horry, State of South Carolina.

FACTUAL ALLEGATIONS

5. On or about October 9, 2016, Decedent and Defendant Dunn were socializing on the property of Decedent's parents located at 2683 Garner Road Aynor, South Carolina.

6. At the above mentioned place and time, Defendant Dunn did knowingly possess a 12 gauge automatic shotgun. This shotgun was purchased by Defendant Smith as evidenced by the Firearms Trace Summary provided by the Bureau of Alcohol, Tobacco, Firearms, and Explosives that is attached as Exhibit A.

7. On or about October 9, 2016, at approximately 6:00 p.m., Defendant Dunn was observed negligently handling the 12 gauge automatic shotgun. Defendant Dunn was waiving the shotgun around and not observing proper safety precautions.

8. Decedent warned Defendant Dunn to stop waiving the shotgun around and to put the weapon down multiple times.

9. Defendant Dunn and Decedent were standing on opposite sides of an open pickup truck door when Defendant Dunn negligently and carelessly discharged the shotgun. The shotgun was loaded with buckshot, which traveled through the rear window of the pickup truck and struck Decedent in his face.

10. After firing the shotgun at Decedent, Defendant Dunn did hear Decedent fall to the ground and later observed Decedent bleeding from his head.

11. After Decedent fell to the ground and was bleeding from his head, Defendant Dunn ran away in a panic, and was later apprehended by law enforcement.

12. As a result of the above-mentioned acts, Decedent did suffer and endure physical pain and die. Further, the statutory heirs have suffered to following injuries:

a) pecuniary loss;

b) mental shock and suffering;

c) wounded feelings,

d) grief and sorrow;

e) loss of companionship;

f) loss of Decedent's experience, knowledge and judgment; and

g) funeral expenses.

FOR A FIRST CAUSE OF ACTION
(Negligence – Defendant Dunn)

13. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

14. The injuries and damages incurred by the Plaintiff were directly and proximately caused by the Defendant Dunn's careless, negligent, grossly negligent, willful, wanton, reckless, and unlawful acts in one or more of the following particulars:

a) in failing to keep a proper look out while discharging a firearm;

b) in discharging a firearm in the general direction or vicinity of another human being;

c) in discharging a firearm in close proximity to another human being;

d) in discharging a firearm without a clear view of the firearm's path;

e) in failing to observe and appreciate the conditions, weather, atmosphere, and wind directly preceding and during the acts that resulted in the death Decedent; and

ELECTRONICALLY FILED - 2017 May 03 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 May 03 4:57 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

f) in failing to appreciate and understand the particular firearm's range and power.

15. Defendant Dunn's careless, negligent, willful, wanton, reckless and unlawful acts were the direct and proximate cause of the incident and resulted in the death of Decedent.

16. The Plaintiff is informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of Defendant Dunn, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

17. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Dunn that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Dunn for actual damages in an appropriate amount, as well as punitive damages.

FOR A SECOND CAUSE OF ACTION
(Negligent Supervision – Defendant Smith)

18. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

19. At all times relevant to this Complaint, Defendant Smith knew or should have known that seventeen-year old Defendant Dunn, did not have the experience or training to safely handle firearms.

20. Defendant Smith knew or should have known that allowing Defendant Dunn to have unsupervised access to a firearm, owned by Defendant Smith, was extremely dangerous to

ELECTRONICALLY FILED - 2017 May 03 4:31 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

the general public, especially those around him, and it was foresceable that he would injure another unless reasonable steps were taken to supervise and control him.

21. Defendant Smith owed a duty to the Plaintiff, and to the general public, to exercise reasonable care to control his minor step-child so as to:

a) Prevent him from negligently harming others, or

b) From so conducting himself as to create an unreasonable risk of bodily harm to others.

22. Defendant Smith knew or had reason to know that he had the ability to control his step-child and knew or should have known of the necessity and opportunity of exercising such control.

23. Defendant Smith failed to perform this duty in that he failed to exercise control over Defendant Dunn by:

a) Not securing the shotgun that was used to kill decedent in a gun safe, which would have prevented Defendant Dunn from having unsupervised access to the shotgun;

b) Failing to train and/or instruct Defendant Dunn on how to safely handle a firearm;

c) Allowing Defendant Dunn to possess, carry, and use firearms with no experience or training; and

d) Purchasing the firearm that was used to kill decedent for Defendant Dunn.

24. The injuries and damages incurred by the Plaintiff and the heirs of Decedent were directly and proximately caused by the aforementioned negligent acts of Defendant Smith.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

25. Therefore as a proximate result of the negligence of Defendant Smith allowing his minor step-child unsupervised access to a shotgun, Defendant Dunn fired an automatic 12 gauge shotgun while his line of sight was obstructed and without properly checking his surroundings. Because of his lack of experience and education regarding gun use, Defendant Dunn failed to appreciate the danger of firing a shotgun in such conditions, and this failure proximately flowing from Defendant Smith allowing such an inexperienced minor to have unsupervised access to the shotgun, resulted in the death of Kenneth Miles Davis.

26. The Plaintiff is informed and believes that as a direct and proximate result of the negligence, carelessness, gross negligence, and recklessness of Defendant Smith, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

27. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Smith that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Smith for actual damages in an appropriate amount, as well as punitive damages.

FOR A THIRD CAUSE OF ACTION
(Negligent Entrustment – Defendant Smith)

28. Plaintiff incorporates by reference and realleges the allegations of the prior paragraphs as stated herein.

29. At all times relevant to this Complaint, Defendant Dunn was incompetent, unfit, inexperienced, or reckless when it came to his ability to safely handle firearms.

ELECTRONICALLY FILED - 2017 May 03 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

30. At all times relevant to this Complaint, Defendant Smith knew or should have known that seventeen-year old Defendant Dunn was incompetent, unfit, inexperienced, or reckless when it came to his ability to safely handle firearms.

31. On or about October 9, 2016, Defendant Smith entrusted Defendant Dunn with the shotgun, a dangerous instrument.

32. The entrustment by Defendant Smith of the shotgun to Defendant Dunn created an appreciable risk of harm to others, including decedent.

33. The entrustment by Defendant Smith of the shotgun to Defendant Dunn was grossly negligent.

34. The Plaintiff is informed and believes that as a direct and proximate result of the negligent entrustment by Defendant Smith of the shotgun to Defendant Dunn, Kenneth Miles Davis suffered fear, physical pain, and suffering, mental and emotional distress and anguish and incurred medical bills in the time before his death, for which the Decedent's estate is entitled to an award of actual damages pursuant to § 15-5-90, Code of Laws of South Carolina (1976) in an amount to be determined by a jury at the trial of this action.

35. Plaintiff is further informed and believes that as a result of the wrongful death of Decedent caused by Defendant Smith that the statutory beneficiaries of Decedent are entitled to judgment against Defendant Smith for actual damages in an appropriate amount, as well as punitive damages.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount to be determined at trial, the costs of this action and for such other and further relief as the Court may deem just and proper.

(Signature page to follow)

Respectfully submitted,

By: s/ J. Taylor Powell
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Attorneys for Plaintiff

May 9, 2017
Charleston, South Carolina

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910
ELECTRONICALLY FILED - 2017 May 09 4:51 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

June 12, 2017

J. Taylor Powell Esq.
Lesemann & Associates LLC
80 Alexander Street
Second Floor
Charleston, SC 29403

Re: Kenneth A. Davis as Personal Representative of the Estate of Kenneth Miles Davis v. Cole Austin Dunn and John Richard Smith
Case Number: 2017-CP-26-02910

Dear Taylor:

We are replying to your letter of yesterday, June 7, 2017, so that you can properly advise your client and dismiss this lawsuit Your letter indicates that you have filed this action seeking to hold Mr. Smith personally liable for the tragic death of Cole Dunn. The letter appears void of a reference to Mr. Dunn, so we ask you to reply and confirm that you will be dismissing Mr. Dunn as a party to this lawsuit.

Your letter indicates that you will be pursuing a claim against John Richard Smith, and further indicates an effort to collect for this claim from homeowner's carrier Farm Bureau. I find that confusing, since Farm Bureau had a policy for the household with a single limit of $300,000.00 and it paid that limit in exchange for a Covenant. Farm Bureau only owes its coverage limit once, and that has been collected.

As to Mr. Smith's potential liability, he was not listed by name in the covenant as he was not a named defendant in the pleadings you drafted, but based upon our firm's efforts and additions, Mr. Smith is protected by reference in the covenant and in the court order. The subject Farm Bureau (Palmetto Casualty) policy is enclosed and is incorporated by reference herein. I direct your attention to the insuring agreement and definitions 1, 2 and 3, all of which appear on Page 1 of the policy. Under the policy, Mr. Smith is both an insured and a named insured.

Both the Covenant and the Court Order protect the named insured, as your correspondence acknowledges and confirms. Mr. Dunn is a named party and he is an insured. As your letter states, you drafted the petition and the order, and we requested edits to include additional language that protects Mr. Smith, as does the Covenant. Your correspondence references Mrs. Smith as the named insured, and it discusses a strategy that you employed in an effort to exclude

Mr. Smith from the approval action and from protection by the covenant and the order, and it appears that strategy was based on an incorrect assumption that Mrs. Smith was the sole named insured. Your reading of the policy will confirm that, as noted above, Mr. Smith is a named insured and therefore, again, he is protected by the covenant and the order.

As a practicing attorney, you are surely aware that a homeowner's policy has a single limit for an insured household. Despite that, you deliberately concocted a scheme to attempt to extort an additional policy limit from the same insured household. You failed to further your scheme by reading the policy. Farm Bureau and this office have consistently dealt in good faith with you and it is regrettable that our good faith was met with subterfuge.

This letter is to advise that we demand that you dismiss this action and immediately cease all attempts to collect any judgment from Mr. Dunn or Mr. Smith, and all threats at such collection. Our Answer will raise counterclaims and will demand all costs and attorney fees associated with the necessity of defending this lawsuit and responding to your unfounded demands. **If we do not receive a reply from you by the close of business on Thursday, June 15th, we will file an Answer inclusive of the Counterclaims noted, along with an accompanying Motion to bring this to the Court's attention and to seek a full dismissal.**

We await and expect your prompt dismissal of this action and your reply to us confirming the same.

J. Dwight Hudson, Esq.
J. Dwight Hudson, Esq.
Hudson Law Offices

JDH: mag
Enclosure(s): as stated

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Palmetto Casualty
INSURANCE COMPANY

Homeowners Policy Form 3
Special Form Policy Provisions

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.

Post Office Box 2124
West Columbia, SC
29171

724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-6700

Policy conditions require immediate notice of any accident or claim.

This policy does not cover any FLOOD claim.

To report an accident or claim, call toll-free, at 1-800-799-7500.

FORM # FB-8390 EDITION 10/2010

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

PALMETTO CASUALTY INSURANCE COMPANY

Homeowner's Policy
Form 3
Your Quick Reference

DECLARATIONS PAGE
- Policy Period
- Your Name and Address
- Residence Premises
- Property Location
- Coverages, Amounts
- Deductibles
- Mortgagee Identification

COUNTY MEMBERSHIP PROVISIONS	**Page 1**
AGREEMENT	**Page 1**
DEFINITIONS	**Page 1**
SECTION I PROPERTY COVERAGES	**Page 5**
Coverage A - Dwelling	**Page 5**
Coverage B - Other Structures	**Page 6**
Coverage C - Personal Property	**Page 7**
Coverage D - Loss of Use	**Page 9**
Additional Coverages	**Page 10**
SECTION I – PERILS INSURED AGAINST	**Page 18**
SECTION I – EXCLUSIONS	**Page 23**
SECTION I – CONDITIONS	**Page 28**
SECTION II – LIABILITY COVERAGES	**Page 35**
Coverage E - Personal Liability	**Page 35**
Coverage F - Medical Payments to Others	**Page 36**
SECTION II – EXCLUSIONS	**Page 36**
SECTION II – ADDITIONAL COVERAGES	**Page 47**
SECTION II – CONDITIONS	**Page 51**
SECTION I and II – CONDITIONS	**Page 53**
PALMETTO CASUALTY PARTICIPATING CONDITIONS	**Page 57**

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ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

COUNTY MEMBERSHIP PROVISIONS

1. As a prerequisite to your purchase of this policy and any renewal of this insurance, you must make application to be a member of and maintain your membership in the applicable county Farm Bureau agricultural organization and affiliated state Farm Bureau agricultural organization (hereinafter collectively known as "Farm Bureau Federation").

2. Your failure to apply for membership and to maintain your membership with the applicable Farm Bureau Federation as our sponsoring organization, including but not limited to your failure to pay the required membership dues to the Farm Bureau Federation, shall require us to cancel or nonrenew your policy.

3. Dues payable to the Farm Bureau Federation are in consideration of membership in the Farm Bureau Federation and other agriculture-related services from Farm Bureau Federation and:

   a. are not in consideration of coverage under this policy, and

   b. are not payable to Palmetto Casualty Insurance Company, South Carolina Farm Bureau Mutual Insurance Company, or any other insurer named on the Declarations.

AGREEMENT

Relying on the facts "**you**" have given "**us**," "**we**" will provide the insurance described in this policy for the limits shown in the latest Declarations in return for the premium and "**your**" compliance with all applicable provisions of this policy. This policy is not complete without the Declarations.

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

1. In this policy, "**you**" and "**your**" refer to the "**named insured**" shown in the Declarations and the spouse if a resident of the same household.

2. "**We**," "**us**" and "**our**" refer to the Company providing this insurance.

3. "**Insured**" means:

   a. **you** and residents of **your** household who are:

      (1) **your** relatives; or

      (2) other persons under the age of 21 and in the care of any person named above.

   b. a student enrolled in school full-time as defined by that school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

      (1) 24 and **your** relative; or

      (2) 21 and in **your** care or the care of the person listed in a. (1) above.

Under Section II, **insured** also means:

c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by **you** or any person included in 3a or 3b above. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without consent of the owner, is not an **insured**;

d. with respect to any vehicle to which this policy applies, persons while engaged in **your** employ or that of any person included in 3a or 3b above.

4. "**Actual cash value**" means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.

5. "**Bodily injury**" means bodily harm, sickness or disease, including required care, loss of services and death resulting there-from. It does not include **personal injury**.

6. "**Business**" means a full-time, part-time or occasional trade, profession or occupation, whether permanent or temporary, including farming. It also includes any other activity engaged in for money or other compensation, except the following:

a. volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;

b. providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

c. the rendering of home day care services to a relative of an **insured**.

7. "**Coverage territory**" means all parts of the world.

8. "**Electronic Data**" means information facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, servers, cells, data processing devices, or any other media which are used with electronically controlled equipment.

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

10. "**Fungi**" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by any fungus, but does not include any fungus that is, is on, or is contained in, any goods or products intended for consumption.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

11. "**Insured location**" means:

a. the **residence premises**;

b. the part of other premises, other structures and grounds used by **you** as a residence and:

(1) which is shown in the Declarations or by Endorsement; or

(2) which is acquired by **you** during the current policy period for **your** use as a residence;

c. any premises used by **you** in connection with a premises in 11a or 11b above;

d. any part of a premises:

(1) not owned by an **insured**; and

(2) where an **insured** is temporarily residing;

e. up to 100 acres total of any and all vacant land, owned by or rented to an **insured**. This does not include:

(1) farm land;

(2) land held for **business** purposes; or

(3) land away from the **residence premises** unless the location is listed on a policy endorsement;

f. land owned by or rented to an **insured** on which a one, two, three or four family dwelling is being built as a residence for an **insured**;

g. individual or family cemetery plots or burial vaults of an **insured**; or

h. any part of a premises occasionally rented to an **insured** for other than **business** use.

12. "**Motor vehicle**" means:

a. a self-propelled land or amphibious vehicle; or

b. any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in **a.** above.

13. "**Occurrence**" means an accident, a happening or event, or continuous or repeated exposure to conditions, which unexpectedly and unintentionally results in **bodily injury** or **property damage** during the policy period. All such injury or damage that is attributable directly or indirectly:

a. to one cause; or

b. to one series of similar causes; or

c. to substantially the same general conditions existing at or emanation from one premises or location;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

shall be deemed one **occurrence** and shall be treated as one **occurrence**, irrespective of the period of time during which such injury or damage occurs on the premises or location at which such injury or damage occurs.

14. "**Personal injury**" means injury arising out of one or more of the following:

    a. false arrest, detention or imprisonment; malicious prosecution;

    b. libel, slander, defamation of character; or

    c. invasion of privacy, or wrongful eviction by a person from or wrongful entry by a person into or onto a room, dwelling or premises that another person occupies, by or on behalf of its owner, landlord, or lessor.

    However, **personal injury** does not include actual, alleged, threatened, or witnessing of humiliation, embarrassment or alienation of affection.

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

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

17. "**Recreational vehicle**" means a 2-, 3- up to 8-wheeled or tracked land or amphibious vehicle that is unlicensed and not subject to **motor vehicle** registration, powered by a petroleum fuel engine or electric motor, used off public roads or highways for personal pleasure or recreation.

18. "**Residence employee**" means an employee of an **insured**, or an employee leased to an **insured** by an agreement with a labor leasing firm, who performs duties, including household or domestic services, in connection with the maintenance or use of the **residence premises**. This includes employees who perform similar duties elsewhere for **you**.

    This does not include employees while performing duties in connection with the **business** of an **insured**.

19. "**Residence premises**" means:

    a. the one family dwelling where **you** reside;

    b. the two, three or four family dwelling where **you** reside in at least one of the family units; or

    c. that part of any other building where **you** reside;

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

    Residence premises includes other structures and grounds at the location specified in the Declarations.

20. "**Sexual harm**" means the actual, alleged, threatened, attempted, or coerced involvement in, or witnessing of, verbal or physical molestation, rape, abuse, assault, or harassment.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

21. "**Terrorism**" means activities against persons, organizations or property of any nature:

a. that involve the following or preparation for any of the following:

(1) use or threat of force or violence;

(2) commission or threat of a dangerous act; or

(3) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. when one or both of the following applies:

(1) the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social, or economic objectives or to express (or express opposition to) a philosophy or ideology.

SECTION I – PROPERTY COVERAGES

COVERAGE A – DWELLING

We cover:

1. the Dwelling on the **residence premises** shown in the Declarations, principally used as **your** private residence, including structures attached to the Dwelling; and

2. materials and supplies located on or next to the **residence premises** used to construct, alter or repair the Dwelling or Other Structures on the **residence premises**; but

3. **We** do not cover:

a. land, including land on which the Dwelling is located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;

b. water in any form, whatsoever;

c. structures, whether or not attached to the Dwelling, for loss caused directly or indirectly by windstorm or hail, to the following:

(1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;

(2) pool cages and similar structures; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. driveways, patios, pools, pavement surrounding a pool, or sidewalks, except as covered under Coverage B – Other Structures, below.

COVERAGE B – OTHER STRUCTURES

We cover other structures on the **residence premises** set apart from the dwelling by clear space. This also includes:

1. structures connected to the dwelling by only a fence, utility line, or similar connection;
2. fences, property line and similar walls, including sea walls;
3. structures, including the property in or on the structure, located in whole or in part in or over water;
4. outdoor equipment, including equipment used to service the **residence premises**;
5. outdoor antennas, except satellite dish antenna systems or related equipment, whether or not attached to a building; and
6. swimming pools; but
7. **We** do not cover:
   a. land, including land on which the Other Structures are located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;
   b. water in any form, whatsoever;
   c. structures, whether or not attached to the Dwelling or Other Structure, for loss caused directly or indirectly by windstorm or hail, to the following:
      (1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;
      (2) pool cages and similar structures;
   d. structures used in whole or in part for **business**, including storage;
   e. farm barns or outbuildings used in whole or in part as a farm barn or farm shed; or
   f. other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; or
   g. satellite dish antenna systems or related equipment, for more than $500, unless specifically endorsed on the policy.

Use of this coverage does not reduce the Coverage A limit of liability.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

COVERAGE C – PERSONAL PROPERTY

We cover:

A. Personal property usual or incidental to the occupancy of the **residence premises** as a dwelling and owned or used by an **insured** while it is anywhere in the world. At **your** request, and after a loss, **we** will cover personal property owned by:

1. others while the property is on the part of the **residence premises** occupied by an **insured**;
2. a guest of the **residence employee**, while the property is in any residence occupied by an **insured**.

B. **Limit For Property At Other Residences**

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

1. moved from the **residence premises** because the **residence premises** are being repaired, renovated or rebuilt and are not fit to live in or store property in; or
2. in a newly acquired principal residence for 30 days from the time you begin to move the property there.

C. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability or the limit of liability for personal property away from the **residence premises**. Perils Insured Against for Coverage C apply. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. $200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, scrip, stored value cards, and smart cards.
2. $1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material.
3. $1,000 on watercraft of all types, including their trailers, furnishings, equipment and outboard motors.
4. $1,000 on trailers not used with watercraft.
5. $2,000 for loss by theft of property away from the **residence premises**, in or on any

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. **motor vehicle**;

b. motorized land conveyance; or

c. watercraft.

This limitation does not apply if there is forcible entry into the **motor vehicle**, motorized land conveyance or watercraft, when the doors, windows, other openings and compartments are closed and locked and there are visible marks of forcible entry, or if the **motor vehicle** is stolen and not recovered within 30 days.

6. $1,000 for loss by theft of jewelry, watches, furs, precious and semi-precious stones.

7. $2,000 for loss by theft of firearms.

8. $2,500 loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewter-ware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.

9. $250 on property away from the **residence premises** used primarily for any **business** purpose. However, this coverage does not apply to equipment described in paragraph 11 below.

10. $2,000 on property on the **residence premises** used primarily for **business** purposes. However, this coverage does not apply to equipment described in paragraph 11 below.

11. $2,500 on **electronic data** processing equipment and the recording or storage media used with that equipment and which is owned by or leased to any **insured**.

12. $2,000 on any one article and $7,500 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article including paintings.

13. $500 for **recreational vehicles** not subject to **motor vehicle** registration or other motorized land conveyances not subject to **motor vehicle** registration.

Property Not Covered. We do not cover:

1. articles separately described and specifically insured in this or other insurance, or specifically excluded elsewhere in this insurance policy;

2. animals, birds or fish;

3. **motor vehicles** and any other motorized land conveyances, except as provided in "Special Limits," paragraph 13 above, or specifically listed in an endorsement and an additional premium paid. This includes:

a. equipment and accessories; or

b. any device or instrument for the transmitting, recording, receiving or reproduction of sound, signals, or pictures which is operated by power from the electrical system of **motor vehicles** or any other motorized land conveyances, including:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1) accessories or antennas;

(2) tapes, wires, records, discs or other media for use with any such device or instrument; or

(3) radar detection devices;

while in or upon the vehicle, or land conveyance.

c. **We** do cover vehicles or conveyances not subject to **motor vehicle** registration which are:

(1) lawns or garden tractors, with a 30 horsepower rating or less, but not **recreational vehicles**; or

(2) designed or used to assist the handicapped.

4. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo.

5. hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, hovercraft and air cushion vehicles.

6. property of roomers, boarders and other tenants, except property of roomers and boarders related to an **insured**.

7. property in an apartment regularly rented or held for rental to others by an **insured**.

8. property rented or held for rental to others off the **residence premises**.

9. books of account, drawings, or other paper records, pertaining to a **business**.

10. credit cards, debit cards, fund transfer cards, or access devices used for deposits, withdrawals or transfer of funds except as provided in Additional Coverages 3.

11. satellite dish antenna systems or related equipment, except as provided under Coverage B, or by endorsement; or

12. land, including land on which personal property is located; nor do **we** cover water in any form.

COVERAGE D – LOSS OF USE

The limit of liability for Coverage D is the total limit for all the coverages that follow.

1. **Additional Living Expense**. If a loss covered under this Section makes that part of the **residence premises** where **you** reside uninhabitable, **we** cover the necessary increase in living expenses incurred by **you** so that **your** household can maintain its normal standard of living. Payment will be for the shortest time required to repair or replace the damage or, if **you** permanently relocate, the shortest time required for **your** household to

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

settle elsewhere. But in any event, that time will not exceed 365 consecutive days from the date of loss.

2. **Fair Rental Value.** If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by **you** uninhabitable, **we** cover the fair rental value of that part of the **residence premises** rented to others or held for rental by **you**, less any expenses that do not continue while the premises are uninhabitable. Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental. But in any event, that time will not exceed 365 consecutive days from the date of loss.

3. **Prohibited Use.** If a civil authority prohibits **you** from using the **residence premises** as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, **we** cover **your** incurred Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for no more than 14 consecutive days from the date use was prohibited. However, if use is prohibited for less than 14 days, we cover for 2 days more than the prohibition was enforced, but not for more than 14 days total.

The periods of time under 1, 2 and 3 above are not limited by expiration of this policy, but the date of loss must be during the policy period.

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

ADDITIONAL COVERAGES

Unless specifically stated otherwise, the Loss Deductible Clause applies to each Additional Coverage below.

1. **Arson Award.** **We** will pay, at **our** option, up to $5,000 for information which leads to an arson, vandalism, or malicious mischief conviction in connection with a loss covered by this policy. Regardless of the number of persons providing information, our limit shall not be increased.

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

2. **Collapse.**

   a. For this Additional Coverage:

      (1) collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.

      (2) a building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.

      (3) a part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building; or

      (4) a building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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

(1) Perils Insured Against in Coverage C – Personal Property, in this policy. These perils apply to covered buildings and personal property for loss insured by this additional coverage;

(2) decay that is hidden from view, unless the presence of such decay is known to an **insured** prior to collapse;

(3) insect or vermin damage that is hidden from view, unless the presence of such damage is known to an **insured** prior to collapse;

(4) weight of contents, equipment, animals or people;

(5) weight of ice, sleet, snow or rain which collects on a roof; or

(6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

c. Loss to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b (2), (3), (4), (5) and (6) unless the loss is a direct result of collapse of a building or any part of a building.

d. Collapse does not include settling, cracking, shrinking, bulging or expansion.

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

f. The loss deductible clause applies to this Additional Coverage.

3. **Credit Card, Debit Card, Fund Transfer Card, or Access Device, Forgery and Counterfeit Money**. All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated, is considered to be one loss.

a. **We** will pay up to $1,000 for:

(1) the legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or debit cards issued to or registered in an **insured's** name;

(2) loss resulting from theft or unauthorized use of a fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an **insured's** name;

(3) loss to an **insured** caused by forgery or alteration of any check or negotiable instrument; and

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) loss to an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

b. Defense provisions:

(1) **we** may investigate and settle any claim or suit that **we** decide is appropriate. **Our** duty to defend a claim or suit ends when the amount **we** pay for the loss equals our limit of liability.

(2) if a suit is brought against an **insured** for liability under the Credit Card, Debit Card, or Fund Transfer Card or Access Device coverage, **we** will provide a defense at **our** expense by counsel of **our** choice; and

(3) **we** have the option to defend at **our** expense an **insured** or an **insured's** bank against any suit for the enforcement of payment under the Forgery coverage.

c. **We** do not cover use of credit card, debit card, fund transfer card, or access device:

(1) by a resident of **your** household;

(2) by a person who has been entrusted with either type of card or access device; or

(3) if an **insured** has not complied with all terms and conditions under which the cards are issued or to the devices accessed.

(4) arising out of **business** use or dishonesty of an **insured**.

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

4. **Damage from Fungi.** If a Peril Insured Against causes covered water damage to a covered item, then **we** will pay up to 2% of the Coverage A item limit of liability for all incurred costs applicable to Coverages A, C, and D only for direct physical loss to covered property caused by, resulting from, contributed to, or aggravated by **fungi**. This 2% limit applies per **occurrence** for item coverages (A, C, and D only) combined and not separately for each coverage. For all incurred damages and for all **occurrences** during a policy period, **we** will not pay more than 3% of the limit for Coverage A for that item. Our limit includes all costs associated, or alleged to be associated, with "Damage from **Fungi**," including but not limited to surveys, tests, remediation, and repairs.

No Damage from **Fungi** coverage applies to any **Other Structures**, Coverage B. This coverage does not increase the limit of liability applying to any coverage. The Loss Deductible Clause applies to this Additional Coverage.

5. **Debris Removal.** **We** will pay **your** reasonable expense for the removal of:

a. debris of covered property if a Peril Insured Against causes the loss;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. ash, dust or particles from a volcanic eruption that has caused direct loss to a covered building or covered property contained in a building; or

c. fallen trees from the **residence premises** if:

(1) coverage is not afforded under Additional Coverages 11. Trees, Shrubs, and Other Plants for the peril causing the loss; or

(2) the tree is not covered by this policy;

provided the tree damages property insured under Coverages A or B and a Peril Insured Against under Coverage C causes the tree to fall. **Our** limit of liability for this coverage will not be more than $500 in the aggregate for any one loss.

d. **We** will also pay **your** reasonable expense, up to $500, for the removal from the **residence premises** of:

(1) **your** tree(s) felled by the peril of Windstorm or Hail or Weight of Ice, Snow or Sleet; or

(2) a neighbor's tree(s) felled by a Peril Insured Against under Coverage **C**;

provided the tree(s):

(3) damage(s) a covered structure; or

(4) does not damage a covered structure, but:

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

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

e. In the event of a total loss of the **residence premises, we** will pay up to an additional 5% of Coverage A-Dwelling limit for debris removal provided the damaged property is repaired or replaced at the **residence premises**.

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

f. **We** do not cover any expenses for:

(1) extracting any **pollutant** from land, soil, or water on or under any **residence premises** or other land that **you** own, lease, rent, or use;

(2) removing, restoring, or replacing polluted land, soil, or water;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) removing covered property or debris of covered property contaminated by any **pollutant** or hazardous material unless the contamination occurred due to a Peril Insured Against at the **residence premises**; nor

(4) costs to comply with any ordinance, law, regulatory, or court order that requires any **insured** or any others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

6. **Fire Department Service Charge.** **We** will pay up to $250 for **your** liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. **We** do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

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

7. **Loss Assessment.** **We** will pay up to $1,000 for **your** share of any loss assessment charged during the policy period against **you** by a corporation or association of property owners. This only applies when the assessment is made as a result of each direct loss to property, owned by all members collectively, caused by a Peril Insured Against under Coverage A – Dwelling, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

a. This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

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

c. This coverage is additional insurance. No deductible applies to this coverage. The limit of $1,000 is the most **we** will pay with respect to any one loss, regardless of the number of assessments.

8. **Property Removed.** **We** insure covered property against direct loss from any cause while being removed from a **residence premises** endangered by a Peril Insured Against under Coverage C- Personal Property and for no more than 30 consecutive days while removed. This coverage does not increase the limit of liability that applies. **Your** property remaining at the **residence premises** is insured against loss caused by a Peril Insured against for Coverage C, Personal Property. The Loss Deductible Clause applies to this Additional Coverage.

9. **Reasonable Repairs.** **We** will pay the reasonable cost **you** incur for necessary repairs made solely to protect covered property from further

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

damage if a Peril Insured Against causes the loss. This coverage does not increase the limit of liability that applies to the property being repaired. This does not relieve you of any duties listed under Section I, Conditions, Duties After Loss, nor extend the reporting time limit established also under Section I, Conditions, Suit Against Us. The Loss Deductible Clause applies to this Additional Coverage.

10. **Refrigerated Products.** **We** will pay up to $1,000 under Coverage C to cover the contents of refrigerated units on the **residence premises** for loss due to power failure or mechanical failure. If mechanical or power failure is known to **you**, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power or mechanical failure shall not include:

    a. removal of a plug from an electrical outlet; or

    b. turning off an electrical switch unless caused by a Peril Insured Against.

    This coverage does not increase the limit of liability that applies to the covered property. The Loss Deductible Clause applies to this Additional Coverage.

11. **Trees, Shrubs and Other Plants.** **We** cover trees, shrubs, plants or lawns on the **residence premises** for loss caused only by the following Perils Insured Against: Fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned or operated by a resident of the **residence premises**, vandalism or malicious mischief, or theft. **We** do not cover loss caused in any other way.

    The limit of liability for this coverage will not be more than 5% of the limit of liability that applies to the dwelling, or more than $500 for any one tree, shrub or plant. **We** do not cover property grown for **business** purposes.

    This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

12. **Ordinance or Law.**

    a. **We** will pay up to 5% of the limit of liability that applies to Coverage A for increased costs **you** incur due to the enforcement of any law or ordinance that regulates or requires:

        (1) construction, demolition, remodeling, renovation, or repair of that part of a covered building or other structure damaged by a Peril Insured Against;

        (2) demolition and reconstruction of the undamaged portion of a covered building or other structure, when that building or other structure must be totally demolished due to damage caused by a Peril Insured Against to another portion of that covered building or other structure;

        (3) remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

that part of the covered building or other structure damaged by a Peril Insured Against.

b. This coverage may be used to pay for any increased costs incurred to remove debris from the construction, demolition, remodeling, renovation, repair, or replacement of property indicated in a. above.

c. **We** do not cover:

(1) loss in value to any covered building or other structure due to requirements of any ordinance or law; or

(2) costs to comply with any ordinance or law that requires any **insured** or any others to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage applies only to loss to **your** dwelling on the **residence premises** covered by Coverage A – Dwelling. This coverage does not apply to any other structure whatsoever.

This coverage is additional coverage. The Loss Deductible Clause applies to this Additional Coverage.

13. **Glass Or Safety Glazing Material**

a. **We** cover:

(1) the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;

(2) the breakage of glass, glass seals or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and

(3) the direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

(1) to covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or

(2) on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property. The Loss Deductible Clause applies to this Additional Coverage.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

14. **Grave Markers**

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

This coverage does not increase the limits of liability that apply to the damaged covered property. The Loss Deductible Clause does not apply to this Additional Coverage.

15. **Water Backup and Sump Discharge or Overflow.**

a. **We** will pay up to $2,500 for direct physical loss, not caused by the negligence of any **insured**, to property covered under Section I caused by:

(1) water, or water-borne material, that backs up through sewers or drains; or

(2) water, or water-borne material, that overflows or is discharged from a sump, sump pump or related equipment even if such overflow or discharge results from the mechanical breakdown of the sump pump or related equipment.

b. This Additional Coverage does not apply to loss caused by:

(1) flood, surface water, floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams or other bodies of water, or spray from any of these, whether or not driven by wind;

(2) water, or water-borne material, which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment which is the direct or indirect result of flood, or other circumstance listed in b(1) above;

(3) water, or water-borne material, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure which is the direct or indirect result of flood; or

(4) mud, pluff mud, mudslide or mudflow,

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

This coverage does not increase the limits of liability for Coverages A, B, C or D stated in the policy Declarations, policy changes, or endorsements. Except as stated under Additional Coverages 4, Damage From **Fungi** above, **we** do not cover indirect, subsequent, consequential, or concurrent loss cause by **fungi** in any sequence to a loss caused by water back-up and sump pump discharge or overflow.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Direct loss by fire or explosion due to water backup and sump discharge or overflow is covered. The Loss Deductible Clause applies to this Additional Coverage.

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING AND COVERAGE B – OTHER STRUCTURES

We insure against risks of direct physical loss to property described in Coverages A and B, if that loss is a physical loss to property.

However, **we** do not insure loss as follows:

1. excluded under Section I – Exclusions.
2. involving collapse, other than as provided in Additional Coverage 2.
3. caused by:
   a. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system, or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
      (1) maintain heat in the building; or
      (2) shut off the water supply and drain all systems and appliances of water.

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

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

   b. freezing, thawing, pressure or weight of water, ice, hail, snow or sleet, whether driven by wind or not, to a:
      (1) fence, pavement, deck, patio or swimming pool;
      (2) footing, foundation, retaining wall or bulkhead or any other structure or device that supports all or part of a building or other structure;
      (3) pier, wharf or dock; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) sump, sump pump or related equipment or a gutter, downspout, roof drain or similar fixtures or equipment;

c. theft in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied;

d. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

e. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning, guttering, or automatic fire protective sprinkler system or from within a household appliance;

f. mold, fungus or wet rot. Subject to Additional Coverage 4, **we** insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of the dwelling if such loss results from the accidental discharge or overflow of water or steam from within:

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

(2) a storm drain, or water, steam or sewer pipes, off the **residence premises**.

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

g. caused by:

(1) wear and tear, marring, deterioration;

(2) inherent vice, latent defect, mechanical breakdown;

(3) the presence, growth, proliferation, spread, or any activity, of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not in whole or in part:

i. caused by or resulting from;

ii. contributed to by; or

iii. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss, subject to Additional Coverage 4, Damage from **Fungi**.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) smog, smoke from agricultural smudging or industrial operations;

(5) release, discharge or dispersal of contaminants or **pollutants**;

(6) settling, cracking, shrinking, bulging or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings; or

(7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, **we** cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. **We** do not cover loss to the system or appliance from which this water escaped.

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in Section I – Exclusions.

1. **Fire or lightning.**

2. **Windstorm or hail.**

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

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

3. **Explosion.**

4. **Riot or civil commotion.**

5. **Aircraft**, including self-propelled missiles and spacecraft.

6. **Vehicles.** This peril includes damage to **your** property caused by a vehicle. It does not include damage to **your** personal property caused by **your motor vehicle, your recreational vehicle** or collision damage to any **motor vehicle you** own, rent or lease, including **recreational vehicles.**

7. **Smoke**, meaning sudden and accidental damage from smoke including emission of smoke, soot, fumes, or vapors from a boiler, furnace, or related equipment. This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief.**

   This peril does not include loss to property on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Also, this peril does not include loss to any computer, computer system, network, hardware, program, **electronic data**, information repository, microchip, integrated circuit, or similar device unless there are visible signs of physical damage to the exterior of the computer, equipment, computer system, or non-computer equipment.

9. **Theft**, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

This peril does not include loss caused by theft:

a. committed by an **insured**;

b. in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied; or

c. from that part of a **residence premises** rented by an **insured** to someone other than an **insured**.

d. of **electronic data**.

This peril does not include loss caused by theft that occurs off the **residence premises** of:

a. property while at any other residence owned by, rented to, or occupied by an **insured**, except while an **insured** is temporarily living there. Property of a student who is an **insured** is covered while residing away from **your residence premises** at a residence away from home.

b. watercraft of all types, and their furnishings, equipment and outboard motors;

c. trailers and campers.

10. **Falling Objects**.

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

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

11. **Weight of ice, snow or sleet** which causes damage to property contained in the building.

We do not cover loss:

a. to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock; or gutter; or

b. caused by settling, cracking, shrinking, bulging, or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

12. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

This peril does not include loss:

a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months, or years;

b. to a Dwelling, Other Structure, or Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

c. on the **residence premises**, if the dwelling has been vacant or unoccupied for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

d. to the system or appliance from which the water or steam escaped;

e. caused by or resulting from freezing except as provided in the peril of Freezing, #14 below;

f. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**;

However, that portion of Section I – Exclusion 3. Water Damage, that applies to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. **Sudden and accidental tearing apart, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water, but not a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

This peril does not include loss:

a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

c. caused by or resulting from freezing except as provided in the peril of Freezing, #14. below.

14. **Freezing** of a plumbing, heating air conditioning or automatic fire protective sprinkler system or of a household appliance, but not gutters, downspouts, roof drain, or similar fixtures or equipment, sump, sump pump or related equipment.

This peril does not include loss:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

c. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**;

15. **Sudden and accidental damage** from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

SECTION I – EXCLUSIONS

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

1. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided elsewhere under this policy, that:

   a. requires or regulates the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion 1.a. does not apply to the amount of coverage that may be provided for in Section I – Property Coverages, Additional Coverages, Ordinance or Law;

   b. results in a loss in value to property; or

   c. requires any **insured** or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**.

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

2. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; any volcanic eruption; landslide; mudflow; erosion; earth sinking, sinkhole, contracting, expanding, rising or shifting; caused by any act of nature or resulting from human or animal forces unless direct loss by:

   a. fire;

   b. explosion;

   c. breakage of glass or safety glazing material which is part of a building, storm door or storm window; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. theft,

ensues and then **we** will pay only for the ensuing loss.

Also, **we** do not cover any loss or damage caused by growth or decay of trees, roots, plants or vines.

3. **Water Damage**, meaning damage from:

a. flood, surface water or any other substance(s) or object(s) on or from the surface of the ground regardless of its source, any floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams, or other bodies of water or spray from any of these, whether or not driven by wind;

b. water, or water-borne matter that backs up through sewers or drains or that overflows or is discharged from a sump, sump pump or related equipment; or

c. water, or water-borne matter, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure; or

d. mud, pluff mud, mudslide, or mudflow,

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

Direct loss by fire, explosion or theft resulting from water damage is covered. Loss caused by **Water Damage** to watercraft, their trailers, furnishings, equipment, and outboard motors, covered by this policy or its endorsement, is covered.

4. **Exclusion for Mold and Fungi.** Other than as stated in Section I - Additional Coverages, Damage from **Fungi**, **we** do not cover the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not, in whole or in part:

a. caused by or resulting from;

b. contributed to by; or

c. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss.

5. **Power Failure** or interruption, meaning the failure or interruption of power or other utility service if the failure takes place off the **residence premises**. But, if a Peril Insured Against ensues on the **residence premises**, **we** will pay only for that ensuing loss caused by a Peril Insured Against.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

6 **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

7. **War and Military Action Exclusion.**

We will not pay for loss or damage caused by the following, listed below. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Excluded are:

a. war, including undeclared civil war;

b. warlike action by a military force, including action to hinder or defend against an actual, expected, or threatened attack, by any government, sovereign, or other authority using military personnel or other agents;

c. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or

d. destruction, seizure or use for a military purpose.

If there is any action that comes within the terms of this exclusion and involves nuclear reaction or radiation or radioactive contamination, then this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

8. **Terrorism Exclusion**. Regardless of the amount of damage and losses, this exclusion applies to any and all incidents of **terrorism**.

a. that involve the use, release or escape of pathogenic or poisonous biological or chemical materials;

b. that could cause the release or escape of pathogenic or poisonous biological or chemical materials; or

c. that directly or indirectly result in nuclear reaction or radiation or radioactive contamination.

We will not pay for loss or damage caused directly or indirectly by **Terrorism**, including action to hinder or defend against an actual, expected or threatened incident of **Terrorism**. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

But if **Terrorism** results in fire, **we** will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property.

With respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes the **Terrorism** Exclusion.

In the event of an act of **Terrorism** that involves nuclear reaction or radiation, or radioactive contamination, this **Terrorism** Exclusion supersedes the Nuclear Hazard Exclusion.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I – Conditions.

10. **Governmental Action**

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

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

11. **We** do not insure under any coverage for loss resulting from one or more of the items below.

a. conduct, act, failure to act, or decision of any person, group, organization, or governmental body whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

(1) planning, zoning, development surveying, siting;

(2) design, specifications, workmanship, construction, grading, compaction;

(3) materials used in construction or repair; or

(4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the **residence premises**.

However, **we** do insure for any ensuing covered loss from items a. and b. unless the ensuing loss is itself a loss excluded by this section.

12. **We** do not insure for loss under any coverage regardless of whether one or more of the items listed in paragraph 11 above:

a. directly or indirectly cause, contribute to or aggravate the loss; or

b. occur before, at the same time, or after the loss or any other cause of the loss.

However, **we** do insure for ensuing covered loss from items 11a and 11b unless the ensuing loss is itself a loss excluded by this section.

13. **Asbestos, Lead, or Silica Presence or Removal**. This policy does not insure covered property for damage, loss of use, or expenses arising from:

a. actual or attempted removal of any asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica, or dust from any of these, unless the asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica is itself damaged by a peril insured against;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. demolition or increased cost of reconstruction, repair, or debris removal, attributable to the enforcement of any law, ordinance or regulation concerning asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica; or

c. any governmental direction or request declaring that asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica, present in, part of, or utilized by any undamaged portion of the **insured's** property can no longer be used for the purpose for which it was intended or installed and must be modified, covered, sealed, protected, or removed.

14. **Pollutants and Pollution Exclusion:** **We** do not insure for loss, cost, or expense:

a. which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, by any person, organization or governmental authority; and

b. arising out of any:

(1) request, demand or order that any **insured** or others test for, monitor, clean up, remove, remedy, repair, contain, treat, detoxify or neutralize, or in any other way respond to, or assess the effects of **pollutants**; or

(2) claim or suit by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, remedying, repairing, containing, treating, detoxifying or neutralizing, or in any other way responding to, or assessing the effects of **pollutants**.

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

15. **We** do not insure covered property for damage, loss of use, or expenses caused by radon gas, radium, any other radioactive substance, any gas, or any sound or light. **We** do not cover the cost of any investigations, fines, or other costs related to radon gas, radium, any other radioactive substance, any gas, or any sound or light.

16. **We** do not insure for loss or damage arising directly or indirectly out of:

a. loss of, alteration of, or damage to; or

b. a reduction in the functionality, availability or operation of any computer, computer system, network, hardware, software, program, **electronic data**, information, repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of an **insured** or others; and

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

c. **we** will not cover, pay for, or reimburse **you** or anyone else for any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided to correct, determine, prevent, rectify, or test for any actual, alleged, or potential problems described in subparagraphs a. and b. above; but

d. **we** will pay for direct physical loss or damage to covered property caused by a Peril Insured Against, Section I, Coverage C – Personal Property. However, this exception does not apply to any loss or damage that is:

(1) otherwise excluded in Section I – Exclusions; or

(2) caused by the peril of **Vandalism or Malicious Mischief**, unless there are visible signs or physical damage to the exterior of such computer system, computer equipment or non-computer equipment.

e. With respect to loss or damage excluded by this paragraph, if a peril listed in Section I – Perils Insured Against for Coverage C – Personal Property ensues, **we** will pay for the direct physical loss or damage caused by such ensuing peril.

17. **Collapse**, other than as provided in **Additional Coverages**.

18. **We** do not insure under any coverage for loss resulting from weather conditions. This exclusion applies only if weather conditions contribute in any way with a cause or event excluded in items 1 through 16 above.

19. **Prejudgment Interest**. This policy does not pay prejudgment interest.

20. **Intentional Acts**, meaning any loss arising out of any act committed, or where there was a conspiracy to commit an act:

a. by or at the direction of any **insured**;

b. with the intent to cause a loss; and

c. in any domestic dispute between **insureds**, family members, or others.

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

21. **Intentional Loss.** If **you** or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then the policy is void and **we** will not pay **you** or any other **insured** for this loss.

SECTION I – CONDITIONS

1. **Insurable Interest and Limit of Liability**. Even if more than one person has an insurable interest in the property covered, **we** will not be liable in any one loss:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. to any **insured** for more than the amount of the **insured's** interest at the time of loss; or

b. for more than the applicable limit of liability.

2. **Your Duties After Loss.** In case of a loss to covered property, **you** or your representative must see that the following are done:

a. immediately notify the police or other appropriate law enforcement agency in any case of loss where a crime is suspected;

b. immediately notify the credit card or fund transfer card company in case of loss under Credit Card, Debit Card, or Fund Transfer Card coverage;

c. give prompt notice to **us** or **our** agent;

d. (1) protect the property from further damage;

(2) make reasonable and necessary repairs to protect the property; and

(3) keep an accurate record of repair expenses;

(4) cooperate with **us** in the investigation and settlement of any claim;

e. prepare an inventory of damaged personal property showing the quantity, description, how, when, and where acquired, **actual cash value** and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

f. as often as **we** reasonably require of **you**, any other **insured**, or any other person seeking coverage:

(1) allow **us**, or **our** designee(s) to inspect the damaged property;

(2) allow **us** to secure, and retain, at **our** expense, evidence relating to the loss;

(3) provide **us** with records and documents **we** request and permit **us** to make copies; and

(4) allow us to obtain from **you**, and any other person seeking coverage, separate recorded statements; and

(5) submit, separate and apart from any other **insured**, to examination(s) under oath, if **we** require by any person named by **us** and sign and swear to it;

g. send to **us**, within 60 days after **our** request, **your** signed, sworn proof of loss which sets forth, to the best of **your** knowledge and belief:

(1) the time and cause of loss;

(2) the interest of the **insured** and all others in the property involved and all mortgages or liens on the property;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) other insurance, service agreements, or warranty provisions which may cover the loss;

(4) changes in title or occupancy of the property during the term of the policy;

(5) specifications of damaged buildings and detailed repair estimates;

(6) the inventory of damaged personal property described in 2e above;

(7) receipts for additional living expense incurred and records that support the fair rental value loss; and

(8) evidence or affidavit that supports a claim under the Credit Card, Debit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. **Loss Settlement.**

The terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in Section I – Additional Coverages, "Ordinance or Law." Covered property losses are settled as follows:

a. (1) Personal property;

(2) Awnings, carpeting, household appliances, fences, property lines, sea walls, outdoor equipment, outdoor antennas and swimming pools, whether or not attached to buildings; and

(3) Other structures that are not buildings, including grave markers and mausoleums;

(4) Buildings not permanently attached to, or otherwise forming part of the realty;

at **actual cash value** at the time of loss but not more than the amount required to repair or replace.

b. Buildings permanently attached to or otherwise forming a part of the realty, under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

(1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, **we** will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:

(a) the limit of liability under this policy that applies to the building;

(b) the replacement cost of that part of the building damaged for like construction and use of the same premises; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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

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

(a) the **actual cash value** of that part of the building damaged; or

(b) that proportion of the cost to repair or replace, without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

(3) To determine that amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, **we** do not include the value of:

(a) excavations, foundations, footings, piers, devices or any supports which are below the undersurface of the lowest basement floor;

(b) those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and

(c) underground flues, pipes, wiring and drains.

(4) **We** will pay no more than the **actual cash value** of the damage, up to the policy limit, until actual repair or replacement is completed.

(5) **You** may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an **actual cash value** basis. **You** may then make claim within 180 days after loss for any additional liability on a replacement cost basis.

We do not guarantee an exact decorative match in texture or color for any roofing, exterior or interior building material, furniture or upholstery.

4. **Loss to a Pair or Set**: In case of loss to a pair or set, **we** may elect to:

a. repair or replace any part to restore the pair or set to its value before the loss;

b. pay the difference between **actual cash value** of the property before and after the loss; or

c. pay in any loss involving part of a series of panels or pieces the reasonable cost of:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1) replacing or repairing the damaged part to match the remainder as closely as possible; or

(2) providing an acceptable decorative effect as may be necessary. However, **we** do not guarantee exact replacement availability. In the event of damage to a part, **we** are not liable for the value of or the repair or replacement of the entire series of panels or pieces.

5. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

6. **Appraisal.** If **you** and **we** fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, independent appraiser and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, **you** or **we** can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of loss. If the appraisers submit a written report of an agreement to **us**, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by **you** and **us**.

7. **Other Insurance And Service Agreement.**

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

a. other insurance, **we** will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss; or

b. a service agreement, then this insurance is excess over any amounts payable under any such agreement. Service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

8. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within three years after the date of loss.

9. **Our Option.** **We** may repair or replace any part of the property damaged or stolen with equivalent property. Any property **we** pay for or replace becomes **our** property at **our** option.

10. **Loss Payment.** **We** will adjust all losses with **you**. **We** will pay **you** unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after **we**

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. reach an agreement with **you**; or

b. receive **your** proof of loss and reach an agreement with **you**; or

c. there is an entry of a final judgment; or

d. there is a filing of an appraisal award with **us**.

11. **Abandonment of Property.** **We** need not accept any property abandoned by an **insured**.

12. **Mortgagee Clause.**

The word **mortgagee** includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and **you**, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If **we** deny **your** claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

a. notifies **us** of any change in ownership, occupancy or substantial change in risk within 90 days of when the mortgagee becomes aware of such change;

b. pays any premium due under this policy on demand if **you** have neglected to pay the premium; and

c. submits a signed, sworn statement of loss within 60 days after receiving notice from **us** of **your** failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.

If the policy is cancelled or not renewed by **us**, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If **we** pay the mortgagee for any loss and deny payment to **you**:

a. **we** are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or

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

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

13. **Loss Payable Clause**

If the Declarations show a loss payee for certain listed insured personal property and if **we** decide to cancel or not renew this policy, that loss payee will be notified in writing.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

14. **No Benefit to Bailee.** **We** will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provisions of this policy.

15. **Nuclear Hazard Clause.**

a. **Nuclear Hazard** means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I.

c. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the **nuclear hazard** is covered.

16. **Unearned Premium Clause.** If a loss under **your** policy is payable or has been paid, the Company has the option to:

a. reduce **your** coverage by any sum up to the amount of the loss and refund to **you** within 30 days of **our** notice to **you** of the reduction in coverage the pro rata unearned premium as of the time of the loss; or

b. retain the unearned premium and maintain **your** policy without regard to the loss; or

c. terminate **your** policy and within 30 days of **our** notice refund to **you** any pro rata unearned premium as of the time of the loss.

17. **Valuation Clause.** For the perils of fire and lightning, **you** and **we** agree that the value of the building described in this policy is, and hereby fix the amount of insurance to be carried on the building as, the amount shown for Coverage A – Dwelling, on the Declarations of this policy. These agreed values are established for insurance purposes only. At any date the building is under construction, the maximum amount of insurance shall be the proportion of the value of the building that the **actual cash value** of the building, on that date, bears to the value of the building when completed.

18. **Loss Deductible Clause.** In case of loss under Coverages A, B, or C, the deductible stated on **your** latest Declarations will be applied per **occurrence** and will be deducted from the amount of the loss. This loss deductible clause shall not apply to the: Arson Award, Credit Card, Debit Card, Fund Transfer Card or Access Device, Forgery and Counterfeit Money, Fire Department Service Charge, Loss Assessment, and Grave Markers coverages.

19. **Change in Ownership, Renting or Leasing.** This policy does not apply if:

a. there is a change in ownership of the dwelling to a person or organization, other than an **insured**,

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. **you** rent or lease the dwelling to a person, other than an **insured** unless **you** notify **us** in writing of the change, rental or lease within 30 days.

20. **Report Increased Values.** **You** agree to notify **us** within 90 days of the start of any building valued at $5,000 or more or any additions to or remodeling of buildings that increases their value by $5,000 or more, and pay any additional premium for the increased value. If **you** fail to notify **us** within 90 days, or pay the additional premium, **we** will not cover any increased values. **We** must receive **your** notification and agree to any amount of increase before any claim occurs.

21. **Concealment Or Fraud.**

We will not provide coverage to any **insureds** under this policy if, whether before or after a loss, any **insured** has, or has conspired to have:

1. intentionally concealed or misrepresented any material fact or circumstance;
2. engaged in fraudulent conduct; or
3. made false statements;

relating to this insurance.

SECTION II – LIABILITY COVERAGES

COVERAGE E – PERSONAL LIABILITY

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

1. pay up to **our** limit of liability for the damages for which the **insured** is legally liable. Damages include prejudgment interest awarded against an **insured**; and

2. have the right and duty to provide a defense at **our** expense by counsel of **our** choice, even if the suit is groundless, false or fraudulent. **We** may investigate, settle, deny, or defend any claim or suit that **we** decide is appropriate. However, **we** will have no duty to defend any suit seeking damages for **bodily injury** or **property damage** to which this insurance does not apply. **Our** duty to settle or defend ends when the amount **we** pay for damages resulting from the **occurrence** equals **our** limit of liability.

   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**.

   Property damage that is loss of use of tangible property that is not physically injured will be deemed to occur at the time of the **occurrence**

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

that caused it. For the purposes of this Section, **electronic data** is not tangible property. **We** will not cover any loss, loss of use, deletion, corruption, or degradation of performance of any other **electronic data** equipment or material caused by **your** ownership, use, or operation of any **electronic data** equipment, material, or instructions, whether the damage or consequences was intentional or not.

This insurance applies to **bodily injury** and **property damage** only if:

a. the **bodily injury** or **property damage** is caused by an **occurrence** which takes place in the **coverage territory**, and

b. the **bodily injury** or **property damage** occurs during the policy period of this policy.

The amount **we** will pay for damages is limited as described in SECTION II – LIMITS OF LIABILITY and on the policy Declarations.

COVERAGE F – MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses that are incurred within three years from the date of an accident causing **bodily injury**. **We** will make these payments regardless of fault. Necessary medical expenses means reasonable charges for first aid administered at the time of the accident, medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage does not apply to **you**, any other **insured**, or regular residents of **your** household except **residence employees**. As to others, this coverage applies only:

1. to a person on the **insured location** with the permission of an **insured**; or

2. to a person off the **insured location**, if the **bodily injury**:

   a. arises out of a condition on the **insured location** or the ways immediately adjoining;

   b. is caused by the lawful activities of an **insured**;

   c. is caused by a **residence employee** in the course of the **residence employee's** employment by an **insured**; or

   d. is caused by an animal owned by or in the care of an **insured**, but not a **business** animal (including a farm animal) nor a dangerous exotic animal.

3. to a **residence employee** if the **occurrence** causing **bodily injury** occurs off the **insured location** and arises out of or in the course of the **residence employee's** employment by an **insured**.

These payments will not exceed the applicable limits of liability. This coverage applies only to **occurrences** in the **coverage territory** during the policy period.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – EXCLUSIONS

1. **Coverage E – Personal Liability and Coverage F – Medical Payments to Others** do not apply to **bodily injury** or **property damage**:

   a. resulting from intentional acts or directions of **you** or any **insured**. The expected, unexpected, or unintended results of these acts or directions are not covered even if the resulting **bodily injury** or **property damage**:

      (1) is of a different kind, quality or degree than initially expected or intended; or

      (2) is sustained by a different person, entity, real or personal property, than initially expected or intended.

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

   b. arising out of or in connection with **business** pursuits of an **insured** or the rental or holding for rental of any part of any premises by an **insured**, whether or not the **business** is owned or operated by an **insured** or employs an **insured**.

      This Exclusion 1. applies but is not limited to, an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the **business**.

      This exclusion does not apply to:

      (1) the rental or holding for rental of any **insured location**:

         (a) on an occasional basis if used only as a residence;

         (b) in part, unless intended for use as a residence by more than two roomers or boarders; or

         (c) in part, as an office, school studio or private garage; or

      (2) an **insured** under the age of 21 years involved in a part-time or occasional, self-employed **business** with no **employees**;

   c. resulting from any **insured's** regularly providing home day care services, or foster parenting services, at any time to a person or persons other than any **insured**, in return for which any **insured** receives monetary or other compensation or any other consideration. The providing of such services in exchange for such compensation is a **business**. Mutual exchange of home day care services, however, is not considered compensation.

   d. arising out of the rendering of or failure to render professional services of any nature, even if covered by another policy.

e. arising out of any act or omission that occurs at, on, or in connection with a premises:

(1) owned or controlled by any **insured**;

(2) rented to any **insured**; or

(3) rented to others by any **insured**;

that is not an **insured location**.

f. arising out of:

(1) the ownership, lease, rental, maintenance, use, loading or unloading of **motor vehicles**, **recreational vehicles**, or any other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an **insured**;

(2) the entrustment by an **insured** of a **motor vehicle**, **recreational vehicle** or any other motorized land conveyance to any person;

(3) maintenance or use of any **motor vehicle**, **recreational vehicle**, or any other motorized land conveyance;

(a) on any highway or public road;

(b) on another's land, whether owned, leased, or rented, without expressed permission;

(c) on public or private lands where these conveyances are prohibited, whether posted or not;

(d) in any prearranged or organized race, speed trial, time trial or any other similar contest; or

(4) vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a conveyance excluded in paragraph (1), (2), or (3) above.

This exclusion does not apply to:

(1) a trailer not towed by or carried on a motorized land conveyance;

(2) a motorized golf cart while being used to play golf on a golf course;

(3) a vehicle, **recreational vehicle** or conveyance not subject to **motor vehicle** registration:

(a) while being used to assist a handicapped person;

(b) while in dead storage on an **insured location**; or

(c) which is a lawn or garden tractor, with no more than a 30 horsepower engine rating, that is not used in any **business** and is not a **recreational vehicle**;

(d) which is powered by electrical current supplied by battery and was not built or modified after manufacture to exceed a speed of 15 miles per hour on level ground.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

g. arising out of:

(1) the ownership, maintenance, use, loading or unloading of a watercraft described below;

(2) the entrustment by an **insured** of a watercraft described below to any person; or

(3) vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a watercraft described below.

Watercraft:

(1) with inboard or inboard-outdrive motor power owned by an **insured**;

(2) with inboard or inboard-outdrive motor power of more than 50 horsepower rented to an **insured**;

(3) that is a sailing vessel, with or without auxiliary power, 26 feet or more in length owned by or rented to an **insured**;

(4) powered by one or more outboard motors with more than 25 total horsepower if the outboard motor is owned by an **insured**. But, outboard motors of more than 25 total horsepower are covered for the policy period if:

(a) **you** acquire them prior to the current policy period and:

(i) **you** declare them at the current policy inception; or

(ii) **your** intention to insure is reported to **us** in writing within 45 days after **you** acquire the outboard motors;

(b) **you** acquire them during the current policy period and **your** intention to insure is reported to **us** in writing within 45 days after **you** acquire the outboard motors; or

(5) designated as a jet ski, air boat, air cushion, hovercraft, personal watercraft or similar type of craft, unless endorsed on this policy.

This exclusion does not apply while the watercraft is stored.

h. arising out of:

(1) the ownership, maintenance, use, operation, loading or unloading of any aircraft or hovercraft by any **insured** or any other person;

(2) the leasing, or rental of an aircraft or hovercraft by any **insured**, including any aircraft loaned to any **insured**;

(3) the entrustment by any **insured** of an aircraft to any person; or

(4) vicarious liability whether or not statutorily imposed for the actions of a child or minor using an aircraft or hovercraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry

people, cargo, photographic, video or electronic equipment. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles.

i. all other damages actually or alleged to be caused, directly or indirectly, happened through, or in consequence of:

(1) war, including undeclared war;

(2) warlike action by a military force or military personnel, including action in hindering or defending against an actual, threatened, or expected attack, by any government, sovereign, or other authority using military personnel or other agents;

(3) civil war, insurrection, rebellion, revolution, usurped power, or action taken by governmental authority to hinder or defend against any of these;

(4) destruction, seizure or use for a military purpose; or

(5) **terrorism**, including any action taken to hinder or defend against an actual, threatened, or expected incident of **terrorism**;

regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

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

j. arising from **sexual harm** committed, caused, instigated, or directed or alleged to have been committed, caused, instigated, or directed by:

(1) **you**, any **insured**, any covered person, or anyone; or

(2) **your**, any **insured's** or any covered person's employee or agent whether or not such **bodily injury**, **personal injury**, or **property damage** is:

(a) intended;

(b) expected; or

(c) foreseeable;

by anyone.

(3) This exclusion also applies to **bodily injury**, **personal injury**, or **property damage** arising from the negligent:

(a) employment, hiring, contracting, and/or retention by anyone of a person who commits **sexual harm**;

(b) investigation of, or reporting or failure to report to the proper authorities, a person:

i) employed;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ii) hired;

iii) contracted; or

iv) retained;

by **you**, any **insured**, covered person, or anyone and who commits or is alleged to have committed **sexual harm**.

(c) failure of any **insured** or any covered person to seek medical, psychological, or other treatment, rehabilitation, or counseling, to prevent:

i) involvement in;

ii) instigation of; or

iii) continuation of;

sexual harm by:

i) any **insured**;

ii) any **insured's** agent; or

iii) any person employed, hired, contracted, and/or retained by any **insured**;

(4) supervision of a person who commits **sexual harm**;

(5) entrustment of a person to any other person who commits **sexual harm**;

(6) allowing, by anyone, of any other person to be in the presence of any person who commits **sexual harm**;

(7) failure by anyone to take action to stop any other person from being in the presence of any person who commits **sexual harm**, including but not limited to failure to warn such other or any person; and

(8) failure of anyone to prevent the commission of **sexual harm**.

k. Abuse or Molestation

Bodily injury, **personal injury**, or **property damage** arising out of:

(1) Any actual, alleged, attempted or threatened abuse or molestation, other than **sexual harm**, by anyone of any person;

(a) any **insured**; or

(b) any **insured's** employee or agent;

whether or not such **bodily injury**, **personal injury**, or **property damage** is:

(a) intended;

(b) expected; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(c) foreseeable;

by anyone.

(2) Any negligent:

(a) employment;

(b) investigation;

(c) supervision;

(d) reporting to the proper authorities, or failure to so report; or

(e) retention;

of a person whose conduct would be excluded by paragraph (1) above;

(3) Any negligent entrustment of a person to another person whose conduct would be excluded by paragraph (1) above; or

(4) Any negligent:

(a) allowing, by anyone, of any other person to be in the presence of any person whose conduct would be excluded by paragraph (1) above;

(b) failure by anyone to take action to stop any other person from being in the presence of any person whose conduct would be excluded by paragraph (1) above; or

(c) failure by anyone to prevent conduct which would be excluded by paragraph (1) above.

l. resulting from any **insured's** conduct, act, failing to act, or decision whether intentional, wrongful, negligent, or without fault while acting as a participant, member, officer, director, advisor, or trustee of any group, board, organization, or government body, whether or not elected.

This exclusion does not apply to **loss assessment** provided under **Section II – Additional Coverages**, paragraph 4.

m. arising out of the actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, insects, rust, mold, mildew, wet rot or dry rot, any other **fungi**, other organism, sickness, condition or illness, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage by:

(1) **you**;

(2) any members of **your** household;

(3) anyone **you** employ;

(4) any other person acting on **your** behalf or at **your** direction; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(5) property belonging to any of those listed above (1) - (4).

n. arising out of corporal punishment or physical or mental abuse, or arising out of **personal injury** except as covered by Section II, Additional Coverages.

o. arising out of acts committed, or alleged to have been committed, by any **insured** that causes **personal injury**, **bodily injury** to, or damages property of, any other **insured** under the provisions of this policy.

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

q. arising out of:

(1) ownership, possession, controlling, keeping, harboring, or breeding or knowingly permitting any other person to own, possess, control, keep, harbor, or breed any dangerous exotic animal on any **insured location**. The presence of any government agency permit does not negate this exclusion and this policy does not serve as evidence of liability insurance coverage for exotic animal owners, possessors, or breeders.

(2) the use of any livestock or other animal in, or while in practice or preparation for, a prearranged racing, speed, or strength contest, or prearranged stunting activity. But this exclusion applies only to **occurrences** arising out of such contests or activities that take place at the site designated for the contest or activity.

r. arising from any nuclear reaction, nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.

s. arising from loss, cost or expense, whether direct or indirect, and whether or not environmental:

(1) which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, by any person, organization or governmental authority;

(2) or arising out of any:

(a) request, demand or order that any **insured** or others test for, monitor, clean-up, remove, remedy, repair, contain, treat, detoxify or neutralize, or in any other way respond to, or assess the effects of **pollutants**, asbestos, lead, radium, radon, insects, rust, bacteria, mold, mildew, wet rot or dry rot, or any **fungi**; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(b) fine, claim or suit by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, remedying, repairing, containing, treating, detoxifying or neutralizing, or in any other way responding to, or assessing the effects of **pollutants**, asbestos, lead, radium, radon, insects, rust, bacteria, mold, mildew, wet rot or dry rot, or any other **fungi**.

(c) supervision, instruction, disclosures, or failures to disclose, recommendations, warning, or advice given, or which allegedly should have been given, in connection with **bodily injury**, **personal injury**, or **property damage** from any consequence of rust, mold, **fungi**, bacteria, wet or dry rot or other microbes or the activities described in subpart (a) above; or

(d) obligation to share with or repay another who must pay damages because of **bodily injury**, **personal injury**, or **property damage** of the type described above in this paragraph. This applies regardless of any other cause that contributed directly or indirectly, concurrently or in any sequence to the **bodily injury** or **property damage**.

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

(3) any asbestos material or substitute, material containing lead, or silica in any form, or dust from any of these; or

(4) radon gas, radium, any other radioactive substance, any gas, any sound or light, all or any occurring at or emanating from any location.

We do not cover expenses incurred for investigation or defense of any claim or suit, clean-up costs, any other costs, fines, or penalties whatsoever related to (1), (2), (3), or (4) above.

t. arising out of the sale or transfer of real property or any enclosed, inhabitable living space, including but not limited to the following:

(1) known or unknown property, building, construction, or structural defects;

(2) actual, alleged, attempted or threatened exposure to or transmission of any communicable disease, bacteria, parasite, virus, insects, rust, mold, mildew, wet rot or dry rot, any other **fungi**, other organism, sickness, condition or illness, regardless of whether any other cause, event, material, or product contributed concurrently or in any sequence to such injury or damage by:

(a) **you**;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(b) any members of **your** household;

(c) anyone **you** employ;

(d) any other person acting on **your** behalf or at **your** direction; or

(3) known or hidden defects in the plumbing, heating, air conditioning, or electrical systems;

(4) known or unknown soil conditions or drainage problems; or

(5) concealment or misrepresentation of any known defects.

u. arising from damage, deletion, corruption, loss, loss of use or degradation of performance of any other **electronic data** equipment, software, or material of any kind caused by **your** use or operation of any **electronic data** equipment, software, material, or instructions however caused.

Exclusions d., e., f., g., and h., do not apply to **bodily injury** to a **residence employee** arising out of and in the course of the **residence employee's** employment by an **insured**.

2. **Coverage E – Personal Liability**, does not apply to:

a. liability:

(1) for **your** share of any loss assessment charged against all members of an association, corporation or community of property owners, except as provided by Section II – Additional Coverages, **4. Loss Assessment**; or

(2) under any contract or agreement, whether written or unwritten, entered into by an **insured**.

b. **property damage** to property owned by an **insured**.

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

d. **bodily injury** to any person eligible to receive any benefits voluntarily provided, or required to be provided, by an **insured** under any:

(1) workers' compensation law;

(2) non-occupational disability law;

(3) occupational disease law;

(4) unemployment compensation law; or

(5) any similar law.

e. **bodily injury** or **property damage** for which an **insured** under this policy:

(1) is also an **insured** under a nuclear energy liability policy; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(2) would be an **insured** under that policy but for the exhaustion of its limit of liability.

f. **bodily injury** to **you** or any **insured** within the meaning of part a. or b. of **insured** as defined.

g. **bodily injury** to **you** or an **insured** as defined under Definitions **5.a.** or **b.**

This exclusion also applies to any claim made or suit brought against **you** or an **insured**:

(1) to repay; or

(2) share damages with;

another person who may be obligated to pay damages because of **bodily injury** to an **insured**.

3. **Coverage F – Medical Payments to Others** does not apply to **bodily injury**:

a. to a **residence employee** if the **bodily injury**:

(1) occurs off the **insured location**; and

(2) does not arise out of or in the course of the **residence employee's** employment by an **insured**.

b. to any person eligible to receive any benefits voluntarily provided; or required to be provided, under any:

(1) workers' compensation law;

(2) non-occupational disability law; or

(3) occupational disease law;

(4) unemployment compensation law; or

(5) any similar law.

c. from any:

(1) nuclear reaction;

(2) nuclear radiation; or

(3) radioactive contamination;

all whether controlled or uncontrolled or however caused.

d. to any person, other than a **residence employee** of an **insured**, regularly residing on any part of the **insured location**.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – ADDITIONAL COVERAGES

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

1. **Claim Expenses.** **We** pay:
   a. expenses **we** incur and costs taxed against an **insured** in any suit **we** defend;
   b. premiums on bonds required in a suit **we** defend, but not for bond amounts more than the limit of liability for Coverage E. **We** need not apply for or furnish any bond;
   c. reasonable expenses incurred by an **insured** at **our** request, including actual loss of earnings (but not loss of other income) up to $100 per day, for assisting **us** in the investigation or defense of a claim or suit;
   d. interest on the entire judgment which accrues after entry of the judgment and before **we** pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. **First Aid Expenses.** **We** will pay reasonable expenses for immediate first aid administered within 24 hours of an accident to others, incurred by an **insured**, for **bodily injury** covered under this policy. **We** will not pay for first aid to **you** or any other **insured**.
3. **Damage to Property of Others.** When **you** have property of others entrusted to or loaned to **you**, or under **your** temporary control, **we** will pay limited benefits if **you** damage or destroy it accidentally.
   a. **We** will pay the lesser of:
      (1) replacement cost at the time of loss;
      (2) full cost of repairs; or
      (3) $500 in any one **occurrence**.
   b. **We** will not pay for **property damage**:
      (1) for any amount recoverable under Section I of this policy;
      (2) caused intentionally by any **insured** who is 13 years of age or older;
      (3) to property owned by an **insured**;
      (4) to property owned by or rented to a tenant of an **insured** or a resident of **your** household; or
      (5) arising out of:
         (a) an **insured's business** pursuits;
         (b) any act or omission in connection with a premises owned, rented or controlled by an **insured**, other than the **insured location**; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(c) the ownership, maintenance, or use of aircraft, hovercraft, watercraft, **recreational vehicle**, **motor vehicles** or any other motorized land conveyances.

This exclusion does not apply to a motorized land conveyance or **recreational vehicle** designed for recreational use off public roads, not subject to motor vehicle registration and not owned or leased by, or rented to or by, or available for the regular use of any **insured**.

(d) damage, deletion, corruption, loss, loss of use or degradation of performance of any other **electronic data** equipment or material caused by **your** use or operation of any **electronic data** equipment, material, or instructions however caused.

4. **Loss Assessment**. **We** will pay up to $1,000 for **your** share of any loss assessment charged during the policy period against **you** by a corporation or association of property owners, when the assessment is made as a result of:

a. each **occurrence** to which Section II of this policy would apply;

b. liability for each act of a director, officer or trustee in the capacity as a director, officer or trustee, provided;

(1) the director, officer or trustee is elected by the members of a corporation or association of property owners; and

(2) the director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

We do not cover loss assessments charged against **you** or a corporation or association of property owners by any governmental body. For covered losses, **we** will not pay more than $1,000 per **occurrence** or per act and not more than $1,000 during the policy period.

Section II – Coverage E – Personal Liability Exclusion 2.a.(1) does not apply to this coverage.

5. **Personal Injury**. **We** will pay up to $25,000 for loss or damages caused by **personal injury**, unless a higher limit of liability for this specific coverage is provided by endorsement and an additional premium paid. This limit applies to one event and to all events for these damages in a policy period.

Also, **Loss Assessment** listed immediately above this paragraph is amended to pay up to $1,000 only for **your** share of loss assessment charged during this policy period against **you** by a corporation or association of property owners when the assessment is made as a result of **personal injury** not excluded elsewhere in this policy or by endorsement. This coverage applies only to loss assessments charged against **you** as an owner or tenant of the **residence premises**.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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

Regardless of the number of assessments, the most **we** will pay for loss arising out of **personal injury** is $1,000.

This Additional Coverage does not apply to **personal injury**:

a. alleged, or harm caused by, any humiliation, embarrassment, alienation of affection, or **sexual harm**;

b. caused by a willful violation of a penal law or ordinance committed by or with the knowledge or consent of any **insured**;

c. (1) to a person arising out of any:

(a) refusal to employ that person;

(b) termination of that person's employment;

(c) employment-related practices, policies, acts of omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or discrimination directed at that person; or

(2) injury to the spouse, child, parent, brother, or sister of that person as a result of **personal injury** to that person at whom any of the employment-related practices described in paragraphs (a) through (c) above is directed.

This exclusion applies:

(1) whether the **insured** may be liable as an employer or in other capacity; and

(2) to any obligation to share damages with or repay someone else who must pay damages because of the injury.

d. arising from any civic or public activities performed for pay by an **insured**; or

e. to **you** or any **insured** within the meaning of part **a.** or **b.** of **insured** as defined, caused by **you** or any other **insured** under the provisions of this policy.

f. (1) arising out of oral or written publication of material, if done by or at the direction of the **insured** with knowledge of its falsity;

(2) arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

(3) for which an insured has assumed liability in any contract or agreement. This exclusion does not apply to:

(a) liability for damages that the **insured** would have in the absence of the contract or agreement;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(b) a written indemnity obligation **you** assumed directly relating to the ownership, maintenance or use of the **residence premises**.

g. acts, attempts, coercion or threats of sexual or physical molestation, abuse, assault, harassment or harm caused, instigated or directed by any **insured**;

h. exposure to or transmission of any disease, sickness or illness to another from any **insured**;

i. caused by or at the direction of any **insured** with the knowledge that the act would violate the rights of another and would inflict **personal injury**;

j. arising out of or in connection with any **business** conducted from an **insured location** or engaged in by any **insured**, whether or not the **business** is owned or operated by an **insured** or employs an **insured**. This applies to, but is not limited to, any act or omission regardless of its nature or circumstance, involving any service or duty rendered, promised, owed, or implied to be provided because of the nature of the business. But this exclusion does not apply to the rental or holding for rental of a covered item:

(1) occasionally if used only as a residence; or

(2) in part as an office, school, studio, or private garage endorsed elsewhere on this policy.

k. arising from any **insured's** conduct, act, failure to act, or decision whether intentional, wrongful, negligent, or without fault while acting as a participant, member, officer, director, advisor, or trustee of any group, board, organization, or government body, whether or not elected;

l. arising from the actual, alleged, or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants**, at any time;

m. arising from any loss, cost, or expense due to:

(1) a request, demand or order that any **insured** or others test for, monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of, **pollutants**; or

(2) claim or suit by or on behalf of any governmental authority for damages because of testing for, monitoring, clean up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of **pollutants**.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION II – CONDITIONS

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

   Our total liability under Coverage F for all medical expense payable for **bodily injury** as the result of one accident will not be more than the limit of liability for Coverage F as shown in the Declarations. This limit is the same regardless of the number of **insureds**, persons or organizations making claims or bringing suits, claims made or persons injured.

2. **Annual Aggregate Limits.** **Our** total liability under Coverage E, Coverage F, and Additional Coverages, **Personal Injury** (and any endorsed higher limits for **Personal Injury**) for all incurred damages resulting during a policy period will not be more than three times the respective limit of liability for Coverages E and F combined, as shown in **your** Declarations.

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

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

   a. give prompt written notice to **us** or **our** agent as soon as is practical, which sets forth:

      (1) the identity of the policy and **insured**;

      (2) reasonably available information on the time, place and circumstances of the accident or **occurrence**; and

      (3) names and addresses of any claimants and witnesses;

   b. immediately forward to **us** every notice, demand, summons or other process relating to the accident or **occurrence**;

   c. at **our** request, help **us**:

      (1) to make settlement;

      (2) to enforce any right of contribution or indemnity against any person or organization who may be liable to an **insured**;

      (3) with the conduct of suits and attend hearings and trials;

      (4) to secure and give evidence and obtain the attendance of witnesses;

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. under the coverage, Damage to Property of Others, submit to **us** within 60 days after the loss a sworn statement of loss, and show the damaged property if in the **insured's** control;

e. the **insured** will not, except at the **insured's** own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the **bodily injury**;

f. cooperate with **us** in the investigation, settlement or defense of any claim or suit;

g. as often as **we** reasonably require, submit to examination(s) under oath, separate and apart from others and sign and swear to it.

5. **Duties of an Injured Person – Coverage F – Medical Payments to Others.**

The injured person will:

a. give **us** written proof of claim, under oath if required as soon as is practical; and

b. authorize **us** to obtain copies of medical reports and records.

c. submit to a physical exam by a doctor of **our** choice when and as often as **we** reasonably require.

A representative of the injured person may perform a. and b. above.

6. **Payment of Claim – Coverage F – Medical Payments to Others.** Payment under this coverage is not an admission of liability by an **insured** or **us**.

7. **Suit Against Us.** No action can be brought against **us** unless there has been full compliance with all the policy provisions of this Section.

No one will have the right to join **us** as a party to any action against an **insured**. Also, no action with respect to Coverage E can be brought against **us** until the obligation of the **insured** has been determined by final judgment or agreement signed by **us**.

8. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an **insured** will not relieve **us** of **our** obligations under this policy.

9. **Other Insurance – Coverage E – Personal Liability.** This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

SECTION I AND II – CONDITIONS

1. **Policy Period.** This policy applies only to loss which occurs during the policy period.

2. **Concealment or Fraud.** If **you** or any other **insured** under this policy has intentionally concealed or misrepresented any material fact or circumstance, or made false statements or engaged in fraudulent conduct relating to this insurance, whether before or after a loss, then this policy is void as to **you** and any other **insured**.

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

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

   a. a subsequent edition of this policy; or

   b. an amendatory endorsement.

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

5. **Membership.** Membership in the Farm Bureau Federation is a condition precedent to coverage and that coverage may be cancelled or nonrenewed for failure to maintain current membership in the Farm Bureau Federation.

6. **Cancellation.**

   a. **You** may cancel this policy at any time by returning it to **us** or by notifying **us** in writing of the future date cancellation is to take effect.

   b. When the policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When **you** request cancellation, or if **we** cancel, the return premium will be pro rata.

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

   d. **We** may cancel this policy by notifying **you** in writing. This cancellation notice may be delivered to **you**, or mailed to **you** at **your** mailing address shown in the Declarations, or the last known address. Proof of mailing will be sufficient proof of notice. The written notification will be according to South Carolina law and mailed or delivered:

      (1) 10 days in advance of the date of cancellation if the reason is for nonpayment of

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(a) any premium due **us**; or

(b) annual membership dues to the South Carolina Farm Bureau Federation.

(2) at least 30 days before the date cancellation takes effect if this policy has been in effect for

(a) less than 120 days and is not a renewal with **us**, **we** may cancel for any reason;

(b) more than 120 days, and is not a renewal with **us**, **we** may cancel for :

(i) misrepresentation of fact, fraud or withholding of material when the policy was obtained or when a claim was submitted;

(ii) substantial change or increased hazard in the risk **we** originally agreed to insure;

(iii) substantial breach of **your** contractual duties, conditions or warranties;

(iv) loss of **our** reinsurance covering a significant portion of **your** policy, or if the continuation of **your** policy would imperil **our** solvency or place **us** in violation of the insurance laws of this state; or

(v) any other reason lawfully permitted.

7. **Non-Renewal.** **We** may elect not to renew this policy for any lawful reason, including nonpayment of membership dues to the South Carolina Farm Bureau Federation. **We** may do so by delivering to **you**, or mailing to **you** at **your** mailing address shown in the Declarations, or the last known address, a written notice and the precise reason for nonrenewal. Proof of mailing will be sufficient proof of notice.

a. If this policy was written for a term of one year or less, **we** may elect not to renew this policy by giving written notification at least:

(1) 60 days before the expiration date of the policy if such date is on or after November 1 and before June 1; or

(2) 90 days before the expiration date of this policy if such date is on or after June 1 and before November 1.

b. If this policy was written for a term of more than one year or for an indefinite term, **we** may elect not to renew this policy by giving written notification at least:

(1) 60 days before the anniversary date of the policy if such date is on or after November 1 and before June 1; or

(2) 90 days before the anniversary date of the policy if such date is on or after June 1 and before November 1.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

8. **Automatic Termination.** If **we** offer to renew or continue this policy and **you** or **your** representative do not accept, this policy will automatically terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that **you** have not accepted **our** offer. Then, a new application, subject to underwriting rules and payment of premium, may be required to obtain new coverage.

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

10. **Subrogation.** An **insured** may waive in writing before a loss all rights of recovery against any person. **You** must furnish the request for waiver to **us** and **we** must agree to it in writing for it to apply. If not waived, **we** may require an assignment of rights of recovery for a loss to the extent that payment is made by **us**.

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

If **we** make a payment under this policy and the person to or for whom payment was made has a right to recover damages from another, **we** shall be subrogated to that right. That person shall:

a. do whatever is necessary to enable **us** to exercise **our** rights; and do nothing after loss to prejudice them;

b. reimburse **us** to the extent of **our** payment if a recovery from another person or party responsible for the loss has been made; and

c. be required to repay **us** if any settlement or judgment duplicates **our** payments.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

11. **Death.** If any person named in the Declarations or the spouse, if a resident of the same household, dies:

a. **we** insure the legal representative of the deceased but only with respect to the **residence premises** and property of the deceased covered under the policy at the time of death;

b. **insured** includes:

(1) any member of **your** household who is an **insured** at the time of **your** death, but only while a resident of the **residence premises**; and

(2) with respect to **your** property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

12. **Payment of Premium.** Checks, debit card, and credit card account numbers in payment of **your** premium are accepted subject to collection. If any form of payment is returned to **us** uncollected for any reason, **your** premium is considered unpaid.

    If the check **you** gave **us** for payment of any premium due is returned unpaid, **we** are entitled to collect a lawful bad check fee. This fee is not considered premium and **your** payment of it does not reinstate this policy or provide any past or future coverage.

13. **Audit and Inspection Clause.** At **our** option, **we** may inspect **your** property and operations at any time. **We** do not assume any liability by exercising **our** right to inspect or audit. By **our** making any inspection or audit, **we** make no representation that **your** property or operations are safe, not harmful to health, or comply with any law, rule or regulation.

14. **Grace Period.** This grace period applies only to the premium due at the renewal inception date and does not apply to any subsequent payments due on **your** part of any installment or premium finance plan, nor any additional premium due to a policy change after renewal. If **your** premium due for renewal (including unpaid membership fees) is received by the Company within 15 days, exclusive of the due date, **your** policy will provide continuous protection without a lapse in coverage. After 15 days, the policy will expire as of the due date and an application for a new policy may be required.

15. **Fair Credit Reporting Act Statement.** At **our** option, **we** may conduct a credit investigation or obtain credit information on **you**, any **insured** or future **insured**, under this policy. This report will be used for underwriting purposes to determine if an offer of coverage will be made, if coverage may continue, or to determine rates, terms, or any other condition.

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

PARTICIPATING CONDITIONS

For Policies Issued in Palmetto Casualty Insurance Company Only.

While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of this **Company** in accordance with the dividends declared by the Board of Directors on this and like policies.

IN WITNESS WHEREOF, this **Company** has caused this policy to be signed by its President and Secretary and countersigned on the **Declarations** page by a duly authorized representative of this **Company**.

President

Secretary

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

J. TAYLOR POWELL
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CHARLESTON, SOUTH CAROLINA 29403
TELEPHONE (843) 724-5155

DIRECT: (843) 203-1029
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June 13, 2017

VIA ELECTRONIC MAIL AND USPS
J. Dwight Hudson, Esq.
2513 North Oak Street, Suite 210
Waverly Centre
Myrtle Beach, SC 29577

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis v. Cole Austin Dunn & John Richard Smith.*
Case No.: 2017-CP-26-2910

Dear Mr. Hudson:

I am writing in response to your letter received yesterday, June 12, 2017, in order to inform you and South Carolina Farm Bureau ("Farm Bureau") that there will be no dismissal of this action. It is unclear to me what authority you are seeking to rely upon when you demand that I dismiss this action, as this litigation was specifically contemplated by the Covenant Not to Execute and discussed on the record at the hearing approving the initial settlement from Farm Bureau. Paragraph 12 of the Covenant Not to Execute specifically states:

> **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This Covenant Not To Execute does not constitute a release of any claim or of any party.**

Until discovery is complete in the filed case against Cole Austin Dunn ("Dunn"), Plaintiff will not be in a position to know whether or not any other liability insurance coverage is available to Dunn. Even if Plaintiff is not able to locate any other liability insurance available to Dunn, Plaintiff has the ability, as well as the legal right to pursue the lawsuit against Dunn all the way to a jury verdict. The only right relating to Dunn that has been surrendered is the right to personally execute upon a judgment against Dunn. John Richard Smith ("Mr. Smith") was not a party to the Covenant Not to Execute, thus he is not able to assert any of the protections that the Covenant Not to Execute provides to Dunn and Charlotte Smith ("Mrs. Smith"). Paragraph 13 of the Covenant Not to Execute specifically states:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit.

Clearly my client has every legal right to bring and prosecute his lawsuit against Dunn and Mr. Smith, thus there will be no dismissal of this action as demanded by your June 12th correspondence.

Also, the second paragraph of your June 12th letter is incorrect. We are pursuing the case against Mr. Smith. We have not sued Farm Bureau. It is Mr. Smith, not my client, who will have the right and ability to pursue claims for negligence and bad faith against Farm Bureau after we obtain a substantial jury verdict against Mr. Smith. If Mr. Smith so choses, he will be free to assign his claims to my client in order to satisfy any judgment obtained against him. If Mr. Smith does not voluntarily assign his claims against Farm Bureau to my client, I would be able to initiate supplemental proceedings and seek a judicial assignment of Mr. Smith's claims to my client, among other assets. Regardless of who is pursuing the claims, Farm Bureau exposed itself to liability for its failure to protect Mr. Smith as its insured. You state that Farm Bureau only owed its coverage limit once, which has been collected. This is only partially correct. Farm Bureau owed a duty to defend and protect **ALL** of its insureds, which included Mr. Smith. Farm Bureau's failure to require that Mr. Smith be included as a party to the Covenant Not to Execute has exposed him to substantial personal liability.

The Third paragraph of your June 12th letter is also incorrect. Mr. Smith is not referenced in the Order Approving Wrongful Death Settlement or the Covenant Not to Execute. Your reliance upon the insuring agreement and definitions 1, 2, and 3 is also misguided. The definitions that you seek to rely upon state as follows:

1. In this policy, "**you**" and "**your**" refer to the "**named insured**" shown in the Declarations and the spouse if a resident of the same household.

2. "**We**," "**us**" and "**our**" refer to the Company providing insurance.

3. "**Insured**" means:

    a. **you** and residents of **your** household who are:

        1) **your** relatives; or

        2) other persons under the age of 21 and in the care of any person named above.

    b. a student enrolled in school full-time as defined by hat school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

        1) 24 and **your** relative; or

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2) 21 and in **your** care or the care of the person listed in a.(1) above.

Nothing contained in the above listed definitions defines Mr. Smith as a named insured. In fact, the opposite is true. "Named insured" is not defined anywhere in the definitions of the relevant policy, and in fact the only time the words "named insured" appear together within the entire generic homeowner's policy that you provided with your letter is where the above listed definitions appear on page 1, and then again on page 57 where the policy states:

> **While this policy is in force, the named insured is entitled to share in the distributable net earnings and savings of the Company in accordance with the dividends declared by the Board of Directors on this and like policies.**

"Named Insured" is not a defined term anywhere in Farm Bureau's policy, and only Mrs. Smith is identified as a "named insured" within the policy. Absent ambiguity, in South Carolina the language of an insurance policy is given its plain, ordinary, and popular meaning. *Helena Chem. Co. v. Allianz Underwriters Ins. Co.*, 357 S.C. 631, 637, 594 S.E.2d 455, 458 (2004). It is abundantly clear that the only named insured as it relates to this matter is Mrs. Smith, as evidenced by her name being the only one that appears anywhere on the declarations page of the Farm Bureau policy. Mr. Smith is **NOT** a named insured on Farm Bureau's policy, and is thus **NOT** protected by the Order Approving Wrongful Death Settlement or the Covenant Not to Execute.

Your allegation that I "concocted" a scheme in an attempt to extort an additional policy limit from Farm Bureau is another mischaracterization of the facts. It was Farm Bureau's failure to protect their insured, by not requiring Mr. Smith's inclusion as a party to the Covenant Not to Execute, that has now exposed Mr. Smith and Farm Bureau to substantial liability, not any decision made by me or my client. I represent the family of, Kenneth Miles Davis, a teenager who was recklessly killed as a result of the negligence of Dunn, Mrs. Smith, and Mr. Smith. It is quite irresponsible for you to rebuff our efforts on behalf of his family in this manner.

I will not be dismissing this action as your letter demands, and if this case proceeds all the way to a jury verdict and I am able obtain a judgment against Dunn and Mr. Smith on behalf of my client, I will seek to enforce and collect upon that judgment in every way allowed by law, other than as limited by the Covenant Not to Execute. You are free to assert any counterclaims that the law and the evidence supports on behalf of your clients, consistent with Rule 11 SCRCP, although I fail to see how any such counterclaims could be brought in good faith.

Our invitation remains open should Farm Bureau be interested in a serious mediation of this case. A stated in my June 7, 2017 correspondence. we will agree to use Karl Folkens at a date that is convenient to all parties. If this is the desire of Farm Bureau please respond to this letter in writing by close of business on June 23, 2017.

Although I am sure you are aware of your duties and obligations in regard to this correspondence, I would request that you do the following:

ELECTRONICALLY FILED - 2017 Jun 23 3:27 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

i. Inform Mr. Smith of this correspondence and invitation to mediate this matter by providing a copy to him and informing him that the failure of Farm Bureau to mediate this matter may subject him to a substantial jury verdict and judgment;

ii. Advise Mr. Smith that if Farm Bureau declines the invitation to mediate this matter and a jury verdict is reached, that his own assets, both current and future, will be subject to judgment and collections, as a result of Farm Bureau's failure to protect him with a Covenant Not to Execute;

iii. Advise Mr. Smith that it is in his best interests to hire a personal attorney independent of Farm Bureau to provide advice as to what his rights are at this stage of the litigation, as well as what future obligations he may have if Farm Bureau fails to accept the invitation to mediate this case; and

iv. Clarify to Mr. Smith that he, as the insured, has adverse interests to those of Farm Bureau in this matter if the invitation to mediate this matter is refused.

I look forward to hearing from you.

With best regards,

J. Taylor Powell

JTP/

643

ELECTRONICALLY FILED - 2017 Jul 24 2:48 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COVENANT NOT TO EXECUTE

This COVENANT is made this 15th day of March, 2017 by and between **KENNETH A. DAVIS**, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE **ESTATE OF KENNETH MILES DAVIS** (hereinafter referred to as "Payees") and **COLE AUSTIN DUNN, CHARLOTTE SMITH and SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY** (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns.

WHEREAS, decedent KENNETH MILES DAVIS was shot, mortally injured, and subsequently passed away from those injuries, on October 9, 2016 in the Aynor area of Horry County, S.C. (hereinafter referred to as the "Incident" or the "Claim"); and

WHEREAS, Payees subsequently made a claim against Payors for wrongful death, survival, bodily injuries, medical expenses, pain and suffering, grief, loss of companionship, funeral expenses, and any and all other damages allegedly suffered by Payees as a result of the Incident; and

WHEREAS at the time of the Accident, SCFB had in effect a Homeowner's Policy for named insured, Charlotte Smith, being policy number 412831, with liability coverage in the amount of Three Hundred Thousand Dollars ($300,000.00) and medical payment coverage of Five Thousand Dollars ($5,000.00) per occurrence.(Hereinafter referred to as the "Policy"); and

WHEREAS, Payors acknowledge that Payees have a substantial claim against Payors for damages allegedly arising out of the Incident and Payees allege that the value of the Claim will exceed the amount of coverage available under the policy; and

WHEREAS, Payors wish to limit their liability or exposure for damages that might exceed the coverage available under the Policy;

NOW THEREFORE, for and in consideration of the payment of the sum of $305,000.00 by Payors ($300,000 in Homeowner's liability insurance coverage and $5,000 in medical payment coverage under Policy # 412831, and for other good and valuable consideration, Payees agree, promise and covenant as follows:

1. Payees and their attorney acknowledge receipt of such payment.

2. Payees hereby promise and covenant for themselves, their heirs, executors, administrators, legal representatives, and assigns, not to execute against Payors, their heirs, executors, administrators, legal representatives, successors or assigns on any judgment that may be obtained by Payees for the wrongful death, survival, bodily injury, medical expenses, pain and suffering, grief, funeral expenses and other damages allegedly sustained as a result of the Incident.
3. SCFB maintains that under the Policy the funds being paid hereunder represent all available insurance coverage under the Policy for the Claim. Payees contend that their damages exceed the amount of this coverage.
4. Payees hereby covenant and promise that if they should obtain a judgment against Payors, they will not execute on said judgment and that, upon a final determination of whether any additional insurance or other benefits will be paid for the Claim, Payees by their attorney, will cause the judgment to be marked and entered as satisfied.
5. Should Payees or their attorney fail or refuse to mark and enter any judgment obtained against Payors as satisfied as provided hereinabove, Payees hereby authorize the Clerk of Court to mark and enter the judgment as satisfied upon receiving a copy of this Covenant.
6. Payees agree that the payment made by Payors is in compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of Payors or of any other person hereby benefiting from this Covenant.
7. Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.
8. Payees hereby represent that they understands that Payors may continue to cooperate and assist in the defense of the Claim.

ELECTRONICALLY FILED - 2017 Jul 24 2:48 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

645
ELECTRONICALLY FILED - 2017 Jul 24 2:48 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. Payees hereby agree that should there be any liens, whether by statute, contract, or otherwise for workers compensation benefits, goods, services, or health care services provided to Payees, Payees by their attorney will cause the provider(s) to be reimbursed from the proceeds of this settlement to the extent required by law and should the provider(s) assert a common law, statutory or contractual lien against Payors, their heirs, executors, administrators, legal representatives, successors, or assigns, Payees will indemnify and hold harmless Payors, their heirs, executors, administrators, legal representatives, successors, and assigns from any and all such claims, demands, actions or causes of action of whatsoever kind or nature, and will reimburse Payors for reasonable attorneys' fees incurred in defending any such action brought by a purported lienholder.
10. Payees acknowledge that they rely wholly upon their own judgment, belief, and knowledge as to the nature, extent, and duration of his/her injuries, medical expenses, pain and suffering and damages and the possibility of recovery for the Claim, and that, in making this Covenant, they have relied upon no representations or statements made by Payors, or by their agents or representatives regarding these injuries or damages or any other matter.
11. Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.
12. **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This**

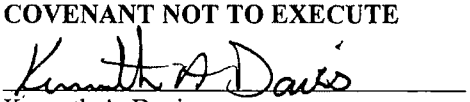
Covenant Not To Execute does not constitute a release of any claim or of any party.

13. It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. However, Payees and their attorney agree that, in compliance with the Court's Order approving this settlement, such litigation will not involve SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY as this settlement is full, final and complete as to SCFB. Payees agree that SCFB has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this Covenant Not To Execute.

IN WITNESS WHEREOF, we have her unto set our hands and seals in the presence of the below named witnesses on the date set forth below.

IN THE PRESENCE OF:

CAUTION. READ BEFORE SIGNING. THIS IS A FULL, FINAL AND COMPLETE COVENANT NOT TO EXECUTE



Kenneth A. Davis,
Personal Representative of
The Estate of Kenneth Miles Davis

Attorney Certification

I, the undersigned attorney for the Payees, hereby certify/certifies that the contents, meaning and final effect of the foregoing Covenant have been carefully and fully explained to them, it is my opinion that Payees fully understand, accept and intend to enter this agreement; and I certify that I have recommended that my clients, the Payees, execute the Covenant.

J. Taylor Powell, Esquire

ELECTRONICALLY FILED - 2017 Jul 24 2:48 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Attorney for Payees

ELECTRONICALLY FILED - 2017 Jul 24 2:48 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

HOMEOWNER POLICY DECLARATIONS

PALMETTO CASUALTY INSURANCE COMPANY
PO BOX 2124, WEST COLUMBIA, SC 29171-2124

Policy Form: HO3 (10/2010) Policy Number: HO 0412831 Dec No.: 10.000

The Declarations of the policy indicated herein are subject to all other terms and conditions of the policy and replace all previously issued declarations, if any. This Declaration Page becomes a permanent part of your policy. Please attach it to your policy booklet.

THIS DECLARATION PAGE IS EFFECTIVE 10/23/2015 TO 10/23/2016 AT 12:01 A.M. EASTERN STANDARD TIME AND FOR EACH SUCCEEDING POLICY PERIOD OF 12 MONTHS HEREAFTER AS THE RENEWAL PREMIUM IS PAID ON OR BEFORE THE EXPIRATION DATE OF THE CURRENT TERM AND ACCEPTED BY THE COMPANY.

Named Insured and Address

CHARLOTTE SMITH
2340 HIGHWAY 1115
GALIVANTS FERRY, SC 29544-6832

Agent Information

DAVID C JORDAN
HORRY-CONWAY (843) 365-8580
3873 W HIGHWAY 501 CONWAY, SC 29526-4443

Policy Premium	Premium Paid By
$2,155.84	INSURED

Please refer to your policy booklet for all definitions, coverages, perils insured against, exclusions, and policy conditions.

Covered Items	Limit Of Liability	SC Valuation Clause	Section I Deductible	Premium
POLICY DISCOUNTS:				
NONE				
POLICY ENDORSEMENT				
NONE				
ITEM 1: RESIDENCE PREMISES INCLUDES THE AREA WITHIN 250 FEET OF THE MASONRY OWNER OCCUPIED DWELLING LOCATED AT 2340 HIGHWAY 1115 GALIVANTS FERRY, SC 29544 6832				
ITEM 1 IS SUBJECT TO THE FOLLOWING PREMIUM ADJUSTMENTS:				
NONE				
ITEM 1 COVERAGES:				$2,155.84
A - DWELLING PROTECTION:	[redacted]	[redacted]	[redacted]	
B - OTHER STRUCTURES PROTECTION:	[redacted]			
C - PERSONAL PROPERTY PROTECTION:	[redacted]			
D - LOSS OF USE PROTECTION:	[redacted]			
E - PERSONAL LIABILITY PROTECTION:	$300,000			
F - MEDICAL PAYMENTS TO OTHERS PROTECTION - EACH OCCURRENCE:	$5,000			
DAMAGE TO PROPERTY OF OTHERS PROTECTION:	$500			
ANNUAL AGGREGATE LIMIT OF 3 TIMES COVERAGE E AND COVERAGE F APPLIES				
ITEM 1 IS SUBJECT TO THE FOLLOWING ENDORSEMENTS:				
EN0216 - PREMISES ALARM OR FIRE PROTECTION SYSTEM				
HO0290 - PERSONAL PROPERTY REPLACEMENT COST				
EN0313 - NAMED STORM DEDUCTIBLE ENDORSEMENT				
IMPORTANT NOTICE				
THIS POLICY CONTAINS A SEPARATE DEDUCTIBLE FOR NAMED STORM OR WIND/HAIL LOSSES, WHICH MAY RESULT IN HIGH OUT-OF-POCKET EXPENSES TO YOU. THE ENCLOSED EXAMPLE ILLUSTRATES HOW THE DEDUCTIBLE MIGHT AFFECT YOU.				
EN9207 - INFLATION PROTECTION				
MORTGAGEE				
DITECH FINANCIAL LLC				
** CONTINUED ON NEXT PAGE **				

026-000 HO 0412831-2 SLA

F095A (04/99)

11-13-2015
Date Prepared

Authorized Representative

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

LESEMANN & ASSOCIATES LLC

CIVIL LITIGATION | BUSINESS DISPUTES

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DIRECT: (843) 203-1029
WEBSITE: www.lalawsc.com

January 30, 2017

SETTLEMENT COMMUNICATION – INADMISSIBLE UNDER S.C.R.E. 408

Mr. Jonathan Graham
Farm Bureau Insurance Company
Senior Claims Adjuster
3873 West Highway 501
Conway, SC 29526

Re: *Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, deceased v. Cole Dunn, et al.*

Your Insured: Charlotte Smith & Cole Dunn
Policy No.: HO 0412831

Dear Jonathan:

I am contacting you pursuant to *Tyger River Pine Company v. Maryland Casualty Company*, 170 S.C. 286, 170 S.E. 346 (1933) and its progeny to inform you that my client, Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis, will agree to accept Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This would include a payment by Farm Bureau Insurance Company in the amount of $300,000.00 representing the policy limit for personal liability protection and a payment in the amount of $5,000.00 representing the policy limit of medical payments to others under Farm Bureau Insurance Company's Policy No.: HO 0412831 at issue in this matter in exchange for a Covenant not to Execute, which would specifically allow for my client to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831.

Please tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) by close of business on February 15, 2017, at which time this offer will expire. This is your opportunity to settle this case within the policy limits in order to protect your insureds and Farm Bureau Insurance Company from the likelihood of an excess verdict. If $305,000.00 is not tendered by the close of business on February 15, 2017, I will withdraw this time sensitive offer to settle within the policy limits and proceed against Charlotte Smith and Cole Dunn. This is not a negotiation tool, nor will this offer be available after February 15, 2017. This should properly perfect any claim that Charlotte Smith and Cole Dunn will

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

have against Farm Bureau Insurance Company for a bad faith handling of this claim at the time of an excess verdict, which we will request that they assign to Mr. Davis as the Personal Representative of the Estate of Kenneth Miles Davis subsequent to that verdict.

For clarification purposes, I am requesting that you tender Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00) on behalf of Charlotte Smith and Cole Dunn. Upon receipt, I will provide you with a Covenant not to Execute, that specifically allows for my clients to pursue and collect on any other liability insurance policies should any be located, as to all claims against Defendants Charlotte Smith and Cole Dunn and a Policy Release as to Farm Bureau Insurance Company's Policy No.: HO 0412831. Although I am sure you are aware of your duties and obligations in regard to this correspondence, I would like to suggest that you do the following:

i. Inform your insureds of this demand by providing a copy to them and informing them that the failure of Farm Bureau Insurance Company to comply with it may subject them to an excess judgment;

ii. Advise your insureds that if Farm Bureau Insurance Company declines to accept this demand and a jury verdict is reached that is in excess of the available coverage, that your insured's own assets, both current and future, will be subject to judgment and collections;

iii. Advise your insureds that it is in their best interests to hire a personal attorney independent of the insurance carriers to provide advice as to what their rights are at this stage of the litigation, as well as what future obligations they may have if their insurance carrier fails to comply with this demand; and

iv. Clarify to your insureds that Charlotte Smith and Cole Dunn, as the insureds, have adverse interests to those of Farm Bureau Insurance Company in this matter if the offer is refused.

FACTS OF THE CASE

As you may know, the decedent, Kenneth Miles Davis, was tragically killed as the result of an accidental shooting on October 9, 2016. Cole Dunn was in possession of a Browning 12 gauge shotgun when he accidentally discharged a round of 00 Buckshot that struck the Decedent in the face. This accidental shooting occurred on the property of Decedent's parents, at 2683 Garner Road, Aynor, SC 29511. The Decedent was taken by ambulance to Conway Hospital, where he was pronounced dead. A copy of Decedent's death certificate is attached as Exhibit A. A copy of the Certificate of Appointment that names Kenneth A. Davis as the Personal Representative of his son's estate is attached as Exhibit B.

LIABILITY AS TO COLE DUNN

Cole Dunn was arrested and charged with Negligent Homicide. Liability is not in dispute. Prior to the accidental discharge of the shotgun, Cole Dunn was waiving the firearm around in a reckless manner. The Decedent was heard telling Dunn to stop waiving the shotgun

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

around and was attempting to walk to a point of safety when Dunn accidentally fired the shotgun. A redacted copy of the incident report is attached as Exhibit C.

LIABILITY AS TO CHARLOTTE SMITH

The liability against Charlotte Smith is clear. **But for Charlotte Smith negligently entrusting her son with a loaded shotgun and actively enabling an irresponsible and reckless teenager to possess the loaded shotgun, the Decedent would still be alive.**

ACTUAL AND OTHER DAMAGES

Under the circumstances of this case, we believe that a substantial award of actual and compensatory damages will be made. A copy of Decedent's funeral bill of $6,333.24 is attached as Exhibit D. There are a number of other cases that we think are illustrative of the type of award that will be granted if this case proceeds to trial. For example, the South Carolina Supreme Court, in affirming a $3,000,000.00 jury verdict in a wrongful death case in 1996, held that even in an instance when no evidence of pecuniary loss was introduced at trial, both parents testified to their grief, shock, and sense of loss, which supported the amount of the verdict. In the absence of pecuniary loss, the $3,000,000.00 verdict was to compensate the parents of a 12-year-old boy for these intangible damages which cannot be determined by any fixed measure. *Knoke v. South Carolina Dept. of Parks, Recreation and Tourism*, 324 S.C. 136 (1996), 478 S.E. 2d 256.

Kenneth Miles Davis was very close to both of his parents, Kenneth and Laura Davis. The Decedent was also very close to his three sisters, Harley, Faith, and Eden. The Decedent's parents are both pastors at their church in Conway, SC, and the Decedent was very involved in this church and would often give sermons himself, even though he was only 16 years old. The Decedents' family, with whom he was very close, had to bear the mental shock of finding out that their perfectly healthy family member was dead at the age of 16. As a result of this accident The Decedents' parents and sisters had to plan his funeral, something that no parent or family member should ever have to endure in these sort of circumstances.

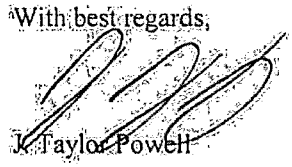
CONCLUSION

As set forth above, our demand to settle for Three Hundred and Five Thousand and 00/100 Dollars ($305,000.00). This is a reasonable demand in view of all of the circumstances, including the obvious liability and significant damages.

We are submitting this demand letter with the hope that we can resolve this matter within your insured' limits of liability coverage by affording Farm Bureau Insurance Company the opportunity to protect their insureds and themselves by settling this case. It is our hope that Charlotte Smith and Cole Dunn will consult with their counsel that is independent from Farm Bureau Insurance Company in order to fully understand the circumstances of this settlement demand. Upon doing so, I would imagine they will recognize that it is in their best interests to instruct Farm Bureau Insurance Company to resolve this matter by accepting this demand and eliminating this sizeable financial risk.

Please accept this letter in the spirit of negotiation in which it is intended and know that it is our hope and desire to reach a rapid and amiable conclusion of this case. Should you have any questions or require any further information, please do not hesitate to contact me. I look forward to hearing from you soon.

With best regards,



J. Taylor Powell

JTP/
Enclosures

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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EXHIBIT A

STATE OF SOUTH CAROLINA

CERTIFICATION OF VITAL RECORD

DEATH CERTIFICATION

STATE FILE NUMBER : 139-16-036306 **AMENDED**

DECEDENT'S NAME: *KENNETH MILES DAVIS* **SEX:** MALE
AKA's: NA **SOCIAL SECURITY NUMBER:** 656-09-0540
ARMED FORCES: NO
DATE OF BIRTH: JUNE 28, 2000 **AGE:** 16 YEARS
TYPE OF PLACE OF DEATH: HOSPITAL- EMERGENCY ROOM/OUTPATIENT **COUNTY OF DEATH:** HORRY
NAME AND ADDRESS OF PLACE OF DEATH: CONWAY MEDICAL CENTER, CONWAY, SC 29526
PLACE OF DISPOSITION: CHRISTIAN FELLOWSHIP CHURCH CEMETERY
DISPOSITION LOCATION: GALIVANTS FERRY, SOUTH CAROLINA
METHOD OF DISPOSITION: BURIAL
DECEDENT'S RESIDENCE: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
PLACE OF BIRTH: SOUTH CAROLINA **MARITAL STATUS:** NEVER MARRIED
SURVIVING SPOUSE'S NAME: NA
FATHER'S NAME: KENNETH ALAN DAVIS
MOTHER'S NAME PRIOR TO FIRST MARRIAGE: LAURA JOHNSON
INFORMANT'S NAME: KENNETH DAVIS **RELATIONSHIP:** FATHER
MAILING ADDRESS: 2683 GARNER ROAD, AYNOR, SC, 29511
FUNERAL HOME: JOHNSON FUNERAL HOME OF AYNOR, INC, 290 NINTH AVE, AYNOR, SC, 29511
FUNERAL DIRECTOR: JEREMY JOHNSON **LICENSE NUMBER:** 2629
EMBALMER'S NAME: NA **LICENSE NUMBER:** NA
ACTUAL OR PRESUMED DATE OF DEATH : OCTOBER 09, 2016 **MANNER OF DEATH :** HOMICIDE
ACTUAL OR PRESUMED TIME OF DEATH: 1916
CAUSE OF DEATH - PART I
SHOT GUN WOUND TO THE HEAD

OTHER SIGNIFICANT CONDITIONS - PART II:
NA

CORONER CONTACTED? YES **AUTOPSY PERFORMED?** NO **AUTOPSY AVAILABLE?** NA
DATE OF INJURY: OCTOBER 09, 2016 **TIME OF INJURY:** 1815 **INJURY AT WORK?** NO
PLACE OF INJURY: RESIDENCE
LOCATION OF INJURY: 2683 GARNER ROAD, AYNOR, HORRY COUNTY, SC, 29511
HOW THE INJURY OCCURRED?
ACCIDENTAL DISCHARGE OF 12 GAUGE SHOTGUN IN CLOSE PROXIMITY TO INDIVIDUAL

CERTIFIER NAME AND TITLE: DEPUTY CORONER MICHELLE MCSPADDEN **LICENSE NUMBER:** NA
CERTIFIER'S ADDRESS: 2560 N MAIN ST #3, CONWAY, SC, 29526
DATE FILED: OCTOBER 11, 2016
DATE OF ISSUANCE: OCTOBER 13, 2016
SPECIAL INSTRUCTIONS :
MANNER OF DEATH AMENDED BY: DHEC 627 PER MICHELLE MCSPADDEN, DEPUTY CORONER

SC05460683

This is a true certification of the facts on file in the Division of Vital Records, SC Department of Health and Environmental Control.

Catherine E. Heigel
Director and State Registrar

Shae R. Sutton
Assistant State Registrar

This is watermarked paper. Do not accept without noting watermark. Hold to light to verify watermark.

Revision Date: 07/31/2015

ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

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EXHIBIT B

STATE OF SOUTH CAROLINA	)	**IN THE PROBATE COURT**
COUNTY OF: HORRY	)	**CERTIFICATE OF APPOINTMENT**
IN THE ESTATE OF: **KENNETH MILES DAVIS,** DECEASED	)	CASE NUMBER 2017ES2600072

This is to certify that

KENNETH A DAVIS

is/are the duly qualified

- ☒ PERSONAL REPRESENTATIVE
- ☐ SUCCESSOR PERSONAL REPRESENTATIVE
- ☐ SPECIAL ADMINISTRATOR

in the above matter and that this appointment, having been executed on the 12th day of January 2017, is in full force and effect.

RESTRICTIONS:

Executed this 12th day of January 2017.

Janice F. Collins, Administrative Assistant

Do not accept a copy of this certificate without the raised seal of the Probate Court.

FORM #141ES (1/2014)
62-1-305, 62-3-103

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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EXHIBIT C

AGENCY I.D.
SC0260400

INCIDENT REPORT

CASE NUMBER: 16093978

NCIC: NO.: ENTD.:

EVENT

INCIDENT TYPE	COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED
1. Manslaughter / Involuntary manslaughter - N - None/Unknown	☑ YES ☐ NO	☐ YES ☑ NO	20	
	☐ YES ☐ NO	☐ YES ☐ NO		
	☐ YES ☐ NO	☐ YES ☐ NO		

TYPE VICTIM: ☑ Individual ☐ Business ☐ Financial ☐ Government ☐ Relig. Orgn. ☐ Soc./Public ☐ Other ☐ Unknown ☐ Police Off.

INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER): 2683 GARNER RD

ZIP CODE: 29511

WEAPON TYPE:

INCIDENT DATE	24 HR. CLOCK	TO	DATE	24 HR. CLOCK	DISPATCH DATE/TIME 24 HR. CLOCK: DISP. DATE	DISP. TIME	TIME ARRIVED	DEPART. TIME	LOCATION NO.
10/09/2016	18:00		10/09/2016	18:20	10/09/2016	18:17	18:23	22:16	

VICTIM NO. 1

COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
[redacted]	#1 AQ		X S O U	W	F	51	N	H: B:	H: B:

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	Galivants Ferry S.C.		29544	

VICTIM'S NAME (LAST, FIRST, MIDDLE)	RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE	ETH.	DAYTIME PHONE	EVENING PHONE
[redacted]	#1 AO		X S O U	W	M	16	N	H: B:	H: B:

HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.:
		BRO		

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	Aynor S.C.		29511	

VISIBLE INJURY (VICT. 1): ☐ YES ☐ NO ☐ EXPLAIN — COMPLAINT OF ANY NON-VISIBLE INJURIES: ☐ YES ☐ NO

VICTIM (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☑ DRUGS: ☐ YES ☐ NO ☐ UNK ☑ TYPE:

TWO-MAN VEH: ☐ ONE-MAN VEH: ☐ DETECTIVE/SPLASHT: ☐ OTHER ☐ ALONE ☐ ASSISTED ☐ — J - This Jurisdiction S - State O - Out of State U - Unknown

SUBJECT NO. 1

☐ SUSPECT ☐ RUNAWAY ☐ WANTED ☐ WARRANT ☑ ARREST ☐ JAIL ☐ SUMMONS

NAME (LAST, FIRST, MIDDLE)	RACE	SEX	AGE	ETH.	DATE OF BIRTH	HEIGHT	WEIGHT	HAIR	EYES
Dunn, Cole Austin	W	M	17	N	[redacted]	5' 7"		BRO	BLU

FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.:

ADDRESS	CITY	STATE	ZIP CODE	LOCATION NO.
[redacted]	Galivants Ferry S.C		29544	

SUBJECT (NO. 1) USING: ALCOHOL ☐ YES ☐ NO ☐ UNK ☑ DRUGS: ☐ YES ☐ NO ☐ UNK ☑ TYPE:

ARRESTED NEAR OFFENSE SCENE ☐ YES ☐ NO — TOTAL # ARRESTED: 1

DATE/TIME OF OFFENSE: 10/9/2016 6:00:00 PM — DATE/TIME OF ARREST: 10/9/2016 12:00:00 AM

NARRATIVE

On 10-9-16 I responded to 2683 Garner Rd located in the Aynor section of Horry County in reference to a shooting. When I arrived along with several other officers the victim was located lying beside a white in color Chevrolet truck. The victim had a gun shot wound [redacted] and E2 was giving him CPR. At the time that EMS personnel was arriving on location a crime scene was being established. [redacted] I located the complainant who said she was near the house when she heard a shot. [redacted] The complainant called 911 and waited for help. Violent crimes along with CSI were notified and arrive at the incident location and took over the investigation. I did transport the subject to the HCDC after Detective Hemingway advised him that he was being charged with the death of the victim. There were other family members of the victim at the residence at the time of the incident but had left for the hospital before there information could be gathered for the report.

PROPERTY EST.

	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	TOTAL VALUE
TYPE (GROUP)			
STOLEN			
DAMAGED			
BURNED			
RECOVERED			
SEIZED			

ADMINISTRATIVE

SUBJECT IDENTIFIED ☑ YES ☐ NO — SUBJECT LOCATED ☑ YES ☐ NO — ☐ ACTIVE ☐ UNFOUNDED ☐ ADM. CLOSED — ☑ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER — ☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER

REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY

REPORTING OFFICER(S)	DATE	UNIT NUMBER	APPROVING OFFICER	DATE	UNIT NUMBER
Tindall, Matthew W.	10/09/2016	588			

FOLLOW-UP INVESTIGATION ☐ YES ☑ NO — OFFICER

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

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EXHIBIT D

JOHNSON FUNERAL HOME
290 9th Avenue
Aynor, South Carolina 29511
(843) 358-5800

DECEASED Kenneth Miles Davis No.
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055	
Embalming	~~750~~	
Other preparation of body	185	
		2,990

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325	
Use of Facilities & Staff for Funeral Ceremony		
Use of Facilities & Staff for Memorial Service		
Use of Equipment & Staff for Graveside Service		
Use of Equipment & Staff for Church Service	415	
		740

3. Transportation:

Transfer of Remains to Funeral Home	250	
Hearse	245	
Limousine		
Sedan		
Service / Utility Vehicle	195	
		690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED 3670 ~~4,420~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Sterling	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$4,251

C. SPECIAL CHARGES

660

STATEMENT OF
FUNERAL GOODS AND SERVICES SELECTED

Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below.

If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below.

CASH ADVANCES

Certified Copies of Death Certificate (3) @ $ each	$ 18
Clergy	
Musician	
Paid Newspaper Notice	
Sun News	369.92
Cemetery Grave Digging	750
Other Vault Setup	415
Bloomers Florist	561.75
TOTAL CASH ADVANCES	$ 1,364.67

We charge you for our services in obtaining: (specify cash advance items)

7.92

SUMMARY

Total Funeral Home Charges	$ ~~8,671~~
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 257.57
Total Cash Advances	$ 1,364.67
GRAND TOTAL	$ ~~10,377.24~~ 9,587.24
Less Credits and Payments	
	~~2500~~
	~~750~~
Total Credits	$
BALANCE DUE	$ ~~7853.24~~
Billing To	~~7,085.24~~
	$6,333.24

DISCLOSURES
Reason for embalming

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below.

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than

If any payment is not paid when due, an unanticipated LATE CHARGE of ____% per month (ANNUAL PERCENTAGE RATE ____%) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

DECEASED [illegible]
DATE OF DEATH
PLACE OF DEATH
DATE OF STATEMENT 10-12-16

A. CHARGE FOR SERVICES SELECTED

1. Professional Services:

Basic Services of Funeral Director & Staff	2055
Embalming	~~750~~
Other preparation of body	185
	2,910

2. Facilities, Equipment & Staff:

Use of Facilities & Staff for Viewing / Visitation	325
Use of Facilities & Staff for Funeral Ceremony	
Use of Facilities & Staff for Memorial Service	
Use of Equipment & Staff for Graveside Service	
Use of Equipment & Staff for Church Service	415
	740

3. Transportation:

Transfer of Remains to Funeral Home	~~250~~
Hearse	245
Limousine	
Sedan	
Service / Utility Vehicle	195
	690

4. Other Services / Facilities / Equipment:

TOTAL OF SERVICES SELECTED	3670 ~~4,720~~

B. CHARGE FOR MERCHANDISE SELECTED

Casket (or other receptacle)	2960
Name/No. Sterling	
Material	
Color	
Outer Burial Container	1195
Name/No. Titan	
Material	
Acknowledgement Cards	32
Register Book	32
Memory Folders / Prayer Cards	
Clothing	
Temporary Grave Marker	32
Cremation Urn	
TOTAL OF MERCHANDISE SELECTED	$4,251

C. SPECIAL CHARGES

☐ Forwarding remains to: ☒ Receiving remains from:

Immediate Burial	
Direct Cremation	
Other	
TOTAL OF SPECIAL CHARGES	$

TOTAL FUNERAL HOME CHARGES ... $ ~~8,671~~ 7921
(This total does not include Cash Advances)

Musician	
Paid Newspaper Notice	
Sun News	369.52
Cemetery Grave Dissing	750
Other Vault Setup	415
Bloomers Florist	561.75
TOTAL CASH ADVANCES	$ 1,364.67

We charge you for our services in obtaining: (specify cash advance items)

SUMMARY

Total Funeral Home Charges	$ ~~8,671~~ 7921
Local Sales Tax (if applicable)	$
State Sales Tax (if applicable)	$ 217.57
Total Cash Advances	$ 1,364.67
GRAND TOTAL	$ ~~10,253.24~~ 9,503.24
Less Credits and Payments	
	- 2500
	- 750
Total Credits	$
BALANCE DUE ▸	$ ~~7853.24~~
Billing To	$ ~~7,085.24~~
	$6,333.24

DISCLOSURES
Reason for embalming

If any law, cemetery or crematory requirements have required the purchase of any items listed, the law or requirement is explained below:

ACKNOWLEDGEMENT AND AGREEMENT

I hereby acknowledge that I have the legal right to arrange the final services for the deceased, and I authorize this funeral establishment to perform services, furnish goods, and incur outside charges specified on this Statement. I acknowledge that I have received the General Price List and the Casket Price List and the Outer Burial Container Price List.

Terms of Payment:

Full payment is due no later than

If any payment is not paid when due, an unanticipated LATE CHARGE of ____ % per month (ANNUAL PERCENTAGE RATE ____ %) on the unpaid balance will be due. I agree to pay the Balance Due listed on this Statement, plus any Late Charge. In the event I default in payment to this funeral establishment, I agree to pay reasonable attorney's fees and court costs in addition to any Late Charge applicable. I understand and agree that I am assuming personal liability for the charges set forth in this Statement and that this is in addition to the liability imposed by law upon the estate of the deceased. By my signature below, I hereby agree to all of the above and acknowledge receipt of a copy of this Statement.

x Linda A Davis
Signed Dated

Social Security Number

x
Signed Dated

ACCEPTANCE This funeral establishment agrees to provide all services, merchandise and cash advances indicated on this Statement.

By Tony Hill

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South Carolina Farm Bureau Mutual Insurance Company
Rick Lamar, CPCU, AIC • *District Claims Manager*

724 Knox Abbott Drive
Cayce, SC 29033
Toll-Free: 1.800.799.7500
Phone: 803.936.4254
Fax: 803.936.4633
rlamar@scfbins.com
www.scfbins.com

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

January 31, 2017

CERTIFIED - RETURN RECEIPT REQUESTED

J. Taylor Powell
Lesemann & Associates, LLC
80 Alexander ST, Second Floor
Charleston SC 29403

RE: Insured: Charlotte Smith
Claim No.: 487128
Date of Accident: 10/9/16
Your Client: Kenneth A. Davis, as Personal Representative of the Estate of Kenneth Miles Davis

Dear Mr. Powell:

Your letter dated January 30, 2017 to Jonathan Graham has come to my attention.

You made a demand on behalf of your client for the liability limits of $300,000, and med pay coverage of $5,000 for a Covenant Not to Execute. This would allow your client to pursue and collect any other liability insurance policies, should any be located.

South Carolina Farm Bureau Mutual Insurance Company, hereinafter known as the Company, accepts your demand and will make payment for a Covenant Not to Execute.

We are having local counsel, Dwight Hudson, to draw up this Covenant to protect our insureds.

Jonathan Graham will be in touch with your office, and will be making payment once we have an acceptable Covenant.

Please advise should you have any questions regarding this correspondence. The Company appreciates the information that you have provided and looks forward to working with you to the conclusion of this matter.

Very sincerely yours,

Rick Lamm

District Claims Manager

RL:ap

cc: Jonathan Graham
Senior Claims Adjuster

J. Dwight Hudson
Attorney at Law
PO Box 70218
Myrtle Beach SC 29572

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

COVENANT NOT TO EXECUTE

This COVENANT is made this 15th day of March, 2017 by and between **KENNETH A. DAVIS**, INDIVIDUALLY AND AS PERSONAL REPRESENTATIVE OF THE **ESTATE OF KENNETH MILES DAVIS** (hereinafter referred to as "Payees") and **COLE AUSTIN DUNN, CHARLOTTE SMITH and SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY** (SCFB), (hereinafter referred to as "Payors"), their heirs, executors, legal representatives, successors and assigns.

WHEREAS, decedent KENNETH MILES DAVIS was shot, mortally injured, and subsequently passed away from those injuries, on October 9, 2016 in the Aynor area of Horry County, S.C. (hereinafter referred to as the "Incident" or the "Claim"); and

WHEREAS, Payees subsequently made a claim against Payors for wrongful death, survival, bodily injuries, medical expenses, pain and suffering, grief, loss of companionship, funeral expenses, and any and all other damages allegedly suffered by Payees as a result of the Incident; and

WHEREAS at the time of the Accident, SCFB had in effect a Homeowner's Policy for named insured, Charlotte Smith, being policy number 412831, with liability coverage in the amount of Three Hundred Thousand Dollars ($300,000.00) and medical payment coverage of Five Thousand Dollars ($5,000.00) per occurrence.(Hereinafter referred to as the "Policy"); and

WHEREAS, Payors acknowledge that Payees have a substantial claim against Payors for damages allegedly arising out of the Incident and Payees allege that the value of the Claim will exceed the amount of coverage available under the policy; and

WHEREAS, Payors wish to limit their liability or exposure for damages that might exceed the coverage available under the Policy;

NOW THEREFORE, for and in consideration of the payment of the sum of $305,000.00 by Payors ($300,000 in Homeowner's liability insurance coverage and $5,000 in medical payment coverage under Policy # 412831, and for other good and valuable consideration, Payees agree, promise and covenant as follows:

1. Payees and their attorney acknowledge receipt of such payment.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

2. Payees hereby promise and covenant for themselves, their heirs, executors, administrators, legal representatives, and assigns, not to execute against Payors, their heirs, executors, administrators, legal representatives, successors or assigns on any judgment that may be obtained by Payees for the wrongful death, survival, bodily injury, medical expenses, pain and suffering, grief, funeral expenses and other damages allegedly sustained as a result of the Incident.
3. SCFB maintains that under the Policy the funds being paid hereunder represent all available insurance coverage under the Policy for the Claim. Payees contend that their damages exceed the amount of this coverage.
4. Payees hereby covenant and promise that if they should obtain a judgment against Payors, they will not execute on said judgment and that, upon a final determination of whether any additional insurance or other benefits will be paid for the Claim, Payees by their attorney, will cause the judgment to be marked and entered as satisfied.
5. Should Payees or their attorney fail or refuse to mark and enter any judgment obtained against Payors as satisfied as provided hereinabove, Payees hereby authorize the Clerk of Court to mark and enter the judgment as satisfied upon receiving a copy of this Covenant.
6. Payees agree that the payment made by Payors is in compromise of a doubtful and disputed claim and that the payment made is not to be construed as an admission of liability on the part of Payors or of any other person hereby benefiting from this Covenant.
7. Payees declare and represent that Payors have made no promises, inducement, or agreement not expressed herein, that this Covenant contains the entire agreement between the Payees and the Payors, that the terms of this Covenant are contractual and not merely recital, and that Payors have made no representations as to the possibility of the recovery of any monies by Payees from any other source or policy for the claim.
8. Payees hereby represent that they understands that Payors may continue to cooperate and assist in the defense of the Claim.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

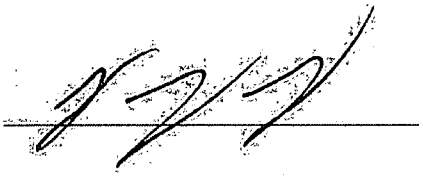
9. Payees hereby agree that should there be any liens, whether by statute, contract, or otherwise for workers compensation benefits, goods, services, or health care services provided to Payees, Payees by their attorney will cause the provider(s) to be reimbursed from the proceeds of this settlement to the extent required by law and should the provider(s) assert a common law, statutory or contractual lien against Payors, their heirs, executors, administrators, legal representatives, successors, or assigns, Payees will indemnify and hold harmless Payors, their heirs, executors, administrators, legal representatives, successors, and assigns from any and all such claims, demands, actions or causes of action of whatsoever kind or nature, and will reimburse Payors for reasonable attorneys' fees incurred in defending any such action brought by a purported lienholder.
10. Payees acknowledge that they rely wholly upon their own judgment, belief, and knowledge as to the nature, extent, and duration of his/her injuries, medical expenses, pain and suffering and damages and the possibility of recovery for the Claim, and that, in making this Covenant, they have relied upon no representations or statements made by Payors, or by their agents or representatives regarding these injuries or damages or any other matter.
11. Payees further understand and agree that this instrument is NOT a release, discharge, or accord and satisfaction and is only as a Covenant Not To Execute any judgment against Payors, their heirs, executors, administrators, legal representatives, successors, and assigns and is executed simply for Payors to purchase freedom from the threat of execution upon any judgment that may be obtained against them after payment of $305,000.00 under the Policy.
12. **This Covenant Not To Execute is not intended to and DOES NOT diminish, impair or limit Payees' rights, if any, to recover additional funds from other insurance coverage available to Cole Austin Dunn or Charlotte Smith. Further, this Covenant Not To Execute is not intended to and DOES NOT diminish Payees' ability to recover against any other potentially responsible party that is not a party to this Covenant. This**

Covenant Not To Execute does not constitute a release of any claim or of any party.

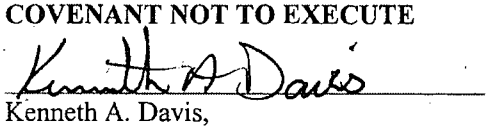
13. It is understood that the Personal Representatives of the Estate of Kenneth Miles Davis may file suit regarding this Claim. This Covenant Not To Execute is not intended to limit or impair the right of the Personal Representatives to file suit. However, Payees and their attorney agree that, in compliance with the Court's Order approving this settlement, such litigation will not involve SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY as this settlement is full, final and complete as to SCFB. Payees agree that SCFB has no obligation in this matter whatsoever after the payment of the proceeds and the signing of this Covenant Not To Execute.

IN WITNESS WHEREOF, we have her unto set our hands and seals in the presence of the below named witnesses on the date set forth below.

IN THE PRESENCE OF:



CAUTION. READ BEFORE SIGNING. THIS IS A FULL, FINAL AND COMPLETE COVENANT NOT TO EXECUTE



Kenneth A. Davis,
Personal Representative of
The Estate of Kenneth Miles Davis

Attorney Certification

I, the undersigned attorney for the Payees, hereby certify/certifies that the contents, meaning and final effect of the foregoing Covenant have been carefully and fully explained to them, it is my opinion that Payees fully understand, accept and intend to enter this agreement; and I certify that I have recommended that my clients, the Payees, execute the Covenant.

J. Taylor Powell, Esquire

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Attorney for Payees

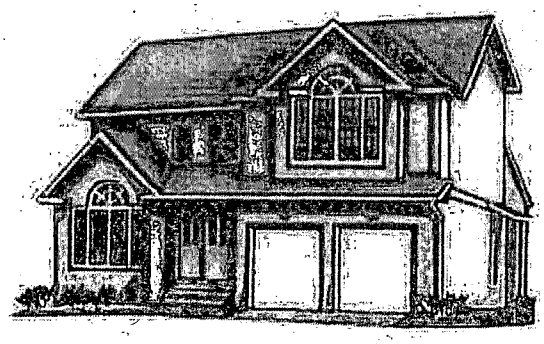
ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Palmetto Casualty
INSURANCE COMPANY

Homeowners Policy Form 3
Special Form Policy Provisions

Your policy consists of this booklet and the appropriate Declarations, forms and endorsements. Coverages apply only when properly shown on the Declarations page.



Post Office Box 2124
West Columbia, SC
29171

724 Knox Abbott Drive
Cayce, SC 29033
(803) 796-6700

Policy conditions require immediate notice of any accident or claim.

This policy does not cover any FLOOD claim.

To report an accident or claim, call toll-free, at 1-800-799-7500.

FORM # FB-8390 EDITION 10/2010

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PALMETTO CASUALTY INSURANCE COMPANY

Homeowner's Policy
Form 3
Your Quick Reference

DECLARATIONS PAGE
- Policy Period
- Your Name and Address
- Residence Premises
- Property Location
- Coverages, Amounts
- Deductibles
- Mortgagee Identification

COUNTY MEMBERSHIP PROVISIONS ..... **Page 1**
AGREEMENT ..... **Page 1**
DEFINITIONS ..... **Page 1**
SECTION I PROPERTY COVERAGES ..... **Page 5**
Coverage A - Dwelling ..... **Page 5**
Coverage B - Other Structures ..... **Page 6**
Coverage C - Personal Property ..... **Page 7**
Coverage D - Loss of Use ..... **Page 9**
Additional Coverages ..... **Page 10**
SECTION I – PERILS INSURED AGAINST ..... **Page 18**
SECTION I – EXCLUSIONS ..... **Page 23**
SECTION I – CONDITIONS ..... **Page 28**
SECTION II – LIABILITY COVERAGES ..... **Page 35**
Coverage E - Personal Liability ..... **Page 35**
Coverage F - Medical Payments to Others ..... **Page 36**
SECTION II – EXCLUSIONS ..... **Page 36**
SECTION II – ADDITIONAL COVERAGES ..... **Page 47**
SECTION II – CONDITIONS ..... **Page 51**
SECTION I and II – CONDITIONS ..... **Page 53**
PALMETTO CASUALTY PARTICIPATING CONDITIONS ..... **Page 57**

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COUNTY MEMBERSHIP PROVISIONS

1. As a prerequisite to your purchase of this policy and any renewal of this insurance, you must make application to be a member of and maintain your membership in the applicable county Farm Bureau agricultural organization and affiliated state Farm Bureau agricultural organization (hereinafter collectively known as "Farm Bureau Federation").

2. Your failure to apply for membership and to maintain your membership with the applicable Farm Bureau Federation as our sponsoring organization, including but not limited to your failure to pay the required membership dues to the Farm Bureau Federation, shall require us to cancel or nonrenew your policy.

3. Dues payable to the Farm Bureau Federation are in consideration of membership in the Farm Bureau Federation and other agriculture-related services from Farm Bureau Federation and:

   a. are not in consideration of coverage under this policy; and

   b. are not payable to Palmetto Casualty Insurance Company, South Carolina Farm Bureau Mutual Insurance Company, or any other insurer named on the Declarations.

AGREEMENT

Relying on the facts "**you**" have given "**us**," "**we**" will provide the insurance described in this policy for the limits shown in the latest Declarations in return for the premium and "**your**" compliance with all applicable provisions of this policy. This policy is not complete without the Declarations.

DEFINITIONS

Certain words and phrases in this policy have specific meanings.

1. In this policy, "**you**" and "**your**" refer to the "**named insured**" shown in the Declarations and the spouse if a resident of the same household.

2. "**We,**" "**us**" and "**our**" refer to the Company providing this insurance.

3. "**Insured**" means:

   a. **you** and residents of **your** household who are:

      (1) **your** relatives; or

      (2) other persons under the age of 21 and in the care of any person named above.

   b. a student enrolled in school full-time as defined by that school, who was a resident of **your** household immediately before leaving to attend school, provided this student is under age:

      (1) 24 and **your** relative; or

      (2) 21 and in **your** care or the care of the person listed in a. (1) above.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Under Section II, **insured** also means:

c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by **you** or any person included in 3a or 3b above. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without consent of the owner, is not an **insured**;

d. with respect to any vehicle to which this policy applies, persons while engaged in **your** employ or that of any person included in 3a or 3b above.

4. "**Actual cash value**" means the cost to replace new today with materials of like kind and quality, less physical depreciation and economic obsolescence.

5. "**Bodily injury**" means bodily harm, sickness or disease, including required care, loss of services and death resulting there-from. It does not include **personal injury**.

6. "**Business**" means a full-time, part-time or occasional trade, profession or occupation, whether permanent or temporary, including farming. It also includes any other activity engaged in for money or other compensation, except the following:

a. volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;

b. providing home day care services for which no compensation is received, other than the mutual exchange of such services; or

c. the rendering of home day care services to a relative of an **insured**.

7. **"Coverage territory"** means all parts of the world.

8. **"Electronic Data"** means information facts or programs stored as, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, servers, cells, data processing devices, or any other media which are used with electronically controlled equipment.

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

10. **"Fungi"** means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by any fungus, but does not include any fungus that is, is on, or is contained in, any goods or products intended for consumption.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

11. "**Insured location**" means:

a. the **residence premises**;

b. the part of other premises, other structures and grounds used by **you** as a residence and:

(1) which is shown in the Declarations or by Endorsement; or

(2) which is acquired by **you** during the current policy period for **your** use as a residence;

c. any premises used by **you** in connection with a premises in 11a or 11b above;

d. any part of a premises:

(1) not owned by an **insured**; and

(2) where an **insured** is temporarily residing;

e. up to 100 acres total of any and all vacant land, owned by or rented to an **insured**. This does not include:

(1) farm land;

(2) land held for **business** purposes; or

(3) land away from the **residence premises** unless the location is listed on a policy endorsement;

f. land owned by or rented to an **insured** on which a one, two, three or four family dwelling is being built as a residence for an **insured**;

g. individual or family cemetery plots or burial vaults of an **insured**; or

h. any part of a premises occasionally rented to an **insured** for other than **business** use.

12. "**Motor vehicle**" means:

a. a self-propelled land or amphibious vehicle; or

b. any trailer or semitrailer which is being carried on, towed by or hitched for towing by a vehicle described in **a**. above.

13. "**Occurrence**" means an accident, a happening or event, or continuous or repeated exposure to conditions, which unexpectedly and unintentionally results in **bodily injury** or **property damage** during the policy period. All such injury or damage that is attributable directly or indirectly:

a. to one cause; or

b. to one series of similar causes; or

c. to substantially the same general conditions existing at or emanation from one premises or location;

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

shall be deemed one **occurrence** and shall be treated as one **occurrence**, irrespective of the period of time during which such injury or damage occurs on the premises or location at which such injury or damage occurs.

14. "**Personal Injury**" means injury arising out of one or more of the following:

    a. false arrest, detention or imprisonment, malicious prosecution;

    b. libel, slander, defamation of character; or

    c. invasion of privacy, or wrongful eviction by a person from or wrongful entry by a person into or onto a room, dwelling or premises that another person occupies, by or on behalf of its owner, landlord, or lessor.

    However, **personal injury** does not include actual, alleged, threatened, or witnessing of humiliation, embarrassment or alienation of affection.

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

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

17. "**Recreational vehicle**" means a 2-, 3- up to 8-wheeled or tracked land or amphibious vehicle that is unlicensed and not subject to **motor vehicle** registration, powered by a petroleum fuel engine or electric motor, used off public roads or highways for personal pleasure or recreation.

18. "**Residence employee**" means an employee of an **insured,** or an employee leased to an **insured** by an agreement with a labor leasing firm, who performs duties, including household or domestic services, in connection with the maintenance or use of the **residence premises**. This includes employees who perform similar duties elsewhere for **you**.

    This does not include employees while performing duties in connection with the **business** of an **insured**.

19. "**Residence premises**" means:

    a. the one family dwelling where **you** reside;

    b. the two, three or four family dwelling where **you** reside in at least one of the family units; or

    c. that part of any other building where **you** reside;

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

    Residence premises includes other structures and grounds at the location specified in the Declarations.

20. "**Sexual harm**" means the actual, alleged, threatened, attempted, or coerced involvement in, or witnessing of, verbal or physical molestation, rape, abuse, assault, or harassment.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

21. "**Terrorism**" means activities against persons, organizations or property of any nature:

a. that involve the following or preparation for any of the following:

(1) use or threat of force or violence;

(2) commission or threat of a dangerous act; or

(3) commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and

b. when one or both of the following applies:

(1) the effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or

(2) it appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social, or economic objectives or to express (or express opposition to) a philosophy or ideology.

SECTION I – PROPERTY COVERAGES

COVERAGE A – DWELLING

We cover:

1. the Dwelling on the **residence premises** shown in the Declarations, principally used as **your** private residence, including structures attached to the Dwelling; and

2. materials and supplies located on or next to the **residence premises** used to construct, alter or repair the Dwelling or Other Structures on the **residence premises;** but

3. **We** do not cover:

a. land, including land on which the Dwelling is located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;

b. water in any form, whatsoever;

c. structures, whether or not attached to the Dwelling, for loss caused directly or indirectly by windstorm or hail, to the following:

(1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;

(2) pool cages and similar structures; or

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. driveways, patios, pools, pavement surrounding a pool, or sidewalks, except as covered under Coverage B – Other Structures, below.

COVERAGE B – OTHER STRUCTURES

We cover other structures on the **residence premises** set apart from the dwelling by clear space. This also includes:

1. structures connected to the dwelling by only a fence, utility line or similar connection;
2. fences, property line and similar walls, including sea walls;
3. structures, including the property in or on the structure, located in whole or in part in or over water;
4. outdoor equipment, including equipment used to service the **residence premises**;
5. outdoor antennas, except satellite dish antenna systems or related equipment, whether or not attached to a building; and
6. swimming pools; but
7. **We** do not cover:
   a. land, including land on which the Other Structures are located. **We** will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the Dwelling or Other Structures;
   b. water in any form, whatsoever;
   c. structures, whether or not attached to the Dwelling or Other Structure, for loss caused directly or indirectly by windstorm or hail, to the following:
      (1) screening and supports enclosing or partially enclosing pools or similar areas, and having its roof and two or more sides made, in whole or in part, of screening material;
      (2) pool cages and similar structures;
   d. structures used in whole or in part for **business,** including storage;
   e. farm barns or outbuildings used in whole or in part as a farm barn or farm shed; or
   f. other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; or
   g. satellite dish antenna systems or related equipment, for more than $500, unless specifically endorsed on the policy.

Use of this coverage does not reduce the Coverage A limit of liability.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

COVERAGE C – PERSONAL PROPERTY

We cover:

A. Personal property usual or incidental to the occupancy of the **residence premises** as a dwelling and owned or used by an **insured** while it is anywhere in the world. At **your** request, and after a loss, **we** will cover personal property owned by:

1. others while the property is on the part of the **residence premises** occupied by an **insured**;
2. a guest of the **residence employee**, while the property is in any residence occupied by an **insured.**

B. **Limit For Property At Other Residences**

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

1. moved from the **residence premises** because the **residence premises** are being repaired, renovated or rebuilt and are not fit to live in or store property in; or
2. in a newly acquired principal residence for 30 days from the time you begin to move the property there.

C. **Special Limits of Liability.** These limits do not increase the Coverage C limit of liability or the limit of liability for personal property away from the **residence premises**. Perils Insured Against for Coverage C apply. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. $200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, medals, scrip, stored value cards, and smart cards.
2. $1,000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace or restore the information from the lost or damaged material.
3. $1,000 on watercraft of all types, including their trailers, furnishings, equipment and outboard motors.
4. $1,000 on trailers not used with watercraft.
5. $2,000 for loss by theft of property away from the **residence premises**, in or on any:

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

a. **motor vehicle**;

b. motorized land conveyance; or

c. watercraft.

This limitation does not apply if there is forcible entry into the **motor vehicle**, motorized land conveyance or watercraft, when the doors, windows, other openings and compartments are closed and locked and there are visible marks of forcible entry, or if the **motor vehicle** is stolen and not recovered within 30 days.

6. $1,000 for loss by theft of jewelry, watches, furs, precious and semi-precious stones.

7. $2,000 for loss by theft of firearms.

8. $2,500 loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewter-ware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.

9. $250 on property away from the **residence premises** used primarily for any **business** purpose. However, this coverage does not apply to equipment described in paragraph 11 below.

10. $2,000 on property on the **residence premises** used primarily for **business** purposes. However, this coverage does not apply to equipment described in paragraph 11 below.

11. $2,500 on **electronic data** processing equipment and the recording or storage media used with that equipment and which is owned by or leased to any **insured**.

12. $2,000 on any one article and $7,500 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article including paintings.

13. $500 for **recreational vehicles** not subject to **motor vehicle** registration or other motorized land conveyances not subject to **motor vehicle** registration.

Property Not Covered. We do not cover:

1. articles separately described and specifically insured in this or other insurance, or specifically excluded elsewhere in this insurance policy;

2. animals, birds or fish;

3. **motor vehicles** and any other motorized land conveyances, except as provided in "Special Limits," paragraph 13 above, or specifically listed in an endorsement and an additional premium paid. This includes:

   a. equipment and accessories; or

   b. any device or instrument for the transmitting, recording, receiving or reproduction of sound, signals, or pictures which is operated by power from the electrical system of **motor vehicles** or any other motorized land conveyances, including:

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(1) accessories or antennas;

(2) tapes, wires, records, discs or other media for use with any such device or instrument; or

(3) radar detection devices;

while in or upon the vehicle, or land conveyance;

c. **We** do cover vehicles or conveyances not subject to **motor vehicle** registration which are:

(1) lawns or garden tractors, with a 30 horsepower rating or less, but not **recreational vehicles**; or

(2) designed or used to assist the handicapped.

4. aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;

5. hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, hovercraft and air cushion vehicles;

6. property of roomers, boarders and other tenants, except property of roomers and boarders related to an **insured**;

7. property in an apartment regularly rented or held for rental to others by an **insured**;

8. property rented or held for rental to others off the **residence premises**;

9. books of account, drawings, or other paper records, pertaining to a **business**;

10. credit cards, debit cards, fund transfer cards, or access devices used for deposits, withdrawals or transfer of funds except as provided in Additional Coverages 3;

11. satellite dish antenna systems or related equipment, except as provided under Coverage B, or by endorsement; or

12. land, including land on which personal property is located; nor do **we** cover water in any form.

COVERAGE D – LOSS OF USE

The limit of liability for Coverage D is the total limit for all the coverages that follow.

1. **Additional Living Expense**. If a loss covered under this Section makes that part of the **residence premises** where **you** reside uninhabitable, **we** cover the necessary increase in living expenses incurred by **you** so that **your** household can maintain its normal standard of living. Payment will be for the shortest time required to repair or replace the damage or, if **you** permanently relocate, the shortest time required for **your** household to

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

settle elsewhere. But in any event, that time will not exceed 365 consecutive days from the date of loss.

2. **Fair Rental Value**. If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by **you** uninhabitable, **we** cover the fair rental value of that part of the **residence premises** rented to others or held for rental by **you**, less any expenses that do not continue while the premises are uninhabitable. Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental. But in any event, that time will not exceed 365 consecutive days from the date of loss.

3. **Prohibited Use**. If a civil authority prohibits **you** from using the **residence premises** as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, **we** cover **your** incurred Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for no more than 14 consecutive days from the date use was prohibited. However, if use is prohibited for less than 14 days, we cover for 2 days more than the prohibition was enforced, but not for more than 14 days total.

The periods of time under 1, 2 and 3 above are not limited by expiration of this policy, but the date of loss must be during the policy period.

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

ADDITIONAL COVERAGES

Unless specifically stated otherwise, the Loss Deductible Clause applies to each Additional Coverage below.

1. **Arson Award. We** will pay, at **our** option, up to $5,000 for information which leads to an arson, vandalism, or malicious mischief conviction in connection with a loss covered by this policy. Regardless of the number of persons providing information, our limit shall not be increased.

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

2. **Collapse**.

   a. For this Additional Coverage:

      (1) collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.

      (2) a building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.

      (3) a part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building; or

      (4) a building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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

(1) Perils Insured Against in Coverage C – Personal Property, in this policy. These perils apply to covered buildings and personal property for loss insured by this additional coverage;

(2) decay that is hidden from view, unless the presence of such decay is known to an **insured** prior to collapse;

(3) insect or vermin damage that is hidden from view, unless the presence of such damage is known to an **insured** prior to collapse;

(4) weight of contents, equipment, animals or people;

(5) weight of ice, sleet, snow or rain which collects on a roof; or

(6) use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

c. Loss to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b (2), (3), (4), (5) and (6) unless the loss is a direct result of collapse of a building or any part of a building.

d. Collapse does not include settling, cracking, shrinking, bulging or expansion.

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

f. The loss deductible clause applies to this Additional Coverage.

3. **Credit Card, Debit Card, Fund Transfer Card, or Access Device, Forgery and Counterfeit Money**. All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated, is considered to be one loss.

a. **We** will pay up to $1,000 for:

(1) the legal obligation of an **insured** to pay because of the theft or unauthorized use of credit cards or debit cards issued to or registered in an **insured's** name;

(2) loss resulting from theft or unauthorized use of a fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an **insured's** name;

(3) loss to an **insured** caused by forgery or alteration of any check or negotiable instrument; and

(4) loss to an **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

b. Defense provisions:

(1) **we** may investigate and settle any claim or suit that **we** decide is appropriate. **Our** duty to defend a claim or suit ends when the amount **we** pay for the loss equals our limit of liability;

(2) if a suit is brought against an **insured** for liability under the Credit Card, Debit Card, or Fund Transfer Card or Access Device coverage, **we** will provide a defense at **our** expense by counsel of **our** choice; and

(3) **we** have the option to defend at **our** expense an **insured** or an **insured's** bank against any suit for the enforcement of payment under the Forgery coverage.

c. **We** do not cover use of credit card, debit card, fund transfer card, or access device:

(1) by a resident of **your** household;

(2) by a person who has been entrusted with either type of card or access device; or

(3) if an **insured** has not complied with all terms and conditions under which the cards are issued or to the devices accessed.

(4) arising out of **business** use or dishonesty of an **insured**.

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

4. **Damage from Fungi.** If a Peril Insured Against causes covered water damage to a covered item, then **we** will pay up to 2% of the Coverage A item limit of liability for all incurred costs applicable to Coverages A, C, and D only for direct physical loss to covered property caused by, resulting from, contributed to, or aggravated by **fungi**. This 2% limit applies per **occurrence** for item coverages (A, C, and D only) combined and not separately for each coverage. For all incurred damages and for all **occurrences** during a policy period, **we** will not pay more than 3% of the limit for Coverage A for that item. Our limit includes all costs associated, or alleged to be associated, with "Damage from **Fungi**," including but not limited to surveys, tests, remediation, and repairs.

No Damage from **Fungi** coverage applies to any **Other Structures,** Coverage B. This coverage does not increase the limit of liability applying to any coverage. The Loss Deductible Clause applies to this Additional Coverage.

5. **Debris Removal**. **We** will pay **your** reasonable expense for the removal of:

a. debris of covered property if a Peril Insured Against causes the loss;

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. ash, dust or particles from a volcanic eruption that has caused direct loss to a covered building or covered property contained in a building; or

c. fallen trees from the **residence premises** if:

(1) coverage is not afforded under Additional Coverages 11, Trees, Shrubs, and Other Plants for the peril causing the loss; or

(2) the tree is not covered by this policy;

provided the tree damages property insured under Coverages A or B, and a Peril Insured Against under Coverage C causes the tree to fall. **Our** limit of liability for this coverage will not be more than $500 in the aggregate for any one loss.

d. **We** will also pay **your** reasonable expense, up to $500 for the removal from the **residence premises** of:

(1) **your** tree(s) felled by the peril of Windstorm or Hail or Weight of Ice, Snow or Sleet; or

(2) a neighbor's tree(s) felled by a Peril Insured Against under Coverage **C;**

provided the tree(s):

(3) damage(s) a covered structure; or

(4) does not damage a covered structure, but:

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

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

e. In the event of a total loss of the **residence premises, we** will pay up to an additional 5% of Coverage A-Dwelling limit for debris removal provided the damaged property is repaired or replaced at the **residence premises**.

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

f. **We** do not cover any expenses for:

(1) extracting any **pollutant** from land, soil, or water on or under any **residence premises** or other land that **you** own, lease, rent, or use;

(2) removing, restoring, or replacing polluted land, soil, or water;

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) removing covered property or debris of covered property contaminated by any **pollutant** or hazardous material unless the contamination occurred due to a Peril Insured Against at the **residence premises**; nor

(4) costs to comply with any ordinance, law, regulatory, or court order that requires any **insured** or any others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

6. **Fire Department Service Charge. We** will pay up to $250 for **your** liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. **We** do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

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

7. **Loss Assessment. We** will pay up to $1,000 for **your** share of any loss assessment charged during the policy period against **you** by a corporation or association of property owners. This only applies when the assessment is made as a result of each direct loss to property, owned by all members collectively, caused by a Peril Insured Against under Coverage A – Dwelling, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

a. This coverage applies only to loss assessments charged against **you** as owner or tenant of the **residence premises**.

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

c. This coverage is additional insurance. No deductible applies to this coverage. The limit of $1,000 is the most **we** will pay with respect to any one loss, regardless of the number of assessments.

8. **Property Removed**. **We** insure covered property against direct loss from any cause while being removed from a **residence premises** endangered by a Peril Insured Against under Coverage C- Personal Property and for no more than 30 consecutive days while removed. This coverage does not increase the limit of liability that applies. **Your** property remaining at the **residence premises** is insured against loss caused by a Peril Insured against for Coverage C, Personal Property. The Loss Deductible Clause applies to this Additional Coverage.

9. **Reasonable Repairs. We** will pay the reasonable cost **you** incur for necessary repairs made solely to protect covered property from further

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

damage if a Peril Insured Against causes the loss. This coverage does not increase the limit of liability that applies to the property being repaired. This does not relieve you of any duties listed under Section I, Conditions, Duties After Loss, nor extend the reporting time limit established also under Section I, Conditions, Suit Against Us. The Loss Deductible Clause applies to this Additional Coverage.

10. **Refrigerated Products**. **We** will pay up to $1,000 under Coverage C to cover the contents of refrigerated units on the **residence premises** for loss due to power failure or mechanical failure. If mechanical or power failure is known to **you**, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power or mechanical failure shall not include:

    a. removal of a plug from an electrical outlet; or

    b. turning off an electrical switch unless caused by a Peril Insured Against.

    This coverage does not increase the limit of liability that applies to the covered property. The Loss Deductible Clause applies to this Additional Coverage.

11. **Trees, Shrubs and Other Plants. We** cover trees, shrubs, plants or lawns on the **residence premises** for loss caused only by the following Perils Insured Against: Fire or lightning, explosion, riot or civil commotion, aircraft, vehicles not owned or operated by a resident of the **residence premises**, vandalism or malicious mischief, or theft. **We** do not cover loss caused in any other way.

    The limit of liability for this coverage will not be more than 5% of the limit of liability that applies to the dwelling, or more than $500 for any one tree, shrub or plant. **We** do not cover property grown for **business** purposes.

    This coverage is additional insurance. The Loss Deductible Clause applies to this Additional Coverage.

12. **Ordinance or Law.**

    a. **We** will pay up to 5% of the limit of liability that applies to Coverage A for increased costs **you** incur due to the enforcement of any law or ordinance that regulates or requires:

        (1) construction, demolition, remodeling, renovation, or repair of that part of a covered building or other structure damaged by a Peril Insured Against;

        (2) demolition and reconstruction of the undamaged portion of a covered building or other structure, when that building or other structure must be totally demolished due to damage caused by a Peril Insured Against to another portion of that covered building or other structure;

        (3) remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of

that part of the covered building or other structure damaged by a Peril Insured Against.

b. This coverage may be used to pay for any increased costs incurred to remove debris from the construction, demolition, remodeling, renovation, repair, or replacement of property indicated in a. above.

c. **We** do not cover:

(1) loss in value to any covered building or other structure due to requirements of any ordinance or law; or

(2) costs to comply with any ordinance or law that requires any **insured** or any others to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **pollutants** in or on any covered building or other structure.

This coverage applies only to loss to **your** dwelling on the **residence premises** covered by Coverage A – Dwelling. This coverage does not apply to any other structure whatsoever.

This coverage is additional coverage. The Loss Deductible Clause applies to this Additional Coverage.

13. **Glass Or Safety Glazing Material**

a. **We** cover:

(1) the breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;

(2) the breakage of glass, glass seals or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and

(3) the direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.

b. This coverage does not include loss:

(1) to covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or

(2) on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. A dwelling being constructed is not considered vacant.

c. This coverage does not increase the limit of liability that applies to the damaged property. The Loss Deductible Clause applies to this Additional Coverage.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

14. **Grave Markers**

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

This coverage does not increase the limits of liability that apply to the damaged covered property. The Loss Deductible Clause does not apply to this Additional Coverage.

15. **Water Backup and Sump Discharge or Overflow.**

a. **We** will pay up to $2,500 for direct physical loss, not caused by the negligence of any **insured**, to property covered under Section I caused by:

(1) water, or water-borne material, that backs up through sewers or drains; or

(2) water, or water-borne material, that overflows or is discharged from a sump, sump pump or related equipment even if such overflow or discharge results from the mechanical breakdown of the sump pump or related equipment.

b. This Additional Coverage does not apply to loss caused by:

(1) flood, surface water, floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams or other bodies of water, or spray from any of these, whether or not driven by wind;

(2) water, or water-borne material, which backs up through sewers or drains or which overflows or is discharged from a sump, sump pump or related equipment which is the direct or indirect result of flood, or other circumstance listed in b(1) above;

(3) water, or water-borne material, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure which is the direct or indirect result of flood; or

(4) mud, pluff mud, mudslide or mudflow,

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

This coverage does not increase the limits of liability for Coverages A, B, C or D stated in the policy Declarations, policy changes, or endorsements. Except as stated under Additional Coverages 4, Damage From **Fungi** above, **we** do not cover indirect, subsequent, consequential, or concurrent loss cause by **fungi** in any sequence to a loss caused by water back-up and sump pump discharge or overflow.

Direct loss by fire or explosion due to water backup and sump discharge or overflow is covered. The Loss Deductible Clause applies to this Additional Coverage.

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING AND COVERAGE B – OTHER STRUCTURES

We insure against risks of direct physical loss to property described in Coverages A and B, if that loss is a physical loss to property.

However, **we** do not insure loss as follows:

1. excluded under Section I – Exclusions
2. involving collapse, other than as provided in Additional Coverage 2;
3. caused by:
   a. freezing of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system, or appliance caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied or being constructed unless **you** have used reasonable care to:
      (1) maintain heat in the building; or
      (2) shut off the water supply and drain all systems and appliances of water.

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

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

   b. freezing, thawing, pressure or weight of water, ice, hail, snow or sleet, whether driven by wind or not, to a:
      (1) fence, pavement, deck, patio or swimming pool;
      (2) footing, foundation, retaining wall or bulkhead or any other structure or device that supports all or part of a building or other structure;
      (3) pier, wharf or dock; or

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(4) sump, sump pump or related equipment or a gutter, downspout, roof drain, or similar fixtures or equipment;

c. theft in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied;

d. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

e. constant or repeated seepage or leakage of water or steam over a period of weeks, months or years from within a plumbing, heating, air conditioning, guttering, or automatic fire protective sprinkler system or from within a household appliance;

f. mold, fungus or wet rot. Subject to Additional Coverage 4, **we** insure for loss caused by mold, fungus or wet rot that is hidden within the walls or ceilings or beneath the floors or above the ceilings of the dwelling if such loss results from the accidental discharge or overflow of water or steam from within:

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

(2) a storm drain, or water, steam or sewer pipes, off the **residence premises**.

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

g. caused by:

(1) wear and tear, marring, deterioration;

(2) inherent vice, latent defect, mechanical breakdown;

(3) the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not, in whole or in part:

i. caused by or resulting from;

ii. contributed to by; or

iii. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss, subject to Additional Coverage 4, Damage from **Fungi**.

(4) smog, smoke from agricultural smudging or industrial operations;

(5) release, discharge or dispersal of contaminants or **pollutants**;

(6) settling, cracking, shrinking, bulging or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings; or

(7) birds, vermin, rodents, insects or domestic animals.

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, **we** cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. **We** do not cover loss to the system or appliance from which this water escaped.

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in Section I – Exclusions.

1. **Fire or lightning**.

2. **Windstorm or hail.**

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

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

3. **Explosion.**

4. **Riot or civil commotion.**

5. **Aircraft,** including self-propelled missiles and spacecraft.

6. **Vehicles.** This peril includes damage to **your** property caused by a vehicle. It does not include damage to **your** personal property caused by **your motor vehicle, your recreational vehicle** or collision damage to any **motor vehicle you** own, rent or lease, including **recreational vehicles.**

7. **Smoke**, meaning sudden and accidental damage from smoke including emission of smoke, soot, fumes, or vapors from a boiler, furnace, or related equipment. This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. **Vandalism or malicious mischief.**

   This peril does not include loss to property on the **residence premises** if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

Also, this peril does not include loss to any computer, computer system, network, hardware, program, **electronic data**, information repository, microchip, integrated circuit, or similar device unless there are visible signs of physical damage to the exterior of the computer, equipment, computer system, or non-computer equipment.

9. **Theft**, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

   This peril does not include loss caused by theft:

   a. committed by an **insured**;

   b. in or to a dwelling or other structure under construction, or of materials and supplies for use in the construction until the dwelling or other structure is finished and occupied; or

   c. from that part of a **residence premises** rented by an **insured** to someone other than an **insured.**

   d. of **electronic data**.

   This peril does not include loss caused by theft that occurs off the **residence premises** of:

   a. property while at any other residence owned by, rented to, or occupied by an **insured**, except while an **insured** is temporarily living there. Property of a student who is an **insured** is covered while residing away from **your residence premises** at a residence away from home.

   b. watercraft of all types, and their furnishings, equipment and outboard motors;

   c. trailers and campers.

10. **Falling Objects**.

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

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

11. **Weight of ice, snow or sleet** which causes damage to property contained in the building.

    We do not cover loss:

    a. to an awning, driveway, fence, patio, deck, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock, or gutter; or

    b. caused by settling, cracking, shrinking, bulging, or expansion of driveways, pavements, patios, foundations, walls, floors, roofs or ceilings.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

12. **Accidental discharge or overflow of water or steam** from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or from within a household appliance. In this peril, a plumbing system or household appliance does not include a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment.

    This peril does not include loss:

    a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months, or years;

    b. to a Dwelling, Other Structure, or Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**.

    c. on the **residence premises**, if the dwelling has been vacant or unoccupied for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

    d. to the system or appliance from which the water or steam escaped;

    e. caused by or resulting from freezing except as provided in the peril of Freezing, #14 below;

    f. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises**;

    However, that portion of Section I – Exclusion 3. Water Damage, that applies to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

13. **Sudden and accidental tearing apart, cracking, burning or bulging** of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water, but not a sump, sump pump or related equipment or a roof drain, gutter, downspout or similar fixtures or equipment;

    This peril does not include loss:

    a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

    b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

    c. caused by or resulting from freezing except as provided in the peril of Freezing, #14 below.

14. **Freezing** of a plumbing, heating air conditioning or automatic fire protective sprinkler system or of a household appliance, but not gutters, downspouts, roof drain, or similar fixtures or equipment, sump, sump pump or related equipment.

    This peril does not include loss:

a. to Personal Property caused by constant or repeated seepage or leakage over a period of weeks, months or years;

b. to Personal Property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or **fungi**;

c. on the **residence premises** caused by accidental discharge or overflow which occurs off the **residence premises;**

15. **Sudden and accidental damage** from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

SECTION I – EXCLUSIONS

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

1. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided elsewhere under this policy, that:

a. requires or regulates the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This Exclusion 1.a. does not apply to the amount of coverage that may be provided for in Section I – Property Coverages, Additional Coverages, Ordinance or Law;

b. results in a loss in value to property; or

c. requires any **insured** or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, **pollutants**.

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

2. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; any volcanic eruption; landslide; mudflow, erosion, earth sinking, sinkhole, contracting, expanding, rising or shifting, caused by any act of nature or resulting from human or animal forces unless direct loss by:

a. fire;

b. explosion;

c. breakage of glass or safety glazing material which is part of a building, storm door or storm window; or

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

d. theft,

ensues and then **we** will pay only for the ensuing loss.

Also, **we** do not cover any loss or damage caused by growth or decay of trees, roots, plants or vines.

3. **Water Damage**, meaning damage from:

a. flood, surface water or any other substance(s) or object(s) on or from the surface of the ground regardless of its source, any floating substance(s) or object(s), waves, seiche waves, storm surge, tidal water, tidal surge, tsunami, overflow of levees, dams, seawalls, streams, or other bodies of water or spray from any of these, whether or not driven by wind;

b. water, or water-borne matter that backs up through sewers or drains or that overflows or is discharged from a sump, sump pump or related equipment; or

c. water, or water-borne matter, below the surface of the ground, including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure; or

d. mud, pluff mud, mudslide, or mudflow,

any or all caused by, or resulting from, in whole or in part, by any natural, man-made, or animal event or action.

Direct loss by fire, explosion or theft resulting from water damage is covered. Loss caused by **Water Damage** to watercraft, their trailers, furnishings, equipment, and outboard motors, covered by this policy or its endorsement, is covered.

4. **Exclusion for Mold and Fungi.** Other than as stated in Section I - Additional Coverages, Damage from **Fungi**, **we** do not cover the presence growth, proliferation, spread, or any activity of rust, bacteria, mold, mildew, wet or dry rot, or any **fungi**, whether or not, in whole or in part:

a. caused by or resulting from;

b. contributed to by; or

c. aggravated by;

any peril or cause of loss, regardless of whether such peril or cause of loss is covered by this policy, and regardless of whether any other peril or cause of loss contributed concurrently or in any sequence to such loss.

5 **Power Failure** or interruption, meaning the failure or interruption of power or other utility service if the failure takes place off the **residence premises**. But, if a Peril Insured Against ensues on the **residence premises**, **we** will pay only for that ensuing loss caused by a Peril Insured Against.

6 **Neglect**, meaning neglect of an **insured** to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

7. **War and Military Action Exclusion.**

We will not pay for loss or damage caused by the following, listed below. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Excluded are:

a. war, including undeclared civil war;

b. warlike action by a military force, including action to hinder or defend against an actual, expected, or threatened attack, by any government, sovereign, or other authority using military personnel or other agents;

c. insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these; or

d. destruction, seizure or use for a military purpose.

If there is any action that comes within the terms of this exclusion and involves nuclear reaction or radiation or radioactive-contamination, then this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.

8. **Terrorism Exclusion**. Regardless of the amount of damage and losses, this exclusion applies to any and all incidents of **terrorism**:

a. that involve the use, release or escape of pathogenic or poisonous biological or chemical materials;

b. that could cause the release or escape of pathogenic or poisonous biological or chemical materials; or

c. that directly or indirectly result in nuclear reaction or radiation or radioactive contamination.

We will not pay for loss or damage caused directly or indirectly by **Terrorism**, including action to hinder or defend against an actual, expected or threatened incident of **Terrorism**. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

But if **Terrorism** results in fire, **we** will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property.

With respect to any such activity that also comes within the terms of the War and Military Action Exclusion, that exclusion supersedes the **Terrorism** Exclusion.

In the event of an act of **Terrorism** that involves nuclear reaction or radiation, or radioactive contamination, this **Terrorism** Exclusion supersedes the Nuclear Hazard Exclusion.

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

9. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I – Conditions.

10. **Governmental Action**

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

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

11. **We** do not insure under any coverage for loss resulting from one or more of the items below:

a. conduct, act, failure to act, or decision of any person, group, organization, or governmental body whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

(1) planning, zoning, development surveying, siting;

(2) design, specifications, workmanship, construction, grading, compaction;

(3) materials used in construction or repair; or

(4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the **residence premises**.

However, **we** do insure for any ensuing covered loss from items a. and b. unless the ensuing loss is itself a loss excluded by this section.

12. **We** do not insure for loss under any coverage regardless of whether one or more of the items listed in paragraph 11 above:

a. directly or indirectly cause, contribute to or aggravate the loss; or

b. occur before, at the same time, or after the loss or any other cause of the loss.

However, **we** do insure for ensuing covered loss from items 11a and 11b unless the ensuing loss is itself a loss excluded by this section.

13. **Asbestos, Lead, or Silica Presence or Removal**. This policy does not insure covered property for damage, loss of use, or expenses arising from:

a. actual or attempted removal of any asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica, or dust from any of these, unless the asbestos material, lead pipes, lead paint, or any material containing asbestos, lead, or silica is itself damaged by a peril insured against;

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

b. demolition or increased cost of reconstruction, repair, or debris removal, attributable to the enforcement of any law, ordinance or regulation concerning asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica; or

c. any governmental direction or request declaring that asbestos material, lead paint, lead pipes, or any material containing asbestos, lead, or silica present in, part of, or utilized by any undamaged portion of the **insured's** property can no longer be used for the purpose for which it was intended or installed and must be modified, covered, sealed, protected, or removed.

14. **Pollutants and Pollution Exclusion. We** do not insure for loss, cost, or expense:

a. which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **pollutants** at any time, by any person, organization or governmental authority; and

b. arising out of any:

(1) request, demand or order that any **insured** or others test for, monitor, clean-up, remove, remedy, repair, contain, treat, detoxify or neutralize, or in any other way respond to, or assess the effects of **pollutants**; or

(2) claim or suit by or on behalf of any person, organization or governmental authority for damages because of testing for, monitoring, cleaning up, removing, remedying, repairing, containing, treating, detoxifying or neutralizing, or in any other way responding to, or assessing the effects of **pollutants**.

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

15. **We** do not insure covered property for damage, loss of use, or expenses caused by radon gas, radium, any other radioactive substance, any gas, or any sound or light. **We** do not cover the cost of any investigations, fines, or other costs related to radon gas, radium, any other radioactive substance, any gas, or any sound or light.

16. **We** do not insure for loss or damage arising directly or indirectly out of:

a. loss of, alteration of, or damage to; or

b. a reduction in the functionality, availability or operation of any computer, computer system, network, hardware, software, program, **electronic data**, information, repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of an **insured** or others; and

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

c. **we** will not cover, pay for, or reimburse **you** or anyone else for any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement, or supervision provided to correct, determine, prevent, rectify, or test for any actual, alleged or potential problems described in subparagraphs a. and b. above; but

d. **we** will pay for direct physical loss or damage to covered property caused by a Peril Insured Against, Section I, Coverage C – Personal Property. However, this exception does not apply to any loss or damage that is:

(1) otherwise excluded in Section I – Exclusions; or

(2) caused by the peril of **Vandalism or Malicious Mischief**, unless there are visible signs or physical damage to the exterior of such computer system, computer equipment or non-computer equipment.

e. With respect to loss or damage excluded by this paragraph, if a peril listed in Section I – Perils Insured Against for Coverage C – Personal Property ensues, **we** will pay for the direct physical loss or damage caused by such ensuing peril.

17. **Collapse**, other than as provided in **Additional Coverages**.

18. **We** do not insure under any coverage for loss resulting from weather conditions. This exclusion applies only if weather conditions contribute in any way with a cause or event excluded in items 1 through 16 above.

19. **Prejudgment Interest**. This policy does not pay prejudgment interest.

20. **Intentional Acts**, meaning any loss arising out of any act committed, or where there was a conspiracy to commit an act:

a. by or at the direction of any **insured**;

b. with the intent to cause a loss; and

c. in any domestic dispute between **insureds**, family members, or others.

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

21. **Intentional Loss.** If **you** or any person insured under this policy causes or procures a loss to property covered under this policy for the purpose of obtaining insurance benefits, then the policy is void and **we** will not pay **you** or any other **insured** for this loss.

SECTION I – CONDITIONS

1. **Insurable Interest and Limit of Liability.** Even if more than one person has an insurable interest in the property covered, **we** will not be liable in any one loss:

a. to any **insured** for more than the amount of the **insured's** interest at the time of loss; or

b. for more than the applicable limit of liability.

2. **Your Duties After Loss.** In case of a loss to covered property, **you** or your representative must see that the following are done:

a. immediately notify the police or other appropriate law enforcement agency in any case of loss where a crime is suspected;

b. immediately notify the credit card or fund transfer card company in case of loss under Credit Card, Debit Card, or Fund Transfer Card coverage;

c. give prompt notice to **us** or **our** agent;

d. (1) protect the property from further damage;

(2) make reasonable and necessary repairs to protect the property; and

(3) keep an accurate record of repair expenses;

(4) cooperate with **us** in the investigation and settlement of any claim;

e. prepare an inventory of damaged personal property showing the quantity, description, how, when, and where acquired, **actual cash value** and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

f. as often as **we** reasonably require of **you**, any other **insured,** or any other person seeking coverage:

(1) allow **us**, or **our** designee(s) to inspect the damaged property;

(2) allow **us** to secure, and retain, at **our** expense, evidence relating to the loss;

(3) provide **us** with records and documents **we** request and permit **us** to make copies; and

(4) allow us to obtain from **you**, and any other person seeking coverage, separate recorded statements; and

(5) submit, separate and apart from any other **insured** to examination(s) under oath, if **we** require by any person named by **us** and sign and swear to it;

g. send to **us**, within 60 days after **our** request, **your** signed, sworn proof of loss which sets forth, to the best of **your** knowledge and belief:

(1) the time and cause of loss;

(2) the interest of the **insured** and all others in the property involved and all mortgages or liens on the property;

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

ELECTRONICALLY FILED - 2017 Sep 07 1:28 PM - HORRY - COMMON PLEAS - CASE#2017CP2602910

(3) other insurance, service agreements, or warranty provisions which may cover the loss;

(4) changes in title or occupancy of the property during the term of the policy;

(5) specifications of damaged buildings and detailed repair estimates;

(6) the inventory of damaged personal property described in 2e above;

(7) receipts for additional living expense incurred and records that support the fair rental value loss; and

(8) evidence or affidavit that supports a claim under the Credit Card, Debit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. **Loss Settlement.**

The terms "cost to repair or replace" and "replacement cost" do not include the increased costs incurred to comply with the enforcement of any ordinance or law, except to the extent that coverage for these increased costs is provided in Section I – Additional Coverages, "Ordinance or Law." Covered property losses are settled as follows:

a. (1) Personal property;

(2) Awnings, carpeting, household appliances, fences, property lines, sea walls, outdoor equipment, outdoor antennas and swimming pools, whether or not attached to buildings; and

(3) Other structures that are not buildings, including grave markers and mausoleums;

(4) Buildings not permanently attached to, or otherwise forming part of the realty;

at **actual cash value** at the time of loss but not more than the amount required to repair or replace.

b. Buildings permanently attached to or otherwise forming a part of the realty, under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

(1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, **we** will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:

(a) the limit of liability under this policy that applies to the building;

(b) the replacement cost of that part of the building damaged for like construction and use of the same premises; or