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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Kristi F. Curtis, Circuit Court Judge

Appellate Case No: 2021-000494

South Carolina Farm Bureau Ins. Co, Appellant
v.

Marion L. Driggers, Shiralee Driggers, Tammy D.
Floyd, Estate of Arthur McKenzie, The Travelers
Home and Marine Insurance Company, The
United States of America acting by and through
Its agency, The Internal Revenue Service, and
The South Carolina Tax Commission, Defendants,

Of Which The Travelers Home and Marine Insurance
Company is the Respondent.

RECORD ON APPEAL

Volume I

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STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO. 2014-CP-45-132

South Carolina Farm Bureau)
Mutual Insurance Company,)
)
Plaintiffs,)

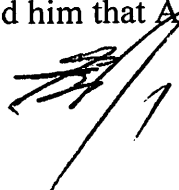
v.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie,)
a/k/a Auther McKenzie, The Travelers)
Home and Marine Insurance)
Company, the United States of)
America, acting by and through its)
Agency, The Internal Revenue Service,)
and The South Carolina Tax)
Commission,)
)
Defendants.)

**ORDER OF CONTINUANCE AND
WITHDRAWAL OF MOTIONS**

5 OCT -8 PM 1:19

On August 27, 2015, the parties appeared before the Court involving various dispositive and discovery-related motions. J. Dwight Hudson, Esquire, appeared as counsel for Plaintiff South Carolina Farm Bureau Mutual Insurance Company. Before the hearing date, James D. Dotson, Esquire (“Attorney Dotson”), formally represented Defendants Marion L. Driggers (“Roy Driggers”), Shiralee Driggers, and Tammy D. Floyd (“Floyd”). However, Attorney Dotson did not attend the hearing. Edward K. Pritchard, III, Esquire (“Attorney Pritchard”), appeared at the hearing and stated that Defendants Roy Driggers, Shiralee Driggers, and Floyd had requested that he represent them instead of Attorney Dotson. Defendant Roy Driggers informed the Court that he had difficulties communicating with Attorney Dotson and had notified him that Attorney Pritchard would



THE UNIVERSITY OF CHICAGO
 DIVISION OF THE PHYSICAL SCIENCES
 DEPARTMENT OF CHEMISTRY
 5712 S. UNIVERSITY AVENUE
 CHICAGO, ILLINOIS 60637

TO: [Name]

FROM: [Name]

SUBJECT: [Subject]

[Main body of the letter containing several paragraphs of text, which is mostly illegible due to the quality of the scan.]

[Continuation of the letter text, including a closing and possibly a signature block, which is mostly illegible.]

replace him as counsel for Defendants Shiralee Driggers, Floyd, and him in this litigation.


Daryl J. Corbin, Esquire (“Attorney Corbin”), appeared as counsel for Defendant Arthur McKenzie a/k/a Auther McKenzie. William Davis, Esquire, appeared as counsel for Defendant Travelers Home and Marine Insurance Company. Defendants The Internal Revenue Service and The South Carolina Tax Commission are nominal parties without any pending motions and their counsel were not present for the hearing.

Attorney Corbin indicated to the Court that the parties had agreed to withdraw all pending motions with leave to restore them at a later date, if necessary. Attorney Corbin further stated that the parties agreed to submit a proposed Scheduling Order for the Court’s review and approval given the recent involvement of Attorney Pritchard and previous discovery issues while Attorney Dotson represented Defendants Roy Driggers, Shiralee Driggers, and Floyd. All counsel affirmed the parties’ agreement as recited by Attorney Corbin.



Under the circumstances, the Court hereby immediately relieves Attorney Dotson of further representation of Defendants Roy Driggers, Shiralee Driggers, and Floyd and accepts the substitution of Attorney Pritchard as counsel of record for them. In addition, the Court hereby continues this case and allows the parties an opportunity to submit a proposed Consent Scheduling Order for the Court’s review and approval within ten (10) days of the date of this Order.

IT IS SO ORDERED.





The Honorable George C. James, Jr.
Circuit Court Judge
Third Judicial Circuit

September , 2015

_____, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP-45-132

SC Farm Bureau

Marion D. Driggers, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The court

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court: Attorney Fritchard is relieved as counsel for Marion Driggers.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : (See reverse)

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

[Signature]

Judge Code

2143

Date

4/28/16

For Clerk of Court Office Use Only

This judgment was entered on the day of , 20 and a copy mailed first class or placed in the appropriate attorney's box on this 2nd day of Apr, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

J. Dwight Hudson

ATTORNEY(S) FOR THE PLAINTIFF(S)

David J. Corbin Marion A. Driggers
William P. Davis
Edward K. Pritchard

ATTORNEY(S) FOR THE DEFENDANT(S)
Sharon W. Stagers

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

- ② MARION Driggers' motion to disqualify counsel:
Mr. Corbin has until 5:00 on May 5, 2016 to provide to the court any materials/submissions in response to this motion.
- ③ Mr. Driggers' motion for summary judgment is continued
- ④ SCFB Bureau's motion to amend is granted.
- ⑤ Travelers' motion for summary judgment is continued. Motion to interplead held in abeyance.
- ⑥ Motion to Compel (3 Driggers defendants) is under advisement. SCFB to provide privilege log to the court by June 8, 2016, along with disputed materials. Counsel shall serve log on opposing parties. SCFB's motion to quash is under advisement.
- ⑦ SCFB's Motion to Compel - may be moot, but counsel for SCFB shall advise the clerk of court.

[Signature] 4/28/16

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

Docket No. 2014-CP-45-00132

SOUTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY,

Plaintiff,

ORDER

v.

MARION L. DRIGGERS, SHIRALEE
DRIGGERS, TAMMY D. FLOYD,
ARTHUR A/K/A ARTHUR
MCKENZIE, THE TRAVELERS
HOME INSURANCE COMPANY, THE
UNITED STATES OF AMERICA
ACTING BY AND THROUGH THE
INTERNAL REVENUE SERVICE,
AND THE SOUTH CAROLINA TAX
COMMISSION,

Defendants.

This matter was before the court on October 27, 2016 for hearing of several pending motions. The plaintiff and the defendants Shiralee Driggers, Tammy D. Floyd, and Travelers. Marion L. Driggers, who represents himself, also appeared. The court heard the following motions of Mr. Driggers: (1) Motion to Amend; (2) Motion to Compel against defendant McKenzie; (3)

Motion to Compel against defendant Travelers; (4) Motion to Abolish Assignment; (5) Motion to Disqualify Attorney Corbin; (6) Motion to Amend (as to certain attorneys); and (7) Motion for Summary Judgment as to McKenzie's cross-claims.

Motion to Amend

In this motion, Mr. Driggers requests judgment against defendant Travelers and plaintiff South Carolina Farm Bureau Mutual Insurance Company (SCFB) for their tortious refusal to pay Mr. Driggers certain sums he claims are due under insurance contracts issued by them. The court will treat this motion as a motion for summary judgment. Under Rule 56, SCRPC, a party is entitled to summary judgment if the pleadings, discovery, and affidavits, if any, establish that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. In cases in which the burden of proof is by the preponderance of the evidence, the non-moving party is only required to present a mere scintilla of evidence in order to overcome a motion for summary judgment. *Hancock v. Mid-South Management*, 381 S.C. 326673 S.E.2d 801 (2009).

Mr. Driggers' motion does not set forth specific grounds upon which his motion is based, except for the statement that Travelers and SCFB have refused "to obey Title 38 of the South Carolina Code of Laws and Supreme Court Opinions (1) 25510, (2) 24091, (3) 24644 and (4) 13669. I also include Appellate Opinion #3581 of which I was a party." Opinion No. 25510 is *Lewis v. Premium Investment Corporation*, 351 S.C. 167, 568 S.E. 2d 361 (2002). Opinion No. 24091 is *Brooks v. Council of Co-Owners*, 315 S.C. 474, 445 S.E. 2d 630 (1994). Opinion No. 24644 is *Nationwide v. Hunt*, 327 S.C. 488 S.E. 2d 339 (1997). Opinion No. 13669 is *Tyger River Pine Co. v. Maryland Casualty Co.*, 170 S.C. 286, 170 S.E. 346 (1933). Opinion No. 3581 is *Nexsen v. Haddock*, 353 S.C. 74, 576 S.E. 2d 183 (Ct. App. 2002).

The court has reviewed all these authorities and concludes that Mr. Driggers is not entitled to judgment at this stage. *Lewis* stands for the proposition that a court of equity "can relieve a defaulting purchaser from the strict forfeiture provision in an installment land contract and provide the opportunity for redemption when equity so demands." 351 S.C. at 173. The court concludes the issue of whether defendant McKenzie has a right of redemption at this stage is an issue of fact that will not be resolved at this stage of the proceedings. If further facts are developed that make the issue pertinent for summary judgment, the court will entertain the issue again if a motion is made.

The court concludes that *Brooks* has no application to the case at bar. The court is not aware of any party to this action asserting the theory of equitable conversion. The issues in the case at bar primarily center upon how much of the land contract price McKenzie and/or Eliza Gamble have paid, whether SCFB owes coverage to its insured(s), and to whom Travelers owes the balance of its coverage. There may be other issues surrounding these issues, but there is no discernable issue concerning equitable conversion of contractual rights.

Nationwide v. Hunt was an appeal from a directed verdict granted to a mortgagee listed as an additional insured under a policy of hazard insurance. The Court ruled that when a policy includes a "standard" mortgagee clause, the mortgagee is entitled to payment from the carrier even when the carrier denies the claim as to the insured(s). In the instant case, the parties have indicated that the Travelers policy contains a standard mortgagee clause. Travelers apparently does not dispute that it owes the balance of its coverage to someone and has offered to tender its proceeds to the court for payment to appropriate parties. However, there is a genuine issue of fact between Mr. Driggers and Mr. McKenzie as to whom the remaining proceeds should be paid. Summary judgment is not appropriate at this stage.

Tyger River Pine Co. does not apply to the instant litigation, as that case addressed the wrongful refusal of a carrier to pay money damages on behalf of its insured to a third party. There are claims of bad faith refusal to pay advanced by Mr. Driggers, but the *Tyger River* doctrine does not apply.

Nexsen v. Haddock does not apply to the instant case. In that case, the Court of Appeals held that under S.C. Code Section 27-35-60, a sublease of real property to a third party is a nullity unless the landlord has consented in writing to the sublease. In the instant case, this statute does not apply, as the original transaction between the pertinent parties was a contract of sale and not a lease. Even if the statute applied to the instant sales contract, an assignment of rights was contemplated in the contract, wherein paragraph 16 provides that the agreement is "binding upon the parties hereto (Driggers, McKenzie, Gamble, and Floyd), their Heirs, Successors, or Assigns." (emphasis added). Assuming for the moment that there is a valid assignment flowing from Gamble to McKenzie, summary judgment is not appropriate under *Nexsen v. Haddock*.

Motion to Compel against McKenzie

As stated at the motion hearing, the court is construing this motion as two interrogatories directed at the defendant McKenzie (a financial statement from McKenzie as of the time of the fire, and proof of any attempt by McKenzie to redeem the property). Answers to these two inquiries shall be served upon Mr. Driggers by January 10, 2016. The third inquiry regarding a statement from Ms. Gamble has been rendered moot by virtue of her affidavit that she did not sign the assignment.

Motion to Compel against Travelers

In this motion, Mr. Driggers seeks the following:

1. "Attorney to attorney between Traveler's and Arthur McKenzie"

2. "Federal law allowing Traveler's to pay attorney fees before mortgage"
3. "Amount Traveler's has paid on dwelling"
4. "Why Traveler's would pay Arthur McKenzie for dwelling he does not own"
5. "If statute of limitations was tolled in this case"

Inquiries 2-5 appear to be in the nature of interrogatories. Inquiry 1 appears to be a request for production. As for number 3, that inquiry was answered during the hearing when counsel for Travelers advised the court that it had paid the sum of \$132,006.00 in coverage for the dwelling. As for numbers 2, 4, and 5, Travelers is to consider those inquiries as interrogatories and is to provide answers or appropriate objection to Mr. Driggers by January 10, 2017. As for number 1, Travelers is to respond to this inquiry as a request for production by January 10 as well. If Travelers has any objections to providing this attorney-to-attorney correspondence, Travelers shall comply with applicable rules requiring submission of a privilege log and copies of disputed documents to the court for *in camera* review.

Motion to Abolish Assignment

In this motion, Mr. Driggers requests that the assignment purportedly signed by Eliza Gamble be abolished. Ms. Gamble has executed an affidavit confirming she did not sign the assignment, and the parties apparently do not dispute the conclusion that Ms. Gamble did not sign the subject assignment. The court therefore finds as a matter of undisputed fact that Ms. Gamble did not sign the assignment. However, the court makes no finding at this time as to whether Ms. Gamble's rights under the contract have been or could be otherwise transferred to Mr. McKenzie. Therefore, this motion is denied.

Motion to Disqualify Attorney Corbin

Mr. Driggers contends that Attorney Corbin should be required to withdraw from further representation of defendant McKenzie. This motion is denied for two reasons. First, the motion was made on two prior occasions on Mr. Driggers' behalf by his former attorneys. While the first motion to disqualify was withdrawn without prejudice, the second motion to disqualify was withdrawn by Mr. Driggers' former attorney on the basis that it had no merit. Mr. Driggers is bound by the second withdrawal and has waived the right to pursue this issue. Second, the motion is denied because it has no merit whatsoever. The court has reviewed the memorandum submitted by Attorney Corbin and has carefully considered the arguments made at the hearing. Attorney Corbin's representation of defendant McKenzie is entirely appropriate.

Motion to Amend (as to Certain Attorneys)

In this motion, Mr. Driggers is "asking the court to issue Judgments on Attorneys William E. Jenkinson, Daryl Corbin, and Jim Dotson for negligence and cost of this action." These attorneys are not parties to this action; therefore, the court does not have personal jurisdiction over them. The motion is therefore denied.

Motion for Summary Judgment as to Defendant McKenzie's Crossclaims

The court first notes that Mr. Driggers has made this motion on behalf of himself and on behalf of defendants Shiralee Driggers and Tammy D. Floyd. Shiralee Driggers and Tammy D. Floyd are represented by counsel in this action and any motions made on their behalf must be made by their attorney. Therefore the motion as to Ms. Driggers and Ms. Floyd is denied.

The court denies Mr. Driggers' motion as well. Rule 56, SCRCP, permits summary judgment only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. The court must construe all evidence and the inferences reasonably derived therefrom in the light most favorable to the nonmoving party. The court concludes that

there are numerous issues of material fact that preclude summary judgment for Mr. Driggers on the McKenzie crossclaims.

Based on the foregoing, it is ordered:

1. The Motion to Amend is treated as one for summary judgment and is denied.
2. The Motion to Compel against defendant McKenzie is granted as set forth above.
3. The Motion to Compel against Travelers is granted as set forth above.
4. The Motion to Abolish Assignment is denied.
5. The Motion to Disqualify Attorney Corbin is denied.
6. The Motion to Amend as to certain attorneys is denied.
7. The Motion for Summary Judgment as to defendant McKenzie's crossclaims is denied.

END OF ORDER-ELECTRONIC SIGNATURE PAGE TO FOLLOW



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Other

SO ORDERED

s/ George C. James, Jr. 2143

Electronically signed on 2016-12-16 10:59:51 page 8 of 8

From: Curtis, Kristi F. Law Clerk (Andrew Sippel) <kcurtislc@sccourts.org>
Sent: Monday, November 23, 2020 9:46 AM
To: Davis, William P.; mgraham hudsonlawoffice.com; Edward Pritchard; Daryl Corbin
Cc: Marion Driggers; Jill Corbin; Hunter Adams; Rosa Raspaldo; Greyson Land
Subject: FW: SC Farm Bureau v. Driggers et al., 2014-CP-45-00132

Good Morning all,

Below is Judge Curtis' rulings with regard to the motions we previously heard and took under advisement.

Best regards,

Andrew Sippel
Law Clerk to the Honorable Kristi F. Curtis
The Circuit Court of South Carolina
Third Judicial Circuit
215 North Harvin Street
Sumter, SC 29150
Office: (803) 774-6160

From: Curtis, Kristi F. <kcurtisj@sccourts.org>
Sent: Thursday, November 19, 2020 4:55 PM
To: Curtis, Kristi F. Law Clerk (Andrew Sippel) <kcurtislc@sccourts.org>
Subject: SC Farm Bureau v. Driggers et al., 2014-CP-45-00132

Dear all:

Travelers' Motion for Summary Judgment as to the cross-claims of defendants Marion Driggers, Shiralee Driggers, and Tammy Floyd is GRANTED. I find that these Defendants were not insureds under the Travelers policy and do not have standing to pursue causes of action for bad faith, breach of contract, or civil conspiracy. Mr. Davis, will you please draft a proposed order consistent with your Memorandum in Support of your motion?

At the hearing on the parties' respective outstanding motions, my notes indicate that I granted Travelers' motion for interpleader **with the consent of all of the parties**. As Mr. Davis indicated at the hearing, Travelers settled with its' insured Arthur McKenzie for \$232,073.45. Travelers paid out \$116,933.05 to Mr. McKenzie for attorney fees and costs, leaving a balance of the settlement funds in the amount of \$115,140.40. Mr. Davis drafted a proposed order to that effect shortly after the hearing which was forwarded to the court and to all of the parties. Mr. Hudson, on behalf of the Plaintiff South Carolina Farm Bureau, objected to language in the proposed order which states Travelers was absolved of any further liability in the case. The main purpose of a motion for interpleader is of course to allow the party to pay the funds into court and then to have no further involvement in the case. SCFB argues that it is not proper to dismiss Travelers from the case until the court has determined the amount of the loss, determined the respective property interests of the parties, and has apportioned the insurance proceeds pursuant to S.C. Code Ann. § 38-75-20.

By my calculations, the total amount of coverage on the house was \$405,000. (\$287,000 from the Travelers policy and \$118,000 from the SCFB policy). SCFB's coverage is therefore approximately 29.14% of the total coverage and Travelers' coverage is approximately 70.86% of the total coverage. Defendants have alleged actual damages in the amount of \$129,800.00. [amended complaint at para. 93] I have no idea what the value of the home was at the time of the loss, except to note that the contract of sale from Tammy Floyd recited

consideration of \$80,000 for the home and the land, and of course, SCFB insured the property for \$118,000. Using my rough math and estimation, it seems clear that Traveler's obligation to cover 70.86% of the loss pursuant to S.C. Code § 38-75-20 would be covered by the deposit of \$115,140.00 with the court under even a generous estimation of the value of the home. It's therefore my intention to sign the proposed order as submitted by Mr. Davis.

Sincerely,
Kristi Curtis

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**From:** Curtis, Kristi F. Law Clerk (Andrew Sippel) <kcurtislc@sccourts.org>  
**Sent:** Monday, November 23, 2020 9:46 AM  
**To:** Davis, William P.; mgraham hudsonlawoffice.com; Edward Pritchard; Daryl Corbin  
**Cc:** Marion Driggers; Jill Corbin; Hunter Adams; Rosa Raspaldo; Greyson Land  
**Subject:** FW: SC Farm Bureau v. Driggers et al., 2014-CP-45-00132

Good Morning all,

Below is Judge Curtis' rulings with regard to the motions we previously heard and took under advisement.

Best regards,

Andrew Sippel  
Law Clerk to the Honorable Kristi F. Curtis  
The Circuit Court of South Carolina  
Third Judicial Circuit  
215 North Harvin Street  
Sumter, SC 29150  
Office: (803) 774-6160

---

**From:** Curtis, Kristi F. <kcurtisj@sccourts.org>  
**Sent:** Thursday, November 19, 2020 4:55 PM  
**To:** Curtis, Kristi F. Law Clerk (Andrew Sippel) <kcurtislc@sccourts.org>  
**Subject:** SC Farm Bureau v. Driggers et al., 2014-CP-45-00132

Dear all:

Travelers' Motion for Summary Judgment as to the cross-claims of defendants Marion Driggers, Shiralee Driggers, and Tammy Floyd is GRANTED. I find that these Defendants were not insureds under the Travelers policy and do not have standing to pursue causes of action for bad faith, breach of contract, or civil conspiracy. Mr. Davis, will you please draft a proposed order consistent with your Memorandum in Support of your motion?

At the hearing on the parties' respective outstanding motions, my notes indicate that I granted Travelers' motion for interpleader **with the consent of all of the parties**. As Mr. Davis indicated at the hearing, Travelers settled with its' insured Arthur McKenzie for \$232,073.45. Travelers paid out \$116,933.05 to Mr. McKenzie for attorney fees and costs, leaving a balance of the settlement funds in the amount of \$115,140.40. Mr. Davis drafted a proposed order to that effect shortly after the hearing which was forwarded to the court and to all of the parties. Mr. Hudson, on behalf of the Plaintiff South Carolina Farm Bureau, objected to language in the proposed order which states Travelers was absolved of any further liability in the case. The main purpose of a motion for interpleader is of course to allow the party to pay the funds into court and then to have no further involvement in the case. SCFB argues that it is not proper to dismiss Travelers from the case until the court has determined the amount of the loss, determined the respective property interests of the parties, and has apportioned the insurance proceeds pursuant to S.C. Code Ann. § 38-75-20.

By my calculations, the total amount of coverage on the house was \$405,000. (\$287,000 from the Travelers policy and \$118,000 from the SCFB policy). SCFB's coverage is therefore approximately 29.14% of the total coverage and Travelers' coverage is approximately 70.86% of the total coverage. Defendants have alleged actual damages in the amount of \$129,800.00. [amended complaint at para. 93] I have no idea what the value of the home was at the time of the loss, except to note that the contract of sale from Tammy Floyd recited

consideration of \$80,000 for the home and the land, and of course, SCFB insured the property for \$118,000. Using my rough math and estimation, it seems clear that Traveler's obligation to cover 70.86% of the loss pursuant to S.C. Code § 38-75-20 would be covered by the deposit of \$115,140.00 with the court under even a generous estimation of the value of the home. It's therefore my intention to sign the proposed order as submitted by Mr. Davis.

Sincerely,  
Kristi Curtis

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

| | | |
|--|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF WILLIAMSBURG |) | C/A NO.: 2014-CP-44-00132 |
| |) | |
| South Carolina Farm Bureau Ins. Co., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER ALLOWING FUNDS TO BE |
| |) | DEPOSITED WITH THE COURT |
| |) | PURSUANT TO RULE 22(b), SCRC |
| Marion L. Driggers, Shiralee Driggers, |) | |
| Tammy D. Floyd, Arthur McKenzie, a/k/a |) | |
| Arther McKenzie, The Travelers Home |) | |
| and Marine Insurance Company, |) | |
| The United States of America acting by |) | |
| and through its agency, The Internal |) | |
| Revenue Service and The South Carolina |) | |
| Tax |) | |
| Commission |) | |
| |) | |
| |) | |
| Defendant. |) | |

It appearing that Defendant The Travelers Home and Marine Insurance Company (“Travelers”) filed an interpleader cross-claim and has settled the claims of its insured, Defendant Arthur McKenzie (“McKenzie”), relative to the policy issued to him by Defendant Travelers, for the sum of Two Hundred Thirty-Two Thousand Seventy-Three and 45/100 (\$232,073.45) Dollars; and

It further appearing that Travelers filed a motion on February 12, 2015 for an order allowing it to deposit with the court the sum of One Hundred Fifteen Thousand One Hundred Forty and 40/100 (\$115,140.40) Dollars of the aforementioned settlement amount, reflecting the deduction of attorneys’ fees and expenses of Defendant McKenzie in the amount of One Hundred Sixteen Thousand Nine Hundred Thirty-Three and 05/100 (\$116,933.05) Dollars, and that all parties were served with said motion; and

It further appearing that the aforementioned sum (\$115,140.40) is sufficient to cover the claims asserted against Travelers's policy proceeds by some or all of the other defendants in this action;

NOW, THEREFORE, pursuant to Rule 22, SCRCP, upon Travelers's deposit of the aforementioned funds with the court, Travelers will be discharged from liability as to such claims, with the claimants to assert their claims against the aforementioned fund.

The Honorable Kristi F. Curtis
Judge, Third Judicial Circuit

September __, 2020
Kingstree, South Carolina



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Deposit Money

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-01-05 12:17:42 page 3 of 3

| | | |
|--|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF WILLIAMSBURG |) | C/A NO.: 2014-CP-44-00132 |
| |) | |
| South Carolina Farm Bureau Ins. Co., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER GRANTING CROSS- |
| |) | DEFENDANT THE TRAVELERS HOME |
| |) | AND MARINE INSURANCE |
| Marion L. Driggers, Shiralee Driggers, |) | COMPANY’S MOTION FOR SUMMARY |
| Tammy D. Floyd, Arthur McKenzie, a/k/a |) | JUDGMENT |
| Arther McKenzie, The Travelers Home |) | |
| and Marine Insurance Company, |) | |
| The United States of America acting by |) | |
| and through its agency, The Internal |) | |
| Revenue Service and The South Carolina |) | |
| Tax Commission |) | |
| |) | |
| Defendant. |) | |

This matter came before the Court on Cross-Defendant The Travelers Home and Marine Insurance Company’s (“Travelers”) Motion for Summary Judgment. For the reasons set forth below, Travelers’s motion is **GRANTED**.

FACTUAL BACKGROUND

This declaratory judgment action arises out of two insurance policies issued by two different insurers to different insureds on the same house located in Williamsburg County:

- (1) Policy number 984761288 633 1 –Travelers issued this homeowner’s policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010.
- (2) Policy number FI 0401219 – Plaintiff South Carolina Farm Bureau Insurance Company (“Farm Bureau”) issued this dwelling fire policy on the same property to Defendant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010.

On or about April 25, 1997, Defendant Tammy Floyd and Lisa Gamble entered into a

Contract for Sale and Purchase of the property. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to Defendant McKenzie.

On or about November 26, 2009, the insured home was damaged by fire, and Defendant McKenzie made a claim under his Travelers policy. The adjustment of Defendant McKenzie's losses was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. Travelers settled Defendant McKenzie's claims for \$232,073.45, of which the sum of \$116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of \$115,140.40. Travelers moved to deposit that amount with the Court pursuant to its interpleader cross-claims. This Court granted that motion under a separate order.

In their Answer to the within action, Mr. and Mrs. Driggers and Tammy D. Floyd asserted cross-claims against Travelers alleging that:

- (1) Travelers and Mr. McKenzie "have conspired with one another with the object . . . of avoiding the payment by the Travelers of any sums toward the lawful claims of Mr. and Mrs. Driggers and Tammy D. Floyd;
- (2) Travelers' "delay in investigating, processing, and paying the McKenzie claim has damaged [them] in that they have not yet been paid the value of their claim; and that they have had to claim against their own policy of insurance, which should have been secondary; and in that they have had to defend this action"; and
- (3) Travelers has "acted in legal bad faith toward the rights [of] these defendants and have damaged these defendants."

Travelers's Answer to the cross-claims denies these allegations and includes several affirmative defenses, including that the cross-claimants are without standing to prosecute their cross-claims against Travelers and that the cross-claimants are strangers to the subject insurance contract with no rights thereunder.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law.” Rule 56(c), SCRCP. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155 226 S.E.2d 703, 705 (1976).

DISCUSSION

“Standing to sue is a fundamental requirement in instituting an action.” *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 84, 644 S.E.2d 58, 60 (2007). It is a part of the concept of justiciability that concerns whether a party may make a legal claim or argument. *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct.App.2008). The general rule in South Carolina is that for parties to have standing, they must have (1) a personal stake in the subject matter of a lawsuit and (2) be a real party in interest. *Ex Parte Gov’t Employee’s Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007). “A real party in interest ... is one who has a real, actual, material or substantial interest in the subject matter of the action, as distinguished from one who has only a nominal, formal, or technical interest in, or connection with, the action.” *Bailey v. Bailey*, 312 S.C. 454, 458, 441 S.E.2d 325, 327 (1994).

Beyond the general rule are three elements that must be met: (1) the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical; (2) there must be a causal connection between the injury and the conduct complained of - the injury has to be fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court; and (3) it must be likely, as opposed to merely

speculative, that the injury will be redressed by a favorable decision. *Smiley v. S.C. Dep't of Health and Env'tl Control*, 374 S.C. 326, 649 S.E.2d 31 (2007) (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)). “The party seeking to establish standing carries the burden of demonstrating each of the three elements.” *Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 601, 550 S.E.2d 287, 291 (2001).

Travelers cites *Park v. Safeco* to support its position that the Cross-Claimants are strangers to its policy and therefore do not have standing to assert any of the cross-claims asserted against it. See *Park v. Safeco Insurance Company of America*, 251 S.C. 410, 162 S.E.2d 709 (1968). In *Park v. Safeco*, Mr. Park, who alleged that he had been injured in a motor vehicle accident in which a Mr. McCall was at fault, brought a declaratory judgment action against McCall's automobile liability carrier, Safeco Insurance Company (“Safeco”). Mr. Park also named his own uninsured motorist carrier, Southern Home Insurance Company (“Southern Home”), as a defendant. He sought a judicial determination as to whether Safeco had successfully denied liability coverage to McCall, among other things. He had not brought suit against McCall. The Supreme Court affirmed the lower court's having sustained Safeco's demurrer. One of the grounds was that, because Mr. Park had not procured a judgment against McCall, and was a stranger to the Safeco insurance contract, he lacked standing to seek declaratory judgment as to that policy:

Counsel for plaintiff argues, with some appeal, that an injured party should have as much right to ask the court to determine the validity of a tortfeasor's liability insurance policy as the insurer or the insured. We think the fallacy of this argument lies in the fact that the injured person is not a party to the contract and has, under the facts of this case, no primary standing to litigate a dispute between the insured and insurer until and unless he establishes liability against McCall.

Id. at 415, 162 S.E.2d at 711.

Travelers contends that *Park v. Safeco* is controlling, as the Cross-Claimants are not

parties to the insurance policy issued by Travelers and therefore do not have primary standing to litigate their allegations against Travelers.

Cross-Claimants contend that, as a required loss payee and the actual owners of the insured property, they have rights under Travelers's policy. Specifically, Cross-Claimants allege that they have, at a minimum, an equitable lien on the subject property that Travelers is legally obligated to pay.

The Cross-Claimants do not allege that they have any contractual relationship with Travelers. Rather, they admit the allegations in paragraph ten (10) of the Complaint that Defendant McKenzie occupied the house in question pursuant to a "rent to own" agreement, according to which he was to have insured the property and listed Cross-Claimants as loss payees, insureds or additional insureds. Cross-Claimants were not listed as loss payees, insureds or additional insureds on the Travelers policy. Apparently concerned that was the case, Cross-Claimants purchased their own policy insuring their own interests in the property.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for civil conspiracy.**

Cross-Claimants' allegations of civil conspiracy fail as a matter of law. A civil conspiracy is "(1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, (3) which causes him special damage." *Lee v. Chesterfield Gen'l Hosp, Inc.*, 289 S.C. 6, 10-11, 344 S.E.2d 379, 381-82 (Ct. App. 1986), citing *Charles v. Texas Co. (Charles I)*, 192 S.C. 82, 5 S.E.2d 464 (1939). It cannot be contended that Travelers's adjustment and resolution of the claim of its insured, Defendant McKenzie, pursuant to their contract injured Cross-Claimants – let alone that it was done for that purpose. Cross-Claimants are strangers to Travelers contract, a fact of which they were very well aware as evidenced by their procurement of an insurance contract of their own with Plaintiff Farm Bureau.

Even if Travelers had breached a contract with Cross-Claimants, it would not amount to civil conspiracy. “A mere breach of contract is not a civil conspiracy; the damages for breach of contract cannot satisfy the requirement of special damages.” HUBBARD AND FELIX, THE SOUTH CAROLINA LAW OF TORTS, 2d ed. p. 387, citing *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989).

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for breach of contract.**

Next, Cross-Claimants allege that Travelers’s purported delay in adjusting its named insured’s claim has damaged them. The fallacy of this allegation is that Travelers’s duties with regard to the adjustment of the claim were owed to its name insured – not to Cross-Claimants.

Similar to the situation presented in *Park v. Safeco*, Cross-Claimants are not parties to the Travelers insurance contract and have no standing to complain about how the claim of the named insured, Defendant McKenzie, was resolved. After all, when they became concerned that their alleged interests had not been protected under Defendant McKenzie’s policy, they could have taken steps then to enforce the provision in the buy and sell agreement that purportedly required that their interests be protected under the policy. Instead, they chose to purchase a policy of their own to protect their interests.

- **Cross-Claimants are not insureds under the Travelers policy and do not have standing to pursue a cause of action for bad faith.**

Finally, Cross-Claimants cannot assert a bad faith claim against Travelers because they are not parties to the Travelers insurance contract. “The elements of an action for bad faith refusal to pay benefits under an insurance contract include: (1) the existence of a mutually binding contract of insurance between the plaintiff and the defendant; (2) refusal by the insurer to pay benefits due under the contract; (3) resulting from the insurer’s bad faith or unreasonable

action in breach of an implied covenant of good faith and fair dealing arising on the contract; (4) causing damage to the insured.” *Cock-N-Bull Steak House, Inc. v. Generali Ins. Co.*, 321 S.C. 1, 6, 466 S.E.2d 727, 730 (quoting *Crossley v. State Farm Mut. Auto. Ins. Co.*, 307 S.C. 354, 359-60, 415 S.E.2d 393, 396-97 (1992)).

CONCLUSION

Ultimately, Cross-Claimants are strangers to the insurance contract between Travelers and Defendant McKenzie. As such, Cross-Claimants’ claims are without legal foundation, as a result of which Travelers is entitled to summary judgment.

For the forgoing reasons, Travelers’s motion for summary judgment is hereby **GRANTED** and all the cross-claims against Travelers are hereby dismissed with prejudice.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-03-03 12:23:18 page 8 of 8

| | | |
|--|---|-------------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF WILLIAMSBURG |) | C/A NO.: 2014-CP-44-00132 |
| |) | |
| South Carolina Farm Bureau Ins. Co., |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | ORDER GRANTING DEFENDANT THE |
| |) | TRAVELERS HOME AND MARINE |
| |) | INSURANCE COMPANY’S MOTION |
| Marion L. Driggers, Shiralee Driggers, |) | FOR SUMMARY JUDGMENT AS TO |
| Tammy D. Floyd, Arthur McKenzie, a/k/a |) | THE CAUSE OF ACTION FOR |
| Arther McKenzie, The Travelers Home) and |) | EQUITABLE INDEMNITY OF |
| Marine Insurance Company, |) | PLAINTIFF |
| The United States of America acting by) and |) | |
| through its agency, The Internal) |) | |
| Revenue Service and The South Carolina) Tax |) | |
| Commission |) | |
| |) | |
| Defendant. |) | |

This matter came before the Court on Defendant The Travelers Home and Marine Insurance Company’s (“Travelers”) Motion for Summary Judgment as to Plaintiff’s claim for equitable indemnity. For the reasons set forth below, Travelers’s motion is **GRANTED**.

FACTUAL BACKGROUND

This declaratory judgment action arises out of two insurance policies issued by two different insurers to different insureds on the same house located in Williamsburg County:

- (1) Policy number 984761288 633 1 –Travelers issued this homeowner’s policy to Defendant Arthur McKenzie on a home located at 200 W. Highway 378 By-pass in Lake City, South Carolina for the period from May 7, 2009 to May 7, 2010.

- (2) Policy number FI 0401219 – Plaintiff South Carolina Farm Bureau Insurance Company (“Farm Bureau”) issued this dwelling fire policy on the same property to Defendant Marion L. Driggers for the period from May 24, 2009 to May 24, 2010.

On or about April 25, 1997, Defendant Tammy Floyd and Lisa Gamble entered into a

Contract for Sale and Purchase of the property. On or about October 13, 2006, Ms. Gamble assigned the Contract for Sale and Purchase to Defendant McKenzie.

On or about November 26, 2009, the insured home was damaged by fire, and Defendant McKenzie made a claim under his Travelers policy. The adjustment of Defendant McKenzie's losses was complicated by tax liens of Defendants The United States of America, acting by and through its agency, The Internal Revenue Service, and The South Carolina Tax Commission. Travelers settled Defendant McKenzie's claims for \$232,073.45, of which the sum of \$116,933.05 has been paid for his attorneys' fees and expenses in connection with said claim, leaving a balance of \$115,140.40. Travelers moved to deposit that amount with the Court pursuant to its interpleader cross-claims. This Court granted that motion under a separate order.

In its Amended Complaint, the only truly direct cause of action against Travelers is for equitable indemnity. On April 11, 2019, Travelers moved for summary judgment on this claim.

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRPC. The purpose of summary judgment is to expedite disposition of cases not requiring the services of the factfinder. *Bankers Trust of S.C. v. Benson*, 267 S.C. 152, 155, 226 S.E.2d 703, 705 (1976).

DISCUSSION

Under South Carolina law, "[i]ndemnity is that form of compensation in which a first party is liable to pay a second party for a loss or damage the second party incurs to a third party. *Town of Winnsboro v. Wiedeman-Singleton, Inc.*, 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), *aff'd*,

307 S.C. 128, 414 S.E.2d 118 (1992). “A right to indemnity may arise by contract (express or implied) or by operation of law as a matter of equity between the first and second party.” *Id.*

Farm Bureau’s own Complaint establishes that there was no contractual right of indemnification between Travelers and Farm Bureau or the Driggers. Specifically, paragraph 11 of the Complaint states, “Defendant McKenzie did insure the property, insuring his ownership interest in the dwelling along with its contents. However, he did so **without noting the interest of Defendants Driggers** per the [contract of sale]. At the time of the said fire loss, the subject property was insured by Defendant McKenzie via a policy with Defendant Travelers.”

In the absence of a contractual right of indemnification, courts have required a “special relationship” between the parties. *See Fountain v. Fred’s Inc.*, 429 S.C. 533, 839 S.E.2d 475 (Ct. App. 2020) (“there must be some kind of relationship between the parties beyond the relationship established by virtue of one party alleging that he was sued because of another party's wrongdoing.”). In South Carolina, a special relationship has been found to exist for the purposes of equitable indemnification between a contractor and subcontractor, a purchaser of a defective vehicle and a seller, a landlord and a general contractor who damaged a tenant's property, a home seller and an exterminator who were both sued by a home buyer for falsely representing that the purchased home was free of termites and moisture, and two former property owners who were both sued by a subsequent property owner for damage to the property. *See Town of Winnsboro v. Weideman-Singleton, Inc.*, 303 S.C. 52, 57, 398 S.E.2d 500, 503 (Ct. App. 1990); *Stuck v. Pioneer Logging Mach., Inc.*, 279 S.C. 22, 301 S.E.2d 552 (1983); *First Gen. Servs. of Charleston, Inc. v. Miller*, 314 S.C. 439, 445 S.E.2d 446 (1994); *Griffin v. Van Norman*, 302 S.C. 520, 397 S.E.2d 378 (Ct. App. 1990); *Addy v. Bolton*, 257 S.C. 28, 183 S.E.2d 708 (1971); *McCoy v. Greenwave Enterprises, Inc.*, 408 S.C. 355, 357, 759 S.E.2d 136, 137 (2014).

In this case, Farm Bureau has failed to show any special relationship with Travelers. Farm

Bureau's Complaint alleges in paragraph fifteen (15) that its own insured, Marion Driggers, did not make any claim under the Farm Bureau policy, nor notify Farm Bureau of the fire, until almost three years from the date of the fire loss. Farm Bureau's basis for the equitable indemnification cause of action against Travelers is set forth in Paragraphs 31 and 32 of the Complaint. Farm Bureau alleges that the "Driggers made a timely claim with Travelers under McKenzie's policy and intended to look to Travelers to pay benefits due for the fire loss in this matter, but Travelers denied his claim. Further, Travelers located Driggers and inquired as to his interest in the property. At that time, it either learned or should have learned of Farm Bureau's coverage and it either failed to notify Farm Bureau of this loss or of its involvement in this loss or it negligently failed to inquire of Driggers as to other insurance coverage which it should have done and had a duty to do in good faith compliance with its professional obligations, and to determine all issues as to coverage so that it could properly evaluate the claims and interests." Thus, Farm Bureau's equitable indemnification claim rests on Travelers's (1) failure to pay Driggers's claim to the Travelers funds, (2) failure to discover the existence of the Farm Bureau policy insuring the property, and (3) failure to notify Farm Bureau of the fire when Farm Bureau's own insured had not notified Farm Bureau or filed a claim.

Farm Bureau has presented no evidence in the form of deposition testimony, affidavit, or otherwise, to establish that Defendant Marion Driggers did in fact make a claim under the Travelers policy, or that Travelers knew of Driggers' alleged interest in the real property (as he is not the owner of record), or that Travelers knew that Driggers had insured the property under a Farm Bureau policy.¹ However, even assuming that each of these allegations is true, none establishes a basis for a claim of equitable indemnification. As Farm Bureau's own Memorandum Opposing Or Responding To Motions By Travelers and Marion L. Driggers (filed July 6, 2020) notes, an insurance policy is a

¹ Counsel for Farm Bureau argues that discovery is ongoing. The court is unpersuaded. This case has been pending since 2014. Plaintiff has had more than ample opportunity to conduct any discovery it deemed necessary.

personal contract between the insurance company and the insured. The insurance carrier's obligations are to the insured and do not pass with the property, unless assigned with the consent of the insurer, or unless "by extraordinary or special and express stipulation of the parties it is made to run with the subject matter." *Crook v. Hartford Ins. Co.*, 175 S.C. 42, 178 S.E. 254 (1935).

Travelers had no obligation to anyone except its own insured, Arthur McKenzie. Any duty McKenzie had to protect Floyd's or the Driggers' interests pursuant to the contract of sale did not implicate Travelers, which was not a party to the contract of sale. Moreover, there is no authority for the proposition that an insurance company has an obligation to investigate the existence of any other policies covering the insured property, or to notify another insurer of a potential claim where that company's own insured has decided not to file a claim. Ultimately, the only relationship between Travelers and Farm Bureau was that they happened to insure the same piece of property. With no special relationship between Farm Bureau and Travelers, Farm Bureau's claim for equitable indemnification fails.

CONCLUSION

For the forgoing reasons, Travelers's motion for summary judgment is hereby **GRANTED** and Farm Bureau's claims for equitable indemnification against Travelers are hereby dismissed with prejudice. As all allegations against Travelers have now been resolved, upon payment of the sum of One Hundred Fifteen Thousand, One Hundred Forty and 40/100 (\$115,140.40) Dollars pursuant to this Court's orders of January 5, 2021 and March 4, 2021, Travelers shall be **DISMISSED** from this action with prejudice.

AND IT IS SO ORDERED.

The Honorable Kristi F. Curtis



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Summary Judgment

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-03-30 11:22:41 page 6 of 6

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4500132

South Carolina Farm Bureau
PLAINTIFF(S)

Marion L Driggers et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's motion to amend the Court's Order of March 30, 2021 is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/09/2021 .

Edward K. Pritchard, III for Marion L Driggers, Shiralee Driggers, Tammy D Floyd
 Thornwell F. Sowell, III
 John Witherspoon Foster
 William Pearce Davis for The Travelers Home and Marine Insurance Company
 Daryl James Corbin for Alice Peterson, Arthur McKenzie a/k/a, Auther McKenzie
 The South Carolina Tax Commission
 Marion L Driggers for Marion L Driggers
 Mariel D. Norton for The Travelers Home and Marine Insurance Company
 John Dwight Hudson for South Carolina Farm Bureau
 William Greyson Land for Shiralee Driggers, Tammy D Floyd
 George John Conits for The Internal Revenue Service, The United States of America
 Marion L Driggers for Marion L Driggers

ADDITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-04-09 16:00:19 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4500132

South Carolina Farm Bureau
PLAINTIFF(S)

Marion L Driggers et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's motion to amend the Court's Order of March 30, 2021 is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/09/2021 .

Edward K. Pritchard, III for Marion L Driggers, Shiralee Driggers, Tammy D Floyd
 Thornwell F. Sowell, III
 John Witherspoon Foster
 William Pearce Davis for The Travelers Home and Marine Insurance Company
 Daryl James Corbin for Alice Peterson, Arthur McKenzie a/k/a, Auther McKenzie
 The South Carolina Tax Commission
 Marion L Driggers for Marion L Driggers
 Mariel D. Norton for The Travelers Home and Marine Insurance Company
 John Dwight Hudson for South Carolina Farm Bureau
 William Greyson Land for Shiralee Driggers, Tammy D Floyd
 George John Conits for The Internal Revenue Service, The United States of America
 Marion L Driggers for Marion L Driggers

ADDITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-04-09 16:00:19 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP4500132

South Carolina Farm Bureau
PLAINTIFF(S)

Marion L Driggers et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Plaintiff's Motion to Alter or Amend the Court's Order of January 5, 2021 is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 04/09/2021 .

Edward K. Pritchard, III for Marion L Driggers, Shiralee Driggers, Tammy D Floyd
 Thornwell F. Sowell, III
 John Witherspoon Foster
 William Pearce Davis for The Travelers Home and Marine Insurance Company
 Daryl James Corbin for Alice Peterson, Arthur McKenzie a/k/a, Auther McKenzie
 The South Carolina Tax Commission
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 Mariel D. Norton for The Travelers Home and Marine Insurance Company
 John Dwight Hudson for South Carolina Farm Bureau
 William Greyson Land for Shiralee Driggers, Tammy D Floyd
 George John Conits for The Internal Revenue Service, The United States of America
 Marion L Driggers for Marion L Driggers

ADDITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Electronic Form 4

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-04-09 15:57:19 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau Ins. Co.,)
)
 Plaintiff,)
)
 vs.)
)
 Marion L. Driggers, Shiralee Driggers,)
 Tammy D. Floyd, Arthur McKenzie, a/k/a)
 Arther McKenzie, The Travelers Home)
 and Marine Insurance Company,)
 The United States of America acting by)
 and through its agency, The Internal)
 Revenue Service and The South Carolina)
 Tax Commission)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2014-CP-45-00132

**ORDER OF DISMISSAL
 WITH PREJUDICE**

It appearing that Defendant The Travelers Home and Marine Insurance Company (“Travelers”) has paid the sum of One Hundred Fifteen Thousand, One Hundred Forty Dollars and Forty Cents (\$115,140.40) pursuant to this Court’s Order of March 30, 2021, Travelers is hereby dismissed from this action with prejudice.

April __, 2021

 The Honorable Kristi F. Curtis



Williamsburg Common Pleas

Case Caption: South Carolina Farm Bureau VS Marion L Driggers , defendant, et al

Case Number: 2014CP4500132

Type: Order/Dismissal

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762

Electronically signed on 2021-04-19 09:52:47 page 2 of 2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau Ins. Co.)
)
 Plaintiff(s))
)
 vs.)
)
 Marion L. Driggers, et. al.)
)
 Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 45-
14 CP45 132

FILED
 2 MAR 7 11:07 AM
 CLERK OF COURT
 WILLIAMSBURG COUNTY
 KINGSTREE, S.C.

Submitted By: J. Dwight Hudson, Esq.
 Address: 1203 48th Ave. N Ste 111 Myrtle Beach SC 29577

SC Bar #: 2753
 Telephone #: 843.692.9889
 Fax #: 843.692.9190
 Other:
 E-mail: hudsonlaw@sc.rr.com

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

DOCKETING INFORMATION (Check all that apply)

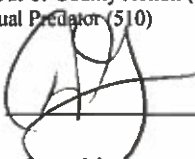
**If Action is Judgment/Settlement do not complete*

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input type="checkbox"/> Breach of Contract (140) <input checked="" type="checkbox"/> Other (199) <p>Declaratory</p> <p>Judgment</p> <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) <p>Previous Notice of Intent Case #
 20____-CP-____-_____</p> <ul style="list-style-type: none"> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture—Consent Order (850) <input type="checkbox"/> Other (899) | <p>Torts – Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Other (399) <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
|---|---|---|--|

Submitting Party Signature: _____



Date: March 6, 2014

A CERTIFIED TRUE COPY
 Sharon W. Stagers
 CLERK OF COURT
 WILLIAMSBURG COUNTY

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

FOR MANDATED ADR COUNTIES ONLY

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

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

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

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-45-_____

14 CP45 132

South Carolina Farm Bureau Mutual)
Insurance Company,)

Plaintiff,)

vs.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company, The)
United States of America acting by and)
through its agency, The Internal Revenue)
Service and The South Carolina Tax)
Commission,)

Defendants.)

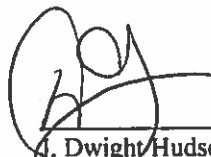
SUMMONS
(Declaratory Judgment Action)

2014 MAR -7 PM 1:07
WILLIAMSBURG COUNTY
CLERK OF COURT
KINGSTREE, S.C.

FILED

TO: THE DEFENDANTS NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, which has been filed with the Clerk for said County, in Horry and to serve a copy of your answer to the said complaint on the subscribers at their office at 1203 48th Avenue North, Suite 111, Myrtle Beach, South Carolina, 29577 within thirty (30) days after the service hereof: exclusive of the day of such service; and if you fail to answer the complaint, within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the complaint.



J. Dwight Hudson, Esquire
Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

Attorney For: Plaintiff

Dated: March 6, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-45-_____

14 CP45 13 2

South Carolina Farm Bureau Mutual)
Insurance Company,)

Plaintiff,)

vs.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company, The)
United States of America acting by and)
through its agency, The Internal Revenue)
Service and The South Carolina Tax)
Commission,)

Defendants.)

COMPLAINT
(Declaratory Judgment Action)

FILED
2014 MAR -7 PM 1:08
WILLIAMSBURG COUNTY
CLERK OF COURT
KINGSTREE, S.C.

The Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, complaining of the Defendants herein, would show unto this Honorable Court as follows:

1. The Plaintiff, South Carolina Farm Bureau Mutual Insurance Company (Hereinafter, SCFB) is a company organized and existing under and by virtue of the laws of the State of South Carolina and is in the business of offering and/or providing insurance coverage to members of South Carolina Farm Bureau Federation. The Plaintiff is organized to do business and is doing business in Williamsburg County, South Carolina.

2. Upon information and belief, the Defendants Marion L. Driggers and Shiralee Driggers are husband and wife, and they are citizens and residents of Williamsburg County, South Carolina.

3. Upon information and belief, the Defendant Tammy D. Floyd is a citizen and resident of either Williamsburg County, South Carolina or Horry County, South Carolina.

4. Upon information and belief, the Defendant Arthur McKenzie is a citizen and resident of Williamsburg County, South Carolina.

5. Upon information and belief, the Defendant, The Travelers Home and Marine Insurance Company is a company organized and existing under and by virtue of the laws of one of the states of the United States, is organized to do business and is doing business in Williamsburg County, South Carolina and is in the business of offering and/or providing insurance coverage.

6. Upon information and belief, the Defendant, The United States of America acting by and through its agency the Internal Revenue Service is an agency, division or department of the federal government.

7. Upon information and belief, the Defendant, The South Carolina Department of Revenue, is an agency, division or department of the government of the State of South Carolina.

8. On or about November 26, 2009, what appears to have been an intentionally set fire damaged or destroyed a dwelling (Hereinafter referenced as "the subject property") which is more particularly described as follows:

All that certain piece, parcel or tract of land with an address of 3328 Turbeville Highway (also known as 200 W. Hwy 378 Bypass, Lake City, South Carolina) lying, being and situate in Williamsburg County, South Carolina, containing three and seven hundred twenty one thousandths (3.721)

acres, being delineated as Tract No. 2 on a plat thereof prepared by L.M. Coleman , III, R.L.S., dated March 9, 1984, and recorded in the Office of the Clerk of Court for Williamsburg County in Plat Book 34 at page 186 and bounded and described as follows, to wit: On the Northwest by lands of Heirs of Kenneth B. Floyd and Tract No. 1 as shown on the plat hereinabove referred to; on the Northeast by other lands of C.R. Coker, a ditch being the line; and on the South by US Highway 378. The same being the identical tract of land conveyed to E.L. Matthews by Blue, Inc., by deed dated the 15th day of November 1991, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book 273 at page 230 and thereafter conveyed by the said E.L. Matthews to Tammy D. Floyd as appears on the records of Williamsburg County. Tax Map #45-118-46.

9. Prior to and at the time of the said fire loss, the subject property was titled to Defendant Tammy D. Floyd, the daughter of Defendants Marion L. Driggers and Shiralee Driggers. Defendant Floyd held the title to the property on behalf of or in partnership with her parents, Defendants Driggers.

10. Prior to and at the time of the said fire loss, the property was occupied by tenant and Defendant Arthur McKenzie pursuant to a "rent to own" agreement under the terms of which Defendant McKenzie was to insure the property including the interests of Defendants Driggers and/or Floyd by listing them as the loss payees/insureds or additional insureds.

11. Defendant McKenzie did insure the property, but did so without noting the interest of Defendants Driggers as per the agreement referenced above. At the time of the said fire loss, the subject property was insured by Defendant McKenzie via a policy with Defendant Travelers.

12. Under the Travelers policy, **(attached & incorporated as EXHIBIT B)** Defendant Arthur McKenzie was the sole named insured on Homeowners Policy No. 984761288 633 1 for policy period 5/07/09 - 5/07/10 providing, in relevant part, the following coverage:

| | | |
|----|--------------------|-----------|
| A: | Dwelling: | \$287,000 |
| B. | Other Structures: | \$ 28,700 |
| C. | Personal Property: | \$200,900 |
| D. | Loss of Use: | \$ 86,100 |

13. Because Defendants Driggers were concerned that Defendant McKenzie would not insure their interests in the property as agreed, and because they wanted to be certain their interests were protected, Defendants Driggers also insured the property, obtaining coverage through the Plaintiff, South Carolina Farm Bureau Mutual Insurance Company.

14. Under the Farm Bureau policy, (attached & incorporated as EXHIBIT A) Defendant Marion L. Driggers was the named insured on Homeowners Policy No. FI 0401219 for policy period 5/24/09 - 5/24/10 providing, in relevant part, the following coverage:

| | | |
|----|-------------------|-----------|
| A: | Dwelling: | \$118,000 |
| B. | Other Structures: | \$ 5,900 |
| D. | Loss of Use: | \$ 11,800 |

15. Upon information and belief, claims have been made by the insureds under both policies. However, the Plaintiff did not receive notice of this fire, nor any claim from the Insured, Marion L. Driggers, until about October 30, 2012, approximately two (2) years and eleven (11) months after the subject fire loss, about a month prior to the running of the statute of limitations for negligence/tort claims, among others.

16. The Plaintiff is aware of potentially applicable statute §38-75-20, *SC Code. Ann.*, which provides that if two or more fire insurance policies are written upon the same property, "they are considered to be contributive insurance, and if the aggregate sum of all such insurance exceeds the insurable value of the property, as agreed by the insurer

and the insured, each insurer, in the event of a total or partial loss, is liable for the pro rata share of insurance."

17. Where other insurance also covers a loss, Farm Bureau's Policy provides as follows:

7. OTHER INSURANCE. If a loss covered by this policy is also covered by other insurance, a service contract or a warranty provision, 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.

Conditions (A)(7), p. 25.

18. As to insurable interest and limit of liability, Farm Bureau's Policy provides as follows:

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 the insured for more than the amount of the insured's interest at the time of the loss ; or
- b. for more than the applicable limit of liability.

Conditions (A)(1), p. 21.

19. Farm Bureau's Policy also obligates the insured to perform certain duties after a loss, to wit;

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

- b. give prompt notice to us or our agent;

20. The Plaintiff is informed and believes that the aggregate sum of insurance from the Travelers and Farm Bureau policies exceed the insurable value of the property within the meaning of §38-75-20, *SC Code. Ann.* and that per the said statute, *Farm Bureau should not be liable for more than its pro rata share of the insurance.*

21. The Plaintiff is further informed and believe that the amount of the Travelers coverage greatly exceeds any insurable interest that Defendant McKenzie may have as a tenant under the subject "rent to own" contract and that per the terms of the contracts and agreements between the individual parties, that Defendant McKenzie agreed to and was obligated to insure the ownership interests of Defendants Driggers and Floyd. Therefore, the Plaintiff is informed and believes that *the Travelers Policy also insures the interests of the titled and/or real owners of the property, Defendants Driggers and/or Floyd.*

22. By the terms of the "Other Insurance" policy clause alleged above, the Plaintiff is informed and believes that any *insurance proceeds due from Farm Bureau to its insured, if any, should be in the proportional amount that its policy limit bears to the total amount of insurance covering the loss.*

23. By the terms of the "Insurable Interest and Limit of Liability" policy clause alleged above, the Plaintiff is informed and believes that *Farm Bureau would not be liable to its insured for more than the amount of the insured's interest at the time of the loss.*

24. Farm Bureau's insured(s) did not notify the Plaintiff of this loss nor make a claim under the policy until October 30, 2012 - about 2 years and 11 months after the loss by this apparently intentional fire. Per the terms of the "Duties After Loss" policy provision, the insured was obligated to give **prompt** notice of the loss to the company and/or its agent. Having not received any notice until the Statute of Limitations was about to run, *the Plaintiff was substantially prejudiced in that its opportunity to investigate this fire loss was completely obstructed and its opportunity to locate the responsible party was completely denied.*

25. The Plaintiff is informed and believes that the Defendant, the United States of America, by and through its agency, The Internal Revenue Service, may have some interest in the insurance proceeds by virtue of certain tax liens filed against Defendant McKenzie of record in various counties, including - but not limited to- two (2) liens of record in Florence County - (1) Serial Number 317830006, filed by Small Business/Self Employed Area #3; Signed by R.A. Mitchell for Debra Alford, dated 9/20/06 and recorded 9/29/06 in the Office of the Clerk of Court for Florence County **in the stated amount of \$1,192,517.05**; and (2) Serial Number 420097708, filed by Small Business/Self Employed Area #3; Signed by R.A. Mitchell for Debra Alford, dated 2/6/08 and recorded 2/19/08 in the Office of the Clerk of Court for Florence County **in the stated amount of \$46,527.18**. Other liens may or may not exist.

26. The Plaintiff is also informed and believes that the Defendant, the South Carolina Department of Revenue, may also have tax liens of record and/or as to Defendant McKenzie.

27. This action is brought pursuant to §15-53-10, et. seq. *SC Code Ann.* The Plaintiff asks that per that Statute, this Court inquire into the matter and declare the rights, status and legal relations as between the Plaintiff and Defendants concerning issues of insurance coverage including those issues referenced above.

28. The Plaintiff asks that this Court declare the following:

A. The insurable value of the property at the time of the subject loss;

B. The ownership/rental/insurable interests, if any, held by the parties in the property at the time of the subject loss;

C. The amount due from each policy and to whom that amount is due on account of this loss, if any, considering all relevant factors,

including ownership, valuation, the damage incurred, and the relevant policy provisions, including the Farm Bureau provisions cited above;

D. That no sums are due from Farm Bureau to its insured for this loss based upon the insured's late notice having substantially prejudiced and/or denied Farm Bureau's right to investigate this apparently intentionally set fire.

29. The Plaintiff seeks an award of costs and/or attorney's fees, directly or by way of offset, for the necessity of bringing this action.

WHEREFORE, Plaintiff prays that this Court inquire into this matter, and issue its judgment as follows:

1. Declaring the rights, status and other legal relations between the parties as relates to coverage under the insurance policies described herein and Declaring the following:

A. The insurable value of the property at the time of the subject loss;

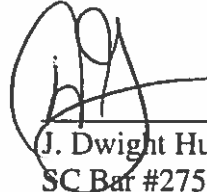
B. The ownership/rental/insurable interests, if any, held by the parties in the property at the time of the subject loss;

C. The amount due from each policy, if any, and to whom that amount is due on account of this loss, considering all relevant factors, including ownership, valuation, the damage incurred, and the relevant policy provisions, including the Farm Bureau provisions cited above;

D. That no sums are due from Farm Bureau to its insured for this loss based upon the insured's late notice having substantially prejudiced and/or denied Farm Bureau's right to investigate this apparently intentionally set fire.

2. For costs, Attorney's fees and for such other relief as this Court may deem just and proper.

s/ J. Dwight Hudson, Esq.



J. Dwight Hudson, Esquire
SC Bar #2753

Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

Attorney for Plaintiff

Dated: March 6, 2014

EXHIBIT A

**South Carolina Farm Bureau
Mutual Insurance Company or
Southern Farm Bureau Casualty or
Palmetto Casualty Insurance Company**

DWELLING FIRE POLICY

FORM DF3



**YOUR POLICY CONSISTS OF THIS BOOKLET AND THE APPROPRIATE
DECLARATIONS, FORMS AND ENDORSEMENTS.**

**COVERAGES APPLY ONLY WHEN PROPERLY SHOWN ON THE
DECLARATIONS PAGE.**

FORM DF3 (12/02)

YOUR DWELLING FIRE POLICY QUICK REFERENCE

DECLARATIONS PAGE

Your Policy Period
Your Name and Address
Your Dwelling
Endorsements
Coverages and Amounts of Insurance
Mortgagee Identification

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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 South Carolina Farm Bureau Mutual Insurance Company, Southern Farm Bureau Casualty 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 **you** and residents of **your** household who are:
 - a. **your** relatives, or
 - b. other persons under the age of 21 and in the care of any person named 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. **Business** means a full-time, part-time or occasional trade, profession or occupation, whether permanent or temporary, including farming.
6. **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.
7. **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.
8. **Occurrence** means an accident, but does not include exposure to conditions, which results during the policy period in:
 - a. **bodily injury**; or
 - b. **property damage**.
9. **Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant, or fuel including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes but is not limited to materials to be recycled, reconditioned or reclaimed.
10. **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.
11. **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**.
12. **Residence premises** means the dwelling, other structures, and grounds which are shown in the Declarations and not used for **business**.
13. **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.

COVERAGES

This insurance applies to the **residence premises**, coverages for which a Limit of Liability is shown, and Perils Insured Against for which a Peril Group is shown in the Declarations.

COVERAGE A - DWELLING PROTECTION

We cover:

1. the dwelling on the **residence premises** shown in the Declarations, used principally as a private residence, including structures attached to the dwelling;
2. attached structures, steps, equipment and accessories which form a permanent part of the dwelling. This includes, but is not limited to: floor coverings, appliances, counters, and cabinets. But we do not cover satellite dish antenna systems or related equipment;
3. oil and gas drums or tanks, connected to the dwelling which furnish heating or cooking fuel;
4. 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**; and
5. decks and porches forming living or recreation space for the dwelling.

This coverage does not apply to land, and will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the dwelling covered. Nor does this coverage apply to any water whatsoever.

COVERAGE B - OTHER STRUCTURES PROTECTION

We cover other structures on the residence premises separated from the dwelling by clear space:

1. structures connected to the dwelling by only a fence, utility line or similar connection are considered to be other structures; and

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2. outdoor equipment used to service the residence premises.

This coverage does not apply to land, and will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the other structures covered. Nor does this coverage apply to any water whatsoever.

We do not cover:

1. other structures used in whole or in part for business, including storage of any business property.
2. barns, outbuildings, or sheds used in whole or in part as farm barns, farm outbuildings, or farm sheds;
3. other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage; or
4. satellite dish antenna systems or related equipment for more than \$500, unless separately insured and a premium paid for the coverage.

COVERAGE C - PERSONAL PROPERTY PROTECTION

We cover personal property only when this coverage and a Limit of Liability are shown in the Declarations. This personal property must be usual or incidental to the occupancy of the residence premises as a dwelling and owned or used by an Insured while it is at the residence premises. At your request, we will cover personal property owned by:

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

Our limit of liability for personal property away from the residence premises is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater. Personal property in a newly acquired principal residence is not subject to this limitation for the 30 days from the time you begin to move the property there.

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. accounts, bills, bullions, currency, deeds, evidences of debt, manuscripts, money or securities;
3. animals, birds or fish;

4. aircraft, hovercraft and parts for aircraft or hovercraft. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used to carry people or cargo. Hovercraft means a self-propelled motorized ground effect vehicle, and includes, but is not limited to, hovercraft and air cushion vehicles.
5. watercraft, other than rowboats and canoes for more than \$500, unless separately insured and a premium paid for the coverage;
6. credit cards or fund transfer cards;
7. land. We will not cover costs to replace, rebuild, stabilize or otherwise restore the land necessary to support the buildings covered. Nor do we cover any water whatsoever.
8. motor vehicles, recreational vehicles and any other motorized land conveyances unless separately insured and a premium paid for the coverage. This includes:
 - a. all-terrain, four-wheeler type vehicles, designed for recreational use;
 - b. equipment and accessories; or
 - c. 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:
 - (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.

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

- a. lawn and garden tractors with a 30 horsepower rating or less, but not recreational vehicles; or
 - b. designed or used for assisting the handicapped;
9. property of roomers, boarders and other tenants, except property of roomers and boarders related to an insured;
 10. property rented or held for rental to others off the residence premises; nor
 11. satellite dish antenna systems or related equipment.

COVERAGE D - LOSS OF USE PROTECTION

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

1. **Fair Rental Value.** If a loss to your property described in Coverage A caused by a Peril Insured Against under this policy 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 180 consecutive days from the date of loss. We will pay only 1/6 of the limit of liability for each month the rented part of the Covered Item at the described location is unfit for its normal use. Payment under this coverage does not reduce the Coverage A limit of liability by the amount paid.
2. **Additional Living Expenses.** We cover additional living expenses if a loss to your property described in Coverage A or C caused by a Peril Insured Against under this policy 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 settle elsewhere. But in any event, that time will not exceed 180 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 the Additional Living Expense or Fair Rental Value loss as provided under 1 and 2 above for no more than a total of fourteen days.

The periods of time under 1, 2, and 3 above are not limited by expiration of this policy.

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.

1. **Arson Award.** At our option, we will pay 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:

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- (1) Collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its current intended purpose.
 - (2) A building or any part of a building that is in danger of falling down or caving in is not considered to be in a state of collapse.
 - (3) A part of a building that is standing is not considered to be in a state of collapse even if it has separated from another part of the building.
 - (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- b. We insure for direct physical loss to covered property involving collapse of a building or any part of a building if the collapse was caused by one or more of the following:
- (1) 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.

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 (2), (3), (4), (5) and (6) unless the loss is a direct result of collapse of a building or any part of a building.

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

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

3. **Damage from Fungi.** If water causes covered damage, 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 Additional Coverage does not increase the limit of liability applying to any coverage.

4. 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 to that property; or
- 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.

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 limit of liability that applies to the dwelling is available for debris removal expense.

- c. We will also pay your reasonable expense for the removal of fallen trees from the residence premises provided the tree damages property insured under Coverages A or B, and a Peril Insured Against causes the tree to fall. Our limit of liability for this coverage will not be more than \$250 in the aggregate for any one occurrence.

d. We do not cover any expense 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; nor
- (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.

5. 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 additional coverage.

6. **Building Additions and Alterations.** Under Coverage C, and when no Coverage A — Dwelling Protection is provided, we cover the building improvements or installations made or acquired at your expense, to that part of the residence premises used exclusively by you. The limit of liability for this coverage will not be more than 10 percent of the limit of liability that applies to Coverage C.

Payment under this coverage reduces the Coverage C limit of liability by the amount paid.

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 Protection. However, we do not pay any loss assessment for damage caused by earthquake or land shock waves or tremors before, during or after a volcanic eruption.

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.

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

8. **Property Removed.** We insure covered property against direct loss from any cause while endangered by a Peril Insured Against and subsequently removed from your residence premises. Protection is limited to a 30-day period from the date of removal and applies on a pro rata basis to any property not removed. This coverage does not change the limit of liability that applies to the property being removed.
9. **Reasonable Repairs.** We will pay the reasonable cost you incur for necessary repairs made solely to protect covered property from further damage if a Peril Insured Against causes the loss. This coverage does not increase the limit of liability applying to the property being repaired.
10. **Trees, Shrubs and Other Plants.** We cover your trees, shrubs, plants or lawns on the residence premises for loss caused by fire or lightning only.

The limit of liability for this coverage will not be more than 5% of the Coverage A limit of liability or more than \$250 for any one tree, shrub, or plant. This does not increase the

limit of liability of Coverage A. We do not cover property grown for business purposes.

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

PERILS INSURED AGAINST

We insure for direct physical loss to property described in Coverage A – Dwelling and Coverage B – Other Structures. However, we do not insure loss:

1. involving collapse, other than as provided in Additional Coverages 2;
2. 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 the system and appliances of water;
 - b. freezing, thawing, pressure or weight of water, ice, hail, snow, or sleet whether driven by wind or not, to a:
 - (1) fence, pavement, patio or swimming pool;
 - (2) foundation, retaining wall or bulkhead;
 - (3) pier, wharf or dock; or
 - (4) gutter;
 - c. theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen;
 - d. wind, hail, ice, snow or sleet to:
 - (1) awnings, signs, or outdoor radio and television antennas and aerials including their lead-in wiring, masts or towers; or
 - (2) trees, shrubs, plants or lawns;
 - (3) structure, other than a building, including the supports and screens, with a roofline covering of cloth, metal, fiberglass or plastic, whether or not the structure is attached to a building;

- (4) screens, including their supports, around a pool, patio or other areas;
 - (5) fences, property line and similar walls, including seawalls;
 - (6) cabanas, gazebos, greenhouses, hothouses, pergolas, slathouses, trellises;
 - (7) outdoor equipment used to service the residence premises;
 - (8) structure, including the property in or on the structure, located in whole or in part in or over water.
- e. vandalism and malicious mischief, if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
- f. 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 or automatic fire protective sprinkler system or from within a household appliance;
- g. (1) wear and tear, marring or scratching, or deterioration;
- (2) inherent vice or 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:
- (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. This exclusion does not apply to Additional Coverage 3.
- (4) contamination, smog or smoke from agricultural smudging or industrial operations;
- (5) release, discharge or dispersal of contaminants or pollutants;
- (6) settling, cracking, shrinkage, bulging or expansion of driveways, pavement, patios, foundations, walls, floors, roofs or ceilings; or
- (7) birds, vermin, rodents, insects or domestic animals, 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.

If any of these (items G 1-7 above) 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.

3. excluded under Exclusions.

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 the Exclusions.

1. **Fire or Lightning.**

2. **Explosion.** This peril does not include loss by explosion of steam boilers or steam pipes, if owned or leased by you or operated under your control.

3. **Wind or Hail.** This peril does not include loss:

a. to the interior of a building or 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; or

b. to the following property when outside of the building or attached to the building:

(1) awnings, signs or radio or television antennas or aerials, including lead-in wiring, masts or towers; or

(2) rowboats and canoes;

4. **Riot or civil commotion.**

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

6. **Smoke**, meaning sudden and accidental damage from smoke. This peril does not include loss caused by smoke from agricultural smudging or industrial operations.
7. **Weight of Ice, Sleet or Snow**, meaning damage to a covered item caused by accumulation of ice, sleet or snow only but not hail, rain or other form of precipitation. This peril does not include loss to the following property when outside of the building or attached to the building:
 - a. carport cover, patio, patio cover, driveway, pavement, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock;
 - b. awnings;
 - c. rowboats and canoes;
 - d. fences, property line and similar walls, including seawalls.
8. **Breakage of glass or safety glazing material** which is part of a dwelling, building, storm door or storm window.

This peril does not include loss on the residence premises if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed or a mobile home or manufactured home being installed is not considered vacant.

9. **Falling objects**. This peril does not include loss to the inside of a building or 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.
10. **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. We also pay for tearing out and replacing any part of the building on the residence premises necessary to repair the system or appliance from which the water or steam escaped.

This peril does not include loss:

- a. to any covered property caused by constant or repeated seepage or leakage over a period of weeks, months or years;
- b. to any covered 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;
- 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 below; nor
 - f. on the residence premises caused by accidental discharge or overflow which occurs off the residence premises;
 - g. caused by overflow or backup of water in any form in gutters.
11. **Sudden and accidental tearing apart, cracking, burning or bulging** of steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.

This peril does not include loss to any covered property:

- a. caused by or resulting from freezing except as provided in the peril of freezing below;
 - b. caused by smog, or the presence, growth, proliferation, spread or any activity of rust, bacteria, mold, wet or dry rot, or fungi; or
 - c. caused by constant or repeated seepage or leakage over a period of weeks, months, or years.
12. **Freezing of plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, but not gutters.**

This peril does not include loss:

- a. on the residence premises while the dwelling is vacant, unoccupied or being installed, unless you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water.
- b. to any covered property caused by constant or repeated seepage or leakage over a period of weeks, months or years;
- c. to any covered property caused by smog, or the presence, growth, proliferation, spread, or any activity of rust, bacteria, mold, wet or dry rot, or fungi;
- d. on the residence premises caused by accidental discharge or overflow which occurs off the residence premises.
- e. caused by overflow or backup of water in any form in gutters.

13. **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 30 consecutive

days immediately before the loss. A dwelling under construction or a mobile home or manufactured home being installed is not considered vacant.

Also, this peril does not include loss to any computer, computer system, network, hardware, program, **electronic data**, software, 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.

14. **Vehicles owned or operated by the insured or by a tenant of the residence premises**, resulting from actual physical contact of such a vehicle with covered property or with the building containing covered property. However, we do not cover loss to any outdoor equipment, fences, driveways, walks, trees, shrubs and plants, or retaining walls not constituting a part of a covered building.

EXCLUSIONS

We do not insure for loss caused directly or indirectly for any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

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.
2. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mudflow; erosion, earth sinking, contracting, expanding, rising or shifting. However, if direct loss by fire or explosion ensues, then we will pay for the ensuing loss only.
3. **Water Damage**, meaning:
 - a. flood, whether natural or manmade, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
 - b. water or water-borne matter which 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.

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

4. **Power Failure or Power Interruption**, meaning the failure or interruption of power or other utility service if the failure or interruption 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.

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

6. **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.

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

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.

7. **Terrorism Exclusion.** Regardless of the amount of damage and losses, this Terrorism 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, or
- b. that could cause the release or escape of pathogenic or poisonous biological or chemical materials; or
- c. to any incident that directly or indirectly results 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.

8. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of the Conditions.
9. **Intentional Acts**, meaning any loss arising out of any act committed:
 - a. by or at the direction of any insured;
 - b. with the intent to cause a loss; or
 - c. in a domestic dispute between insureds, family members, or others.
10. **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) maintenanceof 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.

11. **We do not insure for loss under any coverage regardless of whether one or more of the items listed in paragraph 10 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 10a and 10b above unless the ensuing loss is itself a loss excluded by this policy.

12. **Asbestos and Lead 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 lead, unless the asbestos or lead pipes, lead paint, or any material containing lead, is itself damaged by a Peril Insured Against;

- 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 lead;
- c. any governmental direction or request declaring that asbestos material, lead paint, lead pipes, or any material containing lead, 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.

13. 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.

14. 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, or any other gas or any sound or light.

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

16. **Collapse,** other than as provided in Additional Coverages only.

17. **Theft,** unless provided for by an endorsement and an additional premium paid.

18. We do not cover loss to lawns, plants, shrubs or trees outside of buildings except as shown in Additional Coverages.

19. We do not cover the following loss or damage to Dwellings, Other Structures, or Personal Property unless shown as covered in Additional Coverages for:

- a. Wear and tear, marring or scratching, or deterioration;

- b. Inherent vice or latent defect;
- c. Mechanical breakdown;
- d. 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:
 - (1) caused by or resulting from;
 - (2) contributed to by; or
 - (3) 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. This exclusion does not apply to Additional Coverage 3.

- e. Contamination, smog or smoke from agricultural smudging or industrial operations;
- f. Settling, cracking, shrinkage, bulging or expansion of pavement, patios, foundations, walls, floors, roofs or ceilings; or
- g. Birds, vermin, rodents, insects or domestic animals, whether or not, in whole or in part:
 - (1) caused by or resulting from;
 - (2) contributed to by; or
 - (3) 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.

20. 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, program, software, data, information, repository, microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of an insured or others.

- 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.
- 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.

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

CONDITIONS

- A. This section includes your duties after a loss occurs and how claims are handled.
 - 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 the 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 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. give prompt notice to us or our agent;
 - c. (1) protect the property from further damage;
 - (2) make reasonable and necessary repairs to protect the property;
 - (3) keep an accurate record of repair expenses; and

- (4) cooperate with us in the investigation and settlement of any claim;
- d. 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;
- e. as often as we reasonably require:
 - (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;
 - (4) allow us to obtain from you and any other person seeking coverage, separate recorded statements; and
 - (5) submit to examination(s) under oath and sign and swear to it;
- f. 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; and
 - (2) the interest of the insured and all others in the property involved and all liens on the property; and
 - (3) other insurance, service agreements, or warranty provisions which may cover the loss; and
 - (4) changes in title or occupancy of the property during the term of the policy; and
 - (5) specifications of damaged buildings and detailed repair estimates; and
 - (6) the inventory of damaged personal property described in 2d above; and
 - (7) receipts for additional living expense incurred or records that support the fair rental value loss.

3. Loss Settlement. 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;
- (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. **Actual cash value** will include consideration of fair market value, age, and condition of the item in question at the time of the loss.

- 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 on the same premises; or
- (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 the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:

- (a) excavations, foundations, piers, or any supports which are below the

under-surface 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; or

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

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

(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.** If a loss covered by this policy is also covered by other insurance, a service contract or a warranty provision, 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.
8. **Suit Against Us.** No action can be brought against us under this policy unless the policy provisions have been complied with and the action is started within the time allowed by law.
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:
 - 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 to us by an insured.
12. **Mortgage Clause.** The word mortgagee includes trustee.

If a mortgagee is named in this policy, any loss payable under Property Coverages 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 caused by a Peril Insured Against, if the mortgagee:

- a. notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;

- b. pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. 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. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

14. **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.
- c. This policy does not apply to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

15. **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 this policy is void. We will not pay you or any other insured for this loss.

16. **Unearned Premium Clause.** If a loss under our policy is payable or has been

paid, the Company has the option to:

- a. reduce **your** coverages 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 a loss to a covered item, the deductible stated on **your** latest Declarations will be applied per occurrence. The deductible will apply separately to each covered item. It will be deducted from the amount of the covered loss. This loss deductible clause shall not apply to the Fire Department Service Charge, Arson Award, Loss Assessment, or Trees, Shrubs and other Plants.
19. **Change in Ownership, Renting or Leasing.** This policy does not apply if:
 - a. there is a change in ownership of the dwelling to any other person or organization;
 - b. **you** rent or lease an owner occupied dwelling to a person, other than a child or parent of the named **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.

B. The following Conditions also apply to this policy.

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 policy provision 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 canceled or nonrenewed for failure to maintain 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 the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.
 - d. 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. Proof of mailing will be sufficient proof of notice. The written notification will be:
 - (1) 10 days in advance of the date of cancellation if the reason is for nonpayment of:

- (a) any premium due us; or
- (b) annual membership dues to the Farm Bureau Federation;
- (2) 30 days in advance of the date of cancellation for the reasons below:
 - (a) misrepresentation, fraud or withholding of material when the policy was obtained or when a claim was submitted;
 - (b) substantial change or increased hazard in the risk we originally agreed to insure;
 - (c) substantial breaches of **your** contractual duties, conditions or warranties;
 - (d) 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.
 - (e) any other reason lawfully permitted;

e. Subsection (2) (a) through (d) above do not apply to this policy if it has been in effect for less than 90 days and is not a renewal of a previously existing policy. Policies in effect for less than 90 days may be cancelled for any reason by furnishing 30 days written notice of cancellation, unless the reason is for nonpayment of:

- (1) any premium due us; or
- (2) annual membership dues to the Farm Bureau Federation;

in which case we will furnish 10 days written notice.

7. **Nonrenewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.
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.** 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.
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 premises and property of the deceased covered under the policy at the time of death;
 - b. **insured** includes, with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.
12. **Payment of Premium.** Checks in payment of your premium are accepted subject to collection. If a check 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 the policy or provide any past or future coverage.
- 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 an 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.

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.

MUTUAL POLICY CONDITIONS

Applies only to South Carolina Farm Bureau Mutual Insurance Company

This policy is issued by a mutual company having special regulations lawfully applicable to

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its organizations, membership, policies or contracts of insurance, of which the following shall apply to and form a part of this policy:

By virtue of this policy, the policyholder is a member of the Company. Each member shall be entitled to cast only one vote at all meetings of the Company. This vote may be in person or by proxy.

This insured is hereby notified that maintaining membership in the Farm Bureau Federation is a condition precedent to insurance coverage under this policy.

The policyholder shall participate in the return of unused premiums (dividends) to the extent and on the conditions determined, fixed and declared by the Board of Directors in accordance with the law.

This policy is Nonassessable. The holder of this policy is not subject to any contingent liability, nor liable to assessment.

The policyholder is hereby notified that by virtue of this policy he is a member of the South Carolina Farm Bureau Mutual Insurance Company and that the bylaws of the Company fix the annual meeting at 12:00 o'clock Noon on the last Thursday in October of each year at the Company's Home Office.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized agent of this Company.

President

Secretary

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

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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

PARTICIPATING CONDITIONS

For Policies Issued in Southern Farm Bureau 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

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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

EXHIBIT B

DRIGGERS



May 8, 2009

Policy Number 984761288 633 1
Policy Period 05/07/09 - 05/07/10
12:01 AM STANDARD TIME AT THE RESIDENCE PREMISES

ARTHUR MCKENZIE
PO BOX 1533
LAKE CITY SC 29560

Welcome to Travelers!

Welcome!

Thank you for choosing Travelers for your homeowners insurance. We truly appreciate your business, and we're always available to assist you with claims, questions or additional insurance needs.

QUESTIONS? CONTACT US!

| | |
|---|---------------------------------|
| Policy questions or changes | 843.374.8539 |
| Claim Service | 1.800.CLAIM93
1.800.252.4633 |
| Billing and Payment Information | 1.877.485.0832 |
| Online Service | mytravelers.com |

The enclosed, personalized policy package was created just for you. You will find important documents related to your Travelers policy and coverage:

Your New Insurance Policy, which includes your Declarations, policy form and endorsements. Please take a moment to review these important materials, especially your Declarations Page, which shows the coverages and limits you have selected.

24/7/365 Claim Service - Doing More to Get Your Home Back In Order
If you need us, we'll be there. Just call our toll-free claim service number 1.800.252.4633 (1.800.CLAIM33) 24 hours a day, 365 days a year. We have highly trained representatives nearby, ready to make the claim process as easy as possible for you.

On behalf of MOORE & ASSOCIATES, we look forward to serving you.

Sincerely,

Joseph Lacher
Chief Executive Officer
Personal Lines

P.S. We offer other coverages designed to protect your assets, including car insurance, valuable items, additional liability (for lawsuits), boat and yacht, flood, and identity theft protection. Contact your agent for more information.

PL-12748 7-08



Water

Water

Everywhere ...

Am I protected from Flood? PROBABLY NOT!

Flooding occurs in EVERY state! Many people find out too late that they are at risk for flooding, and even worse that their property insurance doesn't cover flood damage.

- Your Homeowners policy DOES NOT cover flood loss to your home and contents.
- In certain areas, the chance of a flood loss is 25% greater than a loss due to a fire during a 30-year mortgage.
- Six out of every ten declared disasters involve flooding!
- Homes in areas where there is new construction or where there have been other events, such as forest fires, may be in greater danger than in the past because of changes to the land around them.
- 25% of all floods occur outside of a high-risk flood area.
- Federally backed mortgages in certain areas require flood insurance policies for the life of the mortgage.

To ensure that your property and belongings are protected, call your Independent Insurance agent at (843) 374-8539.

Even if you already have a flood policy, you may want to discuss coverages with your agent to ensure that your policy is up to date.



PL-8208 Rev. 5-03

TRAVELERS 

Your privacy . . . Is our concern

WHAT WE MEAN WHEN WE TALK ABOUT "PRIVACY"

Your privacy is important to us. When we sell an insurance policy to a person we need information about the person or property that we're insuring. We consider this private and have taken steps to keep it confidential.

We want you to know about our privacy policy. The privacy policy tells you the kinds of information we get about you, where we get it, and with whom, if anyone, we may share it.

This brochure describes our privacy policy, procedures and practices for individuals who seek or get auto, home and other personal liability and property insurance for personal, family or household needs.

WHAT KIND OF INFORMATION WE HAVE AND WHERE WE GET IT

You give us most of what we need in the application process. To make sure what we have is correct we may need to check with you by phone or mail.

You may be asked to give us more details in writing or over the phone. Plus, we may receive and check your past insurance claims from insurance support organizations or your former insurers.

As allowed by law, we may ask for credit and other consumer reports from consumer reporting agencies concerning your application for insurance or any renewal of insurance. Information given to us by an insurance support organization, including consumer reporting agencies may be retained by them and disclosed to other persons.

For auto insurance, we often get a report of accidents or convictions from your State Motor Vehicle Department. We get these reports through an independent reporting company. We may also check information from government agencies or independent reporting companies. This helps us correctly rate and price your policy.

For home, building, or boat insurance, we or an inspector from an independent company may visit the property to inspect and report on its condition. In some cases, pictures may be taken. This allows us to check the estimate we have of your property's value. If we need more details about the property or the alarm you've installed, we may need to enter your property to finish the inspection. We would contact you before entering your property.

As a part of our application and underwriting process, in most states, we also order an Insurance Score based on credit history. We use the Score, information you give us, and other consumer reports for underwriting and the price we will charge. If we receive corrected personal information from a consumer reporting agency, we will re-evaluate you.

Once you're insured with us, your file may contain details about your policy(ies). This may include bill payments or claim history. A claim representative may comment, for example, on the condition and use of the insured property. We may also keep a police report if one was issued.

Sometimes we need to know about your health. For example, if we need to know whether a physical limitation will affect your ability to drive, we would ask you to sign a form allowing your personal doctor to answer any question we may have.

WHO HAS ACCESS TO THIS INFORMATION

We keep what we collect about you in our files. Our policies and procedures protect your personal information. We have physical, electronic and procedural safeguards in place.

We do not give or sell our customers' personal information to others for marketing purposes. You don't have to ask us to keep your information private because we do not give it, unless allowed.

We will use information about you to sell you insurance, service your insurance and settle claims. We may give the information to other persons or companies to help us manage or service our business. When we do, we require them to use it only for the reasons we gave it to them.

We may give, without your past permission and only if allowed by law, information about you held in our files to certain persons or organizations such as:

- Your agent or broker
- Our affiliated property and casualty insurance companies
- An independent claim adjuster or investigator

- Persons or organizations that conduct scientific research, including actuarial or underwriting studies, provided that no individual may be identified in the studies
- An insurance support organization, including consumer reporting agencies
- Another insurer in order to prevent or prosecute fraud

Also, on rare occasions, we may be required to share this information:

- With a State Insurance Department or other governmental agency, if required by federal, state or local laws
- If ordered by a summons, court order, search warrant or subpoena
- To protect our own legal interests, or in case of suspected fraud or other illegal activities.

HOW TO FIND OUT WHAT INFORMATION WE HAVE ABOUT YOU

If you have any questions about what we have in your file please write to us. When we receive your written request, we will respond within thirty (30) business days. We will let you know if we've given any information about you to anyone in the past. If we asked for a consumer report we will tell you the name and address of the consumer reporting agency.

You may also see and copy your file (except for certain documents about claims and lawsuits). If you believe any of our information is wrong we'll check it out and if we agree there was an error, we'll correct it. If we don't agree, you're still allowed to file a letter with your comments. We'll send the correction or letter to anyone who received or will receive the original information.

If you have any questions about the right of access to or correction of your file, we'll be happy to review our procedures with you. Please contact:

Privacy Coordinator
 KNOXVILLE - 412
 PO BOX 59059
 KNOXVILLE TN 37950

WHEN YOU WRITE, PLEASE BE SURE TO TELL US YOUR:

- Name
- Address
- Policy number
- Phone number and the best time of the day for us to call you

Please include a copy (not the original) of personal ID, such as your driver's license.

WE THANK YOU FOR LETTING US SERVE YOUR INSURANCE NEEDS.

This notice is effective July 2006 and is given by Travelers Indemnity Company, and its property and casualty insurance affiliates, members of the Travelers group of companies. This notice applies to current and former customers and may be amended at any time. The amended notice will be sent to customers and will also be placed on Travelers web sites.

A statement concerning our use of Insurance Score is available upon request for Oregon residents.

NOTICE

Thank you for trusting us as your insurance company. We are committed to your satisfaction and providing you with a competitive rate. Many factors are taken into account to rate insurance, including a credit based insurance score. We recently accessed data from the consumer reporting agency(ies) listed below to help price your policy. The consumer reporting agency that provides information used to develop your insurance score was unable to calculate an insurance score for you. In part, based on this information, you did not receive our lowest rate. You did receive a competitive and accurate price reflecting your individual characteristics.

The consumer reporting agency(ies) contact information is:

Insurance Score (Credit History) Information:

TransUnion Corporation - Consumer Relations

2 Baldwin Place, P.O. Box 1000

Chester, PA 19022

1-800-888-4213

www.transunion.com/direct

Remember:

- You have the right to obtain a free copy of the consumer report from the agency(ies) listed above. You may do so by contacting the agency within 60 days of receiving this notice.
- You also have the right to dispute with the consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency(ies). You should contact the agency to discuss any information in the report.
- The consumer reporting agency(ies) did not make the pricing determination and cannot answer questions regarding your policy.

To learn more about how your insurance score relates to your insurance policy please contact our Insurance Score Resource Center at 1-800-550-7717. For any other questions please contact your Travelers agent or representative.



PL-11748 11-08

IMPORTANT NOTICE

SOUTH CAROLINA POLICYHOLDER NOTICE REGARDING YOUR HOMEOWNERS PREMIUM

South Carolina law requires that we show you the portion of your premium allocated to wind/hail coverage versus non-wind/hail coverage. You may determine the percentage of your policy premium allocated to wind/hail coverage by first referring to the enclosed Declarations page and finding your policy form shown in the "Mandatory Forms and Endorsements" area on the Declarations. Also, on the Declarations find the territory number assigned to the territory where your residence is located. The territory number is shown in the "For Your Information" area.

With this information, you can determine from the chart below the percentage of your policy premium allocated to wind/hail coverage.

Wind/Hail Percentage by Policy Form

| Territory Range | HO-2 | HO-3 | HO-4 | HO-6 | HV-3 | HV-6 |
|-----------------|------|------|------|------|------|------|
| 1 - 25 | 73% | 73% | 63% | 50% | 74% | 43% |
| 26 - 50 | 67% | 67% | 56% | 43% | 67% | 36% |
| 51 - 75 | 64% | 64% | 51% | 39% | 64% | 33% |
| 76 - 100 | 64% | 64% | 44% | 39% | 64% | 33% |
| 101 - 125 | 62% | 62% | 39% | 40% | 63% | 34% |
| 126 - 150 | 63% | 63% | 34% | 41% | 63% | 35% |
| 151 - 175 | 62% | 62% | 27% | 41% | 62% | 35% |
| 176 - 200 | 56% | 56% | 23% | 36% | 57% | 30% |
| 201 - 225 | 49% | 49% | 19% | 31% | 50% | 26% |
| 226 - 250 | 47% | 47% | 16% | 26% | 48% | 22% |
| 251 - 275 | 40% | 40% | 13% | 23% | 41% | 19% |
| 276 - 300 | 38% | 38% | 12% | 21% | 38% | 18% |
| 301 - 325 | 27% | 27% | 5% | 9% | 27% | 8% |
| 326 - 350 | 25% | 25% | 5% | 9% | 26% | 8% |
| 351 - 375 | 25% | 25% | 4% | 9% | 26% | 8% |
| 376 - 400 | 25% | 25% | 4% | 8% | 26% | 8% |
| 401 - 425 | 26% | 26% | 4% | 9% | 27% | 8% |
| 426 - 450 | 26% | 26% | 4% | 9% | 26% | 8% |
| 451 - 475 | 26% | 26% | 4% | 9% | 26% | 8% |
| 476 - 500 | 25% | 25% | 4% | 9% | 25% | 8% |
| 501 - 525 | 25% | 25% | 4% | 9% | 26% | 8% |
| 526 - 550 | 26% | 26% | 4% | 9% | 27% | 8% |
| 551 - 575 | 25% | 25% | 4% | 9% | 26% | 8% |
| 576 - 579 | 36% | 36% | 4% | 9% | 36% | 8% |

Should you have any questions about your wind/hail premium or your policy, please contact your agent or insurance representative.



IMPORTANT BILLING NOTICE

This notice contains important information about our billing options and fees.

You have chosen to pay your insurance premium in monthly installments and will be billed by mail. Please note that a service charge of \$6.00 will apply per installment. Other charges that may apply include a \$10.00 late charge and a \$25.00 fee for payments returned by your bank. If a payment is late we may require the total balance on your account be paid, in order to continue coverage.

If your billing needs change, we offer several ways to pay your premium:

| <u>Bill Plan</u> | <u>Monthly</u> | <u>Lump Sum</u> |
|---------------------------------|----------------|-------------------------|
| Electronic Funds Transfer (EFT) | No Charge | Not Currently Available |
| Recurring Credit Card (RCC) | No Charge | No Charge |
| Bill by Mail | \$ 6.00 | No Charge |

Late Charge: \$10.00 per occurrence
Payments returned by your bank: \$25.00 per occurrence

Visit www.amp.travelers.com if you would like to enroll in our Electronic Funds Transfer (EFT) or Recurring Credit Card (RCC) payment plan.

If you have multiple policies with us you may be able to combine those policies into a single billing account. If you have selected one of our monthly billing options, and you combine your policies into a single billing account, you will be charged just one service charge per installment, and not per individual account.

To add this policy to an existing billing account or if you have other questions about this notice, please call your insurance representative at (843)374-8539.

COMH03



Homeowners Policy Booklet

from Travelers

Especially for:
ARTHUR MCKENZIE



Prepared by:
MOORE & ASSOCIATES

SOUTH CAROLINA
HOMEOWNERS - SPECIAL FORM HO-3 (10-06)

The Contents of This Booklet

1. Your Declarations:

A summary of your coverages, amounts of insurance, and premiums for those coverages under the policy.

2. Homeowners Policy:

The policy contract describing coverages, rights, and obligations.

3. Endorsements:

Additional coverages or policy provisions applicable to your policy.

4. Important Notices:

Information required by your state but not part of your policy provisions.



NEW BUSINESS DECLARATIONS

Homeowners Policy

INSURED AND AGENT INFORMATION

(Named Insured)

Name and Mailing Address

ARTHUR MCKENZIE

PO BOX 1533

LAKE CITY SC 29560

Agent Information

MOORE & ASSOCIATES

PO BOX 9

LAKE CITY, SC 29560

The Residence premises is located at

200 W HIGHWAY 378 BYP

LAKE CITY SC 295604426

POLICY INFORMATION

Homeowners Policy No.

984761288 633 1

Policy Period

05/07/09 - 05/07/10 12.01 A.M.

Standard Time at the residence premises

Your Insurer

The Travelers Home and Marine Insurance Company

One of The Travelers Property Casualty Companies

One Tower Square, Hartford, CT 06183

For Claim Service Call

1-800-CLAIM33

For Policy Service Call

(843) 374-8539

TOTAL POLICY PREMIUM

\$ 784.00

This is not a bill; you will be invoiced separately.



Continued on next page

412C8X205

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POLICY COVERAGES AND LIMITS OF LIABILITY

| | LIMIT |
|--|------------|
| Section I - Property Coverages | |
| A - DWELLING..... | \$ 287,000 |
| B - OTHER STRUCTURES..... | \$ 28,700 |
| C - PERSONAL PROPERTY..... | \$ 200,900 |
| D - LOSS OF USE..... | \$ 88,100 |
| LIMITED FUNGI, OTHER MICROBES OR ROT REMEDIATION | |
| Section I - Property Coverage..... | \$ 5,000 |
| Section II - Liability Coverages | |
| E - Personal Liability (Bodily Injury and Property Damage) Each Occurrence.. | \$ 100,000 |
| F - Medical Payments to Others Each Person..... | \$ 1,000 |

POLICY SAVINGS AND DEDUCTIBLES

Your Savings

The following credits or discounts reduced your premium: Account Discount,
Loss Free Discount

| | DEDUCTIBLE |
|---|------------|
| Section I Property Coverages Deductible (All Perils)..... | \$ 1,000 |

In case of loss under section I, only that part of the loss over the stated deductible is covered.

OPTIONAL ENDORSEMENTS AND COVERAGES

Optional Endorsements

| | LIMIT | PREMIUM |
|--|-------|-----------|
| H0-290 (06-06) Personal Property Replacement Cost..... | | Included* |
| Loss Settlement | | |

MANDATORY FORMS AND ENDORSEMENTS

- H0-3 (10-06) Homeowners 3 Special Form
- H0-300 SC (12-08) Special Provisions - South Carolina

Continued on next page



The Declarations with your Homeowners Policy, HO-3 (10-06), and the optional Endorsements and coverages listed above, form your Homeowners Insurance Policy.

*Note: The additional cost for any optional endorsement or coverage shown as *Included* is contained in the Total Policy Premium amount.

For Your information

The insurable value of the insured premises is \$287,000.

South Carolina law requires that we provide you with the following statement: The insurer can cancel this policy for which you are applying without cause during the first 120 days. That is the insurer's choice. After the first 120 days, the insurer can only cancel this policy for reasons stated in the policy.

Your rating territory is 00525.

This is not a bill. You will be billed separately for this transaction.

For information about how Travelers compensates independent agents and brokers, please visit www.Travelers.com or call our toll free telephone number 1-866-904-8348. You may also request a written copy from Marketing at One Tower Square, 26SA, Hartford, Connecticut 06183.

Thank you for insuring with Travelers. We appreciate your business. If you have any questions about your insurance, please contact your agent or representative.

These declarations with policy provisions HO-3 (10-06) and any attached endorsements form your Homeowners Insurance Policy. Please keep them with your policy for future reference.

Countersignature:

412/08X205

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YOUR HOMEOWNERS POLICY QUICK REFERENCE

| | |
|--|--|
| | <p>DECLARATIONS PAGE</p> <p>Your Name
 Location of Your Residence
 Policy Period
 Policy Coverages
 Limits of Liability
 Deductible Amounts</p> <p align="right">Beginning
On Page</p> <p>AGREEMENT 1
 DEFINITIONS 1</p> |
| SECTION I
PROPERTY
COVERAGES | <p>COVERAGES 3</p> <p>Coverage A - Dwelling 3
 Coverage B - Other Structures 3
 Coverage C - Personal Property 3
 Coverage D - Loss of Use 5
 Additional Coverages..... 5</p> <p>PERILS INSURED AGAINST 10
 EXCLUSIONS 12
 CONDITIONS 14</p> <p>Duties After Loss 14
 Loss Settlement 15
 Loss Deductible 16
 Policy Period 17</p> |
| SECTION II
LIABILITY
COVERAGES | <p>COVERAGES 17</p> <p>Coverage E - Personal Liability 17
 Coverage F - Medical Payments to Others 17</p> <p>ADDITIONAL COVERAGES 18
 EXCLUSIONS 19
 CONDITIONS 23</p> <p>Limit of Liability 23
 Duties After Occurrence 23
 Policy Period 23</p> |
| SECTION I and
SECTION II
CONDITIONS | <p>CONDITIONS 24</p> <p>Cancellation 24
 Nonrenewal 24</p> |



HO-3 (10-06)

HOMEOWNERS 3 – SPECIAL FORM

AGREEMENT

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

DEFINITIONS

In this policy, "you" and "your" refer to the named "insured" shown in the Declarations and the spouse if a resident of the same household. "We", "us" and "our" refer to the company providing this insurance. In addition, certain words and phrases are defined as follows:

1. "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in b, below, mean the following:
 - a. Liability for "bodily injury" or "property damage" arising out of the:
 - (1) Ownership of such vehicle or craft by an "insured";
 - (2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
 - (3) Entrustment of such vehicle or craft by an "insured" to any person;
 - (4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
 - (5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.
 - b. For the purpose of this definition:
 - (1) Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
 - (2) Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;
 - (3) Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and
 - (4) Motor vehicle means a "motor vehicle" as defined in 9, below.
2. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.
3. "Business" means:
 - a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
 - b. Any other activity engaged in for money or other compensation, except the following:
 - (1) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
 - (2) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
 - (3) Providing home day care services to a relative of an "insured".
4. "Employee" means an employee of an "insured", or an employee leased to an "insured" by a labor leasing firm under an agreement between an "insured" and the labor leasing firm, whose duties are other than those performed by a "residence employee".
5. "Fuel system" means:
 - a. One or more containers, tanks or vessels which have a total combined fuel storage capacity of 100 or more U.S. gallons; and:
 - (1) Are, or were, used to hold fuel; and
 - (2) Are, or were, located on any one location;
 - b. Any pumping apparatus, which includes the motor, gauge, nozzle, hose or pipes that are, or were, connected to one or more containers, tanks or vessels described in Paragraph a.;

- c. Filler pipes and flues connected to one or more containers, tanks or vessels described in Paragraph a.;
- d. A boiler, furnace or a water heater, the fuel for which is stored in a container, tank or vessel described in Paragraph a.;
- e. Fittings and pipes connecting the boiler, furnace or water heater to one or more containers, tanks or vessels described in Paragraph a.; or
- f. A structure that is specifically designed and built to hold escaped or released fuel from one or more containers, tanks or vessels described in Paragraph a.

A "fuel system" does not include any fuel tanks that are permanently affixed to a motor vehicle or watercraft owned by an "insured", used for powering the motor vehicle or watercraft and not used at any time or in any manner for "business".

6. "Fungi"

- a. "Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by "fungi".
- b. Under Section II, this does not include any "fungi" that are, are on, or are contained in, a product or goods intended for consumption.

7. "insured" means:

- a. You and residents of your household who are:
 - (1) Your relatives; or
 - (2) Other persons under the age of 21 and in the care of any person named above.
- b. A student enrolled in school full-time, as defined by the school, who was a resident of your household before moving out to attend school, provided the student is under the age of:
 - (1) 24 and your relative; or
 - (2) 21 and in your care or the care of a person described in a.(1) above; or
- c. Any Additional insured named in the Declarations, but only with respect to Coverages A, B, E and F and only for the "residence premises".
- d. Under Section II:
 - (1) With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by

you or any person included in a, or b. above. "insured" does not mean a person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner; or

(2) With respect to any vehicle to which this policy applies:

- (a) Persons while engaged in your employ or that of any person included in a. or b. above; or
- (b) Other persons using the vehicle on an "insured location" with your consent.

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

8. "insured location" means:

- a. The "residence premises";
- b. The part of other premises, other structures and grounds used by you as a residence and:
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises described in a. and b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
- f. Land owned by or rented to an "insured" on which a one or two family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured";
- h. Any part of a premises occasionally rented to an "insured" for other than "business" use;
- i. Any premises owned by you and rented to others for use as a residence by not more than four families, if shown in the Declarations as an ADDITIONAL RESIDENCE RENTED TO OTHERS; or
- j. Any other structure on the "residence premises" rented to others as a private residence for which a limit of liability is shown in the

Declarations for STRUCTURES RENTED TO OTHERS.

9. "Motor vehicle" means:
- A self-propelled land or amphibious vehicle; or
 - Any trailer or semi-trailer which is being carried on, towed by or hitched for towing by a vehicle described in a. above.
10. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results during the policy period, in:
- "bodily injury"; or
 - "property damage".
11. "Property Damage" means physical injury to, destruction of, or loss of use of tangible property.
12. "Residence 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, if the employee's duties are related to the maintenance or use of the "residence premises", including household or domestic services; or

- One who performs similar duties elsewhere not related to the "business" of an "insured."

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

13. "Residence premises" means:

- The one family dwelling where you reside; or
- The two, three or four family dwelling where you reside in at least one of the family units;

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

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

SECTION I - PROPERTY COVERAGES

COVERAGE A - DWELLING

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

of liability is shown in the Declarations for STRUCTURES RENTED TO OTHERS;

- Other structures from which any "business" is conducted; or
- Other structures used to store "business" property. However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

COVERAGE B - OTHER STRUCTURES

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.
2. We do not cover:
- Land, including land on which the other structures are located;
 - Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage. However, we do cover other structures rented to others as a private residence for which a limit

COVERAGE C - PERSONAL PROPERTY

1. Covered Property. We cover personal property owned or used by an "insured" while it is anywhere in the world. At your request, we will cover personal property owned by:
- Others while the property is on the part of the "residence premises" occupied by an "insured"; or
 - A guest or a "residence employee", while the property is in any residence occupied by an "insured".

This request may be made after a loss.

2. **Limit For Property At Other Residences.** Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises", is 10% of the limit of liability for Coverage C, or \$1,000, whichever is greater. However, this limitation does not apply to personal property:
- Moved from the "residence premises" because it is being repaired, renovated or rebuilt and is not fit to live in or store property in; or
 - In a newly acquired principal residence for 30 days from the time you begin to move the property there.
3. **Special Limits of Liability.** The special limit for each category described below is the greater of the limit shown below or the special limit for such category, if any, shown in the Declarations. Such limit is the total limit for each loss for all property in that category. These special limits do not increase the Coverage C limit of liability.
- \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum other than platinumware, coins, medals, scrip, stored value cards and smart cards.
 - \$1,500 on securities, accounts, deeds, evidence 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.
 - \$1,500 on watercraft of all types, including their trailers, furnishings, equipment and outboard engines or motors.
 - \$1,500 on trailers or semitrailers not used with watercraft of all types.
 - \$1,500 for loss by theft of jewelry, watches, furs, precious and semiprecious stones.
 - \$2,500 for loss by theft of firearms and related equipment.
 - \$2,500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware, platinumware, platinum-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold, platinum or pewter.
 - \$5,000 on property, on the "residence premises", used primarily for "business" purposes.
- \$1,500 on property, away from the "residence premises", used primarily for "business" purposes. However, this limit does not apply to loss to electronic apparatus and accessories described in category j. below.
 - \$1,500 on electronic apparatus and accessories, while in or upon a "motor vehicle", but only if the apparatus is equipped to be operated by power from the "motor vehicle's" electrical system while still capable of being operated by other power sources.
 - \$250 on tapes, records, discs or other media that can be used with any electronic apparatus, while in or upon a "motor vehicle".
4. **Property Not Covered**
- We do not cover:
- Articles separately described and specifically insured, regardless of the limit for which they are insured, in this or other insurance;
 - Animals, birds or fish;
 - "Motor vehicles".
 - This includes:
 - Their accessories, equipment and parts; or
 - Electronic apparatus and accessories designed to be operated solely by power from the electrical system of the "motor vehicle".

The exclusion of property described in (a) and (b) above applies only while such property is in or upon the "motor vehicle".
 - We do cover "motor vehicles" not required to be registered for use on public roads or property which are:
 - Used to service an "insured's" residence; or
 - Designed to assist the handicapped;
 - Aircraft meaning any contrivance used or designed for flight, including any parts whether or not attached to the aircraft.
We do cover model or hobby aircraft not used or designed to carry people or cargo;
 - Hovercraft and parts. Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;

- f. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";
- g. Property in an apartment regularly rented or held for rental to others by an "insured", except as provided under Additional Coverage 11. Landlord's Furnishings;
- h. Property rented or held for rental to others off the "residence premises";
- i. "Business" data, including such data stored in:
 - (1) Books of account, drawings or other paper records; or
 - (2) Computers and related equipment.

We do cover the cost of blank recording or storage media, and of prerecorded computer programs available on the retail market;
- j. Credit cards, electronic fund transfer cards or access devices used solely for deposit, withdrawal or transfer of funds except as provided in Additional Coverage 7. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money;
- k. Grave markers, except as provided in Additional Coverage 13. Grave Markers; or
- l. Water or steam.

COVERAGE D - LOSS OF USE

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

- 1. **Additional Living Expense.** If a loss covered under Section I makes that part of the "residence premises" where you reside not fit to live in, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living. However, additional living expense due to "fungi", other microbes or rot remediation will not be paid in addition to any amounts paid or payable under Additional Coverage 16. Limited "Fungi", Other Microbes Or Rot Remediation.

Payment will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.
- 2. **Fair Rental Value.** If a loss covered under Section I makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such

premises less any expenses that do not continue while it is not fit to live in. However, fair rental value due to "fungi", other microbes or rot remediation will not be paid in addition to any amounts paid or payable under Additional Coverage 16. Limited "Fungi", Other Microbes Or Rot Remediation.

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

Written proof that part of the "residence premises" is rented, was held for rental at the time of loss or has been rented within the 24 months prior to the date of loss is required.

- 3. **Civil Authority Prohibits Use.** If a civil authority prohibits you from use of the "residence premises" as a result of direct physical damage to neighboring premises caused by a Peril Insured Against under this policy, we cover resulting 1. Additional Living Expense and 2. Fair Rental Value as provided above for no more than two weeks. Neighboring premises means a premises in sufficient proximity to the "residence premises" that there exists a reasonable risk that the peril affecting the neighboring premises could endanger either the "residence premises" or the safety of its occupants while in the "residence premises".
- 4. **Loss Or Expense Not Covered.** We do not cover loss or expense due to cancellation of a lease or agreement.

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

ADDITIONAL COVERAGES

Unless otherwise stated:

The following coverages are additional insurance; and They are subject to your deductibles.

- 1. **Debris Removal.** We will pay your reasonable expense for the removal of:
 - a. Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
 - b. Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

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



We do not pay for the removal of trees except as provided under 2. Tree Removal below.

2. **Tree Removal.** We will pay your reasonable expense, up to \$1,000, for the removal of one or more trees fallen on the "residence premises" as a result of a Peril Insured Against, provided the tree(s):
 - a. Damage(s) a covered structure; or
 - b. Do(es) not damage a covered structure, but:
 - (1) 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
 - (2) Block(s) a ramp or other fixture designed to assist a handicapped person to enter or leave the dwelling building.

The \$1,000 limit is the most we will pay in any one loss regardless of the number of fallen trees. No more than \$500 of this limit will be paid for the removal of any one tree.
3. **Reasonable Repairs.**
 - a. We will pay the reasonable cost incurred by you for the necessary measures taken solely to protect covered property that is damaged by a Peril Insured Against from further damage.
 - b. If the measures taken involve repair to other damaged property, we will pay only if that property is covered under this policy and the damage is caused by a Peril Insured Against.
 - c. This coverage does not increase the limit of liability that applies to the covered property; or
 - d. Relieve you of your duties, in case of a loss to covered property, described in 2.d. under Section I – Conditions.
4. **Trees, Shrubs And Other Plants.** We cover trees, shrubs, plants or lawns, on the "residence premises", for loss caused by the following Perils Insured Against:
 - a. Fire or Lightning;
 - b. Explosion;
 - c. Riot or Civil Commotion;
 - d. Aircraft;
 - e. Vehicles not owned or operated by a resident of the "residence premises";
 - f. Vandalism or Malicious Mischief; or

g. **Theft.**

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be paid for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

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

No deductible applies to this coverage.
6. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed. This coverage does not change the limit of liability that applies to the property being removed.
7. **Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money.**
 - a. We will pay up to the greater of \$1,000, or the higher amount, if any, shown in the Declarations for CREDIT CARD, for:
 - (1) The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;
 - (2) Loss resulting from theft or unauthorized use of an electronic fund transfer card or access device used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;
 - (3) Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and
 - (4) Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.
 - b. All loss resulting from a series of acts:
 - (1) Committed by any one person or group of persons acting in concert; or

- (2) in which any one person or group of persons acting in concert is concerned or implicated;

is considered to be one loss.

c. We do not cover:

- (1) Use of a credit card, electronic fund transfer card or access device:
- By a resident of your household;
 - By a person who has been entrusted with either type of card or access device; or
 - If an "insured" has not complied with all terms and conditions under which the cards are issued or the devices accessed; or

- (2) Loss arising out of "business" use or dishonesty of an "insured".

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

- 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.
- If a suit is brought against an "insured" for liability under a.(1) or (2) above, we will provide a defense at our expense by counsel of our choice.
- We have the option to defend at our expense an "insured" or an "insured's" bank against any suit for the enforcement of payment under a.(3) above.

8. Loss Assessment.

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

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

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments. We will apply only

one deductible, per unit, to the total amount of any one loss to the property described above, regardless of the number of assessments.

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

- c. Section I Condition 17. Policy Period does not apply to this coverage.

9. Collapse.

- a. With respect to this Additional Coverage:

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

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

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

- (4) A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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

- (1) The Perils Insured Against named under Coverage C;

- (2) Decay that is hidden from view, unless the presence of such decay is known to an "insured" prior to collapse or there are visible signs of water damage and the "insured" has not taken prompt action to prevent further damage;

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

- (4) Weight of contents, equipment, animals or people;

- (5) Weight of rain which collects on a roof; or

- (6) Use of defective material or methods in construction, remodeling or renovation if



the collapse occurs during the course of the construction, remodeling or renovation.

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

10. Glass Or Safety Glazing Material.

- a. We cover:
 - (1) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window;
 - (2) The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window when caused directly by earth movement; and
 - (3) The direct physical loss to covered property caused solely by the pieces, fragments or splinters of broken glass or safety glazing material which is part of a building, storm door or storm window.
- b. This coverage does not include loss:
 - (1) To covered property which results because the glass or safety glazing material has been broken, except as provided in a.(3) above; or
 - (2) On the "residence premises" if the dwelling has been vacant for more than 60 consecutive days immediately before the loss, except when the breakage results directly from earth movement as provided in a.(2) above. Vacant means substantially empty of personal property necessary to sustain normal occupancy. A dwelling being constructed is not considered vacant.
- c. This coverage does not increase the limit of liability that applies to the damaged property.

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

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

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

12. Ordinance or Law.

- a. You may use up to the greater of 10%, or the higher percentage, if any, shown in the Declarations for ORDINANCE OR LAW, of the limit of liability that applies to Coverage A for the increased costs you incur due to the enforcement of any ordinance or law which requires or regulates:
 - (1) The construction, demolition, remodeling, renovation or repair of that part of a covered building or other structure damaged by a Peril Insured Against;
 - (2) The demolition and reconstruction of the undamaged part of a covered building or other structure, when that building or other structure must be totally demolished because of damage by a Peril Insured Against to another part of that covered building or other structure; or
 - (3) The remodeling, removal or replacement of the portion of the undamaged part of a covered building or other structure necessary to complete the remodeling, repair or replacement of that part of the covered building or other structure damaged by a Peril Insured Against.
- b. You may use all or part of this ordinance or law coverage to pay for the increased costs you incur to remove debris resulting from the construction, demolition, remodeling, renovation, repair or replacement of property as stated in a, above.
- c. We do not cover:
 - (1) The loss in value to any covered building or other structure due to the requirements of any ordinance or law; or
 - (2) The costs to comply with any ordinance or law which requires any "insured" or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants in or on any covered building or other structure.

Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids,

alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- d. The most we will pay for any increased costs to comply with any ordinance or law that becomes effective after the date of loss is \$5,000.

13. **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 in Coverage C.

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

14. **Refrigerated Products Coverage.** We insure, up to \$500, covered property stored in freezers or refrigerators on the "residence premises" for direct loss caused by:

- a. Loss of power to the refrigeration unit. Loss of power means the complete or partial interruption of electric power due to conditions beyond an "insured's" control. Loss of power must be caused by damage to:

- (1) Generating equipment; or
- (2) Transmitting equipment; or

- b. Mechanical failure of the unit which stores the property.

Coverage will apply only if you have maintained the refrigeration unit in proper working condition immediately prior to the loss.

This coverage does not increase the limit of liability for Coverage C.

We will pay only that part of the total of all loss payable that exceeds \$100. No other deductible applies to this coverage.

The Power Failure exclusion does not apply to this coverage.

15. **Inflation Coverage.** We may adjust the limits of liability for Coverages A, B, C and D at the beginning of each successive policy term to reflect increases in the cost of insured property. The amount of such increase will be based on the data provided by the appraisal company shown in the Declarations. Payment of the required premium when due for the successive policy term will be sufficient to indicate your acceptance of the adjusted limits.

We will also adjust the limits of liability at the time of a loss by the same percentage pro rated from the effective date of the policy period or the effective date of change if you have requested a

change to the limit of liability for Coverage A during the policy period.

16. **Limited "Fungi", Other Microbes Or Rot Remediation.**

- a. If a loss caused by a Peril Insured Against results in "fungi", other microbes or rot, we will pay for:

- (1) Remediation of the "fungi", other microbes or rot. This includes payment for the reasonable and necessary cost to:

- (a) Remove the "fungi", other microbes or rot from covered property or to repair, restore or replace that property; and

- (b) Tear out and replace any part of the building as needed to gain access to the "fungi", other microbes or rot;

- (2) Any reasonable and necessary increase in living expense you incur:

- (e) So that your household can maintain its normal standard of living; or

- (b) Loss of fair rental value;

if the "fungi", other microbes or rot makes the "residence premises" not fit to live in; and

- (3) Any reasonable and necessary testing or monitoring of air or property to confirm the absence, presence or level of the "fungi", other microbes or rot, whether performed prior to, during or after removal, repair, restoration or replacement.

- b. We will pay under this additional coverage only if:

- (1) The covered loss occurs during the policy period;

- (2) All reasonable means were used to save and preserve the property at the time of and after the covered loss; and

- (3) We receive prompt notice of the covered cause of loss that is alleged to have resulted in "fungi", other microbes or rot.

- c. The most we will pay under this additional coverage is the limit of liability shown in the Declarations for Limited "Fungi", Other Microbes Or Rot Remediation. This is the most we will pay for the total of all loss or costs regardless of the:

- (1) Number of locations or items of property insured under this policy; or

(2) Number of losses or claims made.

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

SECTION I - PERILS INSURED AGAINST

COVERAGE A - DWELLING AND COVERAGE B - OTHER STRUCTURES

1. We insure against risk of direct physical loss to property described in Coverages A and B.

2. We do not insure, however, for loss:

- a. Excluded under Section I - Exclusions;
- b. Involving collapse or danger of collapse, except as provided in Additional Coverage 9. Collapse under Section I - Property Coverages; or
- c. Caused by:

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

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

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

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

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

- (a) Fence, pavement, patio or swimming pool;
- (b) Footing, foundation, bulkhead, wall, or any other structure or device that supports all or part of a building, or other structure;
- (c) Retaining wall or bulkhead that does not support all or part of a building or other structure; or

(d) Pier, wharf or dock;

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

(4) Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if the dwelling has been vacant for more than 60 consecutive days immediately before the loss. Vacant means substantially empty of personal property necessary to sustain normal occupancy. A dwelling being constructed is not considered vacant;

(5) Constant or repeated seepage or leakage of water or steam, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more; or

(6) Any of the following:

- (a) Wear and tear, marring, deterioration;
- (b) Mechanical breakdown, latent defect, inherent vice, or any quality in property that causes it to damage or destroy itself;
- (c) Smog, rust or other corrosion;
- (d) Smoke from agricultural smudging or industrial operations;
- (e) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against named under Coverage C.

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

(f) Settling, shrinking, bulging or expansion, including resultant cracking, of

bulkheads, pavements, patios, footings, foundations, walls, floors, roofs or ceilings;

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

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

Exception To c.(6)

Unless the loss is otherwise excluded, we cover loss to property covered under Coverage A or B resulting from an accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance on the "residence premises". This includes the cost to tear out and replace any part of a building, or other structure, on the "residence premises", but only when necessary to repair the system or appliance. However, such tear out and replacement coverage only applies to other structures if the water or steam causes actual damage to a building on the "residence premises".

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

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

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

COVERAGE C – PERSONAL PROPERTY

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

1. Fire or lightning.
2. Windstorm or hail.

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

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

3. Explosion.

4. Riot or civil commotion.

5. Aircraft.

This peril includes self-propelled missiles and spacecraft.

6. Vehicles.

7. Smoke.

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

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

8. Vandalism or malicious mischief.

9. Theft.

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

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

(1) Committed by an "insured";

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

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

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

(a) Trailers, semitrailers and campers;

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

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

10. Falling Objects.

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

11. Weight Of Ice, Snow Or Sleet.

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

12. Accidental Discharge Or Overflow Of Water Or Steam.

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

b. This peril does not include loss:

- (1) To the system or appliance from which the water or steam escaped;
- (2) Caused by or resulting from freezing except as provided in Peril Insured Against 14. Freezing; or
- (3) On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises";

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

d. Section 1 -- Exclusion 3. Water Damage, Paragraphs a. and c. that apply to surface water and water below the surface of the ground do not apply to loss by water covered under this peril.

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

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

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

14. Freezing.

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

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

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

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

15. Sudden And Accidental Damage From Artificially Generated Electrical Current.

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

16. Volcanic Eruption.

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

SECTION I - EXCLUSIONS

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

1. Ordinance or Law, meaning any ordinance or law:

- a. Requiring or regulating the construction, demolition, remodeling, renovation or repair of property, including removal of any resulting debris. This exclusion A.1.a. does not apply to the amount of coverage

that may be provided for under Additional Coverage 12. Ordinance or Law;

- b. The requirements of which result in a loss in value to property.
- c. Requiring any "insured" or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, pollutants.

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

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

2. Earth Movement, meaning:

- e. Earthquake including land shock waves or tremors before, during or after a volcanic eruption;
- b. Landslide; mudslide, or mudflow;
- c. Subsidence or sinkhole; or
- d. Any other earth movement including earth sinking, rising or shifting;

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

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

3. Water Damage, meaning:

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

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

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

- 4. Power Failure, meaning the failure of power or other utility service if the failure takes place off the "residence premises". But, if the failure results in a loss from a Peril Insured Against, on the "residence premises", we will pay for the loss caused by that peril.
- 5. Neglect, meaning neglect of an "insured" to use all reasonable means to save and preserve property at and after the time of a loss.
- 6. War, War includes the following and any consequence of any of the following:
 - a. Undeclared war, civil war, insurrection, rebellion or revolution;
 - b. Warlike act by a military force or military personnel; or
 - c. Destruction, seizure or use for a military purpose.

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

- 7. Nuclear Hazard, to the extent set forth in the Nuclear Hazard Clause of Section I - Conditions.
- 8. Intentional Loss, meaning any loss arising out of any act an "insured" commits or conspires to commit with the intent to cause a loss.

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

- 9. Governmental Action, meaning 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.

- 10. "Fungi", Other Microbes or Rot, meaning any loss or cost resulting from, arising out of, caused by, consisting of, or related to, "fungi", other microbes or rot. This exclusion does not apply to:

- a. "Fungi", other microbes or rot remediation coverage that may be afforded under Additional Coverage 16. Limited "Fungi", Other Microbes Or Rot Remediation; or

- b. "Fungi", other microbes or rot that results from fire or lightning.
- B. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded by any other provision in this policy is covered.
1. Weather conditions. However, this exclusion applies only if weather conditions contribute in any way with a cause or event excluded in A. above to produce the loss.
 2. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
 3. Faulty, inadequate or defective:
 - e. Planning, zoning, development, surveying, siting;
 - b. Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
 - c. Materials used in repair, construction, renovation or remodeling; or
 - d. Maintenance;
 of part or all of any property whether on or off the "residence premises".

SECTION I - CONDITIONS

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 an "insured" for more than the amount of such "insured's" interest at the time of loss; or
 - b. For more than the applicable limit of liability.
2. Duties After Loss. In case of a loss to covered property, we have no duty to provide coverage under this policy if the failure to comply with the following duties is prejudicial to us. These duties must be performed either by you, an "insured" seeking coverage, or a representative of either.
 - a. Give us prompt notice;
 - b. Notify the police in case of loss by theft;
 - c. Notify the credit card or electronic fund transfer card or access device company in case of loss as provided for in Additional Coverage 7, Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money;
 - d. Protect the property from further damage. If repairs to the property are required, you must:
 - (1) Make reasonable and necessary repairs to protect the property; and
 - (2) Keep an accurate record of repair expenses;
 - e. Cooperate with us in the investigation of a claim;
 - f. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;
 - g. As often as we reasonably require:
 - (1) Show the damaged property;
 - (2) Provide us with records and documents we request and permit us to make copies; and
 - (3) Submit to examination under oath, while not in the presence of another "insured", and sign the same;
 - h. Send to us, within 80 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 all "insureds" and all others in the property involved and all liens on the property;
 - (3) Other insurance 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 f. above;

- (7) Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- (8) Evidence or affidavit that supports a claim under Additional Coverage 7. Credit Card, Electronic Fund Transfer Card Or Access Device, Forgery And Counterfeit Money, stating the amount and cause of loss.

3. **Loss Settlement.** In this Condition 3., 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 Additional Coverage 12. Ordinance Or Law. Covered property losses are settled as follows:

a. Property of the following types:

- (1) Personal property;
- (2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings;
- (3) Structures that are not buildings; and
- (4) Grave markers, including mausoleums;

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

b. Buildings covered 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, after application of any deductible and 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 with material of like kind and quality and for like use; or
- (c) The necessary amount actually spent to repair or replace the damaged building.

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

- (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, after application of any deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

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

- (a) Excavations, footings, foundations, piers, or any other structures or devices that support all or part of the building, which are below the under-surface of the lowest basement floor;
- (b) Those supports described 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 until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss as noted in b.(1) and b.(2) above.

However, if the cost to repair or replace the damage is less than \$2,500, we will settle the loss as noted in b.(1) and b.(2) above whether or not actual repair or replacement is complete.

- (5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss to buildings on an actual cash value basis. You

may then make claim for any additional liability according to the provisions of this Condition 3. Loss Settlement, provided you notify us of your intent to do so within 180 days after the date of loss.

4. **Loss Deductible.** Unless otherwise stated in this policy, the following deductible provision applies:

Subject to the policy limits that apply, we will pay only that part of the total of all loss payable under Section 1 that exceeds the deductible amount shown in the Declarations.

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

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

- a. Reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us.

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

Each party will:

- a. Pay its own appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

8. **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, the coverage provided under this policy 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.

9. **Suit Against Us.** No action can be brought against us unless there has been full compliance with all of the terms under Section 1 of this policy and the action is started within two years after the date of loss.

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

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

12. **Mortgage Clause.**

- a. 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.

- b. If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:
 - (1) Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - (2) Pays any premium due under this policy on demand if you have neglected to pay the premium; and
 - (3) 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.

- c. If we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

- d. If we pay the mortgagee for any loss and deny payment to you:

- (1) We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- (2) 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.
- e. Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
13. **No Benefit to Ballee.** We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.
14. **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.
- 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.
15. **Recovered Property.** If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.
16. **Volcanic Eruption Period.** One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.
17. **Policy Period.** This policy applies only to loss which occurs during the policy period.
18. **Concealment or Fraud.** We provide coverage to no "insureds" under this policy if, whether before or after a loss, an "insured" has:
- a. Intentionally concealed or misrepresented any material fact or circumstance;
- b. Engaged in fraudulent conduct; or
- c. Made false statements;
- relating to this insurance.
19. **Premises Alarm or Fire Protection System.** (Applies only if PROTECTIVE DEVICES CREDIT is shown in the Declarations.)
- We acknowledge the installation of an alarm system and/or an automatic sprinkler system approved by us on the "residence premises". You agree to maintain this system or systems in working order and to let us know promptly of any change, including removal, made to the system(s).

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 an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of li-

ability for the "occurrence" is exhausted by the payment of a judgment or settlement.

COVERAGE F - MEDICAL PAYMENTS TO OTHERS

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

1. To a person on the "insured location" with the permission of an "insured"; or

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

SECTION II - ADDITIONAL COVERAGES

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

1. Claim Expenses. We pay:

- Expenses we incur and costs taxed against an "insured" in any suit we defend;
- Premiums on bonds required in a suit we defend, but not for bond amounts more than the Coverage E limit of liability. We need not apply for or furnish any bond;
- Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$250 per day, for assisting us in the investigation or defense of a claim or suit; and
- 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 expenses for first aid to others incurred by an "insured" for "bodily injury" covered under this policy. We will not pay for first aid to an "insured".

3. Damage to Property of Others. We will pay, at replacement cost, up to \$1,000 per "occurrence" for "property damage" to property of others caused by an "insured".

We will not pay for "property damage":

- To the extent of any amount recoverable under Section I;
- Caused intentionally by an "insured" who is 13 years of age or older;
- To property owned by an "insured";
- To property owned by or rented to a tenant of an "insured" or a resident in your household; or
- Arising out of:
 - A "business" engaged in by an "insured";

(2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or

(3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

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

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

4. Loss Assessment. We will pay up to \$1,000 for your share of loss assessment charged against you, as owner or tenant of the "residence premises", during the policy period by a corporation or association of property owners, when the assessment is made as a result of:

- "Bodily injury" or "property damage" not excluded under Section II of this policy; or
- Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided such person:
 - is elected by the members of a corporation or association of property owners; and
 - Serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

Section II Condition 9, Policy Period, does not apply to this coverage.

Regardless of the number of assessments, the limit of \$1,000 is the most we will pay for loss arising out of:

- a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or

- b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.

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

SECTION II - EXCLUSIONS

A. Coverage E - Personal Liability and Coverage F - Medical Payments to Others.

Coverages E and F do not apply to "bodily injury" or "property damage":

1. Which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":
 - a. Is of a different kind, quality or degree than initially expected or intended; or
 - b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.

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

2. Arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured". This exclusion A.2. applies to, 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 A.2. does not apply to:

- a. The rental or holding for rental of an "insured location":
 - (1) On an occasional basis if used only as a residence;
 - (2) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders;
 - (3) In part, as an office, school, studio or private garage;
 - (4) Shown in the Declarations as an ADDITIONAL RESIDENCE RENTED TO OTHERS; or

(5) Shown in the Declarations as a STRUCTURE RENTED TO OTHERS.

- b. An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees; or
 - c. One or more activities, for which no "insured" receives more than \$2,000 in total compensation for the consecutive 12 months before an "occurrence";
3. Arising out of the rendering of or failure to render professional services;
 4. Arising out of a premises:
 - a. Owned by an "insured";
 - b. Rented to an "insured"; or
 - c. Rented to others by an "insured"; that is not an "insured location";
 5. Caused directly or indirectly by war, including the following and any consequence of any of the following:
 - a. Undeclared war, civil war, insurrection, rebellion or revolution;
 - b. Warlike act by a military force or military personnel; or
 - c. Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental;
 6. Arising out of the transmission of a communicable disease by an "insured";
 7. Arising out of sexual molestation, corporal punishment or physical or mental abuse;
 8. 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;

9. Arising out of, consisting of, caused by, contributed to, aggravated by or resulting from, whether directly or indirectly, by "fungi", other microbes or rot. This includes:
- The cost of testing, monitoring, abating, mitigating, removing, remediating or disposing of "fungi", other microbes or rot;
 - Any supervision, instruction, disclosures, or failures to disclose, recommendations, warnings, or advice given, or that allegedly should have been given, in connection with "bodily injury" or "property damage" consisting of, arising out of, caused by, contributed to, aggravated by or resulting from, whether directly or indirectly, by "fungi", other microbes or rot, or the activities described in 9.a. above;
 - Any obligation to share with or repay another who must pay damages because of "bodily injury" or "property damage" damage of the type described in this exclusion. This applies regardless of any other cause that contributed directly or indirectly, concurrently or in any sequence to the "bodily injury" or "property damage"; and
 - Liability imposed upon any "insured" by any governmental authority for "bodily injury" or "property damage" consisting of, arising out of, caused by, contributed to, aggravated by or resulting from, whether directly or indirectly, by "fungi", other microbes or rot; or
10. Arising out of, resulting from, caused by or contributed to by the escape or release of fuel from a "fuel system". This exclusion applies, but is not limited to:
- Any supervision, instructions, recommendations, warnings or advice given in connection with the above;
 - Any obligation to share damages, losses, costs, payments or expenses with or repay someone else who must make payment because of such "bodily injury" or "property damage", damages, loss, cost, payment or expense; or
 - Any request, order or requirement to test for, monitor, abate, mitigate, remediate, contain, remove, dispose of, or in any way respond to or assess the effects of fuel in any form.

However, this exclusion does not apply to "bodily injury" or "property damage" arising out of fire or explosion that results from such escaped or released fuel.

11. Any loss, cost, payment or expense, including, but not limited to, defense and investigation, of any kind arising out of, resulting from, caused by or contributed to by the actual or alleged presence or actual, alleged or threatened dispersal, release, ingestion, inhalation or absorption of lead, lead pigment, lead compounds or lead in any form which is or was contained or incorporated into any material or substance. This exclusion applies, but is not limited to:
- Any supervision, instructions, recommendations, warnings or advice given in connection with the above;
 - Any obligation to share damages, losses, costs, payments or expenses with or repay someone else who must make payment because of such "bodily injury" or "property damage", damages, loss, cost, payment or expense; or
 - Any request, order or requirement to test for, monitor, abate, mitigate, remediate, contain, remove, dispose of, or in any way respond to or assess the effects of lead, lead pigment, lead compounds or materials or substances containing lead in any form.

B. Coverage E- Personal Liability and Coverage F- Medical Payments to Others.

Coverages E and F also do not apply to:

- "Motor Vehicle Liability" unless, at the time of an "occurrence", the involved "motor vehicle" is:
 - In dead storage on an "insured location";
 - Used to service an "insured's" residence;
 - Designed to assist the handicapped and, at the time of an "occurrence", it is:
 - Being used to assist a handicapped person; or
 - Parked on an "insured location";
 - Designed for recreational use off public roads and:
 - Not owned by an "insured"; or
 - Owned by an "insured", provided the "occurrence" takes place on an "insured location" as defined in Definitions paragraphs 8.a., b., d., e. or h.; or
- A motorized golf cart that is owned by an "insured", designed to carry up to 4 persons, not built or modified after manufacture to exceed a speed of 25 miles per hour on level ground and, at the time of an "occurrence", is within the legal boundaries of:

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

However this exception to the exclusion from coverage does not apply if, at the time and place of an "occurrence", the involved "motor vehicle":

- a. is registered for use on public roads or property;
- b. is not registered for use on public roads or property, but such registration is required by a law, or regulation issued by a government agency, for it to be lawfully used at the place of the "occurrence"; or
- c. is being:
 - (1) Operated in, or practicing for, any prearranged or organized race, speed contest or other competition;
 - (2) Rented to others;
 - (3) Used to carry persons or cargo for a charge; or
 - (4) Used for any other "business" purpose except for a motorized golf cart used for incidental "business" entertainment while on a golfing facility.

2. "Watercraft liability" unless, at the time of an "occurrence", the involved watercraft:

- a. is stored;
- b. is a sailing vessel, with or without auxiliary power that is:
 - (1) Less than 26 feet in overall length; or
 - (2) 26 feet or more in overall length and not owned by or rented to an "insured";
- c. is not a sailing vessel and is powered by:

- (1) An inboard or inboard-outdrive engine or motor, including those that power a water jet pump, of:
 - (a) 50 horsepower or less and not owned by an "insured"; or
 - (b) More than 50 horsepower and not owned by or rented to an "insured"; or
- (2) One or more outboard engines or motors with:
 - (a) 25 total horsepower or less; or
 - (b) More than 25 horsepower if the outboard engine or motor is not owned by an "insured";
 - (c) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it during the policy period, or:
 - (d) More than 25 horsepower if the outboard engine or motor is owned by an "insured" who acquired it before the policy period, but only if:
 - (1) You declare them at policy inception; or
 - (2) Your intent to insure them is reported to us in writing within 45 days after you acquire them.

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

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

However this exception to the exclusion from coverage does not apply if, at the time and place of an "occurrence", the involved watercraft is being:

- a. Operated in, or practicing for, any prearranged or organized race, speed contest or other competition. This exclusion does not apply to a sailing vessel or a predicted log cruise;
 - b. Rented to others;
 - c. Used to carry persons or cargo for a charge; or
 - d. Used for any other "business" purpose.
3. "Aircraft Liability".
 4. "Hovercraft Liability".

Exclusions A.4., B.1., B.2., B.3. and B.4. 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".

C. Coverage E - Personal Liability.

Coverage E does not apply to:

1. Liability:

a. For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in Additional Coverage 4. Loss Assessment;

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

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

(2) In which the liability of others is assumed by the "insured" prior to an "occurrence";

unless excluded in a. above or elsewhere in this policy;

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

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

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

- a. Workers' compensation law;
- b. Non-occupational disability law; or
- c. Occupational disease law;

5. "Bodily injury" or "property damage" for which an "insured" under this policy:

a. is also an insured under a nuclear energy liability policy issued by the:

- (1) Nuclear Energy Liability Insurance Association;
- (2) Mutual Atomic Energy Liability Underwriters;

(3) Nuclear Insurance Association of Canada; or any of their successors; or

b. Would be an insured under that policy but for the exhaustion of its limit of liability;

6. "Bodily injury" to you or an "insured" as defined in Definition 7.a. or b.

This exclusion also applies to any claim made or suit brought against you or an "insured":

- a. To repay; or
- b. Share damages with;

another person who may be obligated to pay damages because of "bodily injury" to an "insured"; or

7. "Bodily injury" to an "employee", "residence employee" or a temporary employee furnished to the "insured" to substitute for a permanent "residence employee" arising out of or in the course of the employee's employment by any Additional Insured named in the Declarations.

D. Coverage F - Medical Payments to Others.

Coverage F does not apply to "bodily injury":

1. To a "residence employee" if the "bodily injury":

- a. Occurs off the "insured location"; and
- b. Does not arise out of or in the course of the "residence employee's" employment by an "insured";

2. To any person eligible to receive benefits voluntarily provided or required to be provided under any:

- a. Workers' compensation law;
- b. Non-occupational disability law; or
- c. Occupational disease law;

3. From any:

- a. Nuclear reaction;
- b. Nuclear radiation; or
- c. Radioactive contamination;

all whether controlled or uncontrolled or however caused; or

d. Any consequence of any of these; or

4. To any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

SECTION II - 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 Coverage E limit of liability shown in the Declarations. This limit is the same regardless of the number of "insureds", claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence".
Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the Coverage F limit of liability shown in the Declarations.
2. **Severability of Insurance.** This insurance applies separately to each "insured". This condition will not increase our limit of liability for any one "occurrence".
3. **Duties After "Occurrence".** In case of an "occurrence", you or another "insured" will perform the following duties that apply. We have no duty to provide coverage under this policy if your failure to comply with the following duties is prejudicial to us. You will help us by seeing that these duties are performed:
 - a. Give us written notice as soon as is practical, which sets forth:
 - (1) The identity of the policy and the named "insured" shown in the Declarations;
 - (2) Reasonably available information on the time, place and circumstances of the "occurrence"; and
 - (3) Names and addresses of any claimants and witnesses;
 - b. Cooperate with us in the investigation, settlement or defense of any claim or suit;
 - c. Promptly forward to us every notice, demand, summons or other process relating to the "occurrence";
 - d. 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; and
 - (4) To secure and give evidence and obtain the attendance of witnesses;
4. **Duties of an Injured Person - Coverage F - Medical Payments to Others.**
 - e. The injured person or someone acting for the injured person will:
 - (1) Give us written proof of claim, under oath if required, as soon as is practical; and
 - (2) Authorize us to obtain copies of medical reports and records.
 - b. The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.
5. **Payment of Claim - Coverage F - Medical Payments to Others.** Payment under this coverage is not an admission of liability by an "insured" or us.
6. **Suit Against Us.** No action can be brought against us unless there has been full compliance with all of the terms under this Section II.
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 such "insured" has been determined by final judgment or agreement signed by us.
7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an "insured" will not relieve us of our obligations under this policy.
8. **Other insurance.** This insurance is excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.
9. **Policy Period.** This policy applies only to "bodily injury" or "property damage" which occurs during the policy period.

10. Concealment or Fraud. We do not provide coverage to an "insured" who, whether before or after a loss, has:
- Intentionally concealed or misrepresented any material fact or circumstance;

- Engaged in fraudulent conduct; or
- Made false statements, relating to this insurance.

SECTIONS I AND II - CONDITIONS

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

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

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

The coverage provided and the premium charged are based on information you have given us. You agree to cooperate with us in determining if this information is correct and complete and to inform us of any change in title, use or occupancy of the "residence premises".

You agree that, if within 60 days of the policy effective date this information changes, is incorrect or incomplete, we may adjust your coverage and premium accordingly by giving you notice. This notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. The notice will contain the changed, incorrect or incomplete information along with the resulting premium change.

3. **Cancellation.**
- You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
 - We may cancel this policy only for the reasons stated below by letting you know in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address

shown in the Declarations. Proof of mailing will be sufficient proof of notice.

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

- When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by letting you know at least 10 days before the date cancellation takes effect.

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

- if there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy; or
- if the risk has changed substantially since the policy was issued.

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

- We will also mail a copy of any notice of cancellation to any Additional insured named in the Declarations.
- When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded pro rata.
- If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

4. **Nonrenewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice. We will also mail a copy of the notice to any Additional insured named in the Declarations.

if we offer to renew and you or your representative do not accept, this policy will automatically terminate without notice of termination at the end of the current policy period. Failure to pay the required renewal premium when due shall mean that you have not accepted our offer.

5. **Assignment.** Assignment of this policy will not be valid unless we give our written consent.
6. **Subrogation.** An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

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

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

7. **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 premises and property of the deceased covered under the policy at the time of death;
- b. "insured" includes:
 - (1) An "insured" who is a member of your household at the time of your death, but only while a resident of the "residence premises"; and
 - (2) With respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PERSONAL PROPERTY REPLACEMENT COST LOSS SETTLEMENT

A. Eligible Property

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

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

B. Ineligible Property

Property listed below is not eligible for replacement cost loss settlement. Any loss will be settled at actual cash value at the time of loss but not

more than the amount required to repair or replace.

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

C. Replacement Cost Loss Settlement Condition

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

1. We will pay no more than the least of the following amounts:
 - a. Replacement cost at the time of loss without deduction for depreciation;
 - b. The full cost of repair at the time of loss;
 - c. The limit of liability that applies to Coverage C, if applicable;
 - d. Any applicable special limits of liability stated in this policy; or
 - e. For loss to any item described in A.2.a. - f. above, the limit of liability that applies to the item.
2. If the cost to repair or replace the property described in A. above is more than \$2,500, we will pay no more than the actual cash value for the loss until the actual repair or replacement is complete.
3. You may make a claim for loss on an actual cash value basis and then make claim for any additional liability in accordance with this endorsement provided you notify us of your intent to do so within 180 days after the date of loss.

All other provisions of this policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SPECIAL PROVISIONS - SOUTH CAROLINA

SECTION I - EXCLUSIONS

The first paragraph of this section is deleted and replaced by the following:

We do not cover any direct or indirect loss or damage caused by, resulting from, contributing to or aggravated by any of these excluded perils. Loss from any of these perils is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

These exclusions apply whether or not the loss event:

- (1) Results in widespread damage;
- (2) Affects a substantial area; or
- (3) Occurs gradually or suddenly.

These exclusions also apply whether or not the loss event arises from:

- (1) Any acts of nature;
 - (2) Any human action or inaction;
 - (3) The forces of animals, plants or other living or dead organisms; or
 - (4) Any other natural or artificial process.
2. Earth Movement is deleted and replaced by the following:
2. "Earth Movement", meaning events that include but are not limited to the following:
- a. Earthquake and earthquake aftershocks;
 - b. Volcano activity including but not limited to:
 1. Volcanic Eruption;
 2. Volcanic Explosion;
 3. Effusion of volcanic material; or
 4. Lava Flow;
 - c. Mudslide, including mudflow, debris flow, landslide, avalanche, or sediment;
 - d. Sinkhole;
 - e. Subsidence;
 - f. Excavation collapse;
 - g. Erosion;
 - h. Any expansion, shifting, rising, sinking, contracting, or settling of the earth, soil or land.

This exclusion applies whether or not the earth, soil or land is combined or mixed with water or any other liquid or natural or man made material.

However, loss caused directly by the specific perils:

- a. fire;
- b. explosion;
- c. breakage of building or dwelling glass or safety glazing material, including storm doors or windows; or
- d. theft;

following any "earth movement" is covered.

3. Water Damage is deleted and replaced by the following:

3. "Water damage", meaning:

- a. Flood, surface water, ground water, storm surge, waves, wave wash, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, whether or not a result of precipitation or driven by wind;
- b. any water or water borne material that enters through or backs up from a sewer or drain, or which overflows from a sump;
- c. any water or water borne material located below the surface of the ground including water or water borne material:
 - (1) Which exerts pressure on, seeps, leaks or flows into:
 - (a) Any part of the dwelling or other structures;
 - (b) The foundation of the dwelling or other structures;
 - (c) Any paved surface located on the "residence premises"; or
 - (d) Any spa, hot tub, or swimming pool.
 - (2) Which causes "earth movement"; or
- d. any overflow, release, migration or discharge of water in any manner from a dam, levee, dike, hurricane barrier or any water or flood control device.

Direct loss by fire, explosion or theft resulting from "water damage" will be covered.

SECTION I - CONDITIONS

9. ~~Suit Against Us is deleted and replaced by the following:~~
9. ~~Suit Against Us. No action can be brought against us unless there has been full compliance with all of the terms under Section I of this policy and the action is started within three years after the date of loss.~~

The following condition is added to forms HO-2 and HO-3:

20. **Valuation Clause.** We agree that for the perils of fire and lightning the amount stated in the limit of liability section of the Declaration for Coverage A is the value of the described building. This value has been stated for insurance purposes only.

SECTION II - ADDITIONAL COVERAGES

The following additional coverage is added:

5. **Property Damage Coverage For Military Personnel and Federal Government Employees:**

If an "insured" is:

- a. A United States Government Employee; or
- b. A member of the United States Military.

We agree to pay for "property damage" to United States government property, for which such "insured" is responsible under applicable rules or regulations.

Payment for such "property damage" will be at replacement cost. Under this endorsement "replacement cost" is defined as the amount necessary to repair or replace the damaged property with no deduction for depreciation, subject to the Limit of Liability for this Additional Coverage.

Our Limit of Liability, per "occurrence", under this Additional Coverage for all damages resulting from any one "occurrence" shall not exceed two months basic pay for the "insured", as of the time of the "occurrence".

We will not pay for "property damage" to:

- e. Aircraft;
- b. "Motor vehicles";
- c. Watercraft; or
- d. Weapons.

We will not pay for "property damage":

- a. To the extent of any amount payable under Section I of this policy; or
- b. Caused intentionally by any "insured" who is 13 years of age or older.

SECTION I AND II - CONDITIONS

3. ~~Cancellation. Paragraph b. is deleted and replaced by the following:~~

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

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

- (2) When this policy has been in effect for less than 120 days and is not a renewal with us, we may cancel for any reason by letting you and your agent know at least 30 days before the date cancellation takes effect.

- (3) When this policy has been in effect for 120 days or more at any time if it is renewal with us, we may cancel:

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

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

- (c) in the event of a substantial breach of a contractual duty, condition or warranty; or

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

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

4. ~~Nonrenewal is deleted and replaced by the following:~~

4. **Nonrenewal.** We may elect not to renew this policy. We may do so by giving the following written notification to you and your agent:
1. 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:
 - a. 60 days before the expiration date of the policy if such date is on or after November 1 and before June 1; or
 - b. 90 days before the expiration date of this policy if such date is on or after June 1 and before November 1.
 2. 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:
 - a. 60 days before the anniversary date of the policy if such date is on or after November 1 and before June 1; or

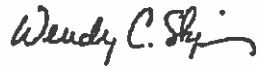
- b. 90 days before the anniversary date of the policy if such date is on or after June 1 and before November 1. The nonrenewal notice, together with the precise reason for nonrenewal, may be delivered or mailed to you and your agent at the mailing addresses shown in the Declarations or the last known addresses.

We will also mail a copy of the notice to any Additional Insured named in the Declarations.

If we offer to renew and you or your representative do not accept, this policy will automatically terminate without notice of termination at the end of the current policy period. Failure to pay the required renewal premium when due shall mean that you have not accepted our offer.

All other provisions of this policy apply.

This policy is signed for the company which is the Insurer under this policy.



Wendy C. Skjerven
Senior Vice President and
Corporate Secretary



Joseph Lecher
Chief Executive Officer
Personal Lines

IN WITNESS WHEREOF, the Company has executed and attested these presents.



PL-8107 8-97



DWELLING FIRE POLICY DECLARATIONS
SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY
PO BOX 2124, WEST COLUMBIA, SC 29171-2124

Policy Form: **DF3 (12/2002)**
CO-INSURANCE APPLIES.

Policy Number: **FI 0401219** Dec No.: **15.000**

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 05/24/2009 TO 05/24/2010 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

MARION L DRIGGERS
3497 HEBRON RD
LAKE CITY, SC 29560-7695

Agent Information

WAYNE MCKENZIE
FLORENCE (843) 669-3173
102 EAST REDBUD LN FLORENCE, SC 29505-5025

| |
|-----------------|
| Policy Premium |
| \$936.81 |

| |
|-----------------|
| Premium Paid By |
| INSURED |

Insurance for each covered item is provided for risks against direct physical loss.
Please refer to your policy booklet for all definitions, coverages, perils insured against, exclusions, and policy conditions.

| Schedule of Covered Items | Limit Of Liability | SC Valuation Clause | Item Deductible | Premium |
|---|--------------------|---------------------|-----------------|----------|
| POLICY ENDORSEMENT PREMIUM | | | | \$0.00 |
| POLICY ENDORSEMENT
EN0900 AMENDATORY ENDORSEMENT

ITEM 1: RESIDENCE PREMISES INCLUDES THE AREA WITHIN 250 FEET OF THE MASONRY TENANT OCCUPIED DWELLING LOCATED AT 3328 TURBEVILLE HWY LAKE CITY, SC 29560 8949

ITEM 1 IS SUBJECT TO THE FOLLOWING PREMIUM ADJUSTMENTS:
NONE

ITEM 1 COVERAGES:
A - DWELLING PROTECTION: \$118,000
B - OTHER STRUCTURES PROTECTION: \$5,900
D - LOSS OF USE PROTECTION: \$11,800

ITEM 1 IS SUBJECT TO THE FOLLOWING ENDORSEMENTS:
DF0089 - LANDLORD'S LIABILITY
DF0216 - PREMISES ALARM OR FIRE PROTECTION SYSTEM
EN0312 - WIND OR HAIL DEDUCTIBLE CLAUSE
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
CITIZENS BANK
PO BOX 446
TURBEVILLE SC, 29162-0446
LOAN NUMBER :

ITEM 2: RESIDENCE PREMISES INCLUDES THE AREA WITHIN 250 FEET OF THE MASONRY TENANT OCCUPIED DWELLING LOCATED AT 229 THOMAS ST OLANTA, SC 29114 9318

** ITEM 2 CONTINUED ON NEXT PAGE ** | | \$118,000 | \$1,000 | \$348.60 |

021-000 FI 0401219-4 BCH
F065A (04/09)

04/09/2009
Date Prepared

Wayne McKenzie
Authorized Representative

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

FILED

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

SOUTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY,

2014 APR -8 PM 3:42
WILLIAMSBURG COUNTY
CLERK OF COURT
KINGSTREE S.C.

2014-CP-45-132

Plaintiff(s)

v.

MARION L. DRIGGERS, SHIRALEE
DRIGGERS, TAMMY D. FLOYD, ARTHUR
a/k/a ARTHUR MCKENZIE, THE
TRAVELERS HOME AND MARINE
INSURANCE COMPANY, THE UNITED
STATES OF AMERICA ACTING BY AND
THROUGH THE INTERNAL REVENUE
SERVICE, AND THE SOUTH CAROLINA
TAX COMMISSION.

Defendant(s).

ANSWER, COUNTERCLAIMS
AND CROSSCLAIMS
OF
MARION L. DRIGGERS,
SHIRALEE DRIGGERS,
AND
TAMMY D. FLOYD

(DECLARATORY JUDGMENT)

A CERTIFIED TRUE COPY
Sharon W. Staggars
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

The Defendants, **MARION L. DRIGGERS, SHIRALEE DRIGGERS, AND TAMMY D. FLOYD**, in answering the Plaintiff's Complaint would show this Honorable Court that:

. Each and every allegation of the Plaintiff's Complaint not specifically admitted or qualified below is denied.

All admissions which these Defendants make in answering Plaintiff's Complaint are made subject to and are qualified by the Defendants' defenses, and to the extent that any allegation contained in Plaintiff's Complaint or any inference therefrom is inconsistent with the defenses pleaded herein, the allegation is generally and specifically denied.

These Defendants also reserve their right to plead by motion or by amended or supplemental pleading any other defenses which may be or may become available to them under the law, rules, or upon the facts of this case as are now know and as may developed during the course of this matter.

To the extent any fact or allegation or defense which directly

or indirectly or by inference or by implication may be or may become relevant which may be inconsistent with other facts or allegations or defenses herein, it is pled in the alternative pursuant to SCRCRCP, Rule 8(e)(2).

To the extent any factual or legal defense herein is inconsistent with existing law, these defendants respectfully beg leave of the court to argue against precedent or to distinguish this matter from existing precedent.

To the extent that any allegation or inference therefrom contained in any defense is relevant to any other defense, these defendants incorporate the facts pled cumulatively, into each preceding and subsequent defense.

AS TO JURISDICTION, VENUE AND

BACKGROUND FACTUAL ALLEGATIONS

Paragraphs 1-29

The foregoing is incorporated herein as if set forth fully verbatim

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Admitted.

8. These defendants admit so much of this allegation which alleges that the insured property was damaged by fire. These defendants do not know whether the fire damage was the result of an intentional act. The defendants do admit that the property

description to the subject property is accurate.

9. Admitted.

10. Admitted.

11. Admitted.

12. Admitted.

13. Admitted.

14. Admitted.

15. These defendants admit that both these defendants and the defendant McKenzie made claims against their respective policies. These defendants deny that they did not notify the plaintiff until the verge of the statute of limitations. The defendant Marion Driggers notified the plaintiff, Farm Bureau, of a potential claim, discussing the matter with his agent on several occasions. However, these defendants did not actually file a claim until it became apparent that the defendant The Travelers would either not pay the claim to its insured McKenzie, would not protect the interest of these defendants, or would not pay McKenzie's claim prior to the expiration of these defendants' deadline to file a claim against their insurer, Farm Bureau, the plaintiff.

16. Admitted.

17. Admitted.

18. Admitted.

19. Admitted.

20. These defendants are without sufficient knowledge either to admit or to deny this allegation and therefore the same is denied subject to the plaintiff proving the same with sufficient legal proof. These defendants are informed and believe that this allegation is an allegation of law which is within only the

province of the court to determine.

21. Admitted.

22. Admitted.

23. Admitted.

24. Denied. These defendants informed the plaintiff of a potential claim. The fire loss was investigated inclusively by The Travelers and the Williamsburg County Fire Department with assistance from the State Fire Marshall. Therefore, it is doubtful that if the plaintiff had investigated the loss in its position of potential secondary coverage, that it would have achieved results different from the other investigators. Farm Bureau was timely notified of a potential claim and chose not to investigate the fire, relying on the other investigators and hoping that it would never be liable. Therefore, it cannot be said that Farm Bureau is prejudiced by its failure to investigate the fire or by the timing of plaintiff's actual claim which was not late filed but was filed toward the end of the period for filing a timely claim.

25. These defendants admit so much of this allegation as can be construed to mean that there exists the possibility that the United States may have some claim toward any proceeds of insurance payable to the Defendant McKenzie, which claim is inferior to the claim of these defendants and which claim does not appear to be of record in Williamsburg County and which does not appear to attach to the Williamsburg County real estate in question.

26. These defendants admit so much of this allegation as can be construed to mean that there exists the possibility that the State of South Carolina may have some claim toward any proceeds of insurance payable to the Defendant McKenzie, which claim is

inferior to the claim of these defendants and which claim does not appear to be of record in Williamsburg County and which does not appear to attach to the Williamsburg County real estate in question.

27. Admitted.

28. These defendants admit sub parts A, B, and C of this allegation. These defendants have addressed the substance of part D of this allegation *supra* in paragraphs 15 and 24, which responses are incorporated as if set forth *verbatim* herein.

29. Denied. There is no contractual provision, set of facts, or law which would allow the plaintiff to recover attorneys fees or costs for the necessity of bringing this action. In any event it was not necessary to bring this action. The plaintiff could merely have paid the claim to these defendants, reserving its rights against the defendant McKenzie who occupied the dwelling at the time of the loss and against the defendant The Travelers, who unnecessarily and intransigently delayed the payment of the McKenzie claim and who stonewalled these defendants to the point of legal damage, leaving these defendants no choice except to claim against their own policy.

FOR A SECOND DEFENSE

And by way of Counterclaim

30. The forgoing is incorporated herein as if set forth fully *verbatim*.

31. **TO THE PLAINTIFF ABOVE NAMED: YOU ARE HEREBY SUMMONED** and required to reply to the Counterclaim herein and to serve a copy of your reply upon the Subscribers at their offices located at 104 South Acline Street, Post Office Drawer 370, Lake

City, South Carolina, 29560, within thirty (30) days after the date of such service if service was made upon your attorney or was made personally upon you or within thirty-five (35) days exclusive of the date of service if service was made upon you by certified mail or upon your statutory agent for service of process, and if you fail to reply to the counterclaim within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Counterclaim.

32. These defendants in setting forth their counterclaims against the plaintiff would show this honorable Court that:

33. These defendants are entitled to an award of attorneys fees for the necessity of defending this action.

FOR A SECOND DEFENSE

And by way of Crossclaim Against

The Defendant Arthur McKenzie

34. The forgoing is incorporated herein as if set forth fully verbatim.

35. **TO THE DEFENDANT ARTHUR MCKENZIE ABOVE NAMED: YOU ARE HEREBY SUMMONED** and required to reply to the CROSSCLAIM herein and to serve a copy of your reply upon the Subscribers at their offices located at 104 South Acline Street, Post Office Drawer 370, Lake City, South Carolina, 29560, within thirty (30) days after the date of such service if service was made upon your attorney or was made personally upon you or within thirty-five (35) days exclusive of the date of service if service was made upon you by certified mail or upon your statutory agent for service of process, and if you fail to reply to the counterclaim within the time aforesaid, judgment by default will be rendered against you for the relief

demanded in the CROSSCLAIM.

36. The defendant in setting forth his CROSSCLAIMS against the DEFENDANT MCKENZIE pursuant to SCRCP, Rule 13 would show this honorable Court that:

37. The defendant McKenzie no longer has an insurable interest in the property as a result of his breach of his "rent to own" contract with these defendants.

38. These defendants have complied with their contract with McKenzie by ejecting the defendant from the subject property and terminating the "rent to own" contract pursuant to order of the Magistrate Court.

39. These defendants are entitled to an order stating that the defendant McKenzie no longer has an interest in the property pursuant to his ejection from the property by the magistrate.

40. These defendants are entitled to an order quieting title to the subject property in their favor to the exclusion of the defendant McKenzie.

FOR A THIRD DEFENSE

And by way of Crossclaim Against

The Defendant THE TRAVELERS

41. The forgoing is incorporated herein as if set forth fully verbatim.

42. **TO THE DEFENDANT THE TRAVELERS ABOVE NAMED: YOU ARE HEREBY SUMMONED** and required to reply to the CROSSCLAIM herein and to serve a copy of your reply upon the Subscribers at their offices located at 104 South Acline Street, Post Office Drawer 370, Lake City, South Carolina, 29560, within thirty (30) days after the date

of such service if service was made upon your attorney or was made personally upon you or within thirty-five (35) days exclusive of the date of service if service was made upon you by certified mail or upon your statutory agent for service of process, and if you fail to reply to the counterclaim within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the CROSSCLAIM.

43. These defendants in setting forth their CROSSCLAIMS against the DEFENDANT THE TRAVELERS pursuant to SCRPC, Rule 13 would show this honorable Court that:

44. The defendants The Travelers and the Defendant McKenzie have conspired with one another with the object in mind of avoiding the payment by the Travelers of any sums toward the lawful claims of these defendants.

45. The defendant THE TRAVELERS' delay in investigating, processing, and paying the McKenzie claim has damaged these defendants in that they have not yet been paid the value of their claim; in that they have had to claim against their own policy of insurance, which should have been secondary; and, in that they have had to defend this action.

46. The Travelers have acted in legal bad faith toward the rights these defendants and have damaged these defendants.

WHEREFORE, having fully set forth their answer, counterclaims, and crossclaims these defendants pray that Court enquire into the matters set forth herein and grant unto them:

- a. An Order requiring these defendants be paid the full value of their claim;
- b. An order declaring the rights and responsibilities of the parties to this action with regard to the subject property

and the policies of insurance in place at the time of the fire damage;

- c. An order denying the plaintiff's request for attorneys fees;
- d. An order awarding these defendants their attorneys fees for the necessity of defending this action, apportioned among the various parties as the court may find appropriate;
- e. An order quieting title to the subject property in favor of these defendants to the exclusion of the defendant McKenzie; and,
- f. Such other and further relief as this Court may deem just and proper.

JAMES DOTSON, ATTORNEY AT LAW

BY: 

JAMES D. DOTSON

South Carolina Bar No. 64306
US Dist Ct for SC No. 5502
104 South Acline Avenue
P. O. Drawer 370
Lake City, SC 29560
(843) 394-2889
JimDotson@DotsonLaw.org

**ATTORNEYS FOR DEFENDANTS
MARION DRIGGERS, SHIRALEE
DRIGGERS, AND TAMMY FLOYD**

Lake City, South Carolina

April 8, 2014

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

SOUTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY,

Plaintiff(s)

v.

MARION L. DRIGGERS, SHIRALEE
DRIGGERS, TAMMY D. FLOYD,
ARTHUR a/k/a ARTHUR MCKENZIE,
THE TRAVELERS HOME AND MARINE
INSURANCE COMPANY, THE UNITED
STATES OF AMERICA ACTING BY
AND THROUGH THE INTERNAL
REVENUE SERVICE, AND THE SOUTH
CAROLINA TAX COMMISSION.

Defendant(s).

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2014-CP-45-132

VERIFICATION OF PLEADINGS

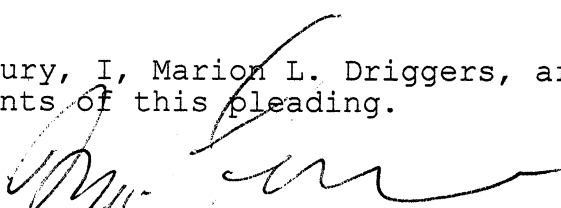
FILED
2014 APR -8 PM 3:42
WILLIAMSBURG COUNTY
CLERK OF COURT
KIMBERLY S. COLE

MARION L. DRIGGERS, being duly sworn, says:

That I have read the foregoing pleading, and I know the contents thereof; that the same is true of my own knowledge, except as to the matters therein stated to be alleged on information and belief; and, as to those matters I believe them to be true.

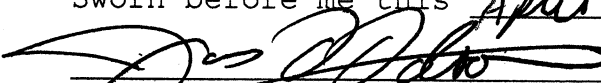
I have discussed the matters alleged in this pleading with my attorney and have specifically authorized my attorney to file and to serve this pleading on the parties. I am authorized by my wife Shiralee Driggers and by my daughter Tammy Floyd to verify these pleadings.

Under penalty of perjury, I, Marion L. Driggers, affirm the veracity of the contents of this pleading.



Marion L. Driggers

Sworn before me this April 1st 2014



James D. Dotson
Notary Public For South Carolina (Florence County)
My Commission Expires: January 31st 2022

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-45- 132

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiff,)

vs.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company, The)
United States of America acting by and)
through its agency, The Internal Revenue)
Service and The South Carolina Tax)
Commission,)

Defendants.)

Plaintiff's
Reply To: "Answer, Counterclaims
And Crossclaims of Marion L. Driggers,
Shiralee Driggers And Tammy D. Floyd"

FILED
2014 APR 30 AM 10:22
WILLIAMSBURG COUNTY
CLERK OF COURT
KINGSTREE, S.C.

The Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, replying to the "Answer, Counterclaims And Crossclaims of Marion L. Driggers, Shiralee Driggers And Tammy D. Floyd," (Hereinafter, the "Answer & Counterclaims") would show unto this Honorable Court as follows:

1. Each and every allegation of the Answer & Counterclaims not specifically admitted, qualified or otherwise explained is deemed denied and strict proof is demanded thereof.
2. Paragraphs 1-29 do not appear to require a response from the Plaintiff. However, to any extent such a response is required, the allegations are denied. By way of further response to these allegations the Plaintiff re-pleads and incorporates by reference herein all allegations of its Complaint as fully as though the same were repeated verbatim.
3. In response to Paragraph 30, the Plaintiff re-pleads the foregoing allegations and incorporates the same herein by reference.

4. Paragraph 31 is directed to and addresses a legal issue more properly within the province of the Court than of the Plaintiff which therefore denies the same and refers the issue to the Court for a determination.

5. Paragraphs 32 and 33 are denied.

6. Paragraphs 34-46 do not appear to require a response from the Plaintiff. However, to any extent such a response is required, the allegations are denied. By way of further response to these allegations the Plaintiff re-pleads and incorporates by reference herein all allegations of its Complaint as fully as though the same were repeated verbatim.

FOR A FIRST DEFENSE
(Rule 8 & 12 Defenses)

7. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

8. The Plaintiff specifically asserts and incorporates herein by reference all defenses and affirmative defenses listed, referenced or mentioned in Rules 8 (c) and Rule 12(b) of the South Carolina Rules of Civil Procedure including the defense of failure to state a cause of action for which relief can be granted pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SECOND DEFENSE
(Reservation of Right to Amend)

9. The Plaintiff re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

10. The Plaintiff reserves the right to amend this pleading and assert all additional defenses, including affirmative defenses, which the discovery process indicates may be applicable to this matter, inclusive of all defenses which may arise by virtue of the contract or contracts between the

parties, and the Plaintiff reserves the right to amend assert all such defenses and does not waive any additional or further defenses including affirmative defenses and/or policy defenses.

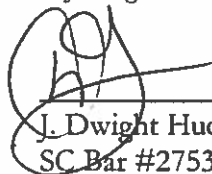
FOR A THIRD DEFENSE
(Pled In The Alternative)

11. The Plaintiff re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.
12. To the extent that facts/allegations/claims/defenses directly or by implication may be or may become or may be read to be inconsistent or in conflict with other facts/allegations/claims/defenses pled directly or by incorporation herein, then the same is/are pled in the alternative pursuant to SCRPC Rule 8(e)(2).

FOR A FOURTH DEFENSE
(Incorporation)

13. The Plaintiff re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.
14. Insofar as any fact/allegation/claim/defense pled hereinabove is or becomes relevant to any other fact/allegation/claim/defense and does not conflict therewith, the Plaintiff incorporates the same into each allegation, claim or defense.

s/ J. Dwight Hudson, Esq.



J. Dwight Hudson, Esquire
SC Bar #2753

Hudson Law Offices
1203 48th Ave. N, Suite 111
Myrtle Beach, SC 29577
(843) 692-9889
Attorney for Plaintiff

Dated: April 29, 2014

CERTIFICATION OF SERVICE

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on April 29, 2014 by

- Placing the same in the United States mail, postage prepaid to the addresses noted below;
- Transmitting the same by facsimile to the numbers noted below;
- Forwarding the same by e-mail to the addresses noted below:

James D. Dotson Esq.
Dotson Law Firm
PO Drawer 370
Lake City, SC 29560

William P. Davis
Baker Ravenel & Bender, LLP
PO Box 8057
Columbia, SC 29202

Daryl J. Corbin Esq.
Attorney at Law
PO Box 447
Florence, SC 29503-0447

FILED
2014 APR 30 AM 10:22
WILLIAMSBURG COUNTY
CLERK OF COURT
MARKS TREE ST.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG) C.A. NO. 2014-CP-45-0132
)
 SOUTH CAROLINA FARM) SOUTH CAROLINA DEPARTMENT
 BUREAU MUTUAL INSURANCE) OF REVENUE'S ANSWER,
 COMPANY,)
 vs.)
 MARION L. DRIGGERS, et al.,) CONSENT TO REFERENCE and
) CERTIFICATE OF SERVICE
)

The South Carolina Department of Revenue (Department) accepts service of the complaint as of the date below and answers as follows:

The Department would affirmatively state that:

1. Either the Department has no lien(s) which encumber the subject property, or the lien(s) are against a person other than the mortgagor(s), or the lien(s) have been paid or withdrawn.

The Department denies the remaining allegations of the complaint.

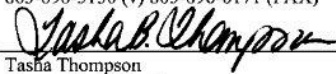
The Department consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate.

CERTIFICATE OF SERVICE:

This Answer is being served upon counsel and filed with the Clerk on the date below by deposit into the United States Mail, first class postage prepaid, at the addresses below.

| | |
|---|---|
| HONORABLE SHARON STAGGERS
WILLIAMSBURG COUNTY CLERK OF COURT
PO BOX 330
KINGSTREE SC 29556 | J DWIGHT HUDSON ESQ
HUDSON LAW OFFICES
1203 48 th AVE NORTH STE 111
MYRTLE BEACH SC 29577 |
|---|---|

SC DEPARTMENT OF REVENUE
 Office of General Counsel,
 Tax and Regulatory Services
 PO Box 12265
 Columbia, SC 29211
 803-898-5130 (v) 803-896-0171 (FAX)


 Tasha Thompson
 Counsel for Litigation
 Milton Kimpson
 Chief Counsel for Litigation

April 30, 2013

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF WILLIAMSBURG) C.A. NO. 2014-CP-45-0132
)
 SOUTH CAROLINA FARM) SOUTH CAROLINA DEPARTMENT
 BUREAU MUTUAL INSURANCE) OF REVENUE'S ANSWER,
 COMPANY,)
 vs.)
 MARION L. DRIGGERS, et al.,) CONSENT TO REFERENCE and
) CERTIFICATE OF SERVICE

The South Carolina Department of Revenue (Department) accepts service of the complaint as of the date below and answers as follows:

The Department would affirmatively state that:

1. Either the Department has no lien(s) which encumber the subject property, or the lien(s) are against a person other than the mortgagor(s), or the lien(s) have been paid or withdrawn.

The Department denies the remaining allegations of the complaint.

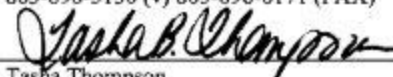
The Department consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate.

CERTIFICATE OF SERVICE:

This Answer is being served upon counsel and filed with the Clerk on the date below by deposit into the United States Mail, first class postage prepaid, at the addresses below.

| | |
|---|---|
| HONORABLE SHARON STAGGERS
WILLIAMSBURG COUNTY CLERK OF COURT
PO BOX 330
KINGSTREE SC 29556 | J DWIGHT HUDSON ESQ
HUDSON LAW OFFICES
1203 48 th AVE NORTH STE 111
MYRTLE BEACH SC 29577 |
|---|---|

SC DEPARTMENT OF REVENUE
 Office of General Counsel,
 Tax and Regulatory Services
 PO Box 12265
 Columbia, SC 29211
 803-898-5130 (v) 803-896-0171 (FAX)


 Tasha Thompson
 Counsel for Litigation
 Milton Kimpson
 Chief Counsel for Litigation

April 30, 2013

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

South Carolina Farm Bureau Mutual
Insurance Company,

Plaintiff,

v.

Marion L. Driggers, *et al.*,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO: 2014-CP-45-0132

ANSWER OF THE UNITED STATES OF
AMERICA AND CONSENT TO
REFERENCE

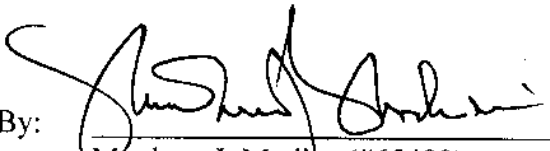
Defendant, United States of America, by and through its agency, Internal Revenue Service, answering the Complaint herein, would respectfully show that:

1. Each and every allegation of the Complaint not hereinafter admitted or otherwise explained is denied and strict proof demanded thereof.
2. This defendant admits the allegations as set forth in the Complaint that the United States holds an interest in the subject property.
3. This defendant asserts that should there be a judgment in favor of defendant Arthur MacKenzie a/k/a Auther McKenzie, those funds should be payable to the defendant United States of America based upon the lien set forth in Paragraph 25 of the Complaint.
4. This defendant has insufficient knowledge of and therefore denies and demands strict proof of the remaining allegations.
5. This defendant consents to reference to a Master-in-Equity or Special Referee of Plaintiff's choosing under such terms as Plaintiff deems appropriate.

WHEREFORE, the defendant, United States of America, on behalf of its agency, Internal Revenue Service, prays that its lien(s) be prioritized and satisfied from

the sale proceeds, that its 120-day statutory right of redemption, 28 U.S.C. § 2410(c), be protected, and or such other and further relief as this Court may deem just and proper.

WILLIAM N. NETTLES
UNITED STATES ATTORNEY

By: 
Matthew J. Modica (#65480)
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, South Carolina 29402
Phone No.: (843) 727-4381
Fax No.: (843) 727-4443
Email: matthew.j.modica@usdoj.gov

May 23, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

South Carolina Farm Bureau Ins. Co.,)
)
Plaintiff,)
)
vs.)
)
Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company,)
The United States of America acting by)
and through its agency, The Internal)
Revenue Service and The South Carolina)
Tax Commission)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
C/A NO.: 2014-CP-44-00132

**ANSWER AND CROSS-CLAIMS FOR
INTERPLEADER OF DEFENDANT THE
TRAVELERS HOME AND MARINE
INSURANCE COMPANY
(Non-Jury)**

Defendant The Travelers Home and Marine Insurance Company, (hereinafter "Travelers") hereby answers Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation of the Complaint not hereinafter specifically admitted, qualified or explained is denied.
2. On information and belief, Travelers admits the allegations contained in paragraphs one (1) through eight (8) of the Complaint.
3. Travelers admits so much of paragraph nine (9) as alleges that, prior to or at the time of the fire loss, the subject property was titled to Defendant Tammy D. Floyd, the daughter of Defendant Marion L. Driggers and Shiralee Driggers. Travelers is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph nine (9), and said allegations are therefore denied.

4. On information and belief, Travelers admits so much of paragraph ten (10) as may be construed to allege that, prior to and at the time of the subject loss, Defendant Arthur McKenzie was a resident of the subject property and that he had entered into an agreement, to which Travelers craves reference for its exact terms and conditions.

5. On information and belief, Travelers admits the allegations contained in paragraphs eleven (11) through fourteen (14) of the Complaint.

6. Travelers admits so much of paragraph fifteen (15) as alleges that Defendant Arthur McKenzie and Defendants Marion L. Driggers and Shiralee Driggers have made claims under their separate policies with Travelers and Plaintiff respectively. Travelers is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph fifteen (15).

7. Travelers admits so much of paragraph sixteen (16) as alleges that the existence and content of S.C. Code Ann. § 38-75-20.

8. On information and belief, Travelers admits the allegations contained in paragraphs seventeen (17) through nineteen (19) of the Complaint.

9. Travelers admits so much of paragraph twenty (20) as alleges that the sum of the coverage limits under the Plaintiff's and Travelers' policies exceeds the value of the subject property.

10. Travelers denies the allegations contained in paragraphs twenty-one (21) and twenty-two (22) of the Complaint.

11. Travelers is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs twenty-three (23) and twenty-four (24), and said allegations are therefore denied.

12. Travelers admits the allegations contained in paragraphs twenty-five (25) through twenty-seven (27).

13. Travelers admits so much of paragraph twenty-eight (28) as alleges that Plaintiff seeks the declarations set forth therein, but denies that it is liable to Plaintiff for any sum whatsoever.

14. Travelers admits so much of paragraph twenty-nine (29) as alleges that Plaintiff seeks an award of costs and attorneys' fees, but Travelers denies that it is liable to Plaintiff for any sum whatsoever.

15. Travelers denies the allegations of paragraph one (1), subparts (A), (B), and (C) at the end of the Plaintiff's Complaint contained in the prayer for relief. The allegations contained in paragraph one (1), subpart (D) are directed to other defendants, as a result of which no response to said allegations is required. To the extent that a response is deemed to be required, said allegations are denied on information and belief. Travelers admits that Plaintiff seeks the declarations set forth in the prayer, but denies that it is liable to Plaintiff for any sum whatsoever.

FOR A SECOND DEFENSE AND BY WAY OF CROSS-CLAIMS
(INTERPLEADER)

16. Travelers repeats and realleges the preceding paragraphs of its Answer and Cross-Claim, as if fully set forth herein.

17. On information and belief, Plaintiff is a corporation organized and existing under the laws of the State of South Carolina and is duly authorized to do business in Williamsburg County, South Carolina.

18. Travelers is a corporation organized under the laws of a state other than South Carolina and is duly authorized to do business in Williamsburg County, South Carolina.

19. On information and belief, Defendant Marion L. Driggers is a citizen and resident of Williamsburg County, South Carolina.

20. On information and belief, Defendant Shiralee Driggers is a citizen and resident of Williamsburg County, South Carolina.

21. On information and belief, Defendant Tammy D. Floyd is a citizen and resident either Williamsburg County, South Carolina or Horry County, South Carolina.

22. On information and belief, Defendant Arthur McKenzie is a citizen and resident of Williamsburg County, South Carolina.

23. On information and belief, Defendant The United States of America, acting by and through its agency the Internal Revenue Service is an agency, division or department of the federal government.

24. On information and belief, Defendant, the South Carolina Department of Revenue, is an agency, division of department of the government of the State of South Carolina.

25. Travelers issued homeowners insurance policy number 984761288 633 1 to Defendant Arthur McKenzie for the period from May 7, 2009 to May 7, 2010. A true and correct copy of said policy is attached hereto as Exhibit A.

26. On or about November 26, 2009, the subject property, located at 200 W. Hwy 378 Bypass, Lake City, South Carolina 29560, was damaged by fire.

27. Pursuant to the terms and conditions of its policy and as a result of the fire on November 26, 2009, Travelers has determined that a payment of \$101,355.62 in dwelling coverage and \$68,019.62 in personal property coverage is owed to its insured, Defendant Arthur McKenzie, with sums deducted for depreciation available to be paid upon actual repair or replacement, in accordance with the policy provisions governing same.

28. On information and belief, Defendant United States of America, by and through its agency, The Internal Revenue Service, may have an interest in the aforementioned insurance proceeds by virtue of tax liens against Defendant Arthur McKenzie pursuant to recorded filings in various counties.

29. On information and belief, Defendant South Carolina Department of Revenue may also have an interest in the aforementioned insurance proceeds by virtue of tax liens against Defendant Arthur McKenzie pursuant to recorded filings in various counties.

30. On information and belief, Defendants Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd claim an interest in the aforementioned insurance proceeds.

31. On information and belief, there may be other liens against the subject property.

32. On information and belief, the interests claimed by the Defendants in the subject dwelling exceed the amounts of coverage owed by Travelers under its policy.

33. Defendant seeks to tender to the Court the sum of One Hundred Sixty-Nine Thousand, Three Hundred Seventy-Five and 24/100 (\$169,375.24) Dollars, representing the total amount of dwelling coverage and personal property coverage available to Defendant Arthur McKenzie as named insured under its subject policy, to be distributed by the Court in amounts as the Court deems appropriate.

34. Travelers requests that it be allowed to deposit with the Court the aforementioned sum so that it may be paid to the other Defendants in such amounts as the Court may deem just and proper, if any, conditioned upon Travelers being fully and finally discharged from any and all further liability to Defendants, with the exception of its obligations under the policy with regard to final settlement upon the completion of repair or replacement, in accordance with the

policy provisions regarding same; this action being continued between the Plaintiff and the remaining Defendants to the extent they make claims against said funds.

WHEREFORE, having answered the Complaint, Defendant The Travelers Home and Marine Insurance Company prays for dismissal from this action and for such other and further relief that this Court deems just and proper, and prays that this Court hear the parties and accept and allow it to deposit \$169,375.24 with the Court upon the following conditions:

(a) that Defendant The Travelers Home and Marine Insurance Company be fully and finally discharged from any and all liability for the aforementioned losses and claims;

(b) that this action be continued amount those claimants making claims against the aforementioned funds; and

(c) that this Court award those making claims such amounts that the Court shall deem just and proper, if any.



William P. Davis
Mariel D. Norton
BAKER, RAVENEL & BENDER, LLP
Post Office Box 8057 (29202)
3710 Landmark Drive, Suite 400
Columbia, SC 29204
Telephone: (803) 799-9091; Fax: (803) 779-3423
wdavis@brblegal.com; mnorton@brblegal.com
Our File: 7746.1749
*Attorneys for The Travelers Home and Marine
Insurance Company*

May 16, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau Ins. Co.,)
)
 Plaintiff,)
)
 vs.)
)
 Marion L. Driggers, Shiralee Driggers,)
 Tammy D. Floyd, Arthur McKenzie, a/k/a)
 Auther McKenzie, The Travelers Home)
 and Marine Insurance Company,)
 The United States of America acting by)
 and through its agency, The Internal)
 Revenue Service and The South Carolina)
 Tax Commission)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-44-00132

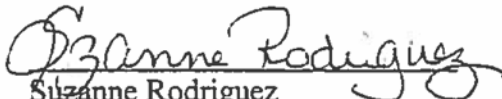
CERTIFICATE OF SERVICE

I, Suzanne Rodriguez, Legal Assistant to William P. Davis of Baker, Ravenel, & Bender, L.L.P., attorneys for The Travelers Home and Marine Insurance Company, do hereby certify that on this 16th day of May 2014, I served the foregoing **Answer and Cross-Claims for Interpleader of Defendant The Travelers Home and Marine Insurance Company** by mailing copies of same by United States Mail, postage prepaid, to counsel at the following addresses:

J. Dwight Hudson, Esquire
 Mary Ann Graham, Esquire
 Hudson Law Offices
 1203 48th Avenue North, Suite 111
 Myrtle Beach, South Carolina 29577

James D. Dotson, Esquire
 104 South Acline Avenue
 P.O. Drawer 370
 Lake City, South Carolina 29560

Daryl J. Corbin, Esquire
 Corbin Law Firm
 227 W. Evans Street
 Florence, South Carolina 29501


 Suzanne Rodriguez

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) THIRD JUDICIAL CIRCUIT
COUNTY OF WILLIAMSBURG) Case No: 2014-CP-45- 132

South Carolina Farm Bureau Mutual)
Insurance Company,)

Plaintiff,)

vs.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company, The)
United States of America acting by and)
through its agency, The Internal Revenue)
Service and The South Carolina Tax)
Commission,)

Defendants.)

ANSWER of PLAINTIFF TO:
Traveler's "Answer and Cross-Claims"

TO: THE PARTIES NAMED ABOVE AND THEIR COUNSEL OF RECORD:

The Plaintiff, South Carolina Farm Bureau Mutual Insurance Company (Hereinafter, "the Plaintiff" or "SCFB"), answering the "Answer and Cross-Claims" of Traveler's Home and Marine Insurance Company, would show unto this Honorable Court as follows:

1. Each and every allegation of the "Answer and Cross-Claims" not specifically admitted, explained or otherwise qualified is deemed denied and strict proof is demanded thereof.

FOR A FIRST DEFENSE
(Response to Allegations)

2. Paragraphs 1-15 do not appear to require a response from SCFB. However, to any extent a response is required, the same are denied and strict proof is demanded thereof.

3. In response to Paragraph 16, SCFB incorporates by reference the foregoing allegations and those contained in SCFB's Complaint as fully as though repeated verbatim herein.
4. Upon information and belief, the allegations of Paragraphs 17 through 24 are admitted.
5. In response to Paragraph 25, SCFB craves reference to the Traveler's policy as being the best source of information as to its contents.
6. Paragraph 26 is admitted.
7. The allegations of Paragraph 27 are denied and SCFB would allege that it and Traveler's insured the same property for different parties. Therefore, it is for the Court to determine the interests of the parties and the carriers as to this property and as to each other, the value or extent of the loss, the amount owed by the carriers, if any, for the loss, and to and from whom the sums are due.
8. In response to Paragraphs 28-32, SCFB would again allege that it is for the Court to determine the interests of the parties and the carriers as to this property and as to each other, the value or extent of the loss, the amount owed by the carriers, if any, for the loss, and to and from whom the sums are due.
9. Paragraphs 33 and 34 are denied and strict proof is demanded thereof. SCFB is informed and believes that the Court must first determine the amount of the loss, the ownership or insurable or property interests of the individual parties and what coverage is due from each carrier. At that point, SCFB is informed and believes that both SCFB and Travelers' could deposit that portion of their coverage determined to be due into the Court so that it could then be paid to the entitled Defendants in the amounts deemed just and proper by the Court. Therefore, SCFB denies that Traveler's is presently entitled to Interpleader and it objects to the same; however, SCFB believes that both it and Traveler's would possibly be entitled to Interpleader once the Court makes the initial

determinations referenced above and SCFB asks that at the proper time, that it also be afforded the right of Interpleader which should not presently be awarded to either carrier.

FOR A SECOND DEFENSE
(Rule 8 & 12 Defenses)

10. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

13. SCFB specifically asserts and incorporates herein by reference all defenses and affirmative defenses listed, referenced or mentioned in Rules 8 (c) and Rule 12(b) of the South Carolina Rules of Civil Procedure including the defenses of failure to state a cause of action for which relief can be granted pursuant to Rule 12 (b)(6) of the South Carolina Rules of Civil Procedure and SCFB is informed and believes that said Complaint should be dismissed with prejudice.

FOR A THIRD DEFENSE
(Reservation of Right to Amend)

14. SCFB re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

15. SCFB reserves the right to amend this pleading and assert all additional defenses, including affirmative defenses, which the discovery process indicates may be applicable to this matter and it reserves the right to assert all such defenses and does not waive any additional or further defenses including affirmative defenses.

s/ J. Dwight Hudson, Esq.



J. Dwight Hudson, Esquire
SC Bar #2753
Hudson Law Offices
1203 48th Avenue North
Suite 111
Myrtle Beach, SC 29577
(843) 692-9889

Attorney for Plaintiff

Dated: June 12, 2014

CERTIFICATION OF SERVICE

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on June 12, 2014 by

- (xx) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- () Forwarding the same by e-mail to the addresses noted below:

William P. Davis
Baker Ravenel & Bender, LLP
PO Box 8057
Columbia, SC 29202
Attorney for Traveler's

Daryl J. Corbin Esq.
Attorney at Law
PO Box 447
Florence, SC 29503-0447
Attorney for McKenzie

Tasha Thompson Esq.
SC Department of Revenue
300 A Outlet Pointe Blvd.

PO Box 12265
Columbia, SC 29211
Attorney for SC Dpt of Revenue

Matthew J. Modica Esq.
U.S. Attorney's Office
151 Meeting St., Ste. 200
Charleston, SC 29401
Attorney for The United States of America

James D. Dotson Esq.
Dotson Law Firm
PO Drawer 370
Lake City, SC 29560
**Attorney for M. Driggers, S Driggers
and T. Floyd**

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NO. 2014-CP-45-132

South Carolina Farm Bureau)
Mutual Insurance Company,)
)
Plaintiffs,)

v.)

ANSWER TO CROSSCLAIMS AND
CROSS-COUNTERCLAIMS
(jury trial demanded)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie,)
a/k/a Auther McKenzie, The Travelers)
Home and Marine Insurance)
Company, the United States of)
American acting by and through its)
agency, The Internal Revenue Service)
and The South Carolina Tax)
Commission,)
)
Defendants.)

Defendant Arthur McKenzie a/k/a Auther McKenzie ("McKenzie"), responding to the Crossclaims of Marion L. Driggers, Shiralee Driggers, and Tammy D. Floyd and as a Cross-Counterclaim against them, would respectfully state as follows:

FOR A FIRST DEFENSE TO CROSSCLAIM

1. McKenzie asserts the Crossclaim fails to state sufficient facts upon which relief may be granted; and, accordingly, he petitions the Court to dismiss the Crossclaim.

FOR A SECOND DEFENSE

2. McKenzie denies each and every allegation of the Crossclaim not hereinafter specifically admitted, qualified, or explained and demands strict proof thereof.

FOR A THIRD DEFENSE

3. McKenzie denies all of the allegations contained within Paragraphs Thirty-Four (34) through Forty (40) of the Crossclaim; and he demands strict proof thereof.

FOR A FIRST CROSS-COUNTERCLAIM
(Breach of Contract accompanied by a Fraudulent Act)

4. McKenzie repeats each and every allegation above as if repeated verbatim herein; and he would further allege as follows:

5. On or about April 25, 1997, Lisa Gamble ("Gamble") and Floyd entered into a Contract for Sale and Purchase ("Purchase Agreement") involving approximately four (4) acres of land and a large brick house ("House") located at 200 West Highway 378 Bypass ("Highway") in Lake City, South Carolina. See copy of Purchase Agreement attached hereto as Exhibit A. On or about October 13, 2006, Gamble and McKenzie entered into an agreement called Assignment of Interest in Contract for Sale and Purchase ("Assignment") assigning the Purchase Agreement to McKenzie. See copy of Assignment attached hereto as Exhibit B. McKenzie made payments to Floyd under the Purchase Agreement for several years.

6. As a result of the Assignment and thousands of dollars in payments which McKenzie made to Floyd under the Purchase Agreement, McKenzie attained an ownership interest in the land and House.

7. On or about July 3, 2007, McKenzie paid Floyd and the Driggers a lump sum advanced payment under the Purchase Agreement of \$42,000 which he received from the South Carolina Department of Public Safety for a portion of his land adjacent to the Highway. McKenzie and Floyd agreed that McKenzie would receive a \$42,000 credit on his future monthly payments owed to Floyd under the Purchase Agreement. Accordingly, Floyd was supposed to grant McKenzie a \$42,000 credit towards sixty (60) future monthly payments of approximately \$695. Although McKenzie was not obligated to make another monthly payment for about sixty (60) month, he continued to make periodic payments to Floyd in an effort to expedite satisfaction of the balance due under the Purchase Agreement.

8. Floyd breached the lump sum payment agreement by failing to properly apply \$42,000 towards sixty (60) future monthly payments under the Purchase Agreement. McKenzie believes that the Driggers encouraged, aided, and abetted Floyd in breaching her agreement with McKenzie about the \$42,000 lump sum payment.

9. On or about November 26, 2009, there was a fire which substantially destroyed the House which McKenzie was buying from Floyd under the Purchase Agreement. At that time, McKenzie was several years ahead in making his monthly payments under the Purchase Agreement given the July 3, 2007, \$42,000 lump sum payment.

10. After the fire, the House was uninhabitable. Floyd and the Driggers knew that McKenzie could no longer live in the House. McKenzie never voluntarily

abandoned the House. McKenzie anticipated that he would have sufficient insurance proceeds to rebuild the House.

11. McKenzie believes that Floyd has sold the House to another person in violation of the Purchase Agreement.

12. Floyd, with the encouragement, aiding, and abetting of the Driggers, violated the Purchase Agreement and the lump sum agreement. Under the circumstances, Floyd and the Driggers share a joint responsibility to compensate McKenzie for his breach of contract damages.

13. As a proximate result and consequence of the breach of the Purchase Agreement, McKenzie has incurred and will continue to suffer from substantial financial harms and damages.

14. The breach of contract committed by Floyd and the Driggers was accompanied by one (1) or more unfair, unjust, or dishonest acts as follows:

- (a) Floyd and the Driggers failed to give McKenzie credit for thousands of dollars in payments he made to Floyd under the Purchase Agreement;
- (b) Floyd and Driggers provided McKenzie with false, inaccurate, deceptive, and fraudulent "accountings" of his payments under the Purchase Agreement.
- (c) Floyd and Driggers failed to give McKenzie proper credit for a \$42,000 payment Floyd received from the South Carolina Department of Public Safety for transferring a portion of the land pledged to McKenzie under the Purchase Agreement.
- (d) Floyd and the Driggers wrongfully took possession and/or sold the house to someone else in violation of the Purchase Agreement.

15. Accordingly, Floyd and Driggers' behavior constitutes breach of contract accompanied by fraudulent intent. Given Floyd and Driggers' intentional misconduct in breaching the parties' contract with fraudulent intent, McKenzie is entitled to a reasonable sum of punitive damages in this matter.

WHEREFORE, Arthur McKenzie respectfully petitions the Court to enter judgment in his favor against Marion L. Driggers, Shiralee Driggers, and Tammy D. Floyd, jointly and severally, for a reasonable sum of actual damages as determined by a jury; grant him a reasonable sum of punitive damages as determined by a jury; and award him other and further relief as the Court deems just and proper.

FOR A SECOND CROSS-COUNTERCLAIM
(Civil Conspiracy)

16. McKenzie repeats each and every allegation above as if repeated verbatim herein; and he would further allege as follows:

17. McKenzie believes that Floyd and the Driggers engaged in a civil conspiracy to cheat him involving his efforts to purchase the House as follows:

- (a) in tricking McKenzie to make a \$42,000 lump sum payment for which he never received proper credit,
- (b) by intentionally creating false accounting records which wrongfully indicate that McKenzie owed more money than due under the Purchase Agreement, and
- (c) by selling the House to another person and maintaining that McKenzie still owes more money under the Purchase Agreement.

18. As a proximate result and consequence of the civil conspiracy committed by Floyd and the Driggers, McKenzie has incurred and will continue to suffer from


substantially special harms and damages, including, but not limited to, loss of a home, embarrassment, humiliation, and other financial harms and damages.

19. Due to Floyd and the Driggers' intentional, reckless, or wanton misconduct in committing civil conspiracy against McKenzie, he is entitled to a reasonable sum of punitive damages in this matter.

WHEREFORE, Arthur McKenzie respectfully prays under that the Court enter a judgment against Marion L. Driggers, Shiralee Driggers, and Tammy D. Floyd, jointly and severally, for a reasonable sum of actual damages as determined by a jury; grant him a reasonable sum of punitive damages as determined by a jury; and award him other and further relief as the Court deems just and proper.

RESPECTFULLY SUBMITTED,

CORBIN LAW FIRM
227 West Evans Street
Post Office Box 447
Florence, South Carolina 29503
(843)667-6119

BY: 
DARYL J. CORBIN
Attorney for Defendant McKenzie

Florence, South Carolina

July 2, 2014

STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

SOUTH CAROLINA FARM BUREAU
MUTUAL INSURANCE COMPANY,

Plaintiff(s)

v.

MARION L. DRIGGERS, SHIRALEE
DRIGGERS, TAMMY D. FLOYD, ARTHUR
a/k/a ARTHUR MCKENZIE, THE
TRAVELERS HOME AND MARINE
INSURANCE COMPANY, THE UNITED
STATES OF AMERICA ACTING BY AND
THROUGH THE INTERNAL REVENUE
SERVICE, AND THE SOUTH CAROLINA
TAX COMMISSION.

Defendant(s).

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

2014-CP-45-132

DRIGGERS, DRIGGERS, AND FLOYD'S REPLY
TO
MCKENZIE'S CROSS CLAIMS

(DECLARATORY JUDGMENT)

The Defendants, *MARION L. DRIGGERS, SHIRALEE DRIGGERS, AND TAMMY D. FLOYD*, in replying to the Cross Claims of the Defendant McKenzie would show this Honorable Court that:

Each and every allegation of the Cross Complaint is specifically denied.

All admissions which these Defendants make in replying to McKenzie's cross claims are made subject to and are qualified by the Defendants' defenses set out here and in the original *Answer* ~~complaint~~, and to the extent that any allegation contained in the cross claims or any inference therefrom is inconsistent with the defenses pleaded herein, the allegation is generally and specifically denied.

These Defendants also reserve their right to plead by motion or by amended or supplemental pleading any other defenses which may be or may become available to them under the law, rules, or upon the facts of this case as are now known and as may developed during the course of this matter.

To the extent any fact or allegation or defense which directly or indirectly or by inference or by implication may be or may become relevant which may be inconsistent with other facts or allegations or defenses herein, it is pled in the alternative pursuant to SCRC, Rule 8(e)(2).

To the extent any factual or legal defense herein is inconsistent with existing law, these defendants respectfully beg leave of the court to argue against precedent or to distinguish this matter from existing precedent.

To the extent that any allegation or inference therefrom contained in any defense is relevant to any other defense, these defendants incorporate the facts pled cumulatively, into each preceding and subsequent defense, *ad seriatim*.

The foregoing is incorporated herein as if set forth fully verbatim.

Each allegation of these defendants' original answer is restated here by reference as if set forth wholly verbatim.

Each allegation of McKenzie's cross claims is denied.

For A First Defense

1. Denied.

For A Second Defense

2. Denied.

For A Third Defense

3. Denied.

**FOR A DEFENSE TO MCKENZIE'S FIRST CROSS COUNTERCLAIM AGAINST
THESE DEFENDANTS.**

(Breach of Contract with Fraudulent Act)

4. Denied.

5. These defendants admit that certain agreements were made. The amounts and dates of McKenzie's payments are not admitted.

6. Denied. The amounts and dates of McKenzie's payments are not admitted.

7. Denied. The \$42,000.00 payment made by McKenzie was credited to his account according to generally accepted principles of accounting and did not absolve McKenzie from making his next monthly payment. After the payment was made and credited, McKenzie's balance due on the loan was over \$61,000.00 dollars.

8. Denied.

9. Denied. These parties admit only that there was a fire which substantially destroyed the residence.

10. Denied.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

**FOR A DEFENSE TO MCKENZIE'S SECOND CROSS COUNTERCLAIM AGAINST THESE
DEFENDANTS.**

(Civil Conspiracy)

16. Admitted.

17. Denied including all subparts.

18. Denied.

19. Denied.

**FOR A THIRD AND ADDITIONAL DEFENSE TO MCKENZIE'S COUNTERCLAIM
AGAINST THESE DEFENDANTS
(RES JUDICATA/COLLATERAL ESTOPPEL)**

20. In the prior case the court made certain findings of fact and made certain conclusions of law, from which the parties are collaterally estopped and precluded from re litigating. The prior court issued certain orders which were not appealed. These are matters which must be considered as *Res Judicata*.

**FOR A FOURTH AND ADDITIONAL DEFENSE TO MCKENZIE'S COUNTERCLAIM
AGAINST THESE DEFENDANTS
(No Right to a Trial by Jury)**

21. The entirety of this case is a matter of equity in which there is no right to a trial by jury.

**FOR A FIFTH AND ADDITIONAL DEFENSE TO MCKENZIE'S COUNTERCLAIM
AGAINST THESE DEFENDANTS**

(SC Frivolous Civil Proceedings Sanctions Act)

22. The forgoing is incorporated herein as if set forth fully verbatim.

23. McKenzie's claims against these defendants are patently frivolous. These defendants have had to engage the services of an attorney with specialized knowledge.

24. These defendants, pursuant to S.C. Code Section 15-36-10 et seq., and the South Carolina Rules of Civil Procedure are entitled to recover their attorney fees and costs reasonably expended in defense of these claims.

**FOR A SIXTH AND ADDITIONAL DEFENSE TO MCKENZIE'S
COUNTERCLAIM AGAINST THESE DEFENDANTS
(Defenses Against Punitive Damages)**

25. The foregoing is incorporated herein as if set forth fully verbatim.

26. Punitive damages as sought by McKenzie violate the rights of the defendants to due process and equal protection under the Constitution of the United States and of the State of South Carolina.

27. There are no meaningful standards with which a jury can impose a punitive award and which give the defendants notice of which conduct might be punished by an award of punitive damages.

28. There are no adequate or meaningful limits to the exercise of discretion of the finder of fact as to which circumstances might give rise to a punitive award or the amount of a punitive award. Such discretion is arbitrary.

29. The imposition of a punitive award is an unjust taking without due process of law.

30. No provisions of South Carolina law or practice comply with the mandates of the United States Supreme Court concerning the imposition of a punitive award.

31. There is no basis for a punitive award against these defendants because the facts recounted by McKenzie are empty conclusory allegations.

WHEREFORE, having fully replied to McKenzie's cross claims these defendants pray that Court enquire into the matters set forth herein and grant unto them:

to these defendants for the reasons set forth in the in these defendants' six enumerated defenses set forth above;

- b. Such other and further relief as this Court may deem just and proper.

JAMES DOTSON, ATTORNEY AT LAW

BY: 
JAMES D. DOTSON

South Carolina Bar No. 64306.
US Dist Ct for SC No. 5502
104 South Acline Avenue
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**ATTORNEYS FOR DEFENDANTS
MARION DRIGGERS, SHIRALEE
DRIGGERS, AND TAMMY FLOYD**

Lake City, South Carolina

July 29, 2014

STATE OF SOUTH CAROLNA)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

South Carolina Farm Bureau,)
)
Plaintiff,)
)
vs.)
)
Marion L. Driggers, et. al,)
)
)
Defendants.)
_____)

Case No. 2014-CP-45-00132

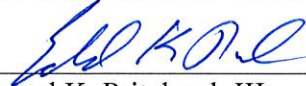
**CONSENT MOTION ALLOWING
DEFENDANTS, MARION L.
DRIGGERS, SHIRALEE DRIGGERS
AND TAMMY D. FLOYD TO
AMEND ANSWER,
COUNTERCLAIM AND
CROSSCLAIMS**

YOU WILL PLEASE TAKE NOTICE THAT pursuant to Rule 15(a), S.C.R.Civ.P, Defendants, Marion Leroy Driggers, Shiralee Driggers and Tammy D. Floyd (hereinafter collectively referred to as “Defendants”), by and through their undersigned counsel, and with the consent of Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, Defendants The Travelers Home and Marine Insurance Company, Arthur McKenzie, a/k/a Auther McKenzie, the United States of America, acting by and through its agency, The Internal Revenue Service, and the South Carolina Department of Revenue, by and through their respective counsel, shall move before this Honorable Court at the Courthouse located at 147 W Main Street, Kingstree, South Carolina, within ten (10) days after service hereof or within such time as this Court may allow, for an Order allowing Defendants to amend their Answer to address the allegations complained of them by Plaintiff and to assert various affirmative defenses and counterclaims and crosslcaims against the Plaintiff and Defendants, in the form attached hereto as Exhibit “A.”

Defendants so move on the basis that they timely filed an answer, counterclaim and crossclaims on April 8, 2014. Through the course of this litigation, the Defendants have secured new counsel and learned of new facts that necessitate an amendment to their pleadings and to

include additional claims for relief that must be pled. Allowing Defendants, to amend their Answer, Counterclaim and Cross-Claims would serve the interest of justice, promote judicial economy and would not prejudice any party to this lawsuit.

Respectfully Submitted,
THE PRITCHARD LAW GROUP, LLC



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*Attorneys for the Defendants Marion Leroy
Driggers, Shiralee Driggers and Tammy D.
Floyd*

December 1, 2015
Charleston, South Carolina

I CONSENT:

John Dwight Hudson, Esq.

Hudson Law Offices

P.O. Box 70218

Myrtle Beach, SC 29572

Attorney for Plaintiff

I CONSENT:

William P. Davis, Esq.

Baker, Ravenel & Bender, LLP

3710 Landmark Drive, Suite 400

P.O. Box 8057

Columbia, SC 29572

*Attorney for Defendant, The Travelers Home
and Marine Insurance Company*

I CONSENT:

Daryl James Corbin, Esq.

Corbin Law Firm

P.O. Box 447

Florence, SC 29572

Attorney for Defendant, Arthur McKenzie,

a/k/a Auther McKenzie

WE CONSENT:

William N. Nettles, Esq.

Matthew J. Modica, Esq.

George Conits, Esq.

United States Department of Justice

151 Meeting Street, Suite 200

Charleston, SC 29402

*Attorney for United States of America, acting by and
through its agency, The Internal Revenue Service*

WE CONSENT:

Tasha Thompson, Esq.
Milton Kimpson, Esq.
South Carolina Department of Revenue
Office of General Counsel
Tax and Regulatory Services
P.O. Box 12265
Columbia, SC 29211
Attorneys for SC Department of Revenue

EXHIBIT A

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-45-00132

SOUTH CAROLINA FARM BUREAU)
MUTUAL INSURANCE COMPANY,)
)
Plaintiff,)

v.)

MARION L. DRIGGERS, SHIRALEE)
DRIGGERS, TAMMY D. FLOYD,)
ARTHUR MCKENZIE, a/k/a AUTHER)
MCKENZIE, THE TRAVELERS)
INSURANCE COMPANY, THE)
UNITED STATES OF AMERCA acting)
by and through its agency, THE)
INTERNAL REVENUE SERVICE and)
THE SOUTH CAROLINA TAX)
COMMISSION,)
)
Defendants.)

**AMENDED ANSWER,
COUNTERCLAIMS AND CROSS-
CLAIMS OF DEFENDANTS MARION L.
DRIGGERS, SHIRALEE DRIGGERS
AND TAMMY D. FLOYD
(Breach of Contract)
(Bad Faith)
(Civil Conspiracy)
(Declaratory Judgment)
(Jury Trial Demanded)**

TO: JOHN DWIGHT HUDSON, ESQ., ATTORNEY FOR PLAINTIFF, SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, PLAINTIFF, SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY, DARYL JAMES CORBIN, ESQ., ATTORNEY FOR DEFENDANT, ARTHUR MCKENZIE A/K/A AUHER MCKENZIE, DEFENDANT, ARTHUR MCKENZIE A/K/A AUTHER MCKENZIE, WILLIAM P. DAVIS, ESQ., ATTORNEY FOR DEFENDANT, THE TRAVELERS INSURANCE COMPANY, DEFENDANT, THE TRAVELERS INSURANCE COMPANY, WILLIAM N. NETTLES, ESQ., MATTHEW J. MODICA, ESQ., AND GEORGE CONITS, ESQ., ATTORNEYS FOR DEFENDANT, THE UNITED STATES OF AMERICA BY AND THROUGH ITS AGENCY, THE INTERNAL REVENUE SERVICE, DEFENDANT, THE UNITED STATES OF AMERICA BY AND THROUGH ITS AGENCY, THE INTERNAL REVENUE SERVICE, TASHA THOMPSON, ESQ., AND MILTON KIMPSON, ESQ., ATTORNEYS FOR DEFENDANT, THE SOUTH CAROLINA TAX COMMISSION, AND DEFENDANT, THE SOUTH CAROLINA TAX COMMISSION:

Defendants, Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd (Tammy D. Floyd hereinafter individually referred to as "Floyd") (Marion L. Driggers, Shiralee Driggers and Tammy

D. Floyd hereinafter collectively referred to as “Driggers”), by and through their undersigned counsel, answering the complaint (hereinafter referred to as “Complaint”) of Plaintiff, South Carolina Farm Bureau Mutual Insurance Company (hereinafter referred to as “SCFB”), counterclaiming against SCFB and cross-claiming against Defendants, Arthur McKenzie a/k/a Auher McKenzie (hereinafter referred to as “McKenzie”), The Travelers Insurance Company (hereinafter referred to as “Travelers”), The United States of America by and through its agency, The Internal Revenue Service (hereinafter referred to as the “IRS”) and the South Carolina Tax Commission (hereinafter referred to as the “SCTC”), states as follows:

FOR A FIRST DEFENSE
(General Denial)

1. That Driggers specifically denies each and every allegation of the Complaint not hereinafter specifically admitted, qualified, modified or explained.
2. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 1 of the Complaint, and, therefore denies the same and demands strict proof thereof.
3. That Driggers admits the allegations of Paragraph 2 and Paragraph 3 of the Complaint.
4. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 4, Paragraph 5, Paragraph 6 and Paragraph 7 of the Complaint, and, therefore, deny the same and demands strict proof thereof.
5. That Driggers specifically denies each and every allegation of Paragraph 8 of the Complaint as alleges that the fire was “intentionally set” and demands strict proof thereof and, on information and belief, admits the remaining allegations of Paragraph 8 of the Complaint.
6. That, on information and belief, Driggers admits the allegations of Paragraph 9 and Paragraph 10 of the Complaint.

7. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 11 of the Complaint, and, therefore, denies the same and demands strict proof thereof.
8. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 12 of the Complaint, and, therefore, denies the same and demands strict proof thereof, and would further allege that the document attached to the Complaint as Exhibit B speaks for itself.
9. That Driggers admit the allegations of Paragraph 13 of the Complaint.
10. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 14 of the Complaint, and, therefore, denies the same and demands strict proof thereof, and would further allege that the document attached to the Complaint as Exhibit A speaks for itself.
11. That Driggers denies each and every allegation of Paragraph 15 of the Complaint and demands strict proof thereof.
12. That the allegations of Paragraph 16 of the Complaint set forth conclusions of law, and, therefore require no response, but if and to the extent a response is required, Driggers lacks sufficient information to admit or deny the same, and, therefore denies the same and demands strict proof thereof.
13. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 17, Paragraph 18 and Paragraph 19 of the Complaint, and, therefore, denies the same and demands strict proof thereof, and would further allege that the document attached to the Complaint as Exhibit A speaks for itself.
14. That Driggers specifically denies the allegations of Paragraph 20 of the Complaint and demands strict proof thereof.

15. That Driggers denies each and every allegation of the Complaint to the extent the allegations of Paragraph 21 of the Complaint allege that McKenzie has or had an insurable interest in the property which is the subject of this matter and has an interest in and to the proceeds of the insurance benefits due and payable under the policy of insurance issued by SCFB which is in issue in this case (which policy of insurance hereinafter referred to as the "SCFB Policy") and/or the proceeds of the insurance benefits due and payable under the policy of insurance issued by Defendant, The Travelers Insurance Company (hereinafter referred to as "Travelers") which is in issue in this case (which policy of insurance hereinafter referred to as the "Travelers Policy") and, therefore, denies the same and demands strict proof thereof, and, on information and belief, admits the remaining allegations of Paragraph 21 of the Complaint.
16. That Driggers lacks sufficient information to admit or deny the allegations of Paragraph 22 and Paragraph 23 of the Complaint, and, therefore, denies the same and demands strict proof thereof, and would further allege that the document attached to the Complaint as Exhibit A speaks for itself.
17. That Driggers denies each and every allegation of Paragraph 24 of the Complaint and demands strict proof thereof.
18. That Driggers lacks information to admit or deny the allegations of Paragraph 25 and Paragraph 26 of the Complaint, and, therefore, denies the same and demands strict proof thereof.
19. That the allegations of Paragraph 27 of the Complaint set forth conclusions of law, and, therefore require no response, but if and to the extent a response is required, Driggers

lacks sufficient information to admit or deny the same, and, therefore denies the same and demands strict proof thereof.

20. That Driggers denies each and every allegation of Paragraph 28 and Paragraph 29 of the Complaint, which constitute the remaining allegations of the Complaint, and demands strict proof thereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel and Laches)

21. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 20 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
22. That SCFB's claims set forth in the Complaint are barred by the doctrines of waiver, estoppel and laches.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Acceptance of Premiums)

23. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 22 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
24. That SCFB received regular and timely payment of premiums from the Driggers, and are accordingly contractually obligated to compensate the Driggers for their loss covered under the SCFB Policy.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

25. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 24 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
26. That SCFB failed to mitigate its damages as required by law.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

27. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 26 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
28. That SCFB is barred from recovery in this action by the doctrine of unclean hands.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State Facts Sufficient to Constitute a Cause of Action)

29. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 28 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
30. That the Complaint fails to state facts sufficient to constitute a cause of action as to Driggers.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation and Non-Waiver)

31. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 30 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
32. The Driggers has not had an opportunity to conduct sufficient investigation or engage in adequate discovery regarding the circumstances of Plaintiff's claims. Therefore, Driggers specifically and expressly reserves and does not waive their rights to assert any additional defense as may be discovered through the course of written discovery, depositions and further investigation.

FOR AN EIGHTH DEFENSE
AND BY WAY OF A COUNTERCLAIM
(Breach of Contract as to SCFB)

33. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 32 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
34. That on May 24, 2009, Driggers, was the legal and beneficial owner and title holder of certain parcel of real property located in the County of Williamsburg, State of South Carolina, whose current physical address is 200 W. Highway 378 Bypass, Lake City, South Carolina 29560 (also known as 3328 Turbeville Highway), which is more specifically described as follows:

All that certain piece, parcel or tract of land, lying, being and situate in Sumter Township, County of Williamsburg, State of South Carolina, containing Three and seven hundred twenty one thousandths (3.721) acres, being triangular in shape and more particularly shown and delineated as Tract No. 2 on a plat thereof prepared by L. M. Coleman, III, R.L.S., dated March 9, 1984, and recorded in the Office of the Clerk of Court for Williamsburg

County in Plat Book 34 at page 186 and bounded and described as follows, to-wit: On the Northwest by lands of Heirs of Kenneth B. Floyd and Tract No. 1 as shown on the plat hereinabove referred to; on the Northeast by other lands of RRD, a South Carolina Limited Partnership, formerly lands of C.R. Coker, a ditch being the line; and on the South by U.S. Highway 378. The same being the identical tract of land conveyed to E.L. Matthews by Blue, Inc. by deed dated the 15th day of November 1991, and recorded in the Office of the Clerk of Court for Williamsburg County in Deed Book 273 at page 230. Tax Map #45-118-46.

(hereinafter referred to as the "Property").

35. That on May 24, 2009, there was a dwelling located on the Property (hereinafter referred to as the "Dwelling").
36. That the Property is and at all times relative hereto was owned by Driggers and titled in the name of Floyd.
37. That, on information and belief, SCFB is a corporation organized and existing pursuant to the laws of the State of South Carolina, is authorized and licensed by the South Carolina Department of Insurance to write contracts of insurance insuring residential dwellings located in South Carolina pursuant to Sections 38-5-10 through 200, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, and does business in Williamsburg County, South Carolina.
38. That on May 24, 2009, SCFB issued a mutually binding contract of dwelling and fire insurance (hereinafter referred to as "the SCFB Policy"), insuring the Dwelling, which Policy is more fully described in Paragraph 8 of the Complaint.
39. That the Policy constitutes a contract between SCFB and the Driggers.
40. That the Policy provides, among other things, that SCFB will cover the Dwelling and all attached structures, ancillary features and porches and decks attached thereto, all out buildings located on the Property, personal property located on the property incidental to

its use as a residence and the use of the Property against direct physical loss, including, without limitation, loss by fire.

41. That the Dwelling was damaged and destroyed by fire on November 26, 2009 (hereinafter referred to as the "Fire").
42. That the damage and destruction of the Dwelling caused by the Fire constitutes a direct physical loss of the dwelling and its contents, a peril insured against under the SCFB Policy.
43. That following the Fire, the Driggers made a timely claim for coverage under the SCFB Policy with SCFB by providing timely notice of the Fire through its local insurance agent.
44. That none of the exclusions to coverage set forth in the SCFB Policy apply to Driggers claim for coverage under the Policy arising out of the Fire.
45. That, as a direct and proximate result of the direct physical loss to the Dwelling caused by the Fire, Driggers is entitled to receive payment of benefits due and owing under the SCFB Policy in an amount equal to the loss sustained by them, to include the cost of replacing the Dwelling without deduction for depreciation, the actual cash value of the contents of the Dwelling at the time of the Fire, the fair rental value of the Property during the period it is and was uninhabitable and for any and all additional living expenses incurred by Driggers as a direct and proximate consequence of the Fire.
46. That though Driggers is entitled to the payment of benefits under the Policy as a direct and proximate consequence of the Fire, SCFB has refused and continues to refuse without just cause or legal justification to pay Driggers the benefits due under the SCFB Policy.

47. That SCFB's failure to pay Driggers their benefits due under the SCFB Policy was unreasonable and in bad faith, and, therefore, constitutes a breach of the implied obligation of good faith and fair dealing inherent in the SCFB Policy.
48. That as a direct and proximate consequence of SCFB's breach of the SCFB Policy, Driggers have suffered actual damages in the amount of all insurance coverages applicable to Driggers under the SCFB Policy.
49. That as a direct and proximate consequence of SCFB's breach of the SCFB Policy, Driggers is entitled to judgment against SCFB in the in the amount of all insurance coverages applicable to Driggers under the SCFB Policy, together with consequential damages and prejudgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the SCFB Policy were made.

FOR A NINTH DEFENSE
AND BY WAY OF A COUNTERCLAIM
(Bad Faith as to SCFB)

50. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 49 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
51. That SCFB Policy, like all contracts of insurance, contains an implied covenant of good faith and fair dealing that neither party will do anything to impair the other's rights to receive benefits under the contract.
52. That SCFB's refusal to pay Driggers benefits due them under the Policy is unreasonable or in bad faith and constitutes a breach of the Policy's implied covenant of good faith and fair dealing.

53. That SCFB's refusal to pay the Driggers benefits due them under the SCFB Policy is and was willful and/or in reckless disregard of Driggers' rights under the SCFB Policy.
54. That as a direct and proximate consequence of SCFB's unreasonable, willful, wanton and/or bad faith breach of the implied obligation of good faith and fair dealing arising under the SCFB Policy, Driggers have suffered actual and consequential damages, including, without limitation, the need to retain an attorney to contest SCFB's refusal to pay the Driggers benefits due them under the SCFB Policy, economic loss of use of the Property in excess of the lost use limits contained in the SCFB Policy, additional deterioration of the Dwelling, increase in the cost to replace the contents and emotional damage, distress and mental anguish.
55. That as a direct and proximate consequence of SCFB's unreasonable, willful, wanton and/or bad faith breach of the implied obligation of good faith and fair dealing arising under the SCFB Policy, Driggers are entitled to judgment in the in the amount of all insurance coverages applicable to Driggers under the SCFB Policy, together with consequential damages, prejudgment interest in the amount of eight and three-fourths percent (8¾%) *per annum* from the date claim for proceeds under the SCFB Policy was made and for punitive damages in an appropriate amount.

FOR A TENTH DEFENSE
AND BY WAY OF A COUNTERCLAIM
(Violation of Section 38-59-40(1), CODE OF LAWS OF
SOUTH CAROLINA, 1976, as to SCFB)

56. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 55 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

57. That Section 38-59-40(1), CODE OF LAWS OF SOUTH CAROLINA, 1976, provides in pertinent part:

In the event of a claim, loss, or damage which is covered by a policy of insurance . . . and the refusal of the insurer . . . to pay the claim within ninety days after a demand has been made by the holder of the policy . . . and a finding on suit of the contract made by the trial judge that the refusal was without reasonable cause or in bad faith, the insurer . . . in addition to any sum or any amount otherwise recoverable, all reasonable attorneys' fees for the prosecution of the case against the insurer. . . The amount of reasonable attorneys' fees must be determined by the trial judge and the amount added to the judgment. The amount of the attorneys' fees may not exceed one-third of the amount of the judgment.

58. That more than ninety (90) days has elapsed since Driggers made their demand on SCFB.
59. That SCFB's refusal to pay Driggers benefits due under the SCFB Policy was without reasonable cause or in bad faith.
60. That as a direct and proximate consequence of SCFB's refusal to pay Driggers benefits due under the SCFB Policy without reasonable cause and/or in bad faith, Driggers are entitled to attorney fees of one-third of any recovery and litigation costs as provided in Section 38-59-40(1), CODE OF LAWS OF SOUTH CAROLINA, 1976.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Breach of Contract as to Travelers)

61. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 60 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
62. That, on information and belief, Travelers is a corporation organized and existing pursuant to the laws of a State other than the State of South Carolina, is authorized and licensed by the South Carolina Department of Insurance to write contracts of insurance insuring residential dwellings located in South Carolina pursuant to Sections 38-5-10 through 200,

CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, and does business in Williamsburg County, South Carolina.

63. That on February 27, 1997, Driggers entered in to a written installment sales contract with Liza Gamble (hereinafter referred to as "Gamble") and McKenzie wherein Driggers agreed to sell the Property to Gamble and McKenzie and Gamble and McKenzie agreed to purchase the Property from Driggers pursuant to the terms more fully set forth therein, which written installment sales contract was recorded with the Office of the Williamsburg County Clerk of Court on February 10, 1998, in Book A-402, Page 115 (hereinafter referred to as the "Contract").
64. That the Contract was prepared based upon terms and conditions contained in a final Order, filed July 10, 1996, in Case No. 94-CP-45-00380, commenced in the Williamsburg County Court of Common Pleas, in the Third Judicial Circuit, captioned *E.L. Matthews, Plaintiff, vs. Arthur McKenzie, Defendant/Third Party Plaintiff, vs. Shirley Driggers, Third Party Defendant*, (hereinafter referred to as the "Order").
65. That pursuant to the Order and the Contract, McKenzie and Gamble were required to procure homeowners, fire and extended insurance contract on the Property with a loss payable clause in favor of the Driggers.
66. That on May 7, 2009, The Travelers issued a policy of homeowners insurance to McKenzie as more fully described in Paragraph 12 of the Complaint (hereinafter referred to as the "Travelers Policy").
67. That, on information and belief, McKenzie failed to have Driggers listed as additional named insureds and/or loss payees under the Travelers Policy in direct violation and breach of the Contract and the Order in that it was without legal justification.

68. That the Policy Travelers provides, among other things, that Travelers will cover the Dwelling and all attached structures, ancillary features and porches and decks attached thereto, all out buildings located on the Property, personal property located on the property incidental to its use as a residence and the use of the Property against direct physical loss, including, without limitation, loss by fire.
69. That the Travelers Policy did not list the Driggers as loss payees but does contain the following provision:

SECTION I – CONDITIONS

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

- a. Reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us.

* * *

(emphasis added).

70. That during the course of Travelers investigation of the Fire, it learned that the Driggers had an ownership interest in the Property.
71. That Driggers, as owners of the Property, are “other persons . . . **legally entitled to receive payment**” under the Travelers Policy.
72. That the Travelers Policy constitutes a contract of insurance between Travelers and McKenzie and Driggers.
73. That the damage and destruction of the Dwelling caused by the Fire constitutes a direct physical loss of the dwelling and its contents, a peril insured against under the Travelers Policy.

74. That following the Fire, the Driggers made a timely claim for coverage under the Policy.
75. That none of the exclusions to coverage set forth in the Travelers Policy apply to Driggers claim for coverage under the Travelers Policy arising out of the Fire.
76. That, as a direct and proximate result of the direct physical loss to the Dwelling caused by the Fire, Driggers are entitled to receive payment of benefits due and owing under the Travelers Policy in an amount equal to the loss sustained by them, to include the cost of replacing the Dwelling without deduction for depreciation, the actual cash value of the contents of the Dwelling at the time of the Fire, the fair rental value of the Property during the period it is and was uninhabitable and for any and all additional living expenses incurred by Driggers as a direct and proximate consequence of the Fire.
77. That though Driggers is entitled to the payment of benefits under the Travelers Policy as a direct and proximate consequence of the Fire, Travelers has refused and continues to refuse without just cause or legal justification to pay Driggers the benefits due under the Travelers Policy.
78. That Travelers failure to pay Driggers their benefits due under the Travelers Policy was unreasonable and in bad faith, and, therefore, constitutes a breach of the implied obligation of good faith and fair dealing inherent in the Travelers Policy.
79. That as a direct and proximate consequence of Travelers' breach of the Travelers Policy, Driggers have suffered actual damages in the amount of all insurance coverages applicable to Driggers under the Travelers Policy.
80. That as a direct and proximate consequence of Travelers' breach of the Travelers Policy, Driggers are entitled to judgment against Travelers in the in the amount of all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential

damages and prejudgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the Travelers Policy were made.

FOR A TWELVTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Bad Faith as to Travelers)

81. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 80 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
82. That the Travelers Policy, like all contracts of insurance, contains an implied covenant of good faith and fair dealing that neither party will do anything to impair the other's rights to receive benefits under the contract.
83. That Travelers' refusal to pay Driggers benefits due them under the Travelers Policy is unreasonable or in bad faith and constitutes a breach of the Travelers Policy's implied covenant of good faith and fair dealing.
84. That Travelers' refusal to pay Driggers benefits due them under the Travelers Policy is and was willful and/or in reckless disregard of Driggers' rights under the Travelers Policy.
85. That as a direct and proximate consequence of Travelers' unreasonable, willful, wanton and/or bad faith breach of the implied obligation of good faith and fair dealing arising under the Travelers Policy, Driggers have suffered actual and consequential damages, including, without limitation, the need to retain an attorney to contest Travelers' refusal to pay Driggers benefits due them under the Travelers Policy, economic loss of use of the Property in excess of the lost use limits contained in the Travelers Policy, additional deterioration of the Dwelling, increase in the cost to replace the contents and emotional damage, distress and mental anguish.

86. That as a direct and proximate consequence of Travelers' unreasonable, willful, wanton and/or bad faith breach of the implied obligation of good faith and fair dealing arising under the Travelers Policy, Driggers are entitled to judgment in the in the amount of all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential damages, prejudgment interest in the amount of eight and three-fourths percent (8¾%) *per annum* from the date claim for proceeds under the Travelers Policy was made and for punitive damages in an appropriate amount.

FOR A THIRTEENTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Violation of Section 38-59-40(1), CODE OF LAWS
OF SOUTH CAROLINA, 1976, as to Travelers)

87. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 86 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
88. That more than ninety (90) days has elapsed since Driggers made their demand on Travelers.
89. That Travelers refusal to pay Driggers benefits due under the Policy was without reasonable cause or in bad faith.
90. That as a direct and proximate consequence of Travelers refusal to pay Driggers benefits due under the Travelers Policy without reasonable cause and/or in bad faith, Driggers are entitled to attorney fees of one-third of any recovery and litigation costs as provided in Section 38-59-40(1), CODE OF LAWS OF SOUTH CAROLINA, 1976.

FOR A FOURTEENTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Breach of Contract as to McKenzie)

91. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 90 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
92. That, as a direct and proximate result of McKenzie's failure to have Driggers listed as additional named insureds and/or loss payees under the Travelers Policy in direct violation and breach of the Contract and the Order, Driggers have suffered damages and loss in an amount equal to the cost of replacing the Dwelling without deduction for depreciation, the actual cash value of the contents of the Dwelling at the time of the Fire, the fair rental value of the Property during the period it is and was uninhabitable and for any and all additional living expenses incurred by Driggers as a direct and proximate consequence of the Fire.
93. That as a direct and proximate consequence of McKenzie's breach of the Contract, Driggers have suffered actual damages in the amount of one hundred eighteen thousand and no one-hundredths dollars (\$129,800.00).
94. That as a direct and proximate consequence of McKenzie's breach of the Contract, Driggers are entitled to judgment against McKenzie in the in the amount of all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential damages and prejudgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the Policy were made.

FOR AN FIFTEENTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Civil Conspiracy as to Travelers and McKenzie)

95. That each and every admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 94 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
96. That Travelers and McKenzie have conspired with one another to deprive Driggers of their benefits due and owing under the Travelers Policy.
97. That Travelers and McKenzie have conspired with one another with the object in mind of delaying and avoiding payment by Travelers to the Driggers due and owing under their Travelers Policy.
98. That the Driggers have suffered special damages in deprivation of sums due and owing them under both the Travelers Policy and the Policy issued to them by Plaintiff.
99. That as a direct and proximate consequence of Travelers' and McKenzie's civil conspiracy, Driggers are entitled to judgment in an amount to be determined by the trier of fact, in amount that includes all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential damages, for prejudgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the Travelers Policy was made and for punitive damages in an appropriate amount.

FOR A FOUREENTH DEFENSE
AND BY WAY OF A CROSS-CLAIM
(Declaratory Judgment as to McKenzie, IRS and SCTC)

100. That each and every admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 99 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

101. That, on information and belief, IRS is an agency of the United States Government with charged which is charged with the duty of collecting taxes levied by and owed to the United States Government.
102. That, on information and belief, SCTC is an agency of the State of South Carolina Government which is charged with the duty of collecting taxes levied by and owed to the State of South Carolina Government.
103. That, on information and belief, McKenzie owes back taxes to both the United States Government and to the State of South Carolina.
104. That, on information, and belief, both IRS and SCTC have filed liens against McKenzie in the Office of the Florence County Clerk of Court.
105. That the Property is located in Williamsburg County, South Carolina.
106. That McKenzie, IRS and SCTC have no legal interest, ownership interest or lienhold interest in or to the Property of any type or nature.
107. That McKenzie, IRS and SCTC have no legal interest, ownership interest or lienhold interest in or to the benefits due under the Policy or the Travelers Policy arising out of the Fire of any type or nature.
108. That Driggers are entitled to a judgment pursuant to Sections 15-53-20, 30, 60, 80, 90, 100, 120, 130 and 140, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, and Rule 57, S.C.R.CIV.P., declaring that McKenzie, IRS and SCTC have no legal interest, ownership interest or lien hold interest in or to the benefits due under the Policy or the Travelers Policy of any type or nature arising out of the Fire and that any and all proceeds and benefits due under the Policy and/or the Travelers Policy arising out of the Fire belong to Driggers.

WHEREFORE, Defendants, Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd, having Answered the Complaint of Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, having counterclaimed against Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, having crossclaimed against Defendants, Arthur McKenzie a/k/a Auther McKenzie, The Travelers Insurance Company, The United States of America by and through its agency, The Internal Revenue Service, and the South Carolina Tax Commission, pray that judgment be entered in their favor as follows:

- A. Dismissing the Complaint of Plaintiff, South Carolina Farm Bureau Mutual Insurance Company, as to them;
- B. Awarding them damages in the amount of all insurance coverages applicable to Driggers under the SCFB Policy, together with consequential damages and pre-judgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the Policy was made against Plaintiff, South Carolina Farm Bureau Mutual Insurance Company;
- C. Awarding them damages in the amount of all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential damages and pre-judgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for proceeds under the Travelers Policy was made against Defendant, The Travelers Insurance Company;
- D. Awarding them damages in the amount of all insurance coverages applicable to Driggers under the Travelers Policy, together with consequential damages and pre-judgment interest in the amount of eight and three-fourths percent (8¾%) per annum from the date claim for

proceeds under the Travelers Policy was made against Defendant, Arthur McKenzie a/k/a Auther McKenzie;

- E. Awarding them punitive damages in an appropriate amount against Plaintiff, South Carolina Farm Bureau Mutual Insurance Company and Defendant, The Travelers Insurance Company;
- F. Declaring that Defendants, Arthur McKenzie a/k/a Auther McKenzie, The United States of America by and through its agency, The Internal Revenue Service, and the South Carolina Tax Commission, have no legal interest, ownership interest or lien hold interest in or to the benefits due under the Policy or the Travelers Policy of any type or nature arising out of the Fire and that any and all proceeds and benefits due under the Policy and/or the Travelers Policy arising out of the Fire belong to Defendants, Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd;
- G. Awarding them their costs and attorney fees incurred in connection with this matter; and,
- H. For such other and further relief as this Court deems just and proper.

PRITCHARD LAW GROUP, LLC



Edward K. Pritchard, III, Esq.
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*Attorneys for Defendants, Marion Leroy
Driggers, Shiralee Driggers, and Tammy
D. Floyd*

December 1, 2015
Charleston, South Carolina

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this date, a true and correct copy of the within and foregoing *Amended Answer, Counterclaims and Cross-Claims of Defendants, Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd*, was served by placing a copy of the same in the United States Mail with sufficient postage affixed thereto, addressed as follows:

John Dwight Hudson, Esq.
Hudson Law Offices
Post Office Box 70218
Myrtle Beach, South Carolina 29572
Attorney for Plaintiff

William P. Davis, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Post Office Box 8057
Columbia, South Carolina 29572
*Attorney for Defendant, The Travelers Home
and Marine Insurance Company*

Daryl James Corbin, Esq.
Corbin Law Firm
Post Office Box 447
Florence, South Carolina 29572
Attorney for Defendant, Arthur McKenzie

William N. Nettles, Esq.
Matthew J. Modica, Esq.
George Conits, Esq.
United States Department of Justice
151 Meeting Street, Suite 200
Charleston, South Carolina 29402
*Attorney for United States of America, acting by and
through its agency, The Internal Revenue Service*

Tasha Thompson, Esq.
Milton Kimpson, Esq.
South Carolina Department of Revenue
Office of General Counsel
Tax and Regulatory Services
Post Office Box 12265
Columbia, South Carolina 29211
Attorneys for SC Department of Revenue

PRITCHARD LAW GROUP

Sandra L. Scott
Paralegal to Elizabeth F. Fulton, Esq.

December __, 2015
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2014-CP-45-00132

SOUTH CAROLINA FARM BUREAU)
MUTUAL INSURANCE COMPANY,)
)
Plaintiff,)

v.)

MARION L. DRIGGERS, SHIRALEE)
DRIGGERS, TAMMY D. FLOYD,)
ARTHUR MCKENZIE, a/k/a AUTHER)
MCKENZIE, THE TRAVELERS)
INSURANCE COMPANY, THE)
UNITED STATES OF AMERCA acting)
by and through its agency, THE)
INTERNAL REVENUE SERVICE and)
THE SOUTH CAROLINA TAX)
COMMISSION,)
)
Defendants.)

VERIFICATION

PERSONALLY APPEARED BEFORE ME, Marion L. Driggers, of 3497 Hebron Road,
Lake City, South Carolina 29560-7695, who first being duly sworn, depose and sayeth:

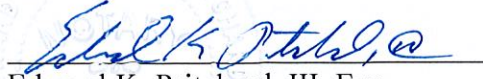
1. That he is, as of the date of the making of this affidavit, over the age of eighteen years and is mentally competent.
2. That he is a defendant in the above captioned matter.
3. That he has read the *Amended Answer, Counterclaims and Cross-Claims of Defendants, Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd*, dated December 1, 2015, and that all of the admissions, denials, explanations, modifications and allegations set forth in Paragraph 1 through Paragraph 108, inclusive are, of his own knowledge, true and accurate.

FURTHER DEPONENT SAYETH NOT!



MARION L. DRIGGERS

SWORN TO before me this
1st day of December, 2015



Edward K. Pritchard, III, Esq.
Notary Public for South Carolina
My commission expires February 25, 2023

MYRTLE BEACH OFFICE:
PO BOX 70218
10838 KINGS ROAD
MYRTLE BEACH, SC 29572
TELEPHONE: (843) 692-9889
FAX: (843) 692-9190



CONWAY OFFICE:
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211 LAUREL STREET
CONWAY, SC 29526
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J. DWIGHT HUDSON*
MARY ANNE GRAHAM

*ADMITTED IN S.C. AND N.C.

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SHALLOTTE OFFICE:
5101 SELLERS ROAD
SHALLOTTE, NC 28459
TELEPHONE: (910) 755-6543
FAX: (843) 692-9190

February 4, 2016

Hon. Sharon W. Stagers
Clerk of Court
125 West Main Street
Kingstree, SC 29556-3347

Re: South Carolina Farm Bureau Mutual Insurance Company v. Mrion L. Driggers, Shiralee Driggers, Tammy D. Floyd, Arthur McKenzie a/k/a Auther McKenzie, The Travelers Home and Marine Insurance Company, The United States of America acting by and through its agency, The Intrnal Revenue Service and The South Carolina Tax Commission
Case No: 2014-CP-45-132

Dear Sharon:

Enclosed herein please find the original and a copy of the following document(s) in the above matter(s):

- Plaintiff's Reply & Counterclaims re: Amended Answer, Counterclaims And Cross Claims of Marion L Driggers, Shiralee Driggers and Tammy D. Floyd.

Please file the original and return the clocked copy in the enclosed envelope.

By copy of this letter forwarded by US Mail and by email, I serve the same upon counsel.

With best regards, I remain

J. Dwight Hudson, Esq.
J. Dwight Hudson, Esq.

JDH: mag
cc: Counsel of Record

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
Case No: 2014-CP-45- 132

South Carolina Farm Bureau Mutual)
Insurance Company,)
)
Plaintiff,)

vs.)

Marion L. Driggers, Shiralee Driggers,)
Tammy D. Floyd, Arthur McKenzie, a/k/a)
Auther McKenzie, The Travelers Home)
and Marine Insurance Company, The)
United States of America acting by and)
through its agency, The Internal Revenue)
Service and The South Carolina Tax)
Commission,)
)
Defendants.)

Plaintiff's Reply & Counterclaims,
RE: Defendants Driggers' & Floyd's
Amended Answer, Counterclaims
And Cross Claims

TO: The Parties By Their Counsel of Record:

The Plaintiff, SOUTH CAROLINA FARM BUREAU MUTUAL INSURANCE COMPANY (Hereinafter referenced as "SCFB"), **first reserving its rights under all Motions filed herewith or alleged herein**, answering the Defendants' Driggers, Driggers and Floyd's (Hereinafter referenced as "Driggers"), Amended Answer, CounterClaims and Crossclaims (Hereinafter referenced as "Amended Answer") herein, and alleging Counterclaims herein would show unto this Honorable Court as follows:

1. Each allegation of the Amended Answer not hereinafter specifically admitted, qualified or otherwise explained is deemed denied and strict proof demanded thereof.

FOR A FIRST DEFENSE
(Response to Allegations)

2. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.
3. The allegations of Paragraphs 1-20 are responsive to allegations of the Plaintiff's Complaint and do not appear to require a response from the Plaintiff. However, to any extent such a response is required they are denied and by way of further response, if required, the Plaintiff incorporates its Complaint herein as fully as though the same were repeated verbatim.
4. Paragraphs 21 and 22 are denied, and SCFB alleges that it is Driggers' whose waiver, estoppel and laches bar his claims and/or rights in the subject insurance contract, to the extent the same exists.
5. In response to Paragraph 23, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
6. Only so much of Paragraph 24 as alleges that certain payments were received from Driggers is admitted. The balance of the Paragraph is denied as Driggers' misrepresentations, actions and failure to act violated the terms of any contract between the parties.
7. In response to Paragraph 25, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
8. Paragraph 26 is denied.
9. In response to Paragraph 27, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
10. Paragraph 28 is denied.

11. In response to Paragraph 29, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
12. Paragraph 30 is denied.
13. In response to Paragraph 31, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
14. In response to Paragraph 32, Plaintiff alleges that it is SCFB which lacked contractually required notice of and an adequate opportunity to investigate the underlying fire and the circumstances of the ownership/occupancy of the subject premises.
15. In response to Paragraph 33, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.
16. As to Paragraph 34, Plaintiff admits that Driggers had some legal or beneficial interest to the described property, as, apparently, did Defendant McKenzie, although Plaintiff had no knowledge of such as Driggers misrepresented the true circumstances of the subject property and Driggers, Driggers, Floyd and McKenzie's interest therein.
17. Upon information and belief, Paragraph 35 is admitted.
18. Paragraph 36 is denied, as, unbeknownst to SCFB, the insured property was occupied by McKenzie pursuant to a Contract of Sale, such that at relevant times, McKenzie also had or claimed to have, an ownership interest in the property.
19. Plaintiff admits only so much of Paragraph 37 as alleges that SCFB is in the insurance business in South Carolina.
20. Plaintiff admits only so much of Paragraphs 38, 39 and 40 as alleges that a policy contract of insurance existed for a period that included the date of loss. However, the policy contract, which is incorporated by reference, was issued based upon a number of

misrepresentations by the insured, without which it would not have been issued. The policy contract was also subject to terms and conditions as stated therein, reference to which is craved as forming a part of this allegation, inclusive of the insured's obligations to protect the Plaintiff's rights in a number of ways, particularly including giving timely notice of a loss and the timely opportunity to investigate that loss.

21. Upon information and belief, so much of Paragraph 41 as alleges the property was damaged by fire is admitted, but it was not destroyed as it was repaired and subsequently occupied.

22. Paragraph 42 is denied because while fire is a peril covered by the policy, it is only covered based upon a complete and truthful application and subject to the insured's compliance with the terms and conditions, including giving Plaintiff timely notice of a loss and the opportunity to timely investigate the same.

23. Paragraphs 43, 44 and 45 are denied. The policy was issued based upon false representations in the application for coverage and Driggers failed to comply with the terms and conditions of the policy, particularly including those requiring timely notice and an opportunity to timely investigate. Further, benefits to Driggers under the policy, if any, which is denied, are subject to the terms and conditions of the policy and to losses having actually been incurred (ie; damage instead of destruction of the now repaired dwelling, Driggers' contents in McKenzie's occupied property, damages for loss of rental value to property not being rented, additional living expenses for Driggers when Driggers did not occupy the subject property). Further, benefits under the policy to Driggers, if any, are subject to the policy's "other insurance" clause and the South Carolina pro rata statute.

24. Paragraph 46 is denied. Instead of denying Driggers' claim, because of the complex facts, issues and legal issues involved, the Plaintiff has brought this action asking the Court to declare coverage and the rights and obligations of all parties.

25. Paragraphs 47, 48 and 49 are denied. SCFB denies bad faith or breach and affirmatively alleges that in bringing this Declaratory Judgment action it has acted reasonably and in good faith, particularly in view of the complex facts, issues, and coverage issues in this matter, and particularly in view of Travelers failure to act in accord with applicable law to pro rate coverage due, if any.

26. In response to Paragraph 50, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.

27. Paragraphs 51, 52, 53, 54 and 55 are denied and SCFB affirmatively alleges that it acted reasonably, in good faith, and in accord with the terms and conditions of the policy and South Carolina law.

28. In response to Paragraph 56, SCFB incorporates the foregoing allegations and those of its Complaint, which is of record in this matter.

29. Plaintiff admits so much of Paragraph 57 as alleges that this action should be heard and ruled upon by a Judge rather than by a jury, and it denies any allegation or implication that it acted unreasonably or in bad faith. However, the balance of the said Paragraph calls for legal conclusions more properly within the province of the Court than of the Plaintiff which therefore denies the same and submits it to the Court for determination.

30. Paragraphs 58, 59 and 60 are denied, and SCFB alleges that it acted with reasonable cause and in good faith in filing this Declaratory Judgment action.

31. Paragraphs 61-108 do not appear to be directed to SCFB nor to require a response from SCFB. To any extent the said Paragraphs allege negligence, fault, unreasonable acts or failures to act, bad faith, breach or other culpable conduct as to SCFB, they are denied and strict proof thereof is demanded. However, SCFB joins in the allegations alleging that Travelers and McKenzie have an obligation to pay Driggers for the loss.

FOR A SECOND DEFENSE
(Contributory or Comparative Negligence)

32. Each of the foregoing allegations is incorporated herein by reference as fully as though the same were repeated verbatim.

33. If Defendants Driggers have suffered any damage, which is denied, said damages are due to and proximately caused by the their own contributory or comparative negligence and recklessness in an amount exceeding any alleged negligence or recklessness on the part of Plaintiff, and Defendants' negligence is a partial or complete bar to its recovery.

34. The Plaintiff pleads comparative or contributory negligence as a complete and affirmative defense.

FOR A THIRD DEFENSE
(Failure to Mitigate)

35. Each of the foregoing allegations is incorporated herein by reference as fully as though the same were repeated verbatim

36. Upon information and belief, the Defendants' claims are barred in whole or in part by their failure to mitigate damages by failing to exercise reasonable care, and failure to undertake proper

preventative or curative measures, inclusive of timely notifying the Plaintiff of the loss and making a claim, thus giving the Plaintiff the timely opportunity to investigate.

FOR A FOURTH DEFENSE

(Good Faith)

37. Each of the foregoing allegations is incorporated by reference herein as fully as though the same were repeated verbatim.

38. The Plaintiff has at all times acted in good faith and with a proper motive in connection with this claim, based upon the information given to and/or known by the Plaintiff which therefore pleads its proper motive and good faith as a full and affirmative defense.

FOR A FIFTH DEFENSE

(RULE 8 AND 12 DEFENSES)

39. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

40. Plaintiff asserts all affirmative defenses under and pursuant to Rules 8 and 12, South Carolina Rules of Civil Procedure, including the defense of failure to state a cause of action for which relief can be granted pursuant to Rule 12 (b)(6) and Plaintiff is informed and believes that said Complaint should be dismissed with prejudice.

FOR A SIXTH DEFENSE

(Unclean Hands)

41. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

42. Plaintiff alleges that to the extent that the Driggers Defendants seek equitable relief or call upon the equitable powers of this Court, Defendants inequitable conduct constitutes unclean hands and bars the granting of relief to them.

FOR A SEVENTH DEFENSE
(Waiver)

43. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

44. Plaintiff is informed and believes and on such information and belief alleges that Defendants Driggers were engaged in conduct that constitutes a waiver of their rights under the contract alleged. By reason of said waiver, the Plaintiff is excused from further performance of the obligations under the contract, if any.

FOR AN EIGHTH DEFENSE
(Equitable Estoppel)

45. Each of the foregoing allegations is incorporated by reference herein as fully as though repeated verbatim.

46. Plaintiff alleges that each and every Cause of Action against SCFB in the Amended Answer, Counterclaims and Cross Claims is barred by reason of acts, omissions, representations and courses of conduct by the Defendants by which Plaintiff was led to rely to its detriment, thereby barring, under the doctrine of equitable estoppel, any Causes of Action asserted by the Defendants.

FOR A NINTH DEFENSE
(Reservation of Right to Amend)

47. Plaintiff re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

48. Plaintiff reserves the right to amend this pleading and assert all additional defenses, including affirmative defenses, which the discovery process indicates may be applicable to this matter and it reserves the right to assert all such defenses and does not waive any additional or further defenses including affirmative defenses.

FOR A TENTH DEFENSE
(Punitive Damages Defense)

49. Plaintiff re-alleges and incorporates the foregoing allegations herein by reference, as fully as though the same were repeated verbatim.

50. An award of punitive damages against Plaintiff, directly or by indemnification, under South Carolina and/or Federal law, violates the fifth, Sixth, and Fourteenth Amendments of the United States Constitution and Article I, §3 of the South Carolina Constitution in that:

- a. The judiciary's ability to correct a punitive damage award only upon a finding of passion, prejudice or caprice is inconsistent with due process guarantees;
- b. Any award of punitive damages serving a compensatory function is inconsistent with due process guarantees;
- c. Any award of punitive damages based upon the wealth of the Plaintiff violates due process guarantees;

- d. The jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of meaningful standards and is inconsistent with due process guarantees;
- e. Even if it could be argued that the standard governing the imposition of punitive damages exists, the standard is void for vagueness; and
- f. The Defendants' claim for punitive damages violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution and Article I, §3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Plaintiff.

51. The Defendants claims for punitive damages violates the federal doctrine of separation of powers and Article I, §3 of the South Carolina constitution for the reason that punitive damages are a creation of the judicial branch of government, which invades the province of the legislative branch of government.

Further replying to the Amended Answer, Counterclaims and Cross Claims, and by way of Counterclaims thereto, the Plaintiff alleges as follows:

**FOR A FIRST COUNTERCLAIM AGAINST DEFENDANTS DRIGGERS
(Misrepresentation)**

52. The foregoing allegations are repleaded herein.

53. The Driggers application) for insurance contained certain questions that were asked of Defendants. By signing the subject application, Defendants Driggers certified that the answers to all questions in the application were true, correct and complete.

54. The Defendants failed to provide truthful and complete answers to certain questions on the subject application, including, but not limited to, their answering "not" to all of the following:

- A. Is the dwelling occupied by a person living alone; and
- B. Any other fire insurance on dwelling or contents; and
- C. Any litigation or dispute concerning this property; and
- D. Ownership of the property other than by applicant.

55. Defendants Driggers failed to provide information that McKenzie was or very well might be living alone; that McKenzie had or was obligated to have other fire insurance on the dwelling and the contents; that there were extensive, long-standing and hostile disputes and litigation concerning the property and that the property was titled to his daughter with McKenzie having an ownership interest in the property. These untruthful and incomplete responses constitute misrepresentations that were untrue, their falsity was known to Defendants Driggers, and the misrepresentations were material to the risk to be assumed by the Plaintiff, were relied upon by the Plaintiff, and were made with the intent to deceive the Plaintiff. Plaintiff would not have insured Defendants Driggers nor issued the policy had the actual situation and status of the property been disclosed by truthful answers on the policy application. Therefore, on information and belief, the subject policy is void from its inception, and the Defendants are not entitled to payment for the subject loss.

56. The responses noted above were not only untruthful, they were also incomplete and constitute misrepresentations were relied upon by the Plaintiff, and were made with the intent to deceive the Plaintiff. Therefore, on information and belief, the subject policy is void from its inception, and the Defendants are not entitled to payment for the subject loss.

**FOR A SECOND COUNTERCLAIM AGAINST DEFENDANTS DRIGGERS
(Breach of Contract)**

57. The foregoing allegations are repleaded herein.
58. Farm Bureau's Policy, in pertinent part, provides as follows:

CONDITIONS

A This section includes your duties after a loss occurs and how claims are handled.

- 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 the 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 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. give prompt notice to us or our agent;*
 - c. (1) protect the property from further damage;*
 - (2) make reasonable and necessary repairs to protect the property;*
 - (3) keep an accurate record of repair expenses; and*
 - (4) cooperate with us in the investigation and settlement of any claim;*
 - d. 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;

e. as often as we reasonably require:

- (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;*
- (4) allow us to obtain from you and any other person seeking coverage, separate recorded statements; and*
- (5) submit to examination(s) under oath and sign and swear to it;*

f. 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; and*
- (2) the interest of the insured and all others in the property involved and all liens on the property; and*
- (3) other insurance, service agreements, or warranty provisions which may cover the loss; and*
- (4) changes in title or occupancy of the property during the term of the policy; and*
- (5) specifications of damaged buildings and detailed repair estimates; and*
- (6) the inventory of damaged personal property described in 2d above; and*
- (7) receipts for additional living expense incurred or records that support the fair rental value loss.*

(SCFB Policy, p. 24-25)

59. As noted above, the insured(s) failed to disclose to Farm Bureau that anyone else had an insurable interest in the subject property, and the insured(s) failed to document or establish and continue to fail and refuse to document and establish the extent of McKenzie's interest in the subject property. Despite that, the insured(s) seek payment of sums that appear to exceed the amount of their insurable interest, and rather than document and establish the amount of such interest, the insured(s) have filed claims alleging breach of contract and bad faith by SCFB.

60. The insured(s) failed to give prompt notice to SCFB as required by the Policy, resulting in substantial prejudice to SCFB as it deprived the company of the ability to investigate this fire loss, which Travelers' determined to be intentionally set.

61. Upon information and belief, the insured(s) failed to do or comply with or may have failed to do or comply with the other "Duties After Loss" as per the provisions cited above, which are incorporated herein by reference.

62. All of the foregoing constitute substantial material breaches by the insured(s)/Driggers of the subject policy or contract of insurance such that SCFB no longer has an obligation to perform under the Contract, and SCFB asks that this Court so hold.

63. Further, SCFB has been damaged by these breaches in that it had to expend money for employee's time to investigate issues that should have been disclosed by the Driggers, including issues relative to the ownership interest in the property, and issues relative to other insurance and the investigation of the other insurance carrier, since the failure to give prompt notice deprived SCFB of the ability to investigate the fire loss. Further, SCFB had to retain counsel to interpret legal issues relative to the foregoing, to conduct Examinations Under Oath, and to file the present action. All of these damages were proximately caused by the Driggers' breaches and SCFB seeks recovery for the same.

**FOR A FIRST COUNTERCLAIM AGAINST DEFENDANTS
MCKENZIE AND TRAVELERS
(Equitable Indemnity)**

64. The foregoing allegations are pleaded herein.

65. Under the facts of this matter, McKenzie had a legal obligation to insure Driggers' interest in the subject property and was under a Court Order to do so, and Travelers provided insurance to McKenzie and it has a contractual obligation to insure Driggers' ownership interests in the subject property _ all as related in Driggers' Amended Answer, Counterclaims and Cross Claims which is incorporated herein by reference. Further, Driggers made a timely claim with Travelers under McKenzie's policy and intended to look to Travelers to pay benefits due for the fire loss in this matter, but Travelers denied his claim and it failed to promptly notify SCFB of this loss.

66. McKenzie and Travelers failure to honor and uphold their legal obligations has exposed the Plaintiff to liability for a loss it had no opportunity to investigate, based upon Travelers and/or McKenzie's failure to notify SCFB of the loss and/or exposed SCFB to a greater portion of a loss than it should legally bear such that the wrongful acts of McKenzie and Travelers have exposed SCFB to liability or to greater liability.

67. SCFB is without negligence or fault in this matter and has acted properly and in good faith with all parties in an attempt to reasonably resolve the same.

68. If damages are awarded against SCFB from Driggers' claims, then SCFB is entitled to be fully or partly indemnified by McKenzie and Travelers for any actual damages, punitive damages or attorney's fees awarded to Driggers, as well as for all expenses, costs, and Attorney's fees associated with this action and/or all expenses, costs, damages or losses to which SCFB is or may be entitled.

69. SCFB seeks the remedy of equitable indemnity from Defendants Travelers and McKenzie and SCFB is informed and believes that the ends of justice and the equities of the matter entitle it to this relief.

WHEREFORE, having replied to the Amended Answer, Counterclaims and Cross Claims of the Defendants herein, the Plaintiff asks for a jury trial, that the Defendants' Amended Answer, Counterclaims and Cross Claims be dismissed with prejudice and that it have judgment as prayed for herein and in its Complaint, which is incorporated herein by reference, and for such other and further relief as this Court deems just and proper.

/s/ J. Dwight Hudson



J. Dwight Hudson, Esquire
SC Bar # 2753
Hudson Law Offices
PO Box 70218
Myrtle Beach, SC 29572
(843) 692-9889

Attorney For: Plaintiff

Dated: February 4, 2016

CERTIFICATION OF SERVICE

This is to certify that the foregoing was served by HUDSON LAW OFFICES by and through its agents, servants and employees on February 4, 2016 by

- (xx) Placing the same in the United States mail, postage prepaid to the addresses noted below;
- () Transmitting the same by facsimile to the numbers noted below;
- (xx) Forwarding the same by e-mail to the addressee(s) noted below:

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**Attorney for M. Driggers, S Driggers
and T. Floyd**

 COPY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau Ins. Co.,)
)
 Plaintiff,)
)
 vs.)
)
 Marion L. Driggers, Shiralee Driggers,)
 Tammy D. Floyd, Arthur McKenzie, a/k/a)
 Auther McKenzie, The Travelers Home)
 and Marine Insurance Company,)
 The United States of America acting by)
 and through its agency, The Internal)
 Revenue Service and The South Carolina)
 Tax Commission)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-44-00132
45

**MOTION FOR AN ORDER ALLOWING
 FUNDS TO BE DESPOSITED WITH
 THE COURT PURSUANT TO RULE
 22(b) OF THE SCRPC**

SHARON L. DRIGGERS
 CLERK OF COURT
 KINGSTREE, S.C.
 2015 FEB 12 AM 11:17
 FILED

TO: J. DWIGHT HUDSON, ESQUIRE AND MARY ANN GRAHAM, ESQUIRE, ATTORNEYS FOR PLAINTIFF; DARYL J. CORBIN, ESQUIRE, ATTORNEY FOR ARTHUR MCKENZIE, A/K/A AUTHER MCKENZIE; JAMES D. DOTSON, ESQUIRE, ATTORNEY FOR MARION L. DRIGGERS, SHIRALEE DRIGGERS, AND TAMMY FLOYD; THE UNITED STATES OF AMERICA ACTING BY AND THROUGH ITS AGENCY, THE INTERNAL REVENUE SERVICE; THE SOUTH CAROLINA TAX COMMISSION

Defendant The Travelers Home and Marine Insurance Company (“Travelers”) hereby moves for an Order permitting it to deposit with the Court the sum of One Hundred Fifteen Thousand One Hundred Forty and 40/100 (\$115,140.40) Dollars and directing the Clerk of Court to accept the same pursuant to Rule 22(b) of the *South Carolina Rules of Civil Procedure*.

Defendant Travelers filed an interpleader crossclaim on May 19, 2014. Defendant Travelers and its insured, Defendant Arthur McKenzie a/k/a Auther McKenzie (“McKenzie”), have settled his claims in relation to the subject policy issued by Defendant Travelers for the sum of Two Hundred Thirty-Two Thousand Seventy-Three and 45/00 (\$232,073.45) Dollars. Defendant Travelers requests an Order permitting it to deposit with the Court the sum of One

Hundred Fifteen Thousand One Hundred Forty and 40/100 (\$115,140.40) Dollars of the aforementioned settlement amount, reflecting the deduction of attorneys' fees and expenses of Defendant McKenzie in the amount of One Hundred Sixteen Thousand Nine Hundred Thirty-Three and 05/100 (\$116,933.05) Dollars. All parties have been served with the interpleader cross-claim.

The undersigned hereby affirms that he has communicated with other counsel of record and attempted in good faith to resolve the matter contained in this motion.



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Our File: 7746.1749
*Attorneys for The Travelers Home and Marine
Insurance Company*

February 11, 2015

FOR A FIRST DEFENSE
(General Denial)

1. That the Driggers deny each and every allegation of McKenzie's Cross-Counterclaims and Third Party Complaint (hereinafter referred to as the "Cross-Counterclaims") not hereinafter specifically and expressly admitted, qualified or explained.
2. Upon information and belief, the allegations set forth in Paragraphs 1 through 5 of McKenzie's Cross-Counterclaims are McKenzie's responses to the Driggers Amended Cross Claims and do not require a response, but to the extent a response is required, the allegations are denied and strict proof is demanded thereof.
3. Answering the allegations in Paragraph 6 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 2 above as if set forth herein verbatim.
4. Answering the allegations in Paragraph 7 of McKenzie's Cross-Counterclaims, the Driggers aver that document attached as Exhibit A speaks for itself, as to the remaining allegations contained in Paragraph 7, the Driggers deny the same and demand strict proof thereof.
5. Answering the allegations in Paragraph 8, the Driggers admit that Tammy Floyd is the adult daughter of the Driggers, as to the remaining allegations contained in Paragraph 8, the Driggers deny the same and demand strict proof thereof.
6. Answering the allegations in Paragraph 9 of McKenzie's Cross-Counterclaims, the Driggers aver that document attached as Exhibit B speaks for itself; as to the remaining allegations contained in Paragraph 9, the Driggers deny the same and demand strict proof thereof.
7. Upon information and belief, the allegations set forth in Paragraph 10 of McKenzie's Cross-Counterclaim set forth a conclusion of law, to which no response is required; as to the

- remaining allegations contained in Paragraph 10, the Driggers deny the same and demand strict proof thereof.
8. Upon information and belief, the allegations set forth in Paragraph 11 of McKenzie's Cross-Counterclaims set forth conclusions of law, to which no response is required, but to the extent a response is required, the allegations are denied and the Driggers demand strict proof thereof.
 9. Upon information and belief, Paragraph 12 and Paragraph 13 of McKenzie's Cross-Counterclaims does not allege any facts, but rather set forth a hypothetical situation, to which no response is required; to the extent a response is required, the allegations are denied and the Driggers demand strict proof thereof.
 10. The Driggers deny the allegations of Paragraph 14 of McKenzie's Cross-Counterclaims and demand strict proof thereof.
 11. Upon information and belief, Paragraph 15 and Paragraph 16 of McKenzie's Cross-Counterclaims does not allege any facts, but rather set forth a hypothetical situation and legal conclusions, to which no response is required; to the extent a response is required, the allegations are denied and the Driggers demand strict proof thereof.
 12. Upon information and belief, the allegations set forth in Paragraph 17 of McKenzie's Cross-Counterclaims set forth a conclusion of law, to which no response is required.
 13. The Driggers lack personal knowledge as to the allegations contained in Paragraph 18, and Paragraph 19 of McKenzie's Cross-Counterclaims, and therefore, deny the same and demand strict proof thereof.
 14. The Driggers deny the allegations of Paragraph 20, Paragraph 21, Paragraph 22, Paragraph 23, Paragraph 24, and Paragraph 25 of McKenzie's Cross-Counterclaims and demand strict proof thereof.

15. Responding to Paragraph 26, the Driggers admit only that there was a fire on or about November 26, 2009, at the subject property. The Driggers lack knowledge as to the remaining allegations contained in Paragraph 26, and therefore, deny the same and demand strict proof thereof.
16. The Driggers deny the allegations of Paragraph 27, Paragraph 28, Paragraph 29, Paragraph 30, Paragraph 31, including subparagraphs (a) through (f), Paragraph 32, Paragraph 33, including subparagraphs (a) through (g), Paragraph 34, Paragraph 35, including subparagraph (a) through (j) and Paragraph 36 of McKenzie's Cross-Counterclaims and demand strict proof thereof.
17. The Driggers deny the allegations of Paragraph 37, including subparagraphs (a) through (g), and Paragraph 38, including the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims and demand strict proof thereof.
18. Answering the allegations in Paragraph 39 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 17 above as if set forth herein verbatim.
19. The Driggers deny the allegations of Paragraph 40, including subparagraphs (a) through (g), Paragraph 41, and Paragraph 42, including the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims and demand strict proof thereof.
20. Answering the allegations in Paragraph 43 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 19 above as if set forth herein verbatim.
21. The Driggers deny the allegations of Paragraph 43 and Paragraph 44 of McKenzie's Cross-Counterclaims and demand strict proof thereof.

22. Upon information and belief, the allegations set forth in Paragraph 45 of McKenzie's Cross-Counterclaims set forth legal conclusions, to which no response is required. To the extent a response is required, the Driggers deny the same and demand strict proof thereof.
23. The Driggers deny the allegations of Paragraph 46, including subparagraphs (a) through (j), Paragraph 47, Paragraph 48 and Paragraph 49, including the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims and demand strict proof thereof.
24. Answering the allegations in Paragraph 50 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 23 above as if set forth herein verbatim.
25. Upon information and belief, the allegations set forth in Paragraph 51 of McKenzie's Cross-Counterclaims set forth legal conclusions, to which no response is required. To the extent a response is required, the Driggers deny the same and demand strict proof thereof.
26. The Driggers deny the allegations of Paragraph 52 of McKenzie's Cross-Counterclaims and demand strict proof thereof.
27. The Driggers lack sufficient knowledge as to the allegations contained in Paragraph 53 of McKenzie's Cross-Counterclaims, and therefore, deny the same and demand strict proof thereof.
28. The Driggers deny the allegations of Paragraph 54, including subparagraphs (a) through (e), Paragraph 55, Paragraph 56 and Paragraph 57, including the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims and demand strict proof thereof.
29. Answering the allegations in Paragraph 58 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 28 above as if set forth herein verbatim.

30. The Driggers deny the allegations of Paragraph 59, Paragraph 60, Paragraph 61, Paragraph 62, Paragraph 63, Paragraph 64, and Paragraph 65, including the “Wherefore” prayer for relief of McKenzie’s Cross-Counterclaims and demand strict proof thereof.
31. Answering the allegations in Paragraph 66 of McKenzie’s Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 30 above as if set forth herein verbatim.
32. Upon information and belief, the allegations in Paragraph 67 of McKenzie’s Cross-Counterclaim set forth a conclusion of law, to which no response is required; as to the remaining allegations contained in Paragraph 67, the Driggers deny the same and demand strict proof thereof.
33. The Driggers deny the allegations of Paragraph 68 of McKenzie’s Cross-Counterclaims and demand strict proof thereof.
34. Responding to Paragraph 69 and Paragraph 70, including the “Wherefore” prayer for relief of McKenzie’s Cross-Counterclaims, the Driggers deny that Defendant McKenzie is entitled to the relief requested therein and demand strict proof thereof.
35. Answering the allegations in Paragraph 71 of McKenzie’s Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 34 above as if set forth herein verbatim.
36. The Driggers deny the allegations of Paragraph 72 and Paragraph 73 of McKenzie’s Cross-Counterclaims and demand strict proof thereof.
37. Upon information and belief, the allegations set forth in Paragraph 74 of McKenzie’s Cross-Counterclaims set forth conclusions of law, to which no response is required, but to the extent a response is required, the allegations are denied and the Driggers demand strict proof thereof.

38. The Driggers deny the allegations of Paragraph 75 and Paragraph 76 of McKenzie's Cross-Counterclaims and demand strict proof thereof.
39. Responding to Paragraph 77 the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims, the Driggers deny that Defendant McKenzie is entitled to the relief requested therein and demand strict proof thereof.
40. Answering the allegations in Paragraph 78 of McKenzie's Cross-Counterclaims, the Driggers repeat and re-allege their response to Paragraphs 1 through 39 above as if set forth herein verbatim.
41. The Driggers deny the allegations of Paragraph 79 of McKenzie's Cross-Counterclaims and demand strict proof thereof.
42. Answering the allegations in Paragraph 80, Paragraph 81 and Paragraph 82 of McKenzie's Cross-Counterclaims, the Driggers aver that document attached as Exhibit C speaks for itself and deny any allegations that contradict Exhibit C.
43. The Driggers lack knowledge as to the allegations contained in Paragraph 83, and Paragraph 84 of McKenzie's Cross-Counterclaims, and therefore, deny the same and demand strict proof thereof.
44. Responding to Paragraph 85 of McKenzie's Cross-Counterclaims, the Driggers aver that no facts have been pled and therefore no response is required.
45. Responding to Paragraph 86 and 87, including the "Wherefore" prayer for relief of McKenzie's Cross-Counterclaims, the Driggers deny the allegations set forth therein, deny that Defendant McKenzie is entitled to the relief requested therein, and demand strict proof thereof.

FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)

46. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 45 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
47. That McKenzie's Counter-crossclaims fail to state facts sufficient to constitute a cause of action as to the Driggers and should be dismissed pursuant to Rule 12(b)(6), SCRCF.

FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Collateral Estoppel / Res Judicata)

48. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 47 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.
49. That, upon information and belief, McKenzie's Counter-crossclaims for breach of contract, civil conspiracy, breach of fiduciary duty, and request for an accounting are subsequently barred BY the doctrines of collateral estoppel and *res judicata* as these claims were previously pled and disposed of on July 10, 1996, in Case No. 1994-CP-45-00380, *E.L. Matthews v. Arthur McKenzie, et. al.*, filed in the Williamsburg County Court of Common Pleas.
50. That, upon information and belief, all of McKenzie's Counter-crossclaims are subsequently barred on the doctrines of collateral estoppel and *res judicata* as all claims surrounding title, ownership and possession of the property were adjudicated and disposed of on March 6, 2013, in Case No. 2012-CV-45-10100960, *E.L. Matthews and Tammy Floyd v. Arthur McKenzie*, filed in the Williamsburg County Magistrate Court.

FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Compliance with Contractual Requirements)

51. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 50 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

52. That, upon information and belief, McKenzie's Counter-crossclaims are barred as the Driggers complied with all notice and ejection requirements of the contract for sale and purchase.

FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Statute of Limitations/ Statute of Frauds)

53. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 52 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

54. That, upon information and belief, some, if not all of McKenzie's Counter-crossclaims are barred by the Statute of Limitations and the Statute of Frauds.

FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)

55. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 54 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

56. That McKenzie has failed to mitigate his damages as required by law.

FOR A SEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Lack of Privity)

57. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 56 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

58. That, McKenzie's Counter-Crossclaims are barred to the extent that he is a stranger to any agreement between the Driggers and Third-Party Defendant, Alice Peterson and the contract for insurance between the Driggers and Plaintiff, South Carolina Farm Bureau Mutual Insurance Company.

FOR AN EIGHTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Betterment)

59. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 58 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

60. That, upon information and belief, the relief sought in McKenzie's Counter-crossclaims would place him in a better position than he would have been prior to the alleged acts of the Driggers, which are denied, and any alleged damages are therefore barred or should be reduced pursuant to the rules of equity.

FOR A NINTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)

61. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 60 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

62. That, upon information and belief, McKenzie's Counter-crossclaims are barred based on the doctrines of waiver, estoppel and laches.

FOR A TENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Forfeiture)

63. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 62 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

64. That, upon information and belief, McKenzie has forfeited his right to pursue his Cross-Counterclaims against the Driggers based on his failure to defend his right to the property in prior judicial actions.

FOR AN ELEVENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Unclean Hands)

65. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 64 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

66. That, upon information and belief, McKenzie's Cross-Counterclaims are barred based on the doctrine of unclean hands.

FOR A TWELFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Abandonment)

67. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 66 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

68. That McKenzie's Cross- Counterclaims are barred following his abandonment of the property, which was judicially determined in Case No. 2012-CV-45-10100960, *E.L. Matthews and Tammy Floyd v. Arthur McKenzie*, filed in the Williamsburg County Magistrate Court.

FOR A THIRTEENTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Reservation and Non-Waiver)

69. That each and every relevant and consistent admission, denial, explanation, modification and/or allegation set forth in Paragraph 1 through Paragraph 68 hereinabove are incorporated herein by reference as if fully set forth herein verbatim.

70. The Driggers have not had an opportunity to conduct sufficient investigation or engage in adequate discovery regarding the circumstances of McKenzie's Cross-Counterclaims. Therefore, the Driggers specifically and expressly reserve and do not waive their rights to assert any additional defense as may be discovered through the course of written discovery, depositions and further investigation.

WHEREFORE, having fully set forth their Reply and Affirmative Defenses to Defendant, McKenzie's Cross-Counterclaims and Third Party Complaint, Defendants Marion L. Driggers, Shiralee Driggers and Tammy D. Floyd prays that these "Counter-Crossclaims" be dismissed with prejudice, with costs assessed against Arthur McKenzie, a/k/a Auther McKenzie, along with an award of attorneys' fees to the Driggers, and for such other and further relief as this Court may deem just and proper.

**Respectfully Submitted,
PRITCHARD LAW GROUP, LLC**

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*Attorneys for Defendants, Marion Leroy
Driggers, Shiralee Driggers, and Tammy
D. Floyd*

March 14, 2016
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)
)
 South Carolina Farm Bureau)
 Mutual Insurance Company,)
)
 Plaintiffs,)
)
 v.)
)
 Marion L. Driggers, Shiralee Driggers,)
 Tammy D. Floyd, Arthur McKenzie,)
 a/k/a Auther McKenzie, The Travelers)
)
 Home and Marine Insurance)
 Company, the United States of)
 American acting by and through its)
 agency, The Internal Revenue Service)
 and The South Carolina Tax)
 Commission,)
)
 Defendants.)
)
 Arthur McKenzie, a/k/a Auther McKenzie,)
)
 Third-Party Plaintiff,)
)
 v.)
)
 Alice Peterson,)
)
 Third-Party Defendant.)
)

IN THE COURT OF COMMON PLEAS
 THIRD JUDICIAL CIRCUIT
 CASE NO. 2014-CP-45-132

SUMMONS
 [jury trial demanded]

- 1. Breach of Contract
- 2. Civil Conspiracy
- 3. Breach of Fiduciary Duties
- 4. Negligence
 [jury trial demanded for Nos. 1 - 4]
- 5. Unjust Enrichment
- 6. Accounting
- 7. Foreclosure
- 8. Declaratory Judgment
 (Cloud on Title)
 [non-jury trial demanded for Nos. 5 - 8]

TO: ALICE PETERSON

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 said Plaintiff on the subscriber at his office in the City of Florence, South Carolina, within thirty (30) days after service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

RESPECTFULLY SUBMITTED,

CORBIN LAW FIRM

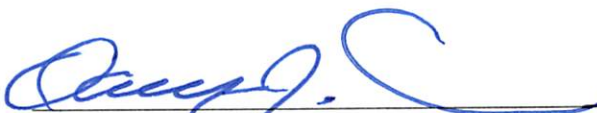
227 West Evans Street

Post Office Box 447

Florence, South Carolina 29503

(843)667-6119

BY:



Daryl J. Corbin, Esquire

Attorney for Auther McKenzie

Florence, South Carolina

April 5, 2016