

03-1648-CD

Brenda Buck vs Erie Ins. Co.

Date: 6/6/2013

Time: 10:12 AM

Page 1 of 2

**Clearfield County Court of Common Pleas**

User: DFOLMAR

ROA Report

Case: 2003-01648-CD

Current Judge: Paul E. Cherry

Brenda A. Buckvs.Erie Insurance Exchange

**CIVIL ACTION**

Date	Judge
11/4/2003 1 ✓ Filing: Civil Complaint. Paid by: Mason, David C. (attorney for Buck, Brenda A.) Receipt number: 1868657 Dated: 11/04/2003 Amount: \$85.00 (Check) 3 CC to Atty. Mason	No Judge
	Case Filed. Paul E. Cherry
11/18/2003 2 ✓ Acceptance Of Service On Behalf Of The Defendant, Erie Insurance Group. filed by, s/Richard W. DiBella, Esquire no cc	No Judge
1/8/2004 3 ✓ Answer and New Matter. filed by, s/Kathleen S. McAllister, Esquire Verification s/Keith McQuown Certificate of Service no cc	No Judge
8/13/2004 4 ✓ Motion for Summary Judgment filed by s/Kathleen McAllister, Esq. No CC	No Judge
8/17/2004 5 ✓ ORDER OF COURT, AND NOW, to-wit, this 16th day of August, 2004, upon consideration of the Motion of Summary Judgement filed on behalf of Erie Insurance Exchange, it is hereby ORDERED, ADJUDGED, and DECREED that the Motion will be heard before the Honorable Judge Cherry on September 23, 2004, at 1:30 p.m. By the Court, Paul E. Cherry. 2 cc Atty McAllister	Paul E. Cherry
9/14/2004 6 ✓ Plaintiff's Motion for Summary Judgment, filed by s/David C. Mason, Esq. No CC	Paul E. Cherry
7 ✓ Plaintiff's Reply To Defendant's Motion for Summary Judgment, filed by s/ David C. Mason, Esquire. No CC.	Paul E. Cherry
7 ✓ Certificate of Service, on behalf of Plaintiff, Plaintiff's Motion for Summary Judgment, upon Richard W. Dibella, Esquire. Filed by s/David C. Mason, Esquire. No CC.	Paul E. Cherry
8 ✓ Certificate of Service, Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment, upon Richard W. DiBella, Esquire. Filed by s/David C. Mason, Esquire. No CC.	Paul E. Cherry
9 ✓ Certificate of Service, Plaintiff's Reply to Defendant's Motion For Summary Judgment by US mail, upon Richard W. DiBella, Esquire filed by s/David C. Mason, Esquire. No CC.	Paul E. Cherry
MISSING 10 ✓ Certificate of Service, Brief in Support of Motion for Summary Judgment, upon David C. Mason, Esquire. Filed by s/Kathleen S. McAllister, Esquire. No CC.	Paul E. Cherry
9/16/2004 11 ✓ Order: AND NOW, this 16th day of September, 2004, upon consideration of Paul E. Cherry plaintiff's motion for Summary Judgment filed in the above matter, it is the Order of the Court that argument on said motion has been scheduled for the 22nd day of October, 2004, at 1:30 P.M., in Courtroom No. 2, Clfd Co. Courthouse. BY THE COURT, /s/ Paul E. Cherry, Judge. 4 CC Atty. Mason w/memo Re: Service.	Paul E. Cherry
9/17/2004 12 ✓ Order, AND NOW, this 16th day of September, 2004, it is the ORDER of the Court that argument on Defendant's Motion for Summary Judgment has been rescheduled from September 23, 2004 to Friday, October 22, 2004 at 1:30 P.M. in Courtroom No. 2, Clearfield County Courthouse. BY THE COURT:s/s Paul E. Cherry, Judge. 1 CC Atty's McAllister, Mason.	Paul E. Cherry
9/21/2004 13 ✓ Affidavit of Service of Order dated Sept 16, 2004 filed by Atty. Mason. No cc.	Paul E. Cherry

MISSING

Date: 6/6/2013  
Time: 10:12 AM  
Page 2 of 2

**Clearfield County Court of Common Pleas**  
ROA Report  
Case: 2003-01648-CD  
Current Judge: Paul E. Cherry

Brenda A. Buckvs. Erie Insurance Exchange

User: DFOLMAR

**CIVIL ACTION**

Date		Judge
10/13/2004	14 Response to Motion for Summary Judgment, on behalf of Defendant, filed by s/Kathleen S. McAllister, Esquire. no CC. certificate of service, forwarded to all counsel of record by 1st class mail the 8th of Oct.	Paul E. Cherry
11/5/2007	15 Notice of Proposed Termination of Court Case, mailed to parties (see Original), filed.	Paul E. Cherry
11/13/2007	16 Statement of Notice of Intention to Proceed, filed by s/David C. Mason, Esq. No CC	Paul E. Cherry
11/14/2007	17 Order, this 13th day of Nov., 2007, Status Conference is scheduled for the 12th day of Dec., 2007, at 10:00 a.m. in Courtroom 2. By The Court, /s/ Paul E. Cherry, Judge. 2CC Attys: Mason, McAllister	Paul E. Cherry
12/6/2007	18 Motion for Non Pros, filed by Atty. McAllister no cert. copies.	Paul E. Cherry
3/4/2013	19 Order, filed cert. to Atty. Mason and McAllister NOW, this 1st day of March, 2013 RE: Status Conf. to be held on May 2, 2013.	Fredric Joseph Ammerman

5  
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03-1648-CD

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

\*

\*

ERIE INSURANCE GROUP

DEFENDANT

\* TYPE OF PLEADING: COMPLAINT ACTION

\* IN DECLARATORY JUDGMENT

\*

\* FILED ON BEHALF OF:

\* PLAINTIFF

\*

\* ATTORNEY FOR PLAINTIFF:

\* David C. Mason, Esquire

\* Supreme Court ID #39180

\* MASON LAW OFFICE

\* P.O. Box 28

\* Philipsburg, PA 16866

\* (814) 342-2240

\*

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

NOV 04 2003

Attest.

William L. Brown  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No.

\*

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

ERIE INSURANCE GROUP

\*

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DEFENDANT

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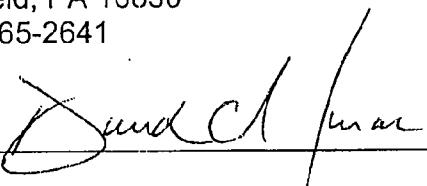
\*

**NOTICE TO DEFEND**

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

**YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE AN LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.**

Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641

  
\_\_\_\_\_  
David C. Mar

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK	* No.
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

COMPLAINT

1. Plaintiff is Brenda A. Buck, an adult individual who resides at 2720 Allport Cutoff, Morrisdale, Pennsylvania, 16858. This residence is in Graham Township, Clearfield County, Pennsylvania.
2. Defendant is Erie Insurance Group, with home offices at 3410 West 12<sup>th</sup> Street, Erie, Pennsylvania, 16505. It is believed and averred that this address is located in Erie County, Pennsylvania.
3. Defendant is believed to be a corporation and a licensed provider of insurance products in the Commonwealth of Pennsylvania.
4. Defendant is engaged in the sale and provision of homeowners insurance policies, as well as other types of causality and indemnity products.
5. Plaintiff purchased from Defendant a "Home Protector - Ultracover Insurance Policy" to provide homeowners insurance coverage for her residence at 2720 Allport Cutoff, Morrisdale, Pennsylvania.
6. At all times relevant hereto Erie Insurance Group issued Policy No. Q59-1805275

to Brenda A. Buck. A true and correct copy of the "Home Protector - Ultracover Insurance Policy" provided to the homeowner is attached to this complaint as Exhibit "A".

7. The Erie Insurance Group "Home Protector - Ultracover Insurance Policy" contract provides as follows on page 7:

#### **PERILS WE INSURE AGAINST**

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited herein.

#### **WHAT WE DO NOT COVER -- EXCLUSIONS:**

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. by collapse, other than as provided in *What We Also Pay, (2) Collapse*.

8. The Erie Insurance Group "Home Protector - Ultracover Insurance Policy" also provides as follows:

#### **WHAT WE ALSO PAY:**

##### **(2) COLLAPSE**

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purposes.

9. On or about September 3, 2003, Plaintiff's residence located at 2720 Allport Cutoff experienced a catastrophic collapse of the wall of the foundation.

10. On or about September 8, 2003, Erie Insurance Group issued a reservation of rights letter, a copy of this letter is attached hereto as Exhibit "B".

11. Accordingly, based upon the contract language Erie Insurance is required to

indemnify the Plaintiff as a result of this loss.

12. On or about September 18, 2003, Defendant Erie Insurance Group issued a denial of coverage letter, a copy of this letter is attached hereto as Exhibit "C".

**WHEREFORE**, Plaintiff prays Your Honorable Court for the entry of an Order:

(a) Declaring that the Defendant Erie Insurance Group's "Home Protector - Ultracover Insurance Policy" provides indemnity and coverage for the collapse of the wall of the foundation of Plaintiff's home in accordance with the contract's coverages and limits;

(b) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses occasioned by the collapse of the wall of the foundation of Plaintiff's home, including the loss of personal property, loss of use and other damages as may be proved;

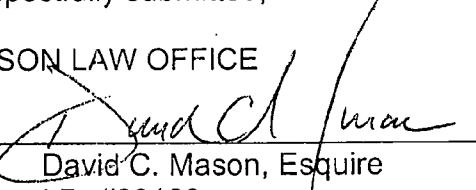
(c) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses associated with the loss and this action, including all of her costs and legal fees incurred in the instant action;

(d) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

MASON LAW OFFICE

By:

  
David C. Mason, Esquire

I.D. #39180

Attorney for Plaintiff

**VERIFICATION**

I, Plaintiff herein, verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements herein are made subject to the penalties of 18 PA. C.S. §4904 relating to unsworn falsification to authorities.

  
\_\_\_\_\_  
Brenda A. Buck

## WHERE TO LOOK IN YOUR POLICY

AGREEMENT .....	4	(11) NON-OWNED RESIDENCES .....	11
ERIE INSURANCE EXCHANGE .....	4	(12) ORDINANCE OR LAW COVERAGE .....	11
ERIE INSURANCE PROPERTY & CASUALTY COMPANY .....	4	(13) TEMPORARY REPAIRS AFTER LOSS .....	11
DEFINITIONS .....	4	(14) TREES, SHRUBS, PLANTS AND LAWNS .....	11
ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS .....	5	DEDUCTIBLE .....	11
ADDITIONAL ERIE INSURANCE PROPERTY & CASUALTY COMPANY DEFINITIONS .....	5	RIGHTS AND DUTIES -- CONDITIONS -- SECTION I .....	11
WHEN AND WHERE THIS POLICY APPLIES ..	5	(1) ABANDONMENT OF PROPERTY ..	11
PROPERTY PROTECTION -- SECTION I .....	6	(2) APPRAISAL .....	11
DWELLING COVERAGE .....	6	(3) AUTOMATIC ADJUSTMENT OF COVERAGE AMOUNTS .....	12
OUR PROMISE .....	6	(4) ERIE OPTION .....	12
OTHER STRUCTURES COVERAGE .....	6	(5) GLASS REPLACEMENT .....	12
OUR PROMISE .....	6	(6) INCREASE OF HAZARD .....	12
PERSONAL PROPERTY COVERAGE .....	6	(7) LOSS PAYMENT .....	12
OUR PROMISE .....	6	(8) LOSS SETTLEMENT .....	12
SPECIAL LIMITS -- PERSONAL PROPERTY .....	7	(9) LOSS TO A PAIR OR SET .....	13
LOSS OF USE COVERAGE .....	7	(10) MORTGAGE CLAUSE .....	13
OUR PROMISE .....	7	(11) NO BENEFIT TO BAILEE .....	13
PERILS WE INSURE AGAINST .....	7	(12) OTHER INSURANCE .....	13
WHAT WE DO NOT COVER -- EXCLUSIONS .....	7	(13) PERMISSION GRANTED TO YOU ..	13
WHAT WE ALSO PAY .....	9	(14) RECOVERED PROPERTY .....	14
(1) AUTOMATIC GARAGE DOOR OPENER .....	9	(15) SUIT AGAINST US .....	14
(2) COLLAPSE .....	9	(16) WHAT TO DO WHEN A LOSS HAPPENS .....	14
(3) CREDIT CARD, CHARGE PLATE, CHECK FORGERY AND COUNTERFEIT MONEY PROTECTION .....	10	HOME AND FAMILY LIABILITY PROTECTION -- SECTION II .....	14
(4) DEBRIS REMOVAL AFTER LOSS ..	10	BODILY INJURY LIABILITY COVERAGE ..	14
(5) EMERGENCY REMOVAL OF PROPERTY .....	10	PROPERTY DAMAGE LIABILITY COVERAGE .....	14
(6) FIRE DEPARTMENT SERVICE CHARGES .....	10	OUR PROMISE .....	14
(7) FIRE EXTINGUISHER RECHARGE ..	10	PERSONAL INJURY LIABILITY COVERAGE .....	14
(8) LOCK REPLACEMENT AFTER LOSS .....	10	OUR PROMISE .....	14
(9) LOSS ASSESSMENT .....	10	MEDICAL PAYMENTS TO OTHERS COVERAGE .....	15
(10) MECHANICAL SERVANT AND ROBOT PROTECTION .....	11	OUR PROMISE .....	15

WHAT WE DO NOT COVER -- EXCLUSIONS . . . . .	15	RIGHTS AND DUTIES -- GENERAL POLICY CONDITIONS -- SECTION I & II . . . . .	18
WHAT WE ALSO PAY . . . . .	16	(1) ACCOUNTING . . . . .	18
(1) CLAIM EXPENSES . . . . .	17	(2) ASSIGNMENT . . . . .	18
(2) DAMAGE TO PROPERTY OF OTHERS . . . . .	17	(3) BANKRUPTCY OF ANYONE WE PROTECT . . . . .	18
(3) FIRST AID EXPENSES . . . . .	17	(4) CANCELLATION . . . . .	19
(4) LOSS ASSESSMENT - PERSONAL LIABILITY COVERAGE ONLY . . . . .	17	(5) CONCEALMENT, FRAUD OR MISREPRESENTATION . . . . .	19
RIGHTS AND DUTIES -- CONDITIONS - SECTION II . . . . .	17	(6) CONTINUOUS POLICY . . . . .	19
(1) DUTIES OF AN INJURED PERSON MEDICAL PAYMENTS TO OTHERS COVERAGE . . . . .	17	(7) COOPERATION . . . . .	19
(2) LIMITS OF PROTECTION . . . . .	17	(8) HOW YOUR POLICY MAY BE CHANGED . . . . .	19
(3) OTHER INSURANCE - PERSONAL LIABILITY COVERAGE . . . . .	18	(9) OUR RIGHT TO RECOVER FROM OTHERS . . . . .	19
(4) SUIT AGAINST US . . . . .	18	(10) PRIORITY . . . . .	19
(5) WHAT TO DO WHEN AN OCCURRENCE, OFFENSE, CLAIM OR SUIT HAPPENS . . . . .	18	(11) SURVIVORS' COVERAGE . . . . .	20
		(12) TIME OF INCEPTION . . . . .	20

ERIE INSURANCE GROUP is proud to present this Ultracover HomeProtector Policy. This important contract between YOU and The ERIE consists of this policy with coverage agreements, limitations, exclusions and conditions, a **Declarations**, plus any endorsements. It is written in plain, simple terms so it can be easily understood. We urge YOU to read this policy.

This policy contains many XTRA PROTECTION FEATURES developed by The ERIE. Wherever an "X" appears in the margin of this policy, YOU receive XTRA PROTECTION, either as additional coverage or as a coverage not found in most homeowners policies.

The protection given by this policy is in keeping with the single purpose of our Founders: "To provide YOU with as near PERFECT PROTECTION, as near PERFECT SERVICE, as is humanly possible, and to do so at the LOWEST POSSIBLE COST."

## AGREEMENT

### ERIE INSURANCE EXCHANGE

In return for your timely premium payment, your compliance with all of the provisions of this policy, and your signing of a **Subscriber's Agreement** with Erie Indemnity Company and other Subscribers, we agree to provide the coverages you have purchased. Your coverages and amounts of insurance are shown on the **Declarations**, which are part of this policy.

Your signing the **Subscriber's Agreement**, which includes a limited power-of-attorney, permits Erie Indemnity Company, as Attorney-in-Fact, to make reciprocal insurance contracts between you and other Subscribers and otherwise manage the business of the Erie Insurance Exchange. This power-of-attorney applies only to your insurance business at the Exchange and is limited to the purposes described in the **Subscriber's Agreement**.

Your responsibility as a **Subscriber** is determined by this policy and the **Subscriber's Agreement**. This policy is not assessable. You are not liable for the losses of other Subscribers.

This agreement is made in reliance on the information you have given us, and is subject to all the terms of this policy.

This policy, all endorsements to it, and the **Subscriber's Agreement** constitute the entire agreement between you and us.

### ERIE INSURANCE PROPERTY & CASUALTY COMPANY

In return for your timely premium payment and your compliance with all of the provisions of this policy, we agree to provide the coverages you have purchased. Your coverages and amounts of insurance are shown on the **Declarations**, which are part of this policy.

This agreement is made in reliance on the information you have given us, and is subject to all the terms of this policy.

This policy and all endorsements to it constitute the entire agreement between you and us.

## DEFINITIONS

Throughout your policy and its endorsements the following words have a special meaning when they appear in bold type:

- "aircraft" means any machine or device capable of atmospheric flight except model airplanes.
- "anyone we protect" means you and the following residents of your household:

1. relatives and wards;
2. other persons in the care of anyone we protect.

Under *Home and Family Liability Protection*, anyone we protect also means:

3. any person or organization legally responsible for animals or watercraft which are owned by you, or any person included in 1. or 2., and covered by this policy. Any person or organization using or having custody of these animals or watercraft in the course of any business, or without permission of the owner is not anyone we protect;
4. any person with respect to any vehicle covered by this policy. Any person using or having custody of this vehicle in the course of any busi-

ness use, or without permission of the owner is not anyone we protect.

- "bodily injury" means physical harm, sickness or disease, including mental anguish or resulting death, but does not include:
  1. any communicable disease or condition transmitted by anyone we protect to any other person through a parasite, virus, bacteria or any other organism.
  2. the exposure to or transmission of any disease, parasite, virus, bacteria or other organism by anyone we protect to any other person.
- "business" means any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming.
- "Declarations" means the form which shows your coverages, amounts of insurance, premium charges and other information. This form is part of your policy. **Declarations** include forms titled Amended Declarations, Renewal Declarations, Revised Declarations, Reinstatement of Coverage, Duplicate Declarations, New Declarations or Continuation Notice.

- "insured location" means:
  1. the residence premises;
  2. the part of any other premises, other structures, and grounds acquired by **you** during the policy period which **you** intend to use as a **residence premises**;
  3. any premises used by **anyone we protect** in connection with premises included in 1. or 2.;
  4. any part of a non-owned premises:
    - a. where **anyone we protect** is temporarily residing; or
    - b. occasionally rented to **anyone we protect** for non-business purposes;
  5. vacant land, other than farmland, owned by or rented to **anyone we protect**;
  6. land owned by or rented to **anyone we protect** on which a one or two family residence is being built for occupancy by **anyone we protect**;
  7. cemetery plots or burial vaults of **anyone we protect**.
- "medical expense" means reasonable charges for necessary medical, surgical, x-ray and dental services, including prosthetic devices, eyeglasses, contacts, hearing aids and pharmaceuticals; and also includes ambulance, hospital, licensed nursing and funeral services.
- "occurrence" means an accident, including continuous or repeated exposure to the same general harmful conditions.
- "personal injury" means injury arising out of:
  1. libel, slander or defamation of character;
  2. false arrest, wrongful detention or imprisonment, malicious prosecution, racial or religious discrimination, wrongful entry or eviction, invasion of privacy, or humiliation caused by any of these.
- "property damage" means:
  1. physical injury to or destruction of tangible property, including loss of its use. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
  2. loss of use of tangible property which is not physically injured or destroyed. All such loss of use shall be deemed to occur at the time of the occurrence.
- "residence employee" means an employee of **anyone we protect** who performs duties in connection with

## WHEN AND WHERE THIS POLICY APPLIES

This policy applies to losses that occur during the policy period. The policy period is shown on the Declarations. Unless otherwise specified on the Declarations, the policy period begins and ends at 12:01 A.M., Standard Time at the stated address of the **Named Insured**.

*Property Protection -- Section I.* This policy applies to property losses as designated in the specific coverage

the maintenance or use of the **residence premises**, including similar duties elsewhere, not in connection with the **business of anyone we protect**.

- "residence premises" means the dwelling where **you** reside, including the structures and grounds, or that part of any other building where **you** reside and which is shown as **residence premises** on the **Declarations**.
- "resident" means a person who physically lives with **you** in **your household**. **Your** unmarried, unemancipated children under age 24 attending school full-time and living away from home will be considered **residents of your household**.

## ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS

The following words have special meaning in policies issued by Erie Insurance Exchange when they appear in bold type:

- "Subscriber" means the person(s) who signed the **Subscriber's Agreement**.
- "Subscriber's Agreement" means an agreement, including a limited power-of-attorney, among the **Subscribers** and the Erie Indemnity Company, as **Attorney-in-Fact**.
- "We", "us" or "our" means the **Subscribers** at Erie Insurance Exchange as represented by their common **Attorney-in-Fact**, Erie Indemnity Company.
- "You", "your" or "Named Insured" means the **Subscribers** and others named on the **Declarations** under **Named Insured**. Except in the **GENERAL POLICY CONDITIONS** Section, these words include the spouse of the **Subscriber** if a **resident** of the same household.

## ADDITIONAL ERIE INSURANCE PROPERTY & CASUALTY COMPANY DEFINITIONS

The following words have special meaning in policies issued by Erie Insurance Property & Casualty Company when they appear in bold type:

- "We", "us" or "our" means the Erie Insurance Property & Casualty Company.
- "You", "your" or "Named Insured" means the person(s) named on the **Declarations** under **Named Insured**. Except in the **GENERAL POLICY CONDITIONS** Section, these words include **your spouse** if a **resident** of the same household.

and at the location(s) insured under this policy. In addition, personal property is covered while located anywhere in the world.

*Home and Family Liability Protection -- Section II.* This policy applies to **bodily injury, property damage and personal injury losses** occurring anywhere in the world.

# PROPERTY PROTECTION -- SECTION I

## DWELLING COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Your dwelling at the residence premises shown on the **Declarations**. Dwelling includes attached structures, and building equipment and fixtures servicing the premises.
2. Construction material at the residence premises for use in connection with your dwelling.

This coverage does not apply to land and water, including natural water, above or below the surface of the ground.

## OTHER STRUCTURES COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Other structures at the residence premises separated from the dwelling, including garages, fences, shelters, tool sheds or carports.  
Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.
2. Construction material at the residence premises for use in connection with your other structures.

We do not pay for loss to structures:

1. used in whole or in part for **business** purposes (except rental or holding for rental of structures used for private garage purposes); or
2. used to store **business** property. However, if the **business** property is solely owned by anyone we protect, we do provide coverage for the structure. The **business** property may not include gaseous or liquid fuel, unless the fuel is in a fuel tank that is permanently installed in a vehicle or craft which is parked or stored in the structure.

This coverage does not apply to land and water, including natural water, above or below the surface of the ground.

## PERSONAL PROPERTY COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Personal property owned or used by anyone we protect anywhere in the world.
2. At your option, personal property owned by others while the property is on your residence premises.
3. At your option, personal property of:
  - a. guests and residence employees while the property is in a residence occupied by anyone we protect;

- b. residence employees away from the residence premises while actually engaged in the service of anyone we protect. X
- 4. At your option, building additions, alterations, fixtures, improvements or installations made, or acquired at your expense, by you to residences occupied by, but not owned by you, for an amount not exceeding 10% of the amount of insurance under this coverage. Payment will not increase the applicable amount of insurance under this policy. X
- 5. Cemetery property, including monuments, headstones, gravemarkers, and urns. X
- 6. Animals, birds and fish, but only while on the residence premises, for the following perils to the extent covered under *Perils We Insure Against*: fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke and vandalism or malicious mischief. X
- 7. Electronic apparatus and equipment:
  - a. while in or upon a motor vehicle or other motorized land conveyance; and
  - b. if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle or conveyance while retaining its capability of being operated by other sources of power.

Electronic apparatus includes cellular phones, fax machines, radios, tape and disc players, and similar equipment or devices for the recording, reproduction, receiving, or transmitting of sound or pictures. Electronic apparatus also includes accessories used in conjunction with such apparatus, including antennas, tapes, wires, records, discs or other media.

When there is loss of tapes, compact discs or similar media by theft from a motor vehicle or other motorized land conveyance, we will pay up to \$150 for the tapes, compact discs or similar media.

We do not pay for loss to:

1. Land motor vehicles and parts.
  - a. We do cover vehicles not subject to motor vehicle registration which are:
    - 1) Designed to assist the handicapped; or
    - 2) Used solely to service the residence premises.
2. Aircraft and parts.
3. Electronic apparatus and equipment which is solely powered from the electrical system of motor vehicles or any other motorized land conveyances.
4. Property rented or held for rental to others away from the residence premises.
5. Property of roomers, boarders or tenants not related to anyone we protect.
6. Any of the following:
  - a. Books of account, drawings, or other paper records containing business data;
  - b. Electronic data processing tapes, wires, records, discs, or other software media containing business data. This includes business data stored in computers and related equipment.

However, we do cover the cost of unexposed or blank records or media.

7. Radar detectors.
8. Property specifically insured by this or any other insurance.

9. Except as provided under *Special Limits -- Personal Property*, property pertaining to a **business** conducted away from the **residence premises** unless at the time of loss such property is **on the residence premises**. However, we do not cover such property on the **residence premises** while it is stored, held as samples, or held for sale or delivery after sale.

10. Land and water, including natural water, above or below the surface of the ground.

10% of  
Personal  
Property  
Coverage  
(but not less  
than \$2000)

•Personal property usually situated at any residence owned or occupied by anyone we protect other than a **residence premises**. Personal property in a newly-acquired principal residence is not subject to this limitation for the 30 days immediately after you begin to move property there.

X

## SPECIAL LIMITS -- PERSONAL PROPERTY

Limitations apply to the following personal property. These limits do not increase the amount of insurance under *Personal Property Coverage*:

Total Amount of Insurance In Any One Loss	Description of Personal Property Subject to Limitations
\$500	<ul style="list-style-type: none"> <li>•Animals, birds and fish</li> </ul>
X \$500	<ul style="list-style-type: none"> <li>•Money, travelers checks, stored value cards, bank notes, bullion, numismatic property, gold other than goldware or gold-plated ware, silver other than silverware or silver-plated ware, and platinum other than platinumware</li> </ul>
\$1000	<ul style="list-style-type: none"> <li>•Theft, misplacing or losing of trading cards, including sports cards</li> </ul>
X \$2000	<ul style="list-style-type: none"> <li>•Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, passports, securities, tickets, stamps and philatelic property</li> <li>•Trailers and campers not otherwise insured, whether licensed or not</li> </ul>
\$2000	<ul style="list-style-type: none"> <li>•Watercraft, including their trailers, whether licensed or not, furnishings, equipment and outboard motors</li> </ul>
X \$2000	<ul style="list-style-type: none"> <li>•Manuscripts</li> </ul>
\$2500	<ul style="list-style-type: none"> <li>•Property pertaining to a <b>business</b> actually conducted on the <b>residence premises</b>, including property in storage, held as samples, or held for sale or delivery after sale</li> </ul>
\$500	<ul style="list-style-type: none"> <li>•Business property away from the <b>residence premises</b>, regardless of whether the <b>business</b> is conducted on or away from the <b>residence premises</b></li> </ul>
X \$3000	<ul style="list-style-type: none"> <li>•Theft, misplacing or losing of guns and related equipment</li> </ul>
X \$3000	<ul style="list-style-type: none"> <li>•Theft, misplacing or losing of jewelry, watches, furs, precious and semi-precious stones</li> </ul>
X \$3000	<ul style="list-style-type: none"> <li>•Theft, misplacing or losing of silverware, silver-plated ware, goldware, gold-plated ware and pewterware</li> </ul>

## LOSS OF USE COVERAGE

### OUR PROMISE

If an insured property loss makes **your residence premises** uninhabitable, we will pay all reasonable additional living expenses while **you** and members of **your household** reside elsewhere.

Payment shall be for the shortest time required to repair or replace the premises or, if **you** choose, for **you** to permanently relocate.

These payments will not exceed a 12 month period.

We will also pay for **your** loss of normal rents resulting from the loss, less charges and expenses which do not continue while the rented part of the **residence premises** is uninhabitable. We will pay this loss of normal rents only until the rented part is habitable.

If a loss from a peril covered under *Perils We Insure Against* occurs at a neighboring premises, we will pay additional living expenses and loss of normal rents for up to two weeks should civil authorities prohibit **you** from occupying **your** premises.

These periods of time are not limited by the expiration of this policy.

No deductible applies to this coverage.

We will not pay for loss or expense due to the cancellation of any lease or agreement.

This coverage also applies to a loss at a covered secondary location.

## PERILS WE INSURE AGAINST

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited herein.

## WHAT WE DO NOT COVER -- EXCLUSIONS

Under the *Dwelling, Other Structures and Personal Property Coverages*:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. by collapse, other than as provided in *What We Also Pay, (2) Collapse*.

2. caused by freezing by temperature reduction of a plumbing, heating, air conditioning, gutters and drain spouts, or fire protective system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the dwelling is vacant, unoccupied or being constructed.

There is coverage if you have used reasonable care to:

- maintain heat in the building; or
- shut off the water supply and drain the system or appliances of water.

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock.

4. caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental.

5. caused by:

- termites, vermin, insects, rodents, birds (except glass breakage), skunks, raccoons, spiders or reptiles;
- mechanical breakdown, deterioration, wear and tear, marring, inherent vice, latent defect, tree roots, rust, smog; wet or dry rot, mold, fungus or spores;
- the discharge, disposal, release or escape of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- smoke, unless the loss is sudden and accidental. Smoke from agricultural smudging or industrial operations is not covered even if the loss is sudden and accidental;
- bulging, cracking, expansion, settling or shrinking in ceilings, foundations, floors, patios, decks, pavements, roofs or walls.

If a. through e. cause water damage not otherwise excluded, from a plumbing, heating, air conditioning, or fire protective system, household appliance, waterbed or aquarium, we cover loss caused by the water. Coverage includes the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. This does not include loss to the defective system or appliance (other than a waterbed or aquarium) from which the water escaped.

6. caused by animals or birds kept by **anyone we protect** or kept by a residence employee of **anyone we protect**.

7. by theft of property from within a dwelling under construction unless that property has become a part of the building, or of materials and supplies for use in the construction until the dwelling is completed and occupied.

Under items 1. through 7. any ensuing loss not excluded is covered.

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock

waves, or tremors before, during, or after a volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising, or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

9. by water damage, meaning:

- flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
- water or sewage which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area;
- water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

10. by power interruption if the interruption takes place away from the **residence premises**. However, we will pay for loss to the contents of refrigerator or freezer units on the **residence premises**, from either power or mechanical failure (other than contents used for **business purposes**). If a loss from a peril covered under *Perils We Insure Against* happens on the **residence premises** as a result of a power interruption off premises we will cover only loss caused by that peril. We will pay for loss caused by a power interruption occurring on the **residence premises**.

11. by war, whether declared or undeclared, discharge of a nuclear weapon (even if accidental), hostile or warlike action in time of peace or war, insurrection, rebellion, revolution, civil war, usurped power, including action taken by governmental authority in defending against such an occurrence.

12. by nuclear action or radiation or radioactive contamination, however caused. Nuclear action includes nuclear reaction, discharge, radiation or radioactive contamination, whether manmade or occurring naturally.

Loss caused by nuclear action is not considered loss by fire, explosion, sonic boom or smoke.

If loss by fire results, we will pay for that resulting loss.

13. by radon gas contamination.

14. by the enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, unless specifically provided under this policy. We do cover loss caused by actions of civil authorities to prevent the spread of a fire caused by a peril covered under *Perils We Insure Against*.

15. by neglect of **anyone we protect** to use all reasonable means to protect covered property at and after the time of loss or when property is threatened by a peril covered under *Perils We Insure Against*.

16. by intentional loss, meaning any loss arising from an act committed by or at the direction of **anyone we protect** with the intent to cause a loss.

17. by acts or decisions, including the failure to act or decide, of any person, group, organization, or governmental body.
18. by the destruction, confiscation or seizure of property by order of any governmental or civil authority. We do cover loss caused by actions of governmental or civil authorities to prevent the spread of a fire caused by a peril covered under *Perils We Insure Against*.
19. by the inability to correctly process, recognize, distinguish, interpret or accept any date or time for loss or damage to electronic data processing equipment, computer networks, computer hardware (including microprocessors either as part of a computer system or operating outside of a system), computer programs, software, media or data.

We will not pay for:

- a. any repair, restoration, replacement or modification to correct any deficiencies or change any features or functions; or
- b. loss or damage, regardless of when the electronic data processing equipment, computer hardware, computer programs, software, media or data were purchased, obtained or installed.

Under the *Dwelling Coverage and Other Structures Coverage*:

We do not pay for loss:

1. by weather conditions if any peril excluded by this policy contributes to the loss in any way.
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance;

of property whether on or off the residence premises by any person, group, organization, or governmental body.

Under the *Personal Property Coverage*:

We do not pay for loss:

1. caused solely by breakage of eyeglasses, glassware, statuary, marble, bronzes, bric-a-brac, porcelains, jewelry, watches, cameras, photographic lenses and similar fragile articles. There is coverage for breakage of the property by or resulting from fire, lightning, windstorm, hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke (unless caused by agricultural smudging or industrial operations), vandalism or malicious mischief, theft including attempted theft, water unless otherwise excluded, and sudden and accidental tearing apart, cracking, burning or bulging of a steam, hot water or air conditioning system.
2. by dampness of atmosphere or extremes of temperature unless the loss is directly caused by rain, snow, sleet or hail.
3. by damage to property (other than jewelry, watches and furs) being refinished, renovated or repaired.
4. by collision (other than collision with a land vehicle), sinking, swamping or stranding of watercraft including their trailers, furnishings, equipment and outboard motors.

5. by seizure, destruction or confiscation by order of any government or public authority.
6. by theft while at another dwelling or adjacent structures owned by, rented to, or occupied by anyone we protect unless anyone we protect is temporarily residing there.

Property of a student we protect is covered while at a residence away from home. This coverage is not subject to the 10% of *Personal Property Coverage* limit under *Special Limits - Personal Property*.

Theft losses must be promptly reported to us and to the police:

## WHAT WE ALSO PAY

### (1) AUTOMATIC GARAGE DOOR OPENER

We will pay up to \$500 for loss to personal property, including the garage door, at the residence premises resulting from the use or malfunction of an automatic garage door opener.

### (2) COLLAPSE

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. a building or part of a building that is in danger of collapsing;
2. a building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. part of a building still standing but is no longer attached to another part of the building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or weight of ice, snow or sleet;
2. hidden decay, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. weight of people, animals, contents or equipment;
4. weight of rain which collects on a roof;
5. use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not be liable for loss under 2., 3., 4. or 5. above to the following property unless the loss is a direct result of the collapse of a building or any part of a building:

Cloth awning, fences, pavements, patios, swimming pools, decks, underground pipes, flues, drains, cesspools, septic tanks, foundations, retaining walls, bulkheads, piers, wharves or docks.

Payment will not increase the amount of insurance applying to the loss.

**(3) CREDIT CARD, CHARGE PLATE, CHECK FORGERY AND COUNTERFEIT MONEY PROTECTION**

We will pay up to \$2500 for the legal obligation of **anyone we protect** to pay because of theft, forgery or unauthorized use of any credit or fund transfer card, charge plate, check or negotiable instrument issued to or registered in the name of **anyone we protect**. We will also pay for loss each time **anyone we protect** unknowingly accepts counterfeit money.

No deductible applies to this coverage. We require evidence of loss.

We will not pay for:

1. loss arising from any **business**;
2. loss arising from **anyone we protect**.

When loss is discovered, **anyone we protect** must give us immediate notice. If the loss involves a credit or fund transfer card or charge plate, **anyone we protect** must also give immediate notice to the issuer of the card or plate. Failure to comply with the terms and conditions of the card or plate voids this protection.

If a loss occurring during the policy period is discovered within a year after the policy has been cancelled, we will pay for the loss. If a prior loss is discovered during the policy period and no other insurance applies, we will pay for the loss. We have the right to investigate and settle any claim or suit before making payment. Full payment of the amount of insurance ends **our** obligation under each claim or suit.

Repeated losses caused by or involving one person are to be considered one loss.

If a claim is made or suit is brought against **anyone we protect** for liability under the *Credit Card or Charge Plate Protection*, we will provide a defense. The defense will be at **our** expense, with a lawyer we choose.

We have the option under the *Check Forgery Protection* to defend at **our** expense **anyone we protect** or their bank against a suit for the enforcement of payment.

**(4) DEBRIS REMOVAL AFTER LOSS**

We will pay the expense for removal of:

1. debris of covered property following loss under *Perils We Insure Against*;
2. ash, dust or particles from volcanic eruption that has caused direct loss to a building or property within a building; or
3. fallen trees which cause damage to covered property, provided coverage is not afforded elsewhere by this policy.

If the amount of insurance applying to the loss is exhausted, we will pay up to an additional 5% of the amount of insurance applying to the damaged property for removal of debris.

We will also pay up to \$1000 per occurrence with a limit of \$500 per tree for the removal of fallen trees on the residence premises if loss is caused by windstorm, hail or weight of ice, snow or sleet even when covered property is not damaged.

**(5) EMERGENCY REMOVAL OF PROPERTY**

We will pay for property damaged in any way while removed from your residence premises because of danger from an insured peril. Coverage is limited to a 30-day period from date of removal. Payment will not increase the amount of insurance applying to the loss.

**(6) FIRE DEPARTMENT SERVICE CHARGES**

We will pay all reasonable fire department service charges to save or protect insured property. Payment is in addition to the amount of insurance applying to the loss.

No deductible applies to this coverage.

**(7) FIRE EXTINGUISHER RECHARGE**

We will pay expenses incurred to recharge portable fire extinguishers after they are used to fight a fire.

No deductible applies to this coverage.

**(8) LOCK REPLACEMENT AFTER LOSS**

At your request, we will pay up to \$250 to replace keys and locks to the exterior doors of the residence premises, as well as keys and locks to your other property (autos, boats, etc.), if the keys are stolen during a theft loss. This coverage does not apply to keys and locks pertaining to **business** property.

We will pay for replacement of automatic garage door transmitters when a transmitter has been stolen. Coverage is also provided for the cost to reprogram the frequency on additional transmitters and/or the control unit box.

No deductible applies to this coverage.

**(9) LOSS ASSESSMENT**

*(Applicable to Section I and Section II - Personal Liability Coverage Only)*

We will reimburse you for an assessment charged against you as owner or tenant of the residence premises by an association or corporation of property owners, minus any other valid and collectible insurance available to the association or corporation covering the same assessment. Under *Property Protection - Section I*, the assessment must result from a direct loss to property, owned by all the property owners collectively, caused by any of the *Perils We Insure Against*. Under *Section II - Personal Liability Coverage Only*, the assessment must result from an occurrence covered under this policy.

Unless otherwise shown on the **Declarations**, our amount of insurance for this protection is \$5000 per assessment.

If you are assessed for a covered water loss, we will pay your share of the cost of tearing out and replacing any part of an insured location necessary to repair the system or appliance.

The policy deductible applies to each dwelling under *Property Protection - Section I* only.

We will not pay if the loss is caused by earthquake or land shock waves or tremors which occur before, during or after a volcanic eruption.

We also will not pay for any loss assessments charged by a governmental body.

#### **(10) MECHANICAL SERVANT AND ROBOT PROTECTION**

**X** We will pay up to \$500 for loss to personal property at the residence premises caused by malfunction of a mechanical servant or robot.

#### **(11) NON-OWNED RESIDENCES**

**X** We will pay up to \$1000 for loss by theft and vandalism or malicious mischief to residences occupied by, but not owned by anyone we protect.

#### **(12) ORDINANCE OR LAW COVERAGE**

If a loss by a *Peril We Insure Against* occurs to covered property, or the building containing the covered property, we will pay for the increased costs incurred due to the enforcement of any ordinance or law that is in force at the time of the loss up to 10% of the amount of insurance under *Dwelling Coverage* or \$5000, whichever is greater.

You may use this coverage for:

1. the construction, demolition, renovation or repair of the portion of the building damaged by a *Peril We Insure Against*; or
2. the demolition and reconstruction of the undamaged portion of the building if the entire building must be demolished because of damage by a *Peril We Insure Against*; or
3. the removal or replacement of the undamaged portion of the building because of the repair or replacement of the portion of the building damaged by a *Peril We Insure Against*; or
4. the removal of debris resulting from the construction, demolition, renovation, repair or replacement of 1, 2, or 3.

Ordinance or Law Coverage does not include coverage for:

1. loss in value to any covered building due to the requirements of any ordinance or law; or
2. the cost to comply with any ordinance or law requiring the testing, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, responding to or assessing the effects of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant in or on any covered building.

#### **(13) TEMPORARY REPAIRS AFTER LOSS**

We will pay for reasonable and necessary expenses for temporary repairs to protect covered property from further damage after loss by a peril covered under *Perils We Insure Against*. Payment will not increase the amount of insurance applying to the loss.

#### **(14) TREES, SHRUBS, PLANTS AND LAWNS**

We will pay up to an additional 5% of the amount of insurance under *Dwelling Coverage* for loss to trees, shrubs, plants and lawns at the residence premises.

Coverage applies only to loss caused by the following perils covered under *Perils We Insure Against*: fire or lightning, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke, vandalism or malicious mischief and theft.

We will not pay for:

1. more than \$500 on any one tree, shrub or plant;
2. damage to lawns by vehicles owned or operated by a resident of the residence premises;
3. trees, shrubs, plants or lawns grown for business purposes.

#### **DEDUCTIBLE**

We will pay for loss minus the deductible shown on the Declarations. Unless otherwise provided in an endorsement, in the event of total loss to the Dwelling from a covered peril, the deductible will not apply.

The deductible does not apply to:

1. *Loss of Use Coverage*
2. *Credit Card, Charge Plate, Check Forgery and Counterfeit Money Protection*
3. *Fire Department Service Charges*
4. *Fire Extinguisher Recharge*
5. *Lock Replacement After Loss*.

### **RIGHTS AND DUTIES -- CONDITIONS -- SECTION I**

#### **(1) ABANDONMENT OF PROPERTY**

We are not required to accept abandoned property.

#### **(2) APPRAISAL**

If you and we fail to agree on the amount of loss, on the written demand of either, each party will choose a competent appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days after both appraisers have been identified,

you or we can ask a judge of a court of record in the state where your 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 loss. If they cannot agree, they will submit their differences to the umpire. A written award by two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other expenses of the appraisal. However, if the written demand for appraisal is made by us, we will pay for the reasonable cost of your appraiser and your share of the cost of the umpire.

We will not be held to have waived any rights by any act relating to the appraisal.

### (3) AUTOMATIC ADJUSTMENT OF COVERAGE AMOUNTS

#### X Dwelling, Other Structures, Personal Property

##### • Dwelling

The amount of insurance applying to the Dwelling is the replacement cost at the time of loss. We will adjust the premium for the next policy period to reflect any change in the replacement cost.

You are required to notify us or our Agent of any improvements or other changes to the dwelling which exceed \$5000. This notice must be given to us within 90 days after such improvements or changes are started. If we are not notified, we do not cover loss to such improvements or changes. Your premium may be adjusted during the current policy period to reflect the additional amount of insurance.

##### • Other Structures

The amount of insurance applying to Other Structures is the amount shown on the Declarations. We will keep track of rising costs and at the next policy period we will adjust the amount of your Other Structures Coverage if necessary. Your premium will be adjusted at each policy period to reflect any change.

During the policy period, if there is an increase in construction costs and a loss occurs, we will reflect the increase in the amount of insurance before making payment. There will be no charge for this additional coverage.

##### • Personal Property

The amount of insurance applying to Personal Property Coverage is the amount shown on the Declarations. Adjustment in this amount will be made proportionately to the adjustment of Other Structures Coverage.

### (4) ERIE OPTION

If we give you written notice within 30 days after we receive your signed, sworn statement of loss, we may repair or replace any part of the property damaged with equivalent property.

### (5) GLASS REPLACEMENT

Loss to glass caused by a peril covered under *Perils We Insure Against* will be settled on the basis of replacement with safety glazing materials when required by law.

### (6) INCREASE OF HAZARD

Unless we agree beforehand, coverage is suspended if the hazard is substantially increased by any means within the control or knowledge of anyone we protect.

### (7) LOSS PAYMENT

We will settle any claim for loss with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. We will pay within 30 days after we receive your proof of loss and the amount of loss is finally determined by one of the following:

1. we have reached an agreement with you; or
2. there is an entry of final judgment; or
3. there is a filing of an appraisal award on your behalf.

### (8) LOSS SETTLEMENT

The increased cost incurred to comply with any ordinance or law is not included under this condition, except for coverage that is provided under *What We Also Pay, Ordinance or Law Coverage*.

Loss to Dwelling Coverage, Other Structures Coverage and Personal Property Coverage will be settled on a replacement cost basis, without deduction for depreciation.

#### Dwelling and Other Structures Coverage

X

Payment will not exceed the smallest of the following amounts:

1. the replacement cost of that part of the dwelling damaged for equivalent construction and use on the same premises; or
2. the amount actually and necessarily spent to repair or replace the damaged dwelling.

We will pay no more than the actual cash value of the damage until the actual repair or replacement is completed. However, when the loss is both less than \$2500 and less than 5% of the amount of insurance applying to the loss, we will pay the replacement cost before actual repair or replacement is completed.

X

You may disregard the replacement cost provision and make claim for loss or damage to buildings on an actual cash value basis. However, you still have the right to make claim, within 180 days after the loss, for any additional amounts we will be required to pay under this Loss Settlement provision.

#### Personal Property Coverage

1. Payment will equal the cost at the time of loss of a new article identical to the one damaged, destroyed

or stolen. If the identical article is no longer manufactured or is not available, we will pay the cost of a new article similar to that damaged or destroyed and which is of comparable quality and usefulness. This provision also applies under *Damage To Property of Others Coverage* as provided under Section II.

2. We also cover the cost of repair or replacement of:

- carpeting
- household appliances
- cloth awnings
- outdoor antennas and outdoor equipment.

X

3. Under *Personal Property Coverage* we do not cover loss to property:

- a. unless maintained in good and workable condition;
- b. unless repaired or replaced;
- c. which is outdated or obsolete and which is stored or not being used;
- d. which by its nature cannot be replaced by a new article including, but not limited to, antiques, fine arts, souvenirs, and collectors' items;
- e. which is at a secondary residence or at a residence rented to others.

When replacement coverage does not apply because of an exclusion under this section we will pay actual cash value at the time of loss.

We will pay the smallest of the following amounts for any one item of insured property:

1. replacement cost;
2. repair cost;
3. any special limitations described in the policy.

When the replacement cost for the entire loss is more than \$2500, we will not pay more than the actual cash value for the loss or damage until actual repair or replacement is completed.

You may make claim for loss on an actual cash value basis and then make claim within one year after the loss for any additional amounts we are required to pay under this *Loss Settlement* provision.

### (9) LOSS TO A PAIR OR SET

If there is a loss to a pair or set we may:

1. repair or replace any part of the pair or set to restore it to its value before the loss; or
2. pay the difference between actual cash value of the property before and after the loss.

### (10) MORTGAGE CLAUSE

Loss under *Dwelling Coverage* or *Other Structures Coverage* shall be payable to mortgagees named on the *Declarations*, to the extent of their interest and in the order of precedence.

### Our Duties

We will:

1. protect the mortgagee's interests in an insured building. This protection will not be invalidated by any act or neglect of anyone we protect, any breach of warranty, increase in hazard, change of ownership, or foreclosure if the mortgagee has no knowledge of these conditions;
2. give mortgagee 30 days prior notice if we cancel or refuse to continue this policy.
3. give mortgagee notice if you cancel this policy.

X

### Mortgagee's Duties

The mortgagee will:

1. furnish proof of loss within 60 days after receiving notice from us if you fail to do so;
2. pay upon demand any premium due if you fail to do so;
3. notify us of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
4. give us the right of recovery against any party liable for loss. This shall not impair the mortgagee's right to recover the full amount of the mortgage debt;
5. after a loss, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage and all securities held as collateral to the mortgage debt;
6. at our request, submit to examinations under oath.

Policy conditions relating to *Appraisal, Loss Payment and Suit Against Us* apply to the mortgagee.

This condition shall also apply to any trustee named on the *Declarations*.

### (11) NO BENEFIT TO BAILEE

No bailee shall benefit, directly or indirectly, from this insurance.

### (12) OTHER INSURANCE

If both this insurance and other insurance apply to a loss, we will pay our share. Our share will be the proportionate amount that this insurance bears to the total amount of all applicable insurance, except insurance in the name of an association or corporation of property owners.

If there is other insurance in the name of an association or corporation of property owners covering the same property covered by this policy, the other insurance applies first.

### (13) PERMISSION GRANTED TO YOU

Coverage applies even when your described dwelling is vacant or unoccupied, except where limited under *Exclusion (2), Section 1*.

You may make alterations, additions and repairs to your building, and complete structures under construction.

You may waive your rights to recovery against another involving the insured property. This must be done in writing prior to a loss.

#### **(14) RECOVERED PROPERTY**

If we have made payment on property which has later been recovered by you or us, you or we will notify the other of the recovery. You have a right to the recovered property. If you elect to have the property, you will repay us the amount of our payment to you.

#### **(15) SUIT AGAINST US**

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within one year (Maryland - three years) after the loss or damage occurs.

#### **(16) WHAT TO DO WHEN A LOSS HAPPENS**

In case of a loss, anyone we protect must:

1. give us or our Agent immediate notice of the loss. If the loss is due to criminal activity or theft, you must also notify the police;
2. do whatever possible to recover and protect the property from further damage. If it is necessary to protect the property, you must make reasonable repairs, and keep a record of all repair costs;
3. furnish a complete inventory of damaged property including quantity, actual cash value and amount of loss claimed;

4. produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, other vouchers and other financial information as we may reasonably require;
5. show us or our representative the damaged property, as often as may be reasonably required;
6. at our request, separately submit to examinations and statements under oath and sign a transcript of the same;
7. cooperate with us in our investigation of a loss and any suits;
8. send us, within 60 days after our request, your signed and sworn proof of loss statement which includes an explanation of the following:
  - a. time and cause of loss;
  - b. your interest in the property and the interest of all others involved;
  - c. any encumbrances on the property;
  - d. other policies which may cover the loss;
  - e. any changes in title, use, occupancy or possession of the property which occurred during the policy term;
  - f. when required by us, any plans, specifications and estimates for the repair of the damaged building;
  - g. the inventory of damaged property as prepared in 3. of this condition;
  - h. receipts for any additional living costs as a result of the loss, and records of pertinent rental loss;
  - i. in case of claim under *Credit Card, Charge Plate, Check Forgery and Counterfeit Money Protection*, an affidavit stating amount, time and cause of loss.

### **HOME AND FAMILY LIABILITY PROTECTION -- SECTION II**

Personal Liability Coverage includes Bodily Injury Liability Coverage, Property Damage Liability Coverage and Personal Injury Liability Coverage.

#### **BODILY INJURY LIABILITY COVERAGE**

#### **PROPERTY DAMAGE LIABILITY COVERAGE**

#### **OUR PROMISE**

We will pay all sums up to the amount shown on the Declarations which anyone we protect becomes legally obligated to pay as damages because of **bodily injury** or **property damage** caused by an occurrence during the policy period. We will pay for only **bodily injury** or **property damage** covered by this policy.

We may investigate or settle any claim or suit for damages against anyone we protect, at our expense. If anyone we protect is sued for damages because of **bodily injury** or **property damage** covered by this policy, we will provide a defense with a lawyer we choose, even if the allegations are not true. We are not obligated to pay any claim or judgment or defend any suit if we have already

used up the amount of insurance by paying a judgment or settlement.

#### **PERSONAL INJURY LIABILITY COVERAGE**

#### **OUR PROMISE**

We will pay all sums up to the amount shown on the Declarations which anyone we protect becomes legally obligated to pay as damages because of **personal injury** caused by an offense committed during the policy period. We will pay for only **personal injury** covered by this policy.

We may investigate or settle any claim or suit for damages against anyone we protect, at our expense. If anyone we protect is sued for damages because of **personal injury** covered by this policy, we will provide a defense with a lawyer we choose, even if the allegations are not true. We are not obligated to pay any claim or judgment or defend any suit if we have already used up the amount of insurance by paying a judgment or settlement.

## MEDICAL PAYMENTS TO OTHERS COVERAGE

### OUR PROMISE

We will pay the necessary **medical expenses** incurred or medically determined within three years from the date of an accident causing **bodily injury** or **personal injury**. This three-year limitation does not apply to funeral expenses.

This coverage does not apply to you or regular residents of your household, other than **residence employees**.

To others, we will pay only in the following situations:

1. To a person on an **insured location** with the permission of **anyone we protect**; or
2. To a person off an **insured location** if the **bodily injury** or **personal injury**:
  - a. arises out of a condition on an **insured location** or adjoining ways;
  - b. is caused by the activities of **anyone we protect**;
  - c. is caused by a **residence employee** in the course of employment by **anyone we protect**;
  - d. is caused by an animal **anyone we protect** owns or is caring for.

Payment under this coverage is not an admission of liability by us or **anyone we protect**.

### WHAT WE DO NOT COVER -- EXCLUSIONS

#### Bodily Injury Liability Coverage

#### Property Damage Liability Coverage

#### Personal Injury Liability Coverage

#### Medical Payments To Others Coverage

We do not cover under *Bodily Injury Liability Coverage*, *Property Damage Liability Coverage*, *Personal Injury Liability Coverage* and *Medical Payments To Others Coverage*:

1. **Bodily injury**, **property damage** or **personal injury** expected or intended by **anyone we protect** even if:
  - a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
  - b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.

We do cover reasonable acts committed to protect persons and property.

2. **Bodily injury**, **property damage** or **personal injury** arising out of **business pursuits** of **anyone we protect**.

We do cover:

- a. activities normally considered **non-business**;
- b. **business** pursuits of salespersons, collectors, messengers and clerical office workers employed by others. We do not cover installation, demonstration and servicing operations;
- c. **business** pursuits of educators while employed by others as educators, including corporal punishment of pupils;

- d. occasional **business** activities of **anyone we protect**. These include, but are not limited to, babysitting, cadding, lawn care, newspaper delivery and other similar activities.

We do not cover regular **business** activities or **business** activities for which a person is required to be licensed by the state.

- e. the ownership of newly-acquired one or two family dwellings, but only for a period of 30 consecutive days after acquisition unless described on the **Declarations**.

3. **Bodily injury**, **property damage** or **personal injury** arising out of the rental or holding for rental of the **residence premises** by **anyone we protect**.

We do cover if the **residence premises** is:

- a. occasionally rented or held for rental to others as a residence;
- b. rented or held for rental in part as a residence, unless for the accommodation of more than three roomers or boarders;
- c. rented or held for rental in part as an office, school, studio or private garage.

4. **Bodily injury**, **property damage** or **personal injury** arising out of the rendering or failing to render professional services. Professional services include, but are not limited to:

- a. any architectural, engineering or industrial design services;
- b. any medical, surgical, dental or other services contributing to the health of persons or animals;
- c. any beauty or barber services;
- d. any legal, accounting or insurance services;
- e. the servicing, installation, or maintenance of computer hardware or software;
- f. the selling, designing, licensing, consultation, franchising, furnishing or creation of computer hardware or software, including electronic data processing programs, designs, specifications, manuals or instructions.

5. **Bodily injury**, **property damage** or **personal injury** arising out of any premises owned by or rented to **anyone we protect** which is not an **insured location**. This exclusion does not apply to **bodily injury** or **personal injury** to a **residence employee** arising out of and in the course of employment by **anyone we protect**.

6. **Bodily injury**, **property damage** or **personal injury** arising out of the ownership, maintenance or use of:
  - a. aircraft;
  - b. any land motor vehicle owned or operated by or rented or loaned to **anyone we protect**.

We do cover motor vehicles if:

- 1) they are used solely at an **insured location** and not subject to motor vehicle registration;
- 2) they are kept in dead storage at an **insured location**;
- 3) they are a recreational land motor vehicle not designed for use on public roads while at an **insured location**;
- 4) they are a golf cart, wherever used or located;
- 5) they are a lawn or farm type vehicle or snowblower, wherever used or located, if not subject to motor vehicle registration;
- 6) they are designed to assist the handicapped.

- c. watercraft:

- 1) owned by or frequently rented to **anyone we protect** if it has inboard or inboard-outdrive

- motor power of more than 75 horsepower; or
- 2) owned by or frequently rented to **anyone we protect** if it is a sailing vessel 26 feet or more in length; or
- 3) powered by one or more outboard motors with more than 75 total horsepower owned by **anyone we protect** at the beginning of the policy period.

**X** However, if **anyone we protect** acquires watercraft, regardless of horsepower, coverage applies during the policy period. If the watercraft is acquired within 60 days of the end of the policy period, we will provide coverage for a maximum of 60 days. We have the right to charge you an additional premium.

*Exclusion 6. c.* does not apply while the watercraft is stored on shore.

*Exclusion 6.* does not apply to **bodily injury or personal injury** to any **residence employee** arising out of and in the course of employment by **anyone we protect**.

We do not cover liability arising out of the negligent entrustment of an **aircraft**, motor vehicle or watercraft excluded in 6.

We also do not cover statutorily imposed vicarious parental liability for the actions of a child or minor using an **aircraft**, motor vehicle or watercraft excluded in 6.

7. **Bodily injury, property damage or personal injury** arising out of war (declared or undeclared), civil war, insurrection, rebellion or revolution.

Discharge of a nuclear weapon is considered a warlike act, even if accidental.

8. **Bodily injury or personal injury** which arises out of or results from a communicable disease or condition transmitted by **anyone we protect** to any other person through a parasite, virus, bacteria or any other organism.

9. Except as provided in paragraph 2. c. under "*What We Do Not Cover - Bodily Injury Liability Coverage, Property Damage Liability Coverage, Personal Injury Liability Coverage and Medical Payments To Others Coverage*," **bodily injury, property damage or personal injury** which arises out of the sexual molestation, corporal punishment or physical or mental abuse by **anyone we protect**.

10. **Bodily injury, property damage or personal injury** which arises 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.

11. **Bodily injury, property damage or personal injury** which arises out of the discharge, disposal, release or escape of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

12. Punitive or exemplary damages and related defense costs.

We do not cover under **Bodily Injury Liability Coverage, Property Damage Liability Coverage or Personal Injury Liability Coverage**.

1. Liability assumed under any oral contract or agreement, or by contract or agreement in connection with any **business** of **anyone we protect**.
2. Liability for **your** share of any loss assessment charged against all members of an association or corporation of property owners. This exclusion does not apply to *What We Also Pay, (9) Loss Assessment, Section I* of this policy.
3. **Property damage to property owned by anyone we protect**.
4. **Property damage to property rented to, occupied or used by, or in the care of anyone we protect**. This exclusion does not apply to **property damage** caused by fire, explosion, sonic boom or smoke, or by accidental discharge of water from a waterbed or aquarium.
5. **Bodily injury or personal injury** to any person eligible to receive any benefits required to be provided or voluntarily provided by **anyone we protect** under any workers compensation, non-occupational disability or occupational disease law.
6. **Bodily injury, property damage or personal injury** for which **anyone we protect** is covered under any nuclear energy liability policy, or would be covered if its amounts of insurance had not been exhausted.
7. **Bodily injury or personal injury** arising out of business pursuits of **anyone we protect**, other than business pursuits covered by this policy.
8. **Bodily injury or personal injury** to employees of **anyone we protect** arising out of employment.

This exclusion does not apply to **bodily injury** to a **residence employee** arising out of and in the course of employment by **anyone we protect**.

9. **Personal injury** arising out of willful violation of a law or ordinance by **anyone we protect**.
10. **Personal injury** arising out of civic or public activities performed for pay by **anyone we protect**.
11. Suits for libel, slander or defamation of character made against **anyone we protect** if the publication or statement:
  - a. took place before the effective date of this insurance; or
  - b. was knowingly untrue.
12. **Bodily injury or personal injury** to **you** and if residents of your household, your relatives, and persons under the age of 21 in your care or in the care of your **resident relatives**.

Under *Medical Payments To Others Coverage* we do not cover **bodily injury or personal injury**:

1. to a **residence employee** if it occurs off an **insured location** and does not arise out of or in the course of employment by **anyone we protect**.
2. to any person eligible to receive any benefits required to be provided or voluntarily provided under any workers compensation, non-occupational disability or occupational disease law.
3. from any nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
4. to **anyone we protect** or other person(s) who resides on the **insured location**, except a **residence employee**.

## WHAT WE ALSO PAY

Payment for the following is in addition to the amounts of insurance shown on the **Declarations**.

## (1) CLAIM EXPENSES

We pay:

1. court costs, to defend or settle as we believe proper, any claim or suit against anyone we protect, for damages covered under this policy. Our payment of the limit of protection for a settlement, judgment, or deposit in court ends our duty to pay under this item.
2. expenses incurred, to investigate and defend or settle as we believe proper, any claim or suit against anyone we protect for damages covered under this Policy. Our payment of the limit of protection for a settlement, judgment, or deposit in court ends our duty to pay under this item.
3. post-judgment interest, but only that portion of the post-judgment interest which accrues on that part of any judgment that does not exceed the limit of protection on a suit we defend. Our payment, offer in writing, or deposit in court of that part of the judgment which does not exceed the limit of protection ends our duty to pay any post-judgment interest which accrues after the date of our payment, written offer or deposit.
4. prejudgment interest or delay damages awarded on that part of any judgment that does not exceed the limit of protection. If we offer in writing to pay the applicable limit of protection, we will not pay any prejudgment interest or delay damages for the period of time after the offer.
5. reasonable expenses anyone we protect may incur at our request to help us investigate or defend a claim or suit. This includes up to \$300 a day for actual loss of earnings (but not loss of other income) and vacation time or other benefit loss.
6. premiums on the following types of bonds, but not for bond amounts greater than the limit of protection:
  - a. appeal bond in a suit we defend;
  - b. bail bond (with premium of \$500 or less) required due to an accident or related traffic violation involving a vehicle we insure;
  - c. attachment bond to release property of anyone we protect due to an accident or related traffic violation involving a vehicle covered by this policy.

X

X

X

We have no duty to apply for or furnish such bonds. 7. reasonable lawyers' fees up to \$50 which anyone we protect incurs because of arrest, resulting from an accident involving a vehicle covered by this policy.

## (2) DAMAGE TO PROPERTY OF OTHERS

We pay, on a replacement cost basis, up to \$1000 per occurrence for property damage to property of others caused by anyone we protect. This coverage also applies to property of others in the possession of anyone we protect.

We will not pay for property damage:

1. to the extent of any amount recoverable under Section I of this policy;
2. caused intentionally by anyone we protect who has attained the age of 13;
3. to property owned by anyone we protect;
4. to property owned by or rented to a tenant of anyone we protect or a resident of your household;
5. arising out of:
  - a. an act or omission in connection with a premises (other than an insured location) owned, rented or controlled by anyone we protect;
  - b. business pursuits; or
  - c. ownership, maintenance or use of a motor vehicle, aircraft or watercraft. We will pay for property damage to a land motor vehicle designed for recreational use off public roads while in the possession of or caused by anyone we protect if:
    - 1) not subject to motor vehicle registration, and
    - 2) not owned by anyone we protect.

## (3) FIRST AID EXPENSES

We pay reasonable expenses for first aid to other persons and animals at the time of an accident involving anyone we protect.

X

## (4) LOSS ASSESSMENT - PERSONAL LIABILITY COVERAGE ONLY

See *What We Also Pay, (9) Loss Assessment - Section I.*

# RIGHTS AND DUTIES -- CONDITIONS - SECTION II

## (1) DUTIES OF AN INJURED PERSON - MEDICAL PAYMENTS TO OTHERS COVERAGE

The injured person or someone acting on behalf of that person will:

1. give us written proof of claim, as soon as possible, under oath if required;
2. sign papers at our request to allow us to obtain medical reports and copies of records.

The injured person will submit to mental and physical examination by doctors selected by us as often as reasonably required. We may pay the injured person or the provider of the services.

## (2) LIMITS OF PROTECTION

This insurance applies separately to anyone we protect. Regardless of the number of people we protect, claims made or persons injured, our total liability under Personal Liability Coverage for damages resulting from one occurrence, offense, claim or suit will not exceed the amount shown on the Declarations for Personal Liability Coverage. All bodily injury, property damage and personal injury resulting from one accident or from continuous or repeated exposure to the same general conditions is considered the result of one occurrence, offense, claim or suit.

Our total liability under Medical Payments To Others Coverage for all medical expense payable for bodily injury and personal injury to any one person will not exceed the "Each Person" amount shown on the Declarations.

### (3) OTHER INSURANCE - PERSONAL LIABILITY COVERAGE

This insurance is excess over any other valid and collectible insurance. However, if the other insurance is specifically written as excess insurance over this policy, the limits of this policy apply first.

If at the time of loss there is other insurance in the name of an association or corporation of property owners covering the same property covered by this policy, the insurance afforded by this policy shall be excess over the amount recoverable under such other insurance.

### (4) SUIT AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy.

No one has the right to make us a party to a suit to determine the liability of anyone we protect.

The legal liability of anyone we protect must be determined before suit under *Personal Liability Coverage* may be brought against us. This determination may be by a court of law or by written agreement of all parties, including us.

### (5) WHAT TO DO WHEN AN OCCURRENCE, OFFENSE, CLAIM OR SUIT HAPPENS

When there is an occurrence, offense, claim or suit anyone we protect will:

1. notify us or our Agent in writing as soon as possible, stating:
  - a. your name and policy number;

## RIGHTS AND DUTIES -- GENERAL POLICY CONDITIONS -- SECTION I & II

We, you and anyone else protected by this policy must do certain things in order for the terms of this policy to apply.

### (1) ACCOUNTING

If the premium payment plan chosen for this policy includes a service charge, the service charge is paid to the Erie Indemnity Company.

*The following applies only to policies issued by Erie Insurance Exchange:*

X Erie Indemnity Company may keep up to 25% of the premium written or assumed by Erie Insurance Exchange as compensation for (A) becoming and acting as Attorney-in-Fact, (B) managing the business and affairs of Erie Insurance Exchange and (C) paying general administrative expenses, including sales commissions, salaries and employee benefits, taxes, rent, depreciation, supplies and data processing.

- b. the time, place, and circumstances of the occurrence, offense, claim or suit;
- c. names and addresses of injured persons and witnesses.

#### 2. give us:

- a. promptly, any papers that relate to the occurrence, offense, claim or suit;
- b. a signed statement containing all the facts about the occurrence, offense, claim or suit.

#### 3. at our request:

- a. assist in making settlement;
- b. help us enforce any right of recovery against any party liable to anyone we protect;
- c. cooperate with us in our investigation of a loss and any suit;
- d. attend hearings and trials;
- e. assist us in securing and giving evidence and in obtaining the attendance of witnesses;
- f. separately submit to examinations and statements under oath and sign transcripts of same;
- g. authorize us to obtain records and other information;

- h. answer all reasonable questions about the occurrence, offense, claim or suit;

- i. allow us to inspect and appraise the damaged property before its repair or disposal.

#### 4. under the coverage *Damage To Property Of Others*, send us, within 60 days of our request, sworn proof of loss.

#### 5. not make payments, assume obligations or incur expenses, except at one's own cost, other than for first aid to other persons and animals at the time of the bodily injury.

The rest of the premium will be placed on the books of the Erie Insurance Exchange. We will deposit or invest this amount as permitted by law. This amount will be used to pay losses, loss adjustment expenses, investment expenses, damages, legal expenses, court costs, taxes, assessments, licenses, fees, any other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes Erie Indemnity Company decides are to the advantage of the Subscribers.

### (2) ASSIGNMENT

Interest in this policy may be transferred only with our written consent. We may require evidence that all Named Insureds approve the assignment.

### (3) BANKRUPTCY OF ANYONE WE PROTECT

Bankruptcy or insolvency of anyone we protect or anyone we protect's estate will not relieve us of our obligations.

#### (4) CANCELLATION

##### Your Right to Cancel

You may cancel this policy by mailing or delivering to our Agent or us written notice stating at what future date you want the cancellation to take effect. We may waive these requirements by confirming the date of cancellation to you in writing.

##### Our Right to Cancel or Refuse to Continue

We may cancel or refuse to continue this policy or any coverage by mailing you written notice stating the effective date of our action. Our action will comply with the laws of the state where your residence premises is located. Our cancellation or refusal to continue this policy will not take effect until at least 30 days (Maryland - 45 days), except for non-payment of premium after we send it. The effective date for cancellation for non-payment of premium will be in compliance with the laws of the state in which you reside.

We reserve the right to cancel for your non-compliance with our premium payment plans. We do not waive our right to cancel, even if we have accepted prior late payments.

##### Method of Giving Notice

Mailing notice to the address shown on the Declarations will be sufficient proof of notice. The policy period will end on the date and time stated in the notice.

##### Return of Premium

If your policy is cancelled by you or us, we will return the pro rata unused share of your premium. Cancellation will be effective even if we have not given or offered the returned premium.

#### (5) CONCEALMENT, FRAUD OR MISREPRESENTATION

This entire policy is void as to you and anyone we protect if, whether before or after a loss:

1. you or anyone we protect have intentionally concealed or misrepresented any material fact or circumstance concerning this insurance; or
2. there has been fraud or false swearing by you or anyone we protect as to any matter that relates to this insurance or the subject thereof; or
3. you or anyone we protect engage in fraudulent conduct as to any matter that related to this insurance or subject thereof.

In the event of 1., 2. or 3. above, we will not pay for any loss.

#### (6) CONTINUOUS POLICY

Your policy is a continuous policy. It will continue in force until cancelled by you or terminated by us as explained in the Cancellation Condition. Each year we will send you a Declarations which shows the premium due for the next policy period.

In return for this service, you must mail us written notice

prior to the new policy period if you want to cancel. If we do not receive this notice, your policy remains in force and you must pay us the earned premium due for this time.

#### (7) COOPERATION

You agree to cooperate with us by:

1. truthfully completing and promptly returning questionnaires and audit forms about this insurance;
2. permitting and helping with inspections and audits; and
3. complying with specific recommendations to improve your risk.

#### (8) HOW YOUR POLICY MAY BE CHANGED

This policy conforms to the laws of the state in which your residence premises is located. If the laws of the state change, this policy will comply with those changes.

Your policy may change by asking us. Your request must contain enough information to identify you. Asking our Agent is the same as asking us. If we agree with your request, we will then issue a Declarations.

We will give you the benefit of any change in coverage made by us, if it does not require additional premium. This change will be effective as of the date we implement the change for you in your state.

If the information we use to determine the premium for your coverage(s) changes during the policy period, we may adjust your premium. Premium adjustments will be made using rules and rates in effect for our use.

#### (9) OUR RIGHT TO RECOVER FROM OTHERS

After we make a payment under this policy, we will have the right to recover from anyone else held responsible for the loss. This right will not apply under Section I if you have waived it in writing prior to the loss.

Anyone to whom we have paid will sign papers and do whatever is required to transfer this right to us, and do nothing to harm this right.

Anyone receiving payment from us and someone else for the same loss will reimburse us up to our payment less a proportionate share of the costs (including attorney fees) of such recovery.

We will pay all reasonable expenses anyone may incur at our request to help us recover damages from anyone else held responsible. This includes up to \$300 a day for actual loss of earnings.

This condition does not apply under Section II - Medical Payments To Others Coverage or Damage To Property Of Others.

#### (10) PRIORITY

This insurance will first protect you, your spouse residing in your household and then others we protect. X

**(11) SURVIVORS' COVERAGE**

If you die, the policy will cover:

1. anyone we protect who is a member of your household at the time of your death, but only while a resident of the residence premises;
2. anyone having lawful possession of insured property until a representative is appointed; but only until the end of the policy period during which your death occurs;

3. **your** legal representative, but only while performing duties as **your** representative and only until the end of the policy period during which **your** death occurs.

(12) TIME OF INCEPTION

If this policy replaces coverage in other policies which end on the inception date of this policy, but at a different time, then this policy will take effect when the other coverage ends.

This policy has been signed on our behalf at Erie, Pennsylvania by our President and Secretary. If required by law, it has been countersigned on the Declarations by our authorized Agent.

J. R. K. Lander  
Secretary

Secretary

Jeffrey A. Dickey

President



ERIE INSURANCE GROUP

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2005 Ultracover (Ed. 2/01) UF-8213



## ERIE INSURANCE GROUP

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JAMES J. WITKOWSKY, CPCU, AIC, AIM  
Claims Manager

September 8, 2003

Brenda Buck  
R.R. 1, Box 463A  
Morrisdale, PA 16858-9513

### RESERVATION OF RIGHTS

Re: ERIE Claim #010110488941  
ERIE Policy #Q59-1805275  
ERIE Insured: Brenda Buck  
Date of Loss: 9/3/03

Dear Ms. Buck:

This letter is in regard to a claim that you submitted to Erie Insurance Group on September 4, 2003, involving your foundation wall caving in.

As you are aware, this adjuster conducted an investigation at your dwelling on Thursday, September 4, 2003 and Friday, September 5, 2003. At the current time, Erie Insurance Group has referred a cause inspection to Richard Hughes, engineer out of Clearfield, Pennsylvania.

Please be advised at this time that Erie Insurance Group is continuing to investigate this matter. Investigation of this claim is being conducted with full and completed Reservation of Rights afforded to Erie Insurance Group under the policy of insurance issued to Brenda A. Buck. This policy is the HomeProtector Ultracover Policy Q59-1805275 (Edition 02/01), effective from November 18, 2002 to November 18, 2003. Our investigation of this claim at this time is not to be construed as a waiver of any of the exclusionary provisions of your HomeProtector Ultracover Policy.

Based on the information that we have to date, Erie Insurance Group is reserving the right to deny or disclaim coverage because certain policy exclusions or provisions may apply, or may not have been met. Specifically, we reserve the right to deny this claim based on the following provisions in your HomeProtector Ultracover Policy. Please refer to pages 7, 8 and 9 of your HomeProtector Ultracover Policy, which states under:

### **WHAT WE DO NOT COVER -- EXCLUSIONS**

#### **Under the Dwelling, Other Structures and Personal Property Coverages:**

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence to the loss:

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock;
4. caused by 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 fire protective system or a household appliance.

However, there is coverage if the loss is sudden and accidental Brenda Buck

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Brenda Buck  
Page 2  
September 8, 2003

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock waves or tremors before, or during, or after volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.
9. by water damage, meaning:
  - a. flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
  - c. water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

Also, please refer to page 9 of the policy which states:

**Under the Dwelling and Other Structures:**

**We do not pay for loss:**

1. by weather conditions, if any peril excluded by this policy contributes to the loss in anyway;
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate:
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance

of property whether on or off the resident premises by any person, group, organization or governmental body.

Please be aware that Erie Insurance Group is not, at this time, denying coverage, but is reserving the right to do so at some time in the future. It appears to be in the best interest of all concerned parties that Erie Insurance Group, without prejudice or waiving any of its rights, continues to investigate this matter at this time.

Erie Insurance Group does not waive its right to assert any of the policy exclusions. Additionally, Erie Insurance Group does not waive its right to assert any additional policy exclusions or conditions that were not mentioned in this letter. We suggest that you take a copy of your insurance policy along with this letter to any personal attorney of your choice, if you desire Brenda Buck

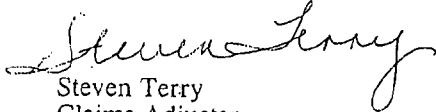
Brenda Buck  
Page 3  
September 8, 2003

We also wish to advise you that a claim should be submitted to any other insurance carrier who may have a potential for coverage of this incident.

Nothing in this letter is intended to waive or alter any of the terms, conditions or defenses under the policy of insurance in question, all of which are expressly reserved and reaffirmed.

If you have any questions or concerns, please feel free to contact me at the number listed below or you may correspond to Erie Insurance Group, P.O. Box 966, Clearfield, Pennsylvania 16830.

Sincerely,



Steven Terry  
Claims Adjuster  
Erie Branch Claims  
(814) 768-3538

ST:gjp

By certified mail - return receipt requested

cc: S. Terry  
cc: File



## ERIE INSURANCE GROUP

Branch Office • 3410 West 12th Street • Erie, Pennsylvania 16505 • (814) 451-5000  
Toll Free 1-877-771-3743 • Fax (814) 451-5060 • [www.erieinsurance.com](http://www.erieinsurance.com)

JAMES J. WITKOWSKY, CPCU, AIC, AIM  
Claims Manager

September 18, 2003

Brenda A. Buck  
R.R. 1, Box 463A  
Morrisdale, PA 16858-9513

Re: ERIE Claim #010110488941  
ERIE Policy #Q59-1805275  
ERIE Insured: Brenda Buck  
Date of Loss: 9/3/03

Dear Ms. Buck:

We have reviewed the facts of this case. As you probably know, our obligation as an insurer is to reimburse you only when a covered loss takes place. We must be guided by all information available to us.

We wish to be fair in handling your claim but the facts indicate that there is no coverage under your Ultracover Homeowners Policy effective from November 18, 2002 to November 8, 2003. For this reason, we must respectfully decline to make payment of your claim.

Our decision is based upon the following. Please refer to your Ultracover Homeowners Policy with Erie Insurance Group, pages 7 through 9 where it states under:

### WHAT WE DO NOT COVER -- EXCLUSIONS

#### **Under the Dwelling, Other Structures and Personal Property Coverages:**

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock.
4. caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental:

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock waves, or tremors before, during, or after a volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising, or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole

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Brenda A. Buck  
Page 2  
September 18, 2003

landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

9. by water damage, meaning:

- a. flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
- c. water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

Additionally, please refer to page 9 of the policy:

**Under the Dwelling Coverage and Other Structures Coverage:**

We do not pay for loss:

- 1. by weather conditions if any peril excluded by this policy contributes to the loss in any way;
- 2. caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance;

of property whether on or off the residence premises by any person, group, organization, or governmental body.

As you are aware, our investigation revealed that the cause of the loss was subsurface rain water putting pressure on your foundation and ultimately causing the one foundation wall to cave in, coupled with improper construction of the foundation itself. As outlined in the above paragraphs, these causes of losses are specifically excluded under your Ultracover Homeowners Policy; therefore, once again, no coverage exists on this loss.

It should be noted that you had brought to light a pin hole leak in the underground water line caused by a "kink" due to improper construction. As you are aware, both Erie Insurance Group and the engineer, Rich Hughes, believe that this had no bearing whatsoever on the failure of the wall. Be advised even if it did, the exclusion listed earlier in the above paragraphs would still apply and there would still be no coverage for the loss at hand.



ERIE INSURANCE GROUP  
The ERIE Is Above All In SERVICE<sub>®</sub> • Since 1925

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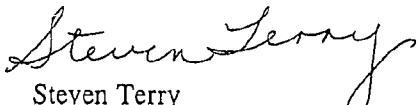
Brenda A. Buck  
Page 3  
September 18, 2003

After your review of the policy and the language of this letter, should you have any questions or comments, please feel free to contact me. If you have any disagreements with this determination with respect to the denial of coverage, please advise in writing, in detail, the basis of any disagreement that you may have. We will, of course, review any documentation or additional information that you provide us with.

As always, Erie Insurance Group reserves all of its rights, exclusions, defenses and limitations under this policy, and by this notification, it is not waiving any of its rights, limitations, defenses or other exclusions under the Ultracover Policy. In the event that information becomes available and would constitute an additional basis for denial of coverage, we will advise.

If you wish to discuss this matter further, please contact me at (814) 768-3538, or correspond to Erie Insurance Group, P.O. Box 966, Clearfield, Pennsylvania 16830.

Sincerely,



Steven Terry  
Claims Adjuster  
Erie Branch Claims

ST:ca

cc: Hrenko Insurance Agency  
P.O. Box 35  
Phillipsburg, PA 16866  
cc: S. Terry  
cc: File



ERIE INSURANCE GROUP  
The ERIE Is Above All In SERVICE • Since 1925

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 – CD

vs.

ANSWER AND NEW MATTER

ERIE INSURANCE GROUP,

Defendant.

Filed on behalf of Defendant,  
ERIE INSURANCE GROUP

Counsel of Record for this Party:

KATHLEEN S. McALLISTER, ESQUIRE  
Pa. I.D. No. 30764

DiBELLA, GEER, McALLISTER & BEST  
Firm I.D. No. 099

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

NOTICE TO PLEAD

You are hereby notified to plead to the enclosed Answer and New Matter directed to you within twenty (20) days from service hereof or a judgment may be entered against you.

DiBELLA & GEER, P.C.

BY:   
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 – CD

vs.

ERIE INSURANCE GROUP,

Defendant.

ANSWER AND NEW MATTER

AND NOW, comes the Defendant, Erie Insurance Exchange, incorrectly designated as "Erie Insurance Group," by its attorneys, DiBella & Geer, P.C. and presents the following Answer and New Matter to the Plaintiff's Complaint as follows:

ANSWER

As Answer to the Plaintiff's Complaint for Declaratory Judgment, Erie Insurance Exchange avers as follows:

1. After a reasonable investigation, Erie Insurance Exchange (hereinafter referred to as "Erie") is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of paragraph 1 of the Plaintiff's Complaint for Declaratory Judgment. Therefore, they are denied and strict proof thereof is demanded at the time of trial to the extent they are relevant and material.

2. The allegations of paragraph 2 of the Plaintiff's Complaint for Declaratory Judgment are admitted in part and denied in part. Erie Insurance Group is not a legal entity subject to suit. The correct name of this Defendant is Erie Insurance Exchange. Erie Insurance Exchange is a Pennsylvania corporation with its principal place of business at 100 Erie Insurance Place, Erie, Pennsylvania, 16530. The remaining allegations of paragraph 2 are denied as stated.

3. The allegations of paragraph 3 of the Plaintiff's Complaint for Declaratory Judgment are admitted.

4. The allegations of paragraph 4 of the Plaintiff's Complaint for Declaratory Judgment are admitted.

5. The allegations of paragraph 5 of the Plaintiff's Complaint for Declaratory Judgment are admitted.

6. The allegations of paragraph 6 of the Plaintiff's Complaint for Declaratory Judgment are admitted in part and denied in part. It is admitted that Erie issued its policy number Q59-1805275 to the Plaintiff, Brenda A. Buck. It is further admitted that Erie Ultra-Cover Insurance Policy Form 2005 Ultra-Cover (Ed. 2/01) UF – 8213 is attached as Exhibit "E" to the Plaintiff's Complaint for Declaratory Judgment. It is denied that Exhibit "A" represents a true and correct copy of the policy at issue. The policy attached as Exhibit "A" to the Plaintiff's Complaint for Declaratory Judgment fails to include policy declarations, policy amendments and endorsements.

7. The allegations of paragraph 7 of the Plaintiff's Complaint for Declaratory Judgment are admitted in part and denied in part. It is admitted that the language as set forth on page 7 of Erie Ultra-Cover Insurance Policy Form 2005 Ultra-Cover (Ed.

2/01) UF – 8213 is accurately quoted, in part, in paragraph 7 of the Plaintiff's Complaint for Declaratory Judgment. It is denied that the said language is a conclusive statement of the terms, conditions, coverages, limitations, exclusions and conditions contained in the Erie policy. A review of the entire policy is necessary to appropriately determine available coverage under the Erie policy. By way of further answer, Erie incorporates herein by reference the averments of its New Matter.

8. The allegations of paragraph 8 of the Plaintiff's Complaint for Declaratory Judgment are admitted in part and denied in part. It is admitted that the language as set forth on page 9 of Erie Ultra-Cover Insurance Policy Form 2005 Ultra-Cover (Ed. 2/01) UF – 8213 is accurately quoted, in part, in paragraph 8 of the Plaintiff's Complaint for Declaratory Judgment. It is denied that the said language is a conclusive statement of the terms, conditions, coverages, limitations, exclusions and conditions contained in the Erie policy. A review of the entire policy is necessary to appropriately determine available coverage under the Erie policy. By way of further answer, Erie incorporates herein by reference the averments of its New Matter.

9. After a reasonable investigation, Erie is without knowledge or information sufficient to form a belief as to the truth or falsity of the averments of paragraph 9 of the Plaintiff's Complaint for Declaratory Judgment. Therefore, they are denied and strict proof thereof is demanded at the time of trial to the extent they are relevant and material.

10. The allegations of paragraph 10 of the Plaintiff's Complaint for Declaratory Judgment are admitted.

11. The allegations of paragraph 11 of the Plaintiff's Complaint for Declaratory Judgment are denied in their entirety to the same force and effect as though repeated at length herein. Erie specifically denies that the policy issued to the Plaintiff provides coverage for the occurrence of September 3, 2003. To the contrary, the policy specifically excludes loss caused directly or indirectly by collapse; freezing, thawing, pressure or weight of water or ice to foundations, 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 fire protective system or a household appliance; by earth movement and/or by water damage. Moreover, the policy does not pay for loss by weather conditions or loss caused by faulty or inadequate design, development of specifications, workmanship, construction or materials used in construction. Although the policy does provide additional coverage for collapse as is set forth in the policy, such coverage is only available for specified perils, none of which apply to the within loss or occurrence. Since the loss as claimed is excluded, no coverage is available to the Plaintiff for the occurrence of September 3, 2003. By way of further answer, Erie incorporates herein by reference the averments of its New Matter.

12. The allegations of paragraph 12 of the Plaintiff's Complaint for Declaratory Judgment are admitted.

WHEREFORE, Erie Insurance Exchange demands judgment in its favor and against the Plaintiff. Erie Insurance Exchange respectfully requests that this Court enter judgment as follows:

- a. Declare that the Plaintiff's claim for collapse or other damage due to the alleged occurrence of September 3, 2003, is not covered under the terms and conditions of the Erie Insurance Exchange policy;

- b. Declare that the Erie Insurance Exchange policy, Q59-1805275 and specifically policy exclusions for loss caused directly or indirectly by collapse; freezing, thawing, pressure or weight of water or ice to foundations, 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 fire protective system or a household appliance; by earth movement and/or by water damage bar any coverage for the claimed occurrence of September 3, 2003, and that the policy does not pay for loss by weather conditions or loss caused by faulty or inadequate design, development of specifications, workmanship, construction or materials used in construction bar any coverage for the claim of Erie's insured, Brenda A. Buck; and,
- c. That Erie acted in good faith at all times relevant and material hereto and at all times had a reasonable basis for its decision to deny the claim of Brenda A. Buck.

NEW MATTER

As further Answer and New Matter, Erie Insurance Exchange avers as follows:

- 13. The Plaintiff's Complaint for Declaratory Judgment fails to state a claim upon which relief can be granted.
- 14. The Erie Insurance Exchange policy, policy number Q59-1805275 contains conditions, limitations and exclusions which apply to all claims made against the policy. More specifically, the policy contains an exclusion for "collapse" and provides:

**WHAT WE DO NOT COVER – EXCLUSIONS.**

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. By collapse, other than as provided in what we also pay, (2)  
Collapse.

15. To the extent that the occurrence of September 3, 2003, involving the cave in or collapse of a basement foundation wall at the Plaintiff's residence constitutes a collapse, this occurrence is not covered under the Erie policy. It is specifically excluded by a clear and unambiguous exclusion.

16. The Erie policy contains an exclusion for pressure of weight of water or ice on foundations and provides:

#### WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

3. By freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulk head, pier, wharf or dock.

17. To the extent that the alleged occurrence of September 3, 2003, was caused in whole or in part was caused by freezing, thawing, pressure or weight of water or ice on the basement foundation wall, the said occurrence is not covered under the Erie policy. It is excluded under the terms of a clear and unambiguous policy exclusion.

18. The Erie policy contains an exclusion for loss caused by constant or repeated seepage or leakage of water and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

4. Caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental.

19. To the extent that the alleged occurrence of September 3, 2003, was caused by constant or repeated seepage or leakage of water over a period of weeks, months or years from a household plumbing, heating, air conditioning or fire protective system, or any household appliance, the policy does not provide coverage for the loss as claimed. It is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

20. The Erie policy contains an exclusion for "earth movement" and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

8. By earth movement, due to natural or manmade events, meaning earthquake, including land shock waves, or tremors before, during or after a volcanic eruption, mine subsidence, sink hole, landslide, mudslide, mud flow, earth sinking, rising or shifting. Direct loss by fire, explosion, sonic boom, theft or mine subsidence, sink hole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

21. To the extent that the alleged occurrence of September 3, 2003, was caused by earth movement, the loss as claimed is not covered under the terms and conditions of the Erie policy. It is excluded pursuant to the clear and unambiguous earth movement exclusion contained in the Erie policy.

22. The Erie policy contains an exclusion for "water damage" and provides:

#### WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

9. By water damage, meaning:

\*\*\*\*\*

c. Water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

23. To the extent that the loss as claimed was caused by water damage, the claim is not covered under the terms and conditions of the Erie policy. It is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

24. The Erie policy contains an exclusion for "weather conditions" and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

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Under the dwelling, other structures coverage:

We do not pay for loss:

1. By weather conditions if any peril excluded by this policy contributes to the loss in any way.

25. To the extent that the loss was caused in whole or in part by weather conditions, the Erie policy does not cover the alleged claim of September 3, 2003. The loss is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

26. The Erie policy contains an exclusion for faulty "workmanship or construction" and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

\*\*\*\*\*

Under the dwelling, other structures coverage:

We do not pay for loss:

2. Caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. Planning, zoning, development;
  - b. Design, development of specifications, workmanship, construction;
  - c. Materials used in construction; or
  - d. Maintenance;

Of property whether on or off the residence premises by any person, group, organization, or governmental body.

27. To the extent that the loss was caused in whole or in part by faulty or inadequate design, specifications, workmanship, construction or materials used in construction, the loss as claimed is not covered under the Erie policy. It is excluded pursuant to a clear and unambiguous exclusion contained within the Erie policy.

28. The Erie policy does provide additional coverage for collapse under certain specified terms, conditions and limitations. More specifically, the policy provides:

#### WHAT WE ALSO PAY.

\*\*\*\*\*

##### (2) Collapse.

We will pay for direct physical loss to insure property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. A building or part of a building that is in danger of collapsing;
2. A building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. Part of a building still standing but is no longer attached to another part of a building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. Fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, air craft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. Weight of people, animals, contents or equipment;
4. Weight of rain which collects on a roof;
5. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not be liable for loss under 2, 3, 4, or 5, above to the following property unless the loss is a direct result of the collapse of a building or any part of a building:

Cloth awning, fences, pavements, patios, swimming pools, decks, underground pipes, flues, drains, cesspools, septic tanks, foundations, retaining walls, bulk heads, piers, wharfs or docks.

29. To the extent that the occurrence of September 3, 2003, is considered as a collapse of a building or any part of a building, the additional coverage for collapse extended under the Erie policy does not apply in that the occurrence was not due to a peril listed in the additional coverage for collapse.

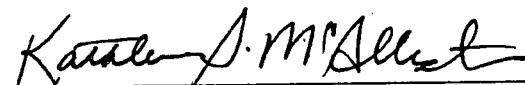
30. Based on the investigation conducted by Erie with regard to the Plaintiff's claim, it is clear that policy exclusions as outlined above in the preceding paragraphs apply to bar coverage for the alleged occurrence of September 3, 2003, and the damage claimed under the Erie policy.

WHEREFORE, Erie Insurance Exchange demands judgment in its favor and against the Plaintiff. Erie Insurance Exchange respectfully requests that this Court enter judgment as follows:

- a. Declare that the Plaintiff's claim for collapse or other damage due to the alleged occurrence of September 3, 2003, is not covered under the terms and conditions of the Erie Insurance Exchange policy;
- b. Declare that the Erie Insurance Exchange policy, Q59-1805275 and specifically policy exclusions for loss caused directly or indirectly by collapse; freezing, thawing, pressure or weight of water or ice to foundations, 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 fire protective system or a household appliance; by earth movement and/or by water damage. Moreover, the policy does not pay for loss by weather conditions or loss caused by faulty or inadequate design, development of specifications, workmanship, construction or materials used in construction bar any coverage for the claim of Erie's insured, Brenda A. Buck; and,
- c. That Erie acted in good faith at all times relevant and material hereto and at all times had a reasonable basis for its decision to deny the claim of Brenda A. Buck.

Respectfully submitted,

DiBELLA & GEER, P.C.

BY:   
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

VERIFICATION

I, Keith McQuown of Erie Insurance Exchange hereby verify the statements set forth in the foregoing ANSWER AND NEW MATTER are true and correct to the best of my knowledge, information and belief.

I understand that false statements made herein are subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsifications to authorities.

Keith McQuown

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DEC 12 2003  
CLAIMS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Answer and New Matter has been forwarded to all counsel of record by first class mail this day 6th of January, 2007.

David C. Mason, Esquire  
P.O. Box 28  
Philipsburg, PA 16866

DiBELLA & GEER, P.C.

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 - CD

vs.

MOTION FOR SUMMARY JUDGMENT

ERIE INSURANCE GROUP,

Defendant.

Filed on behalf of Defendant,  
ERIE INSURANCE GROUP

Counsel of Record for this Party:

KATHLEEN S. McALLISTER, ESQUIRE  
Pa. I.D. No. 30764

DiBELLA, GEER, McALLISTER & BEST  
Firm I.D. No. 099

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK, CIVIL DIVISION  
Plaintiff, No. 03-1648 – CD  
vs.  
ERIE INSURANCE GROUP,  
Defendant.

MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Defendant, Erie Insurance Exchange (incorrectly designated as "Erie Insurance Group,"), by its attorneys, DiBella, Geer, McAllister & Best, P.C. and, pursuant to Pennsylvania Rule of Civil Procedure 1035.1 and 1035.2, presents this Motion for Summary Judgment as follows:

1. This matter arises out of a Complaint for Declaratory Judgment filed on behalf of the Plaintiff, Brenda A. Buck. A true and correct copy of the Plaintiff's Complaint (without exhibits) is attached thereto, incorporated herein and marked as Exhibit "A".
2. The suit concerns an incident of September 3, 2003, wherein a basement foundation wall at the Plaintiff's residence caved in or collapsed.
3. By way of background, the Plaintiff, Brenda A. Buck, had entered into a contract (along with her parents) for the construction of the house at 2720 Allport Cut-Off, Morrisdale, Pennsylvania, 16858, with Michael W. Owens and Sons, Contractors, on or about October 21, 1998.

4. Construction was completed in February of 1999, and the Plaintiff, Brenda A. Buck, moved into the house shortly thereafter. Plaintiff continuously resided at the Allport Cut-Off property since that time and up through the present time.

5. On September 3, 2003, Plaintiff had returned home from work in the late afternoon. She heard a loud noise emanating from the basement and, upon investigation, found a sea of mud and debris in the basement and also discovered that the wall at the side of the house closest to the attached garage had collapsed into the basement. A true and correct copy of the Plaintiff's deposition is attached hereto, incorporated herein and marked as Exhibit "B".<sup>1</sup>

6. At her deposition taken May 10, 2004, the Plaintiff indicated that she had no knowledge as to the cause of the collapse or the incident in question. Pertinent pages regarding this issue are attached hereto as Exhibit "C". Plaintiff's Complaint, however, (see paragraphs 9 and 11 of Exhibit "A") clearly terms this a collapse incident.

7. An investigation of the incident was conducted by Erie Insurance Exchange. Erie retained the services of a consulting engineer, Richard T. Hughes, P.E. Mr. Hughes investigated the collapse and prepared a written report outlining his findings and conclusions. Mr. Hughes' report is attached hereto, incorporated herein and marked as Exhibit "D". The report concludes:

Based on the physical evidence at the site, a review of Industry Standards and finally my experience with other foundation collapses, it is my professional opinion with high degree of engineering certainty that the cause of the wall collapse is due to a lack of reinforcing combined with recent severe rainstorms, which saturated the ground.

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<sup>1</sup> The garage was built by a different contractor in November of 2001. The garage is attached to the house but has no basement.

Masonry walls must resist 3 types of loading (see attached reference). In this instance, this wall failed under earth pressure and hydrostatic (water) pressure.

This failure was not due to a water line break. The homeowner saw water pouring and shooting side like it was under pressure. This is due to the way the yard is sloped toward the house. A pinhole water leak would increase a home's meter reading to over 18,500 gallons per quarter.

As often the case poor construction practices have caused the problem.

8. At all times relevant and material hereto, the Plaintiff, Brenda A. Buck, was insured under an Erie Insurance Exchange Home Protector Ultra Cover Insurance Policy at policy number Q59-1805275. A true and correct copy of the policy is attached hereto, incorporated herein and marked as Exhibit "E".

9. After receiving notice of the loss from the Plaintiff, Erie Insurance Exchange issued a reservation of rights. A true and correct copy of the reservation of rights letter issued by Erie Insurance Exchange is attached hereto, incorporated herein and marked as Exhibit "F".

10. Following further investigation and receipt of the engineer's report, Erie Insurance Exchange denied Ms. Buck's claim for coverage under the Erie Insurance Exchange policy. A true and correct copy of the denial letter is attached hereto, incorporated herein and marked as Exhibit "G".

11. For all of the reasons as set forth below, the Erie Insurance Exchange Home Owner's Policy issued to the Plaintiff, Brenda A. Buck does not provide coverage for the loss as claimed in the Plaintiff's Complaint and therefore, Erie Insurance Exchange is entitled to summary judgment as a matter of law.

12. The Erie Insurance Exchange policy, policy number Q59-1805275 contains an exclusion for "collapse" and provides:

WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. By collapse, other than as provided in what we also pay, (2) Collapse.<sup>2</sup>

13. To the extent that the occurrence of September 3, 2003, involving the cave in or collapse of a basement foundation wall at the Plaintiff's residence constitutes a collapse, this occurrence is not covered under the Erie policy. It is specifically excluded by a clear and unambiguous exclusion.

14. The Erie policy contains an exclusion for pressure or weight of water or ice on foundations and provides:

WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

3. By freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulk head, pier, wharf or dock.

---

<sup>2</sup> Although the policy does provide Additional Coverage for Collapse, see paragraph 26 of this Motion, such coverage is not available for this claim as the collapse was not caused by a named peril.

15. To the extent that the alleged occurrence of September 3, 2003, was caused in whole or in part was caused by freezing, thawing, pressure or weight of water or ice on the basement foundation wall, the said occurrence is not covered under the Erie policy. It is excluded under the terms of a clear and unambiguous policy exclusion.

16. The Erie policy contains an exclusion for loss caused by constant or repeated seepage or leakage of water and provides:

#### WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

4. Caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental.

17. To the extent that the alleged occurrence of September 3, 2003, was caused by constant or repeated seepage or leakage of water over a period of weeks, months or years from a household plumbing, heating, air conditioning or fire protective system, or any household appliance, the policy does not provide coverage for the loss as claimed. It is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

18. The Erie policy contains an exclusion for "earth movement" and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

8. By earth movement, due to natural or manmade events, meaning earthquake, including land shock waves, or tremors before, during or after a volcanic eruption, mine subsidence, sink hole, landslide, mudslide, mud flow, earth sinking, rising or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sink hole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

19. To the extent that the alleged occurrence of September 3, 2003, was caused by earth movement, the loss as claimed is not covered under the terms and conditions of the Erie policy. It is excluded pursuant to the clear and unambiguous earth movement exclusion contained in the Erie policy.

20. The Erie policy contains an exclusion for "water damage" and provides:

## WHAT WE DO NOT COVER – EXCLUSIONS.

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

9. By water damage, meaning:

\*\*\*\*\*

c. Water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

21. To the extent that the loss as claimed was caused by water damage, the claim is not covered under the terms and conditions of the Erie policy. It is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

22. The Erie policy contains an exclusion for "weather conditions" and provides:

WHAT WE DO NOT COVER – EXCLUSIONS.

\*\*\*\*\*

Under the dwelling, other structures coverage:

We do not pay for loss:

1. By weather conditions if any peril excluded by this policy contributes to the loss in any way.

23. To the extent that the loss was caused in part by weather conditions, and in part by an excluded peril such as collapse, water damage, earth movement, repeated seepage or leakage or faulty construction, the Erie policy does not cover the alleged claim of September 3, 2003. The loss is excluded pursuant to a clear and unambiguous exclusion contained in the Erie policy.

24. The Erie policy contains an exclusion for faulty "workmanship or construction" and provides:

WHAT WE DO NOT COVER – EXCLUSIONS.

\*\*\*\*\*

Under the dwelling, other structures coverage:

We do not pay for loss:

2. Caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. Planning, zoning, development;
  - b. Design, development of specifications, workmanship, construction;
  - c. Materials used in construction; or
  - d. Maintenance;

Of property whether on or off the residence premises by any person, group, organization, or governmental body.

25. To the extent that the loss was caused in whole or in part by faulty or inadequate design, specifications, workmanship, construction or materials used in construction, the loss as claimed is not covered under the Erie policy. It is excluded pursuant to a clear and unambiguous exclusion contained within the Erie policy.

26. The Erie policy does provide additional coverage for collapse under certain specified terms, conditions and limitations. More specifically, the policy provides:

**WHAT WE ALSO PAY.**

\*\*\*\*\*

**(2) Collapse.**

We will pay for direct physical loss to insure property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. A building or part of a building that is in danger of collapsing;
2. A building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. Part of a building still standing but is no longer attached to another part of a building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. Fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, air craft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. Weight of people, animals, contents or equipment;
4. Weight of rain which collects on a roof;
5. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not be liable for loss under 2, 3, 4, or 5, above to the following property unless the loss is a direct result of the collapse of a building or any part of a building:

Cloth awning, fences, pavements, patios, swimming pools, decks, underground pipes, flues, drains, cesspools, septic tanks, foundations, retaining walls, bulk heads, piers, wharfs or docks.

27. To the extent that the occurrence of September 3, 2003, is considered as a collapse of a building or any part of a building, the additional coverage for collapse extended under the Erie policy does not apply in that the occurrence was not due to a peril listed in the additional coverage for collapse.

28. Based on the investigation conducted by Erie with regard to the Plaintiff's claim, it is clear that policy exclusions as outlined above in the preceding paragraphs apply to bar coverage for the alleged occurrence of September 3, 2003, and the damage claimed under the Erie policy.

29. Under the various terms, conditions, limitations and exclusions from the Erie Insurance Exchange policy as set forth above, it is clear that no coverage is afforded for the incident of September 3, 2003, at the residence of the Plaintiff, Brenda A. Buck. No genuine issue of material fact exists with regard to any of the claims as set forth in Plaintiff's Complaint and therefore, as a matter of law, Erie Insurance Exchange is entitled to summary judgment.

WHEREFORE, Defendant, Erie Insurance Exchange, demands judgment in its favor and against the Plaintiff, Brenda A. Buck and requests that this Honorable Court enter judgment declaring as follows:

- a. Declare that the Plaintiff's claim for damage due to the incident of September 3, 2003, is not covered under the terms and conditions of the Erie Insurance Exchange policy;
- b. Declare that the Erie Insurance Exchange policy, Home Protector Ultra Cover Insurance Policy number Q59-1805275 and specifically the policy exclusions for collapse, pressure of weight of water or ice on foundations, constant or repeated seepage or leakage of water, earth movement, water damage, weather conditions and faulty workmanship or construction bar any claim for coverage by Erie Insurance Exchange's insured, Brenda A. Buck; and,
- c. That Erie Insurance Exchange acted in good faith at all times relevant and material hereto and at all times had a reasonable basis for its decision to deny the claim of Brenda A. Buck.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 – CD

vs.

ERIE INSURANCE GROUP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this \_\_\_\_\_ day of \_\_\_\_\_, 2004, upon consideration of the Motion for Summary Judgment filed on behalf of Erie Insurance Exchange, it is hereby ORDERED, ADJUDGED and DECREED that the Motion be and the same hereby is granted.

BY THE COURT:

\_\_\_\_\_  
J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03-1648-CD

PLAINTIFF

\*

\*

\* JURY TRIAL DEMANDED

\*

\*

ERIE INSURANCE GROUP

\*

\*

DEFENDANT

\* TYPE OF PLEADING: COMPLAINT ACTION

\* IN DECLARATORY JUDGMENT

\*

\* FILED ON BEHALF OF:

\* PLAINTIFF

\*

\* ATTORNEY FOR PLAINTIFF:

\* David C. Mason, Esquire

\* Supreme Court ID #39180

\* MASON LAW OFFICE

\* P.O. Box 28

\* Philipsburg, PA 16866

\* (814) 342-2240

\*

ERIE 6

NOV 07 2003

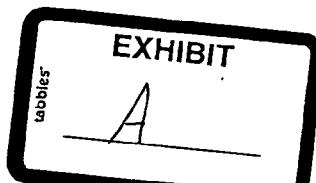
CLAIMS

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

NOV 04 2003

Attest.

*Lee L. R.*  
Prothonotary/  
Clerk of Courts



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No.

PLAINTIFF

\*

vs.

\* JURY TRIAL DEMANDED

ERIE INSURANCE GROUP

\*

DEFENDANT

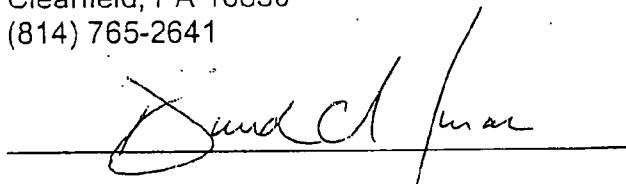
\*

NOTICE TO DEFEND

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE AN LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Court Administrator  
Clearfield County Courthouse  
Clearfield, PA 16830  
(814) 765-2641



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No.

\*

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

\*

ERIE INSURANCE GROUP

\*

\*

DEFENDANT

\*

COMPLAINT

1. Plaintiff is Brenda A. Buck, an adult individual who resides at 2720 Airport Cutoff, Morrisdale, Pennsylvania, 16858. This residence is in Graham Township, Clearfield County, Pennsylvania.

2. Defendant is Erie Insurance Group, with home offices at 3410 West 12<sup>th</sup> Street, Erie, Pennsylvania, 16505. It is believed and averred that this address is located in Erie County, Pennsylvania.

3. Defendant is believed to be a corporation and a licensed provider of insurance products in the Commonwealth of Pennsylvania.

4. Defendant is engaged in the sale and provision of homeowners insurance policies, as well as other types of causality and indemnity products.

5. Plaintiff purchased from Defendant a "Home Protector - Ultracover Insurance Policy" to provide homeowners insurance coverage for her residence at 2720 Airport Cutoff, Morrisdale, Pennsylvania.

6. At all times relevant hereto Erie Insurance Group issued Policy No. Q59-1805275

to Brenda A. Buck. A true and correct copy of the "Home Protector - Ultracover Insurance Policy" provided to the homeowner is attached to this complaint as Exhibit "A".

7. The Erie Insurance Group "Home Protector - Ultracover Insurance Policy" contract provides as follows on page 7:

#### **PERILS WE INSURE AGAINST**

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited herein.

#### **WHAT WE DO NOT COVER -- EXCLUSIONS:**

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. by collapse, other than as provided in *What We Also Pay, (2) Collapse*.

8. The Erie Insurance Group "Home Protector - Ultracover Insurance Policy" also provides as follows:

#### **WHAT WE ALSO PAY:**

##### **(2) COLLAPSE**

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purposes.

9. On or about September 3, 2003, Plaintiff's residence located at 2720 Allport Cutoff experienced a catastrophic collapse of the wall of the foundation.

10. On or about September 8, 2003, Erie Insurance Group issued a reservation of rights letter, a copy of this letter is attached hereto as Exhibit "B".

11. Accordingly, based upon the contract language Erie Insurance is required to

indemnify the Plaintiff as a result of this loss.

12. On or about September 18, 2003, Defendant Erie Insurance Group issued a denial of coverage letter, a copy of this letter is attached hereto as Exhibit "C".

**WHEREFORE**, Plaintiff prays Your Honorable Court for the entry of an Order:

(a) Declaring that the Defendant Erie Insurance Group's "Home Protector - Ultracover Insurance Policy" provides indemnity and coverage for the collapse of the wall of the foundation of Plaintiff's home in accordance with the contract's coverages and limits;

(b) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses occasioned by the collapse of the wall of the foundation of Plaintiff's home, including the loss of personal property, loss of use and other damages as may be proved;

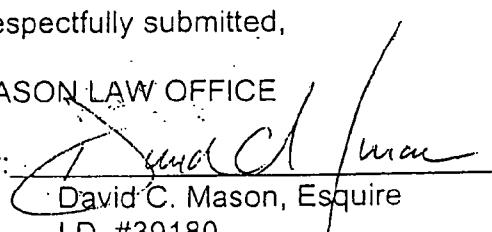
(c) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses associated with the loss and this action, including all of her costs and legal fees incurred in the instant action;

(d) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

MASON LAW OFFICE

By:

  
David C. Mason, Esquire  
I.D. #39180  
Attorney for Plaintiff

ERIE 6

NOV 17 2003

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PA

\* \* \* \* \*

BRENDA A. BUCK,

\*

Plaintiff

\* Case No.

vs.

\* 03-1648-CD

ERIE INSURANCE GROUP,

\*\*

Defendant

\*

OPENING  
STATEMENT

\* \* \* \* \*

DEPOSITION OF

BRENDA A. BUCK

Taken on behalf of the Defendant herein, pursuant to the Rules of Civil Procedure, taken before me, the undersigned, Cynthia Piro Blough, a Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania, at the law offices of David Mason, North Front Street, Philipsburg, Pennsylvania, on Monday, May 10, 2004, beginning at 2:15 a.m.

FOR THE PLAINTIFF:

DAVID C. MASON, ESQ.  
409 North Front Street  
P.O. Box 28  
Philipsburg, PA 16866

FOR THE DEFENDANT:

KATHLEEN S. MCALLISTER, ESQ.  
DiBella, Geer, McAllister & Best, P.C.  
312 Boulevard of the Allies  
Pittsburgh, PA 15222

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EXHIBIT

Sargent's Court  
(8) tabbed

vice, Inc.

B

1                   INDEX2                   WITNESS: Brenda A. Buck

3                   EXAMINATION

4                   by Attorney McAllister

3 - 51

5                   CERTIFICATE

52

6                   EXHIBITS7                   PAGE8                   NUMBER    DESCRIPTION9                   IDENTIFIED

10                  One      Contract

11                  7

12                  Two      Estimate

13                  27

14                  Three     Cartwright Contracting Estimate

15                  28

16                  Four     Bowman Masonry Estimate

17                  28

18                  Five     Set of Eight Pictures

19                  29

20                  Six      Pictures by Mr. Terry

21                  46

18                   OBJECTIONS20                   ATTORNEY21                   PAGE

22                  NONE MADE

## PROCEEDINGS

2 BRENDA A. BUCK, HAVING FIRST BEEN DULY SWEORN, TESTIFIED AS  
3 FOLLOWS:

## 4 EXAMINATION

5 BY ATTORNEY MCALLISTER:

6 Q. Ms. Buck, my name is Kathleen McAllister. I am here  
7 representing Erie Insurance Exchange in connection with a  
8 lawsuit that you have brought under Erie under a policy of  
9 insurance. I am here to take your deposition so that I can  
10 determine facts and other information that are relevant to  
11 that lawsuit. I'll be asking you questions directly, and  
12 you should answer my questions to the best of your own  
13 personal information and understanding. If you don't  
14 understand a question I ask, if you don't hear me, or if  
15 you just want me to repeat it, please tell me and I would  
16 be happy to do that for you. Otherwise, I will assume that  
17 you've heard me and that you've understood me and that  
18 you're answering the question that I have asked. Are those  
19 instructions acceptable to you?

20 A. Yes.

21 Q. If you do need to take a break for whatever reason, let  
22 us know. If you need to speak with Mr. Mason or if you  
23 simply need to take a break, although I don't believe that  
24 we'll be too long here today. Is there anything at all  
25 that would by way of medication or any condition that you

1 have that would interfere with your ability to hear  
2 questions or to answer questions today?

3 A. No.

4 Q. Then we'll proceed.

5 ATTORNEY MASON: Customary  
6 stipulations?

7 ATTORNEY MCALLISTER: I'm not sure what  
8 those are.

9 ATTORNEY MASON: Oh, up here they  
10 simply indicate that we'll waive all objections during the  
11 course of the deposition until the time of the trial except  
12 those that go to the form of the question.

13 ATTORNEY MCALLISTER: That's acceptable  
14 to me, Dave.

15 ATTORNEY MASON: Thank you.

16 BY ATTORNEY MCALLISTER:

17 Q. Please state your full name for the record?

18 A. Brenda Ann Buck.

19 Q. Where do you presently live?

20 A. 2720 Allport Cutoff, Morrisdale, Pennsylvania.

21 Q. Is that the same house that's the subject of this  
22 lawsuit?

23 A. Yes, it is.

24 Q. Is that a house that you've resided in for some period  
25 of time?

1 A. The five years that it's been there, yes.

2 Q. Who else lives with you at the house?

3 A. My fiancé when he's not in college and his son on the  
4 weekends and during the summer.

5 Q. What is your fiancé's name?

6 A. His name Timothy Ryder, R-Y-D-E-R.

7 Q. And his son, how old is he?

8 A. He's five.

9 Q. Is there anyone else during the five years you've lived  
10 at the Allport Cutoff Road address, is there anyone else  
11 that's lived there with you?

12 A. No. He's the only one that's ever lived there.

13 Q. Did you have the house built?

14 A. Yes, I did.

15 Q. Who built the house for you?

16 A. Michael Owens & Sons Contracting.

17 Q. Did you say Owens?

18 A. Owens.

19 Q. O-W-E-N-S?

20 A. Yes.

21 Q. Do you know if that is a company that's still in  
22 existence?

23 A. I'm not sure.

24 Q. Do you know where they're located?

25 A. 322 Clearfield.

1 Q. So Route 322 in Clearfield, PA?

2 A. Yes.

3 Q. Was there a particular individual of that company that  
4 was involved in building your house?

5 A. Michael Owens.

6 Q. Do you know if he has any sort of engineering degrees  
7 or architectural degrees?

8 A. I have no idea.

9 Q. He's a contractor?

10 A. Yes.

11 Q. Do you know if the construction of your house was done  
12 pursuant to a written agreement or contract?

13 A. I'm not sure. A written agreement between the two of  
14 us?

15 Q. Yes.

16 A. We had a contract, yes.

17 Q. Do you still have a copy of the contract?

18 A. Yes.

19 Q. Do you know if there were any written plans and  
20 specifications for the construction of your house in  
21 addition to that contract?

22 A. No, and my contract doesn't have any specific building  
23 plans. As far as I can tell there was no blueprint or any  
24 of those kind of things.

25 Q. So you think that there was a written contract, but you

1 do not believe that there were plans and specifications for  
2 the construction of the house?

3 A. We have a copy of that. You can certainly look at it.  
4 I mean, it's a plan. It's just --- it's general.

5 Q. Now your attorney's just handed you a proposal?

6 A. Yes.

7 Q. And that proposal is for yourself, Brenda A. Buck,  
8 Thomas B. Buck, and Yvonne Buck and Michael W. Owens & Sons  
9 of Clearfield, Pennsylvania. And it does on page two of  
10 this document show a layout of the house showing the rooms  
11 and a little bit of information as to the square footage.  
12 And then it also has a written proposal dated October 21,  
13 1998, beginning on page three?

14 A. Correct.

15 ATTORNEY MCALLISTER: We're going to  
16 mark this, if you don't mind, Dave, as Exhibit One to the  
17 deposition. If I can't take this particular copy and mark  
18 it, I'll make a copy.

19 ATTORNEY MASON: Why don't I have some  
20 copies made of it right now?

21 ATTORNEY MCALLISTER: All right. That  
22 would be great. Thank you.

23 (Exhibit One marked for  
24 identification.)

25 OFF RECORD DISCUSSION

1 BY ATTORNEY MCALLISTER:

2 Q. The proposal that we marked as Exhibit Number One  
3 identifies other parties to this contract other than  
4 yourself, and specifically Thomas and Yvonne Buck. Are  
5 Thomas and Yvonne your parents?

6 A. Yes.

7 Q. And did they help you with the construction of this  
8 home?

9 A. At the time the property was still in their name. So  
10 their name had to be on the contract. Nothing is in either  
11 of their names now, because they have signed the property  
12 over to me. But at the time, yes.

13 Q. And was it intended from the day the house was built  
14 that you and you alone would reside in the house?

15 A. Yes.

16 Q. So the house was built for you?

17 A. Yes. But we were waiting subdivision of the property.  
18 I got some of it, and my brother got some of it, and my  
19 sister got some of it. So we were subdividing.

20 Q. The property that was owned by your parents?

21 A. By my father, yes, and my mother.

22 Q. Now in connection with the construction of the house  
23 that was to be your house, did you separately retain any  
24 architect or engineer to look at the plans or the proposal  
25 that we've marked as Exhibit Number One?

1 A. No.

2 Q. Did anyone other than Michael Owens & Sons have  
3 anything to do with the construction or design of the  
4 house?

5 A. Not to my knowledge.

6 Q. To your knowledge, was it a complete design build  
7 project that Michael Owens & Sons did for you and your  
8 parents?

9 A. The only thing that I know he subcontracted was the  
10 ceiling. He had swirled ceilings done by somebody else.  
11 That was the only thing he ever mentioned to me that he was  
12 subcontracting.

13 Q. And you've indicated that you have not seen any kind of  
14 detailed blueprints or drawings; is that true up until  
15 today?

16 A. Yes.

17 Q. Do you know one way or the other whether there are any  
18 detailed drawings as opposed to this written specification  
19 that exists?

20 A. None that I know of.

21 Q. Is this a modular home?

22 A. No.

23 Q. And as I understand it, I use a couple different terms,  
24 but modular home is one that basically comes in a kit and  
25 the architect can build this same home any number of times

1 using that kit. A stick-built home on the other hand is  
2 one that is built by the contractor per your specifications  
3 or his specifications. So with that definition, which is  
4 my definition, was this a stick-built home or a modular  
5 home or don't you know?

6 A. It was not a modular home, no. I would say it was by  
7 your definition a stick-built home.

8 Q. It appears from Exhibit One, and you're free to look at  
9 it if you need to do so for any reason, but if you look at  
10 the proposal on page three of that document, it appears -  
11 that Michael W. Owens & Sons did all of the work relating  
12 to the foundation?

13 A. As far as I know, yes.

14 Q. They dug the foundation and they placed footers. And  
15 as far as you know, then would it be correct, that no one  
16 else did that?

17 A. As far as I know no one else did that. The only trucks  
18 I saw there were Owens & Sons.

19 Q. Prior to this house that was built for you in or around  
20 October '98 through sometime I guess into the spring of  
21 1999, had there been any sort of structure on the property  
22 where the house was built?

23 A. No.

24 Q. Had you had to have a survey done for any purpose on  
25 this property?

1 A. Yes. To do the subdivisions.

2 Q. And do you know who did the survey?

3 A. No, but I could find out. My father took care of that.

4 Q. This proposal is dated October 21, 1998. Do you know  
5 when the house was completed?

6 A. It was the end of February 1999.

7 Q. Prior to the time that you moved into the house, did  
8 you have an inspection done by anyone?

9 A. I do not know that. The township, as far as I know, I  
10 thought had their own inspectors. But I'm really not sure.  
11 I did not personally hire anybody to inspect the home. I  
12 did not know I needed to do that.

13 Q. Sometimes before a contractor turns over a finished  
14 house or product to the owner or buyer, the buyer will go  
15 through and physically examine and perhaps might put  
16 together a punch list that would indicate these are defects  
17 or these things are wrong and need to be corrected. Did  
18 you or anyone do that to your knowledge?

19 A. No.

20 Q. The house was finished the end of February 1999, when  
21 did you move in?

22 A. The same time, the end of February 1999.

23 Q. Did Mr. Ryder move in at approximately the same time?

24 A. No, he did not.

25 Q. When did Mr. Ryder move in?

1 A. Approximately two and a half years ago.

2 Q. So sometime in ---. You're trying to estimate, please  
3 don't ask Mr. Ryder for help.

4 A. I was just trying to think. It would have been about  
5 probably two weeks after 9/11, what would that be?

6 Q. End of September 2001 or early October 2001.

7 A. Sometime in there, yes. Probably more Octoberish.

8 Q. Before that time, no one lived at the house other than  
9 you?

10 A. No one.

11 Q. Did you have city utilities at this property or just  
12 city water? Can you describe the lot, how big a lot it is?

13 A. When I built my home it sat on a 24 and a half acre  
14 lot. It is now right around seven, I do believe.

15 Q. Is that because the property has been further  
16 subdivided?

17 A. Yes.

18 Q. Your house sits on a piece of property now that is  
19 approximately seven acres?

20 A. Right.

21 Q. Is there any other home or structure on that seven  
22 acres?

23 A. No.

24 Q. Is there a well on the property for any reason?

25 A. No.

1 Q. Can you describe generally the terrain of the property,  
2 whether it's flat or hilly?

3 A. It's hilly.

4 Q. Approximately how close is the nearest house?

5 A. I'm not good at distance. Probably --- I am trying to  
6 think how far would that be.. 300 yards, maybe. I'm not  
7 good at distance.

8 Q. All right. I won't hold you to that then.

9 A. I have no spatial ability.

10 Q. The proposal that we've marked as Exhibit Number One  
11 describes this house as a 28 foot by 40 foot ranch. Is  
12 that what you have?

13 A. Yes.

14 Q. And the second page of this proposal, which is a rough  
15 layout of the house shows that the first floor has two  
16 bedrooms, a master bedroom, a smaller bedroom, a dining  
17 room/kitchen area, and a living room area. Is that what is  
18 presently there?

19 A. Yes.

20 Q. There's an area garage marked X'd off. Is there a  
21 garage there or no?

22 A. There is now. There was not at the time that the  
23 structure was built.

24 Q. When was this garage added on to the house?

25 A. It was added on, let's see, it was started when Tim and

1 I first started dating. And it was done that November. So  
2 November 2001.

3 Q. Is there plumbing in the garage at all?

4 A. No.

5 Q. Is there a basement in the house?

6 A. Yes.

7 Q. Does the basement run the whole length of the house  
8 with the exception of the garage?

9 A. Yes.

10 Q. What is in the basement?

11 A. The furnace, the oil tank, my washer/dryer. It was  
12 wall-to-wall carpeting and a living room suit. Most of  
13 that has been ripped out. And in the laundry room was  
14 linoleum. And that has been ripped out.

15 Q. So you seem to be indicating that the basement was  
16 finished?

17 A. It was finished, yes. It wasn't dry walled, but it had  
18 wall-to-wall carpeting. It was separated by --- it was ---  
19 the walls were already sectioned out. But the drywall  
20 actually was not up.

21 Q. Let me just see if I understand what you said. At the  
22 time of the original construction in February 1999, the  
23 basement area was partially finished, meaning that you did  
24 have carpeting down?

25 A. The carpeting was put in a couple months after that.

1 Michael Owens did not put the carpeting in.

2 Q. And you indicated that there was some sectioning for  
3 walls in the basement area?

4 A. Right.

5 Q. But no drywall up?

6 A. No.

7 Q. So the studs were up, but someone needed to put up the  
8 drywall?

9 A. Right.

10 Q. Who did put up the drywall?

11 A. There was no drywall in the basement. In the rest of  
12 the house Michael Owens did it.

13 Q. But in terms of --- after the construction was done in  
14 February of '99, did someone else put up drywall in the  
15 basement?

16 A. No.

17 Q. Did you put up paneling?

18 A. No.

19 Q. So you never did finish it?

20 A. No. It wasn't completely finished. But it was  
21 carpeted and there was furniture down there.

22 Q. Is that true up to today?

23 A. Well when the wall collapsed because of the water  
24 damage, we ripped the carpeting out.

25 Q. But I mean the walls?

1 A. Yes, it's still true. No, there's no wall that we have  
2 up now.

3 Q. No paneling and no drywall on the walls as of ---

4 A. No.

5 Q. --- September 2003?

6 A. Correct. There's just studs.

7 Q. Do you know if Mr. Owens did the plumbing work at the  
8 house himself?

9 A. As far as I know, yes.

10 Q. How about the electrical work?

11 A. Yes.

12 Q. Just because I haven't seen it, I want to look and see  
13 if that is indicated in Exhibit One. And it appears to be.  
14 And I think you answered this already, but do you know of  
15 any local ordinance that would have required a rough-in or  
16 finish inspection for either the plumbing or the electrical  
17 work in the house?

18 A. As far as I know, the only thing that I know of was  
19 electrical.

20 Q. As of the time that you purchased this house and moved  
21 into the house, did you obtain an insurance policy?

22 A. I obtained an insurance policy with Erie from the time  
23 the foundation was being done.

24 Q. And it appears from the records that I have that that  
25 was through the Hrenko Insurance Agency, and that's

1 H-R-E-N-K-O, on Tyrone Pike in Philipsburg, PA; is that  
2 right?

3 A. Correct.

4 Q. Do you know who the agent was that you dealt with at  
5 the time?

6 A. I do not.

7 Q. But as far as you know, it's always been an Erie policy  
8 that's been in place at the house?

9 A. Yes.

10 Q. And just --- I know you're anticipating what I'm  
11 asking, but try to let me finish before you answer so that  
12 the Court Reporter doesn't go crazy.

13 A. I'm sorry.

14 Q. That's okay. Other than putting on the garage that  
15 you've already told me about, have you done any remodeling  
16 to the house, any addition, or anything that was new that  
17 was added onto the structure?

18 A. There was a deck added onto the back of the house  
19 shortly after I had moved in, that spring.

20 Q. Anything else?

21 A. No.

22 Q. Did you do any sort of major work involving the  
23 electrical or plumbing systems in the house?

24 A. No.

25 Q. Did you do any work at all on the electrical plumbing

1 system or plumbing system?

2 A. My finance, Tim, wired the basement. It had not been  
3 wired. He put in outlets in the basement.

4 Q. How about plumbing? Did Mr. Ryder do any plumbing  
5 work?

6 A. No.

7 Q. Did the house come with air conditioning?

8 A. No.

9 Q. Did you add air conditioning to the house at any time?

10 A. I have a small window unit.

11 Q. How big was the deck that was added onto the back?

12 A. That I do not know off hand.

13 Q. Bigger than this room?

14 A. No.

15 Q. Prior to the incident that occurred in September of  
16 2003, did you have any problem with plumbing, sewers or  
17 drains with the house?

18 A. No.

19 Q. Did you have any problem whatsoever with flooding?

20 A. No.

21 Q. Any prior problem with the walls in the basement?

22 A. No.

23 Q. Any problem that you know there's been cracking either  
24 in the upstairs area or the basement?

25 A. There were some cracking in the --- not the east wall

1 that collapsed, the back wall.

2 Q. So some cracking in the back wall?

3 A. Yes.

4 Q. And was that in the basement?

5 A. Yes.

6 Q. Did you report that to anyone including Michael Owens?

7 A. No.

8 Q. Did you make any sort of repair to the cracking that  
9 was visible?

10 A. No.

11 Q. Would that still be visible if I went out there and  
12 looked at it today?

13 A. It's still visible, it's not --- there are retention  
14 walls built, that wall to prevent it from collapsing  
15 because of the east end wall collapsing. The engineer that  
16 Erie sent that recommended we put retention walls so it's  
17 not as --- I mean, you can't see it as much. It's still  
18 there.

19 Q. So with regard to the year and a half or so that you  
20 lived in the house before that incident --- actually it's  
21 more like three and a half years, sorry about that. For  
22 about three and a half years before the incident you had no  
23 problems with the house at all?

24 A. No.

25 Q. Tell me what happened then in September of 2003 as best

1 you remember it?

2 A. Well it was Labor Day weekend and my fiancé --- I took  
3 my fiancé back to school on Monday, which would have been  
4 the 1st. I worked the 2nd, I came home the 3rd from work.  
5 And I was in the house and I was watching television. I  
6 turned off the television and it started to rain sometime  
7 while I had the television on. I heard water hitting  
8 cement, which was an extremely unusual sound. I'd never  
9 heard that before. It sounded like it was in the basement,  
10 I'd never had water in my basement. I had wall-to-wall-  
11 carpeting, I didn't know where it was coming from. It  
12 sounded like it was coming from the basement. So I walked  
13 down the basement stairs and whenever I walked into my  
14 laundry room I noticed my green carpet was completely  
15 brown. It was covered in mud. And became very alarmed at  
16 that, because I had never had any water problem. I walked  
17 around the corner into the back side of the basement where  
18 I could see the east wall and it was laying on the floor.  
19 I became extremely upset, ran up the stairs, my only  
20 thought was, I have to get out of this house, I don't know  
21 if it's safe. And I went out into the garage, which I  
22 don't know if it was really safe, either. And I called my  
23 fiancé on the phone.

24 Q. Did you hear the wall fall down?

25 A. No. I do not believe I was home at the time it

1       happened. It happened while I was at work.

2       Q. You stated that you never had water in the basement  
3       before; is that true with regard to the whole basement  
4       area?

5       A. Yes.

6       Q. So you never had any pooling of water?

7       A. No.

8       Q. Did you ever observe any condensation of water on the  
9       walls?

10      A. The --- would it be the south wall, had a little bit in  
11       the back corner. But nowhere else.

12      Q. What would you describe as being a little bit?

13      A. The wall was a little wet at the bottom just in that  
14       one corner, but nowhere else. I never had any water  
15       problems. The carpeting wasn't wet there or anything. The  
16       walls looked, you know, it looked darker.

17      Q. Did you ever have any kind of mold in the basement?

18      A. No.

19      Q. Did it smell musty or mildewy when you would walk down  
20       into the basement?

21      A. Never.

22      Q. Was the basement completely submerged, and that's  
23       probably theatrical. Was there any wall of the basement  
24       that was an outside exposed wall?

25      A. No.

1 Q. So all four walls of the basement were underground?

2 A. I mean, you can see a little bit of the foundation.

3 But the walls are underground except for the little --- the  
4 top part.

5 Q. Would there be any way to get out of the basement other  
6 than walking upstairs and coming out the first floor of the  
7 house?

8 A. There was a door.

9 Q. Where does the door from the basement lead?

10 A. It's on the left end. It leads out to the back yard.

11 Q. If you would go out the west end door from the  
12 basement, would you have to walk up stairs to get to the  
13 back yard?

14 A. Yes.

15 Q. Would those stairs be exterior stairs?

16 A. Yes.

17 Q. Now you indicated that the east wall was laying on the  
18 floor. Looking at the diagram that is on page two of  
19 Exhibit Number One, does that show how the house was laid  
20 out?

21 A. Pretty much. It's a little smaller than that because  
22 they condensed it.

23 Q. But in terms of north, south, east, and west, point to  
24 me which wall would be the east wall?

25 A. This one.

1 Q. This one?

2 A. Yes, this one.

3 Q. Would the garage be in the location that is indicated

4 on page two of Exhibit One?

5 A. Yes.

6 Q. So the new addition or garage that was placed, was

7 placed in --- was placed above and to the east of the wall

8 that collapsed?

9 A. Yes. But the garage is not connected.

10 Q. So there's no way to get from the garage to the

11 basement?

12 A. No.

13 Q. Is the garage connected to the house?

14 A. It's on the side of the house. But it's not

15 technically connected to the house. It's just up against

16 the house.

17 Q. Is there a man door from the kitchen area to the

18 garage?

19 A. Yes.

20 Q. Do you know who put the garage addition on the house?

21 A. Yes, I do.

22 Q. Who did that?

23 A. Rodney and Gerard Guenot, G-E --- no, G-U-E-N-O-T.

24 Q. Rodney and Gerard Guenot?

25 A. Yes.

1 Q. Where are they located?  
2 A. Out of Wallacetown.  
3 Q. Are they contractors?  
4 A. Yes.  
5 Q. Are they related to you by blood or marriage?  
6 A. Yes.  
7 Q. How are they related?  
8 A. They're distantly my mother's cousins.  
9 Q. How much of the east wall fell down?  
10 A. Here (indicating) to --- there's a little space under  
11 the porch for storage that --- it's part of the basement  
12 that comes over. And then there's a little bit of this  
13 wall still up. But basically from here (indicating) to the  
14 end.  
15 Q. So you're demonstrating on the drawing that's part of  
16 Exhibit One, but essentially, virtually all of the east  
17 wall fell in from an area just below the kitchen range to  
18 an area about halfway underneath the front porch?  
19 A. Yes.  
20 Q. Are you able to say how high the basement ceiling is or  
21 how tall it is in that area?  
22 A. I believe it's eight feet.  
23 Q. Did the entire course of block that was that entire  
24 eight foot, did that all come down?  
25 A. Most of it. There's blocks around the bottom that

1 didn't. Like the bottom blocks. It kind of zigzags where  
2 it's caved and then later some more of the upper corner  
3 under the kitchen came in.

4 Q. I have some photographs taken. They're black and white  
5 copies. And maybe they're not that good, so ---.

6 ATTORNEY MASON: We have some, good  
7 printed copies if you want to use photographs.

8 ATTORNEY MCALLISTER: I was just going  
9 to ask if you got the photographs.

10 A. It zigzagged when it ---.

11 OFF RECORD DISCUSSION

12 BY ATTORNEY MCALLISTER:

13 Q. Your attorney has just handed me a group of photos.  
14 They appear all to be dated September 4th of 2003. I  
15 assume you've seen these photographs before?

16 A. Uh-huh (yes).

17 Q. Did you take these photographs?

18 A. Yes, I did.

19 Q. So you personally took all of the photographs?

20 A. Yes.

21 ATTORNEY MCALLISTER: And I believe,  
22 Dave, you've agreed that she could make those available to  
23 me?

24 ATTORNEY MASON: Yes.

25 BY ATTORNEY MCALLISTER:

1 Q. So I would take it then that these photographs fairly  
2 and accurately depict what was seen in your basement on  
3 September 4 of 2003, or the day after the incident?

4 A. Yes.

5 Q. Do the things that we see in terms of your personal  
6 property, the carpeting and furniture, sports equipment and  
7 things like that, were all of those things, things that you  
8 normally kept in the basement as to the time that this  
9 happened?

10 A. Yes.

11 Q. And I believe your washer and dryer is shown in there?

12 A. Yes.

13 Q. Have you, separate and apart from the photographs, made  
14 any sort of list as to what was damaged in the incident?

15 A. Yes.

16 Q. Do you have that with you today?

17 A. Yes.

18 Q. And if I could see that.

19 A. When did you create the list?

20 Q. After the wall collapsed we started going through.  
21 Actually Tim did most of it. He went on Sears, looked up  
22 the item, and went with what the average cost of that item  
23 would be. There's also a separate list from Grace's Gun  
24 Shop of the guns that were in the basement that were  
25 totally destroyed. I don't know if I had that.

1 Q. So in addition to the notation of guns on this list  
2 that we'll mark as Exhibit Number Two, if that's okay with  
3 you. you believe that there's a more detailed list of guns?

4 (Exhibit Two marked for  
5 identification.)

6 A. Yes, we had them appraised at a gun shop.

7 BY ATTORNEY MCALLISTER:

8 Q. This list --- is this in your handwriting or Tim's  
9 handwriting?

10 A. That's Tim's handwriting.

11 Q. And it shows approximately \$5,630 in furniture. It  
12 then lists \$10,322 in carpentry. What does that represent?

13 A. Oh, there's a separate carpentry list for the --- under  
14 the stairwell there was some drywall in that wall needed to  
15 be replaced that Mike Owens put in when he did the  
16 stairway. You know, they have to put the drywall down the  
17 stairs. That's ruined. The carpeting, I believe, it's  
18 including that. And some items upstairs cracking of  
19 drywall from when this happened at the house.

20 OFF RECORD DISCUSSION

21 A. He was just scribbling down there. There were some  
22 things that when the contractor came in he did not estimate  
23 that we noticed later that he had added. This is a list  
24 from ---.

25 ATTORNEY MCALLISTER: Let's mark the

1 separate list from Cartwright Contracting as Exhibit Three.  
2 And then the proposal from Bowman Masonry as Exhibit Four.

3 (Exhibits Three and Four marked for  
4 identification.)

5 BY ATTORNEY MCALLISTER:

6 Q. We're looking at what we've marked as Exhibit Number  
7 Two. You have some further documentation for the line item  
8 of carpentry, which is Exhibit Number Three?

9 A. Correct.

10 Q. And further documentation for the line item of \$39,000  
11 of Exhibit Number Two, which is a proposal from Bowman  
12 Masonry, which we've marked as Exhibit Number Four?

13 A. Correct.

14 Q. Is the proposal from Bowman Masonry, and you can look  
15 at it if you like, is that to repair the east wall?

16 A. That's to repair the east wall or reinforce the  
17 remaining wall so this doesn't happen to them.

18 Q. Now has that work or any part of the work that's  
19 indicated in Exhibit Three or Exhibit Four, has any of that  
20 work been done yet?

21 A. No.

22 Q. So you've gotten an estimate from Cartwright  
23 Contracting and an estimate from Bowman Masonry, but that  
24 work has not yet been completed?

25 A. Correct. The only thing that has been done is there's

1 a jack under the east wall. And there is part of a plywood  
2 wall put in just to reinforce it to protect the house from  
3 further collapse.

4 Q. Do you know how the garage was constructed? In other  
5 words, was there a foundation dug for the garage?

6 A. Just a footer.

7 Q. Do you know if there is a gap area between the garage  
8 floor and what would be the floor of the basement?

9 A. Not to my knowledge.

10 (Exhibit Five marked for  
11 identification.)

12 BY ATTORNEY MCALLISTER:

13 Q. I'm going to show you a photograph. Do you mind if I  
14 just put 5-1 on the back of this? And Exhibit Five  
15 generally will be the photographs and just any I want to  
16 ask you about I'll put a number on the back. Exhibit 5-1,  
17 I think, because it shows a wall that's falling down, is  
18 that the east wall?

19 A. Yes.

20 Q. Would the --- part of that photograph that shows the  
21 cylinder or barrel on the left-hand bottom, would that be  
22 the floor area?

23 A. This was the oil tank.

24 Q. That's your oil tank.

25 A. And the oil tank was actually holding this section up.

1 This section is no longer there, also because it was  
2 leaning on the oil tank.

3 Q. But the oil tank is at floor level?

4 A. Yes, it sits on the floor. It's off the floor by  
5 metal.

6 Q. In this photograph, Exhibit 5-1, was one of the ones  
7 you took on the day after; correct?

8 A. Yes.

9 Q. The material that came into the basement from behind  
10 the east wall, what was it?

11 A. Dirt, mud.

12 Q. Did you see flowing water at all?

13 A. Initially, yes. There was water that came in after the  
14 wall collapsed. But that ceased.

15 Q. Was --- now you indicated that it was raining that day?

16 A. Yes.

17 Q. As of that time frame, do you know whether it had been  
18 raining for an extended period of time?

19 A. It rained all summer.

20 Q. By that you mean that it was a fairly wet, rainy summer  
21 in the summer of 2003?

22 A. Yes, it was.

23 Q. Even with that what you just said, even the fact that  
24 it was a rainy summer, did you have water in the basement  
25 other than that one little corner in the south area?

1 A. No.

2 Q. I'm going to mark another photograph as Exhibit 5-2.

3 Where is that?

4 A. That is the east wall. Let me see which way this goes.

5 Okay. This is the ceiling.

6 Q. So we can see joints in the top of that photograph?

7 A. Right. This --- to my left would be the furnace room.

8 There's another little room off the furnace room, which  
9 would be behind the stairway. That is this room. And then  
10 to the right would be the little storage space.

11 Q. When you went down that day after you'd come home from  
12 work and heard something downstairs, is that what you saw  
13 in terms of where cinder blocks were laying?

14 A. Yes.

15 Q. So that has not --- somebody hasn't pushed them around  
16 or shoveled them away?

17 A. Oh, yes. They're out in the yard now. The cinder  
18 blocks have been removed from the basement.

19 Q. What I'm asking you, Brenda, is when you went down that  
20 day, when you discovered it, did the cinder blocks look  
21 like what we see in Exhibit 5-2?

22 A. Yes. Everything you see here is what I came downstairs  
23 to, yes. Nothing was touched. I took pictures as it was.

24 Q. Exhibit 5-3, which is another photograph also, seems to  
25 bear a date of 9/4. In terms of the studding that you

1 described that was in place at the time of the accident, is  
2 that what it looked like?

3 A. Yes.

4 Q. In terms of the furniture and carpeting that you had in  
5 the room, is that what it looked like, what we see in  
6 Exhibit 5-3?

7 A. Yes.

8 Q. I'm going to show you two photographs, Exhibit 5-4 and  
9 Exhibit 5-5. These seem to bear a date of September 12, if  
10 you want to look and check if it looks like they were taken  
11 about a week or so after the incident, would that be  
12 correct?

13 A. Yes.

14 Q. And would that just be another view of the area where  
15 you did have furnished?

16 A. Yes, I had run out of film.

17 Q. And by that time, September 12th, someone had stacked  
18 up some of the blocks?

19 A. Some of them, yes.

20 Q. I'm going to show you another photograph that I've  
21 marked as Exhibit 5-6. It too seems to have a date of  
22 September 12, 2003, on it. Does this show the oil tank  
23 that we saw in the prior photograph?

24 A. Yes.

25 Q. Looking on the right-hand side of that photograph,

1 behind the oil tank, there seems to be some sort of pipe  
2 buried behind the block wall. Do you see that?

3 A. That's a garden hose. It had come from the basement  
4 and up into the garage.

5 Q. I see the garden hose. I'm looking at this here, which  
6 would be more towards the center of the picture with some  
7 sort of elbow or covering around the plank as well?

8 A. I do not know what that is, but it is not a pipe. I  
9 don't know if it was garbage that was used in the backfill,  
10 maybe. A piece of like the stuff off of siding or --- I'm  
11 not even sure what that is. I don't know. I'm not sure  
12 what that is. I think it's just a piece of like debris.

13 ATTORNEY MASON: Just for  
14 clarification, Ms. McAllister. Are you referring to this  
15 white thing, or this thing right there?

16 ATTORNEY MCALLISTER: Well, both. I'm  
17 not sure whether they're part of anything or whether they  
18 connect. But I can't tell what it was. And currently Ms.  
19 Buck does not know what it is, either.

20 A. I believe it's just a piece of debris. It's not a  
21 pipe, I know that for certain.

22 BY ATTORNEY MCALLISTER:

23 Q. And Exhibit --- now I'll mark two other photographs,  
24 Exhibit 5-7 and Exhibit 5-8. They do not appear --- well,  
25 there it is.

1 A. They're not in the basement, no. They're the water  
2 lying outside of the house.

3 Q. That's what I was going to ask you. These two  
4 photographs, Exhibit 5-7 and 5-8, can you tell me what  
5 those are?

6 A. Yes, I can. This one here (indicating) is the water  
7 line that was leaking when it was put into the house. You  
8 can see here where it's taken up out of the ground and at  
9 the entrance to the house instead of using an elbow. It  
10 was just bent causing two pinprick areas that have  
11 increased over the --- probably over some time span. As we  
12 were walking around the house looking at things, we noticed  
13 bubbling up out of the ground and discovered, after  
14 speaking with the water company that we had a leak in our  
15 water line. This water line was just taken and physically  
16 forced into an angle instead of using an elbow. This is  
17 the corrected water line with an elbow.

18 Q. So Exhibit 5-8 shows the line before it was corrected,  
19 and Exhibit 5-7 shows a new water line put in place?

20 A. Yes.

21 Q. When was that new water line put in?

22 A. Right after, probably, on September, I'm going to say  
23 it was the 6th. Because it was the same day we went to a  
24 wedding.

25 Q. Do you have other photographs of that water line?

1 A. I do not believe.

2 Q. Where did the water line enter the house?

3 A. It enters the house before --- it's on the north wall  
4 before the east wall. Probably a couple of feet up the  
5 north wall. And again, I apologize, I have no spatial  
6 ability.

7 Q. Let's see if looking at page two of Exhibit One helps.  
8 The north wall would be the back side of the house behind  
9 the kitchen dining room area?

10 A. Correct.

11 Q. Looking at what appears to be the sink area in the  
12 kitchen on page two of Exhibit One, can you mark where the  
13 water line entered the house?

14 A. From the deck it was right off of here (indicating).  
15 And it had to be ripped off. I'm going to say it's  
16 probably right in ---.

17 Q. I'm going to let you circle it with my pen.

18 A. Well the oil tank would be here (indicating). So the  
19 furnace is right here (indicating). So I would say it's  
20 right here (indicating). Because it's right before the  
21 furnace.

22 Q. Why don't you put oil tank where you believe the oil  
23 tank was?

24 A. Oil tank is here (indicating). I'll make it square.

25 Q. Why don't you put an F where the furnace is?

1 A. The furnace is right here (indicating).

2 Q. And then the circle that you've already drawn, why  
3 don't you just label it water line so you put W there for  
4 water line. Now did you dig up the area on the north side  
5 of the house where the water line entered the house?

6 A. Tim Ryder did.

7 Q. After Tim dug it up, did you have a plumber, an  
8 engineer, or any expert look at the water line to tell you  
9 whether it was or was not properly installed?

10 A. No, I did not. Timothy Ryder worked construction since  
11 he was a teenager. And he's put in many water lines. So  
12 he technically was my expert. And he said it should have  
13 had an elbow.

14 Q. So based on Mr. Ryder's experience in contracting and  
15 putting water lines in himself, he said to you that this  
16 one was not properly installed?

17 A. That's correct.

18 Q. And recognizing that he is not an engineer; is he?

19 A. He is not.

20 Q. And recognizing that you have now filed a lawsuit with  
21 regard to the insurance aspects of this water damage  
22 incident, have you hired anyone other than Mr. Ryder to  
23 take a look at this and determine whether it was or was not  
24 properly installed?

25 A. No.

1 Q. Do you still have the pipe?

2 A. Yes.

3 Q. Who has the pipe?

4 A. It is at my house. I have the pipe.

5 Q. If I were to look at the pipe, what would I see that  
6 would tell me that there was something wrong with, either  
7 the pipe itself or the installation?

8 A. You would see that the pipe is bent. And at each side  
9 of the bend there are pinprick areas on the side where the  
10 leakage occurred.

11 Q. And I think I understand what you're saying. But say  
12 if I took an ordinary drinking straw that didn't have the  
13 bending thing in it and bent it as --- is that the same  
14 sort of thing as what you're saying?

15 A. Yes.

16 Q. Do you know what the pipe was made of?

17 A. No, I do not.

18 Q. Is it metal or plastic?

19 A. I would say plastic. It appears to have some kind of  
20 rubber coating on the top.

21 Q. Did you engage the services of any outside contractor  
22 or company to come in and do cleanup work at that house?

23 A. No.

24 Q. Can you tell me what work was done by anybody to clean  
25 up the condition in the basement?

1 A. Timothy Ryder had some friends, relatives carry the  
2 blocks and the dirt off of the floor. And he at that point  
3 after the floor was cleaned up he and I carried the  
4 carpeting out. The furniture is mostly still there except  
5 the couch that was taken out. We physically carried most  
6 of that out and then he had friends he had to work --- had  
7 his friends and relatives come over for a work day. And  
8 they carried out block and dirt. And at this point there's  
9 plywood in the basement. He is in the process when not in  
10 college in building a plywood wall just to reinforce it,  
11 although plywood won't last forever, it will last a little  
12 while to reinforce the house.

13 Q. So the short answer to my question is, you didn't hire  
14 anybody --- you didn't hire any business entity to do the  
15 work?

16 A. No.

17 Q. But that you and Mr. Ryder and some friends and  
18 relatives did whatever clean-up work you could?

19 A. Yes.

20 Q. Did you pay anyone in terms of compensation for the  
21 work that they did?

22 A. Yes.

23 Q. Who did you pay?

24 A. Timothy Ryder's father, Daniel Ryder.

25 Q. Anyone else?

1 A. And a friend of ours, Kenneth Thomas. We paid them for  
2 one day's worth of work for the heavy stuff that they  
3 carried out.

4 Q. Is any of that indicated on Exhibit Two or any of the  
5 other itemization that you've given me as to damages for  
6 this incident?

7 A. No.

8 Q. Do you know how much you paid them?

9 A. Probably approximately \$150 together. It was just one  
10 day.

11 Q. As of right now, is the basement cleaned up in terms of  
12 getting the carpeting out, getting the mud, water, and  
13 debris out?

14 A. Pretty much. There are still some things. But most of  
15 it is out of there. And where there is the plywood's not  
16 up, the dirt is still continuing to come into the basement.

17 Q. When you and/or Mr. Ryder dug up the pipe that is shown  
18 in Exhibits 5-7 --- make it 5-8, because that's the old  
19 pipe, could you see water coming out of the pipe?

20 A. No, it was turned off at the source. The water company  
21 came out and turned it off.

22 Q. Prior to the incident that you observed when the east  
23 wall fell in, was there any pooling of water that was  
24 visible outside near the house, specifically near the north  
25 wall?

1 A. That's how we found it. The water line was leaking.  
2 We saw bubbling up of water. But it looked like it was  
3 coming out of the ground instead of going into the ground.

4 Q. And would that be in or around the area that you've  
5 marked on Exhibit One showing where the water line was?

6 A. Yes, it would be right here up at the ground level.

7 Q. I had asked whether there was any sort of pooling or  
8 puddling. Was there in fact pooling or puddling in that  
9 area outside?

10 A. Yes. It's hard to say because it was so wet last  
11 summer. But yes, it was wet all the time even when it  
12 wasn't raining.

13 Q. Was there grass in that area?

14 A. No.

15 Q. Was it a garden or what was the area like right outside  
16 that north wall?

17 A. It's like a little walkway. Occasionally I would park  
18 my vehicle back here.

19 Q. Was the property landscaped with grass so that you have  
20 a lawn?

21 A. Some of it. That particular area, no.

22 Q. And was it --- the amount of water that would have been  
23 in the area on the north wall of the property where the  
24 water line entered the house, if you stepped there, would  
25 you be stepping in an inch or so of water?

1 A. I'm trying to think back to when I walked back through  
2 there. Yes.

3 Q. How big an area would it cover, an area as big as this  
4 table, which is like 3 foot by 10 or 12 foot?

5 A. No, I don't think it would be that big.

6 Q. And you indicated you saw bubbling coming up?

7 A. Yes.

8 Q. Did you report this incident to Erie Insurance?

9 A. Yes.

10 Q. Who did you report it to?

11 A. The adjustor who came out to look at the basement, he  
12 also knew about the water line.

13 Q. Did you call your agent or did you call the company?

14 A. Actually Tim called the agent.

15 Q. Do you know who that was?

16 A. No. I do not.

17 Q. There was an adjustor by the name of Steve Terry that  
18 came to your house. Did he come to your house on more than  
19 one occasion?

20 A. Yes. Steve Terry was there on more than one occasion.

21 Q. Do you know how many times he was there?

22 A. I think it was twice.

23 Q. Did you show Mr. Terry the basement area?

24 A. Yes.

25 Q. Did Mr. Terry take photographs?

1 A. Yes.

2 Q. Did you explain to him what happened?

3 A. What do you mean?

4 Q. Did you explain to him what you've explained to me in

5 terms of what you --- what you observed in the basement?

6 A. Yes.

7 Q. Did you explain to him in the way that you explained to

8 me what you believed was the cause of the incident that

9 happened?

10 A. I don't know what the cause was.

11 Q. Would that be true as you sit here today that you don't

12 know what the cause was?

13 A. No, I do not.

14 Q. Have you engaged anyone other than your attorney who

15 would indicate to you that the cause of the problem

16 involving the east wall was improper construction of the

17 house or basement?

18 A. I'm not sure I understand the question. Did I hire

19 anybody that said that, no.

20 Q. Were you present when a Mr. Hughes inspected your house

21 in behalf of Erie?

22 A. Yes, I was.

23 Q. Did Mr. Hughes make any statement to you as to what he

24 believed the cause was?

25 A. Yes, he told me what he believed the cause was.

1 Q. What did he tell you?

2 A. He said that it was faulty construction.

3 Q. As of the time that Mr. Hughes came to the house, had  
4 you dug out and replaced the water line that entered the  
5 house on the north side?

6 A. Before he came to the house?

7 Q. Uh-huh (yes). And it's not a trick question. If you  
8 don't know the date that he came to the house, I think I  
9 can help you out there.

10 A. I'm not sure which day he came to the house.

11 Q. It appears from information that I have that Mr. Hughes  
12 came to the house on September 7th, which would be four  
13 days after the incident happened.

14 A. The whole water would still have been there for the  
15 water line.

16 Q. Meaning that you had not yet done the work to replace  
17 that water line?

18 A. The water line had been replaced but it had not been  
19 filled back in. And he did look at the pipe, now that I  
20 recall. Yes, he looked at the pipe.

21 Q. Did he also look at the pipe that you had removed?

22 A. Yes, that's the pipe I'm referring to.

23 Q. When you first discovered the problem in your basement  
24 on September 3, what was it that caused you to turn off  
25 your water?

1 A. I did not turn off the water at that time. The water  
2 was turned off before the pipe was replaced.

3 Q. And when would that have been then?

4 A. On the 6th, I believe.

5 Q. It wasn't until three days after?

6 A. Right. The water was still on in the house until that  
7 water pipe was replaced. It was turned back on after the  
8 pipe was replaced.

9 Q. Was the outside deck damaged in this incident?

10 A. Yes.

11 Q. How was the deck damaged?

12 A. It had to be removed to replace the water line.

13 Q. Has the deck been put back up or is that part of the  
14 estimate for damage that you've included in Exhibit Three?

15 A. That is part of the estimated damage.

16 Q. And the estimated damage that you've included through  
17 Exhibit Four, in order to replace the east wall  
18 contemplates removing the garage floor?

19 A. Yes.

20 Q. And are any of the contractors that have provided  
21 estimates to you, either Cartwright Contracting or Bowman  
22 Masonry, are they related to you by blood or marriage?

23 A. No.

24 Q. So these are independent estimates that you've  
25 obtained?

1 A. Yes, they are.

2 Q. Have you obtained estimates from any other sources?

3 A. No.

4 Q. Has there been structural damage to any part of the  
5 house on the first floor of the house as a result of this  
6 incident?

7 A. Yes.

8 Q. Can you tell me about that?

9 A. The doors do not fit correctly. Some of them are very  
10 hard to close. Some of them are almost impossible to walk.  
11 At this point, the door frames are not in alignment  
12 anymore. The wall in my kitchen has sunk about an inch  
13 from the floor, so about an inch from the wall behind my  
14 refrigerator. The contractor told me that when things are  
15 fixed in the basement my drywall will crack.

16 Q. But you're not seeing cracking yet?

17 A. Not yet.

18 Q. Anything else?

19 A. Not that I can think of at this time.

20 Q. Is any of the work that was involved in placing ---  
21 replacing, rather, the water line part of the damage  
22 estimate exhibits that you've provided me?

23 A. No, it is not.

24 Q. And did Mr. Ryder do all that work?

25 A. Yes, he did.

1 | OFF RECORD DISCUSSION

5 (Exhibit Six marked for  
6 identification.)

7 BY ATTORNEY MCALLISTER:

8 Q. There were two photographs shown on Exhibit Six. The  
9 bottom photograph purports to be the back of your house.  
10 Is that, in fact, the back of your house? . . .

11 A. Yes.

12 Q. Because this is a black and white photocopy of a  
13 picture, I can't tell, but is this a driveway behind your  
14 house?

15 A. No, it's not.

16 O. So whatever that is, it's not a roadway or a driveway?

17 A. No.

18 Q. Is there grass in that area?

19 A. Some.

20 Q. We see the deck on the back. That's your deck;  
21 correct?

22 A. Yes.

23 Q. Could you put an X on there at approximately where the  
24 water line went into the house?

25 A. It was right near where this indentation is. So it's

1 right there, kind of here.

2 Q. Where you put it at, it's basically at the end of the  
3 deck?

4 A. No, that can't be right. It must be on this side in  
5 the indentation. Yes. So here. I'm trying to think as  
6 I'm looking from the back of the house and I'm backwards.  
7 So it would be in here.

8 Q. And I know we can't really see much in the top  
9 photograph on Exhibit Six. But there's an indication that  
10 someone's put a caption on this photograph saying water  
11 bubbling out of ground. And it's a close-up of the back of  
12 the house. Do you know what the two lines are that are  
13 shown in the top picture on Exhibit Six?

14 A. This is my electric.

15 Q. So that has nothing to do with water piping?

16 A. No.

17 Q. Is that where --- is that the area where you saw water  
18 bubbling out of the ground?

19 A. Yes.

20 Q. Would it be true that up until today that you have not  
21 had anyone contractor or an engineer on your behalf go out  
22 and look at the wall to determine cause of the failure?

23 A. We did have an engineer come out and look at it.

24 Q. Who was that?

25 A. Bob Mulholland (phonetic). But he is not an

1 architectural engineer.

2 Q. He is an engineer, though?

3 A. Yes.

4 ATTORNEY MCALLISTER: I would ask that  
5 if you have any expert reports that you make those  
6 available. I don't know from what Ms. Buck is saying  
7 whether they separately engaged this engineer or whether  
8 it's someone that you've retained as an expert in this  
9 case.

10 ATTORNEY MASON: It's not someone that  
11 I've retained.

12 BY ATTORNEY MCALLISTER:

13 Q. When did Mr. Mulholland go to the house and look at the  
14 house?

15 A. I couldn't give you an exact date. But it was probably  
16 a month or so after the wall collapsed. A month or two  
17 maybe.

18 Q. Did he put anything in writing in terms of his  
19 observations?

20 A. Yes, he did send me a letter.

21 Q. Did he speak to you as to any conclusions as to the  
22 cause?

23 A. He didn't really speak to me, no. He spoke with Tim.

24 Q. What opinion did he give from what you're aware either  
25 from conversation or in this letter as to cause?

1 A. I'd have to read the letter.

2 ATTORNEY MCALLISTER: I guess I would  
3 do a letter to you asking for production of the letter.

4 BY ATTORNEY MCALLISTER:

5 Q. Has anyone else looked at the house, examined the  
6 basement or the pipe to render any sort of an opinion as to  
7 what caused this incident?

8 A. No.

9 Q. And as you sit here today, you don't have any idea of  
10 what caused it?

11 A. No, I do not know.

12 Q. You did, in fact, receive a reservation of rights  
13 letter from Erie Insurance Exchange on or about September  
14 8, detailing the reasons as to why they believed that there  
15 was no coverage for this claim?

16 A. Yes, I did.

17 Q. Have you had any other written or oral contact with any  
18 representative of Erie Insurance after the two visits by  
19 Mr. Terry and after the receipt of this letter?

20 A. No. I don't believe.

21 ATTORNEY MASON: Ms. McAllister,  
22 attached to the Plaintiff's complaint is a letter dated  
23 September 18th from Erie. That's after the reservation of  
24 rights letter.

25 BY ATTORNEY MCALLISTER:

1 Q. So we've got the reservation of rights letter that's  
2 dated September 8th and that was followed up by a letter of  
3 September 18, 2003, again from Steven Terry. And you have  
4 a copy of that letter in front of you?

5 A. Yes.

6 Q. And that indicates that Erie is denying your claim or  
7 that it has determined that there was no coverage for the  
8 claim; correct?

9 A. Yes.

10 Q. After this letter of September 18, 2003, which is from  
11 Mr. Terry, had you had any further contact with any  
12 representative from Erie?

13 A. Not that I'm aware of.

14 Q. And following that, you engaged the services of Mr.  
15 Mason?

16 A. Yes, I did.

17 Q. And filed this lawsuit?

18 A. Yes.

19 ATTORNEY MCALLISTER: I think that's  
20 all I have. Would you like to explain signature? Do you  
21 want to read it?

22 ATTORNEY MASON: Brenda, following your  
23 deposition you have the opportunity to review the  
24 transcript to correct anything that the Court Reporter may  
25 have gotten wrong or any errors she may have made. That's

1 procedure A. Procedure B is that you waive your signature  
2 because you can't correct any misstatements that you may  
3 have made anyway. There's a different procedure for coming  
4 back and correcting those misstatements. I would recommend  
5 to you that you waive your right to read and review the  
6 transcript before it's provided to Ms. McAllister, as a  
7 final one. If there are glaring errors, we'll cover those  
8 in letters with her.

11 A. Okay.

DEPOSITION CONCLUDED AT 3:35 P.M.

1 COMMONWEALTH OF PENNSYLVANIA)

2 COUNTY OF CAMBRIA )

3 C E R T I F I C A T E

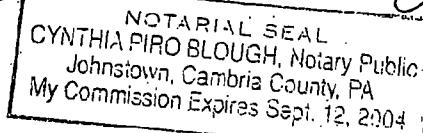
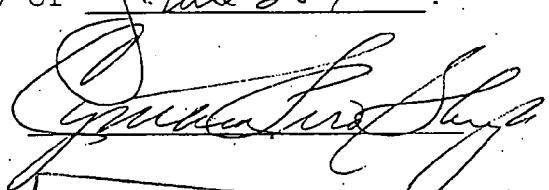
4 I, Cynthia Piro Blough, a Notary Public in and  
5 for the Commonwealth of Pennsylvania, do hereby  
6 certify:

7 That the witness was first duly sworn to testify  
8 to the truth, the whole truth, and nothing but the  
9 truth; that the foregoing deposition was taken at the  
10 time and place stated herein; and that the said  
11 deposition was taken stenographically by me and  
12 reduced to typewriting, and constitutes a true and  
13 correct record of the testimony given by the witness.

14 I further certify that the reading and signing  
15 of said depositions were (not) waived by counsel for  
16 the respective parties and by the witness.

17 I further certify that I am not a relative,  
18 employee or attorney of any of the parties, nor a  
19 relative or employee of counsel, and that I am in no  
20 way interested directly or indirectly in this action.

21 IN WITNESS WHEREOF, I have hereunto set my hand  
22 and stamp this 25 day of June 2004



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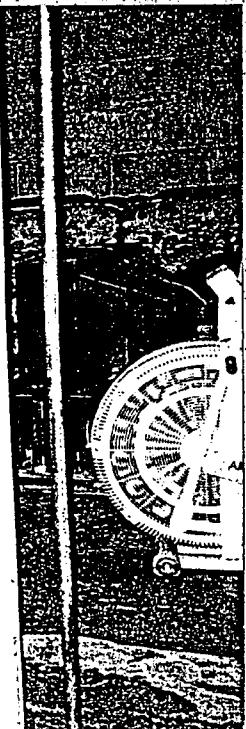
## LAWYER'S NOTES

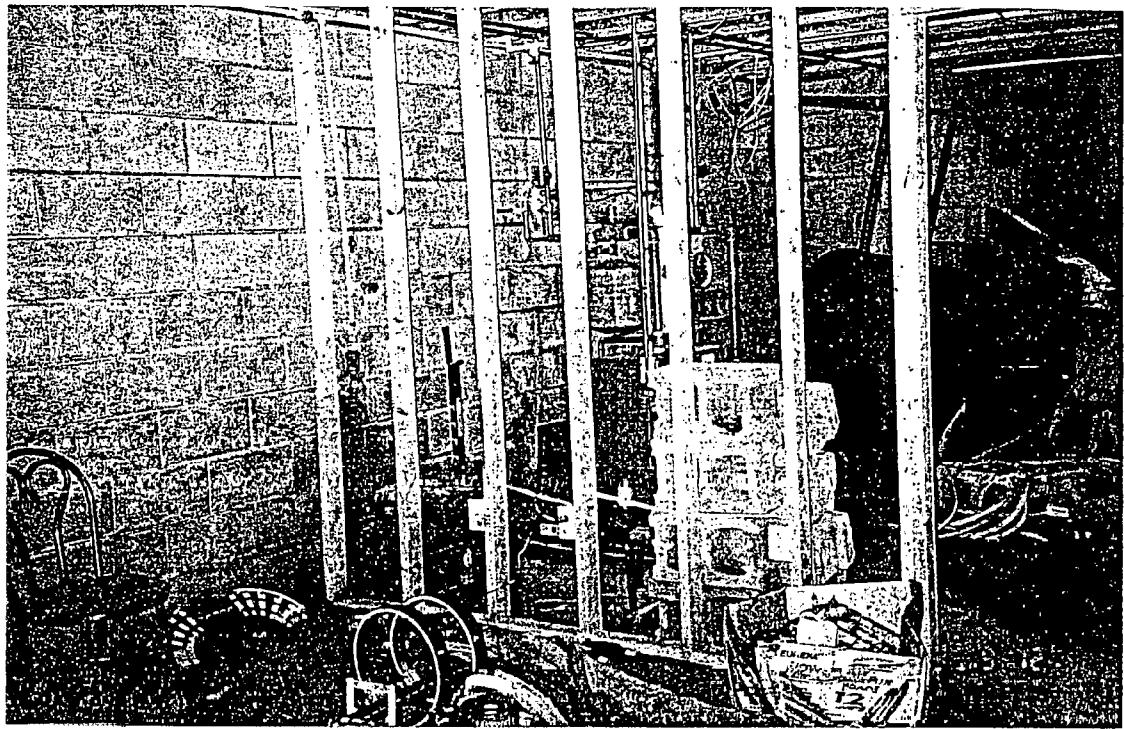
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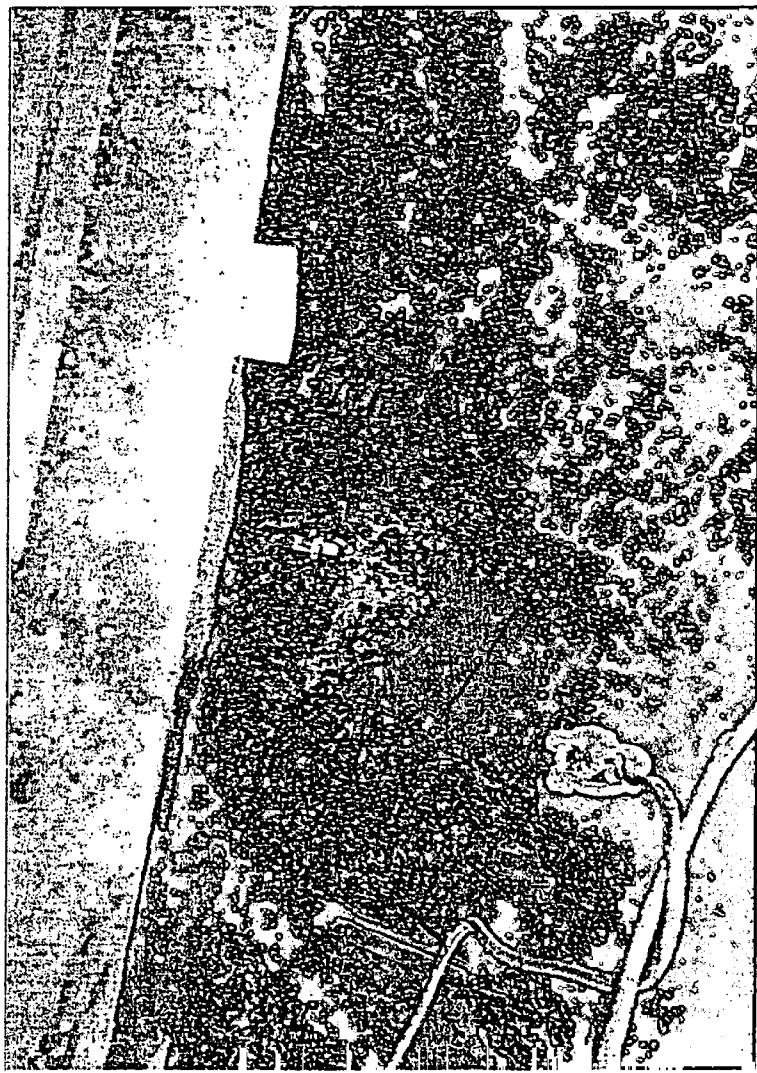


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\*CHARLESTON, WV\*









RESIDENTIAL  
CONSTRUCTION  
SPECIFICATIONS  
FOR THE RESIDENCE OF

BRENDA A. BUCK

AND

THOMAS B. BUCK

AND

YVONNE BUCK

BY

MICHAEL W. OWENS & SONS

R.R. 2 BOX 310A

CLEARFIELD, PA 16830

(814)765-5118

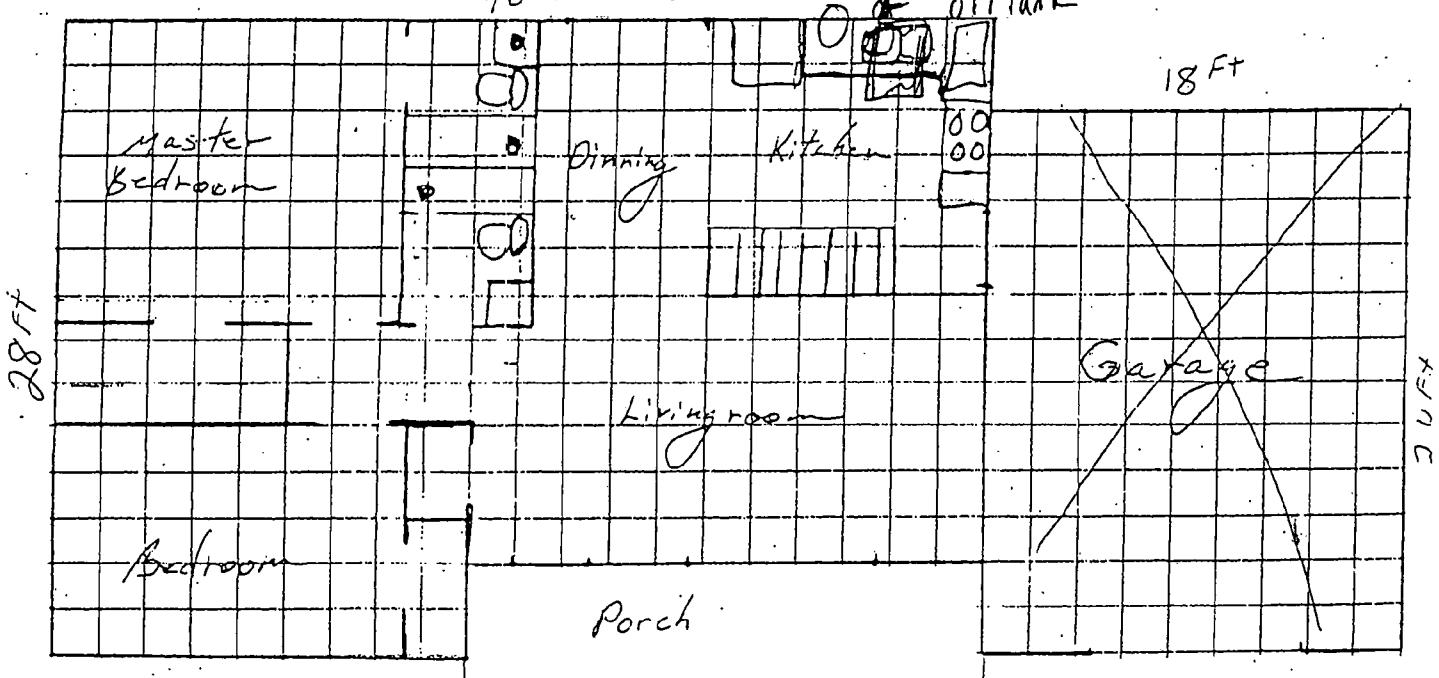
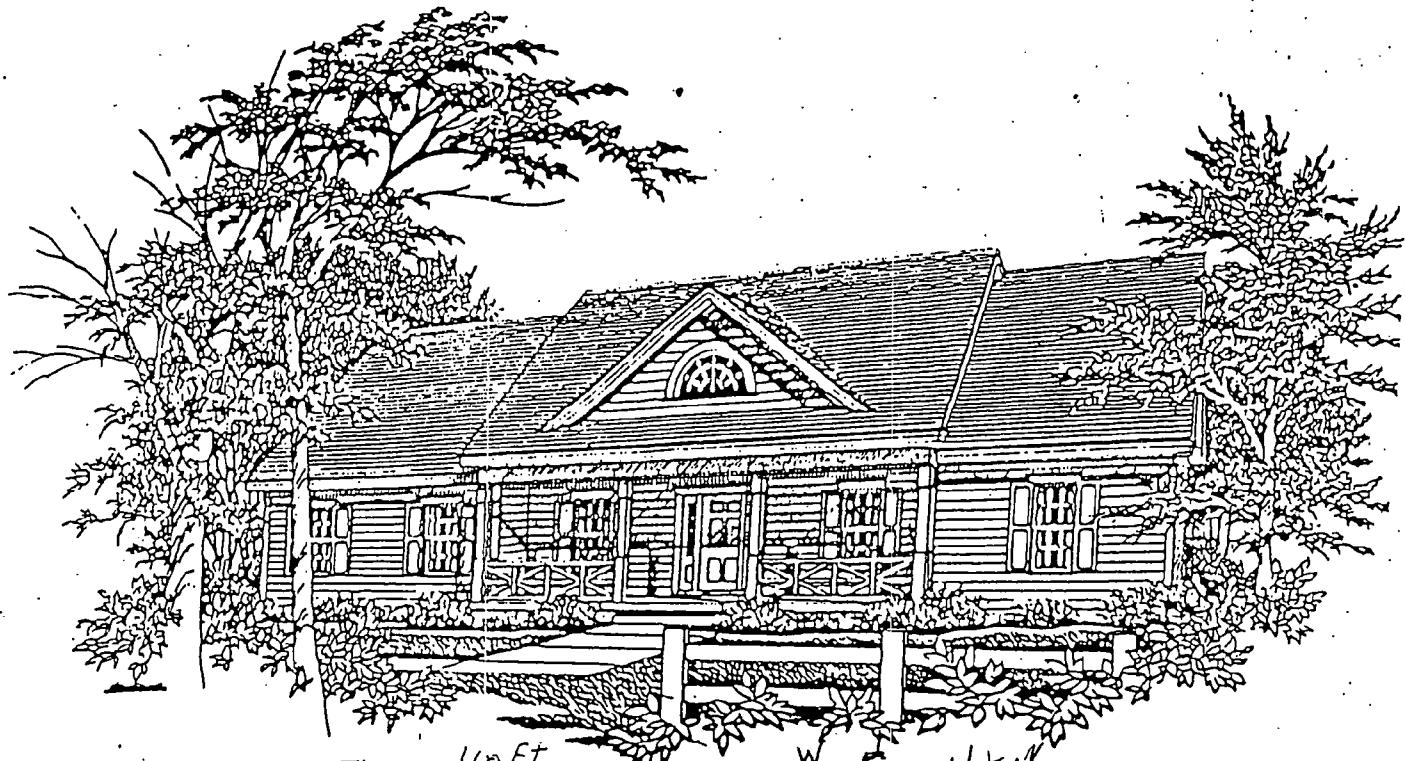


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PROPOSAL

\*Revised Date - October 21, 1998

TO: Brenda A. Buck  
Thomas B. Buck  
Yvonne Buck  
Bigler-Allport Cut-Off  
Allport, PA 16821

We hereby propose to furnish all the materials and labor necessary for the completion of a 28' X 40' two bedroom ranch home. To include the following:

To dig foundation and rough grade back to foundation  
Pour 24" X 8" footers  
Lay blocks with 10" X 8" X 16" blocks in basement  
French drain(Form-A-Drain)  
Pour 4" thick concrete floors in basement (All concrete work is not guaranteed against hair-line cracks, but is guaranteed not to crack causing structural damage.)  
2' X 10' floor joists; 3/4" T & G OSB board on floor  
Roof trusses - 24" on centers - 5/8" OSB board on roof  
Rough framing - 2" X 6" and 7/16 OSB board on outside walls  
2" X 4" inside walls  
Insulation - outside walls - R19; ceilings - R 38  
Interior walls - 1/2" drywall smoothed with swirled ceilings  
25 yr. - 3 tab shingles  
Ty-Vek house wrap  
Vinyl siding, soffit and fascia, and spouting  
200 Amp electrical service with standard switches and receptacles  
Will-Tuff vinyl windows  
Front door allowance - \$300.00; patio door allowance - \$600.00  
Interior doors - pre-hung masonite; 6 panel  
Colonial pine trim throughout  
Lighting allowance - \$20. each, with the exception of: kitchen - \$50.; dining room - \$75.

2 baths - \$1,000.00 allowance each

Kitchen allowance - \$2,500.00 to include cabinets and hardware, stainless steel sink, formica and trim, faucets, and range hood - any additions to the above will be an extra charge.

Floor covering allowance - \$17.00 per sq. yd. if chosen from Clearfield Carpet One; or you may choose from Lezzer's samples valued at \$20. per sq. yd.

NOTE: Any excess materials shall become the property of the contractor since this is an allowance to cover total flooring in the home and the excess is at the contractor's expense.

PVC plumbing - 3/4" and 1/2" water lines, 4", 3", and 1 1/2" drains

Washer and dryer hookups

3 telephone jacks

3 TV hookups

Oil hot water baseboard heating system

Sand mound septic system allowance - \$5,500.00

Building permit fees are to be paid by the Owners.

All water and sewer tap on fees are to be paid by the Owners.

All material is guaranteed to be specified, and the above work to be performed and completed in a substantial workmanlike manner.

Any alteration or deviation involving extra costs, will be executed only upon written orders(see enclosed sample form), and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control.

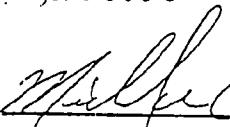
IT IS UNDERSTOOD THAT THE PRICE AGREED UPON HEREIN DOES NOT INCLUDE POSSIBLE EXPENSE ENTAILED IN COPING WITH HIDDEN OR UNKNOWN CONTINGENCIES FOUND AT THE JOB SITE. IN THE EVENT THAT SUCH CONTINGENCIES ARISE AND THE CONTRACTOR IS REQUIRED TO FURNISH LABOR OR MATERIALS OR OTHERWISE PERFORM WORK NOT PROVIDED FOR OR CONTEMPLATED BY THE CONTRACTOR, THE ACTUAL COSTS, PLUS 20% THEREOF WILL BE PAID FOR BY THE OWNERS.

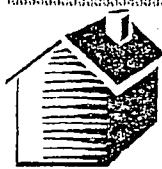
Owners to carry fire, tornado, and other necessary insurance upon the above work.

Workmen's compensation and public liability insurance on the above work to be taken out by contractor.

**TOTAL PRICE - \$67,100.00**

Respectfully submitted,

  
Michael J. O'Neil, Owner



# MICHAEL W. OWENS AND SONS

---

R.R. 2 Box 310A, Clearfield, PA 16830

Telephone (814)765-5118

---

## AUTHORITY FOR CHANGE IN CONTRACT BY MUTUAL AGREEMENT BETWEEN... MICHAEL W. OWENS, SR., CONTRACTOR AND BRENDA A. BUCK THOMAS B. BUCK & YVONNE BUCK, OWNERS

THE FOLLOWING CHANGES, ALTERATIONS, ADDITIONS OR  
SUBSTITUTIONS ARE TO BE MADE IN THE WORK AND/OR MATERIALS  
CALLED FOR IN THE PLANS AND SPECIFICATIONS, WHICH ARE A  
PART OF THE BUILDING CONTRACT SIGNED BY THE ABOVE NAMED  
PARTIES ON OCTOBER 21, 1998 TO INCLUDE:

SIGNED:  
CONTRACTOR \_\_\_\_\_ DATE: \_\_\_\_\_  
Michael W. Owens, Sr.

OWNER \_\_\_\_\_ DATE: \_\_\_\_\_  
Brenda A. Buck

OWNER \_\_\_\_\_ DATE: \_\_\_\_\_  
Thomas B. Buck

OWNER \_\_\_\_\_ DATE: \_\_\_\_\_  
Yvonne Buck

NOTIFY MORTGAGEE OF ANY ADDITIONS TO, OR DEDUCTIONS FROM CONTRACT  
PRICE.

---

# SPECIFICATIONS

The Contractor shall provide all necessary labor and materials and perform all work as specified herein for the erection of a residence for: Brenda A. Buck, Thomas B. Buck, and Yvonne Buck, as Owners, in accordance with these specifications and accompanying drawings. The location of the residence will be as follows: Bigler-Allport Cut-Off, City of Allport, Township of Graham, County of Clearfield, State of Pennsylvania.

## GENERAL

All blank spaces in these specifications that apply to this building are to be filled in. All blank spaces that do not apply are to be crossed out. The general conditions herein set forth shall apply to any contract given under these specifications and shall be binding upon every subcontractor as well as the General Contractor. The Contractor shall comply with all health and building ordinances that are applicable.

NOTE: Contractor shall not be responsible for heating the home while under construction or any additional charges for heating additives to any materials or supplies while under construction, (since the construction was not started before August 1st, as stated in our original specifications and agreement dated August 18, 1998), or if the Owners cause any delay in the construction for any reason.

IT IS UNDERSTOOD THAT THE PRICE AGREED UPON HEREIN DOES NOT INCLUDE POSSIBLE EXPENSE ENTAILED IN COPING WITH HIDDEN OR UNKNOWN CONTINGENCIES FOUND AT THE JOB SITE. IN THE EVENT THAT SUCH CONTINGENCIES ARISE AND THE CONTRACTOR IS REQUIRED TO FURNISH LABOR OR MATERIALS OR OTHERWISE PERFORM WORK NOT PROVIDED FOR OR CONTEMPLATED BY THE CONTRACTOR, THE ACTUAL COSTS, PLUS 20% THEREOF, WILL BE PAID FOR BY THE OWNERS.

IT IS ALSO UNDERSTOOD, AS STATED IN THE AGREEMENT, THAT THE OWNERS SHALL NOT MOVE ANY POSSESSIONS INTO THE HOME, OR SHALL NOT OCCUPY THE HOME UNTIL THE FINAL PAYMENT HAS BEEN MADE TO THE CONTRACTOR.

## EXTRAS OR CREDITS

Any deviation from these specifications or plans involving an extra charge or a credit must be agreed upon in writing between the contracting parties before the change is made. The Contractor shall not take advantage of any discrepancies in the drawings and specifications. If any discrepancies are found, they shall be referred to the Owners or architect and be corrected before any contract is entered into.

## INSURANCE

The Contractor will provide liability insurance and workmen's compensation insurance in full until completion of the building. Fire, tornado and/or windstorm and other necessary insurance during construction to be provided by Owners.

## EXCAVATION AND GRADING

The Contractor shall do all necessary excavating and rough grading. If there is lack of dirt, whether it be fill or topsoil, the Owners are responsible for providing such dirt. Existing topsoil to be piled where directed by Owners for use in grading. The finish grading shall be done by the Owners. The grade level shall be established jointly by the Contractor and the Owners. The Owners will also furnish a survey of the lot showing the location of the building. The finish grading, seeding, sodding, and landscaping shall be done by the Owners unless specified.

MICHAEL W. OWENS & SONS

R.R. 2 BOX 310A  
CLEARFIELD, PA 16830  
(814)765-5118

---

AGREEMENT  
BETWEEN CONTRACTOR AND OWNERS

THIS AGREEMENT, made in Clearfield this 21st day of October, 1998  
by and between MICHAEL W. OWENS & SONS, hereinafter called the  
Contractor, and Brenda A. Buck, Thomas B. Buck, and Yvonne Buck,  
hereinafter called the Owners,

WITNESSETH: That the Contractor and Owners for the consideration  
hereinafter named agree as follows:

ARTICLE I. That The Contractor agrees to provide all the materials as  
specified and to perform all the labor shown on the Working Drawings and  
described in the Specifications for the construction of a two bedroom ranch  
home to be located at Bigler-Allport Cut-Off, City of Allport, Township of  
Graham, County of Clearfield, State of Pennsylvania.

ARTICLE II. The Owners agree to pay the Contractor in current funds  
for the performance of the contract SIXTY-SEVEN THOUSAND ONE  
HUNDRED DOLLARS(\$67,100.00), subject to any additions or deductions to  
the General Conditions of the Contract agreed upon in writing, and to make  
payments on account hereof upon presentation of proper lien waivers, as  
the work progresses and as follows:

\$10,065.00 when foundation and basement walls are completed and sealed;  
\$16,775.00 when dwelling is raised, sheeted, and under roof;  
\$16,775.00 when plumbing, wiring, and heating have been roughed in,  
siding and shingles are completed, and when windows and  
exterior doors are set;  
\$16,775.00 upon completion of drywall and walls are ready for painting, and  
when heating system is installed;

ARTICLE III. Final payment of \$6,710.00 shall be due upon completion of the home and the contract fully performed.

CONTRACTOR SHALL NOT BE RESPONSIBLE FOR HEATING THE HOME OR ANY ADDITIONAL CHARGES FOR HEATING ADDITIVES TO ANY MATERIALS OR SUPPLIES WHILE UNDER CONSTRUCTION,(SINCE THE CONSTRUCTION WAS NOT STARTED BEFORE AUGUST 1ST, AS STATED IN OUR ORIGINAL SPECIFICATIONS AND AGREEMENT DATED AUGUST 18, 1998), OR IF THE OWNERS CAUSE ANY DELAY IN THE CONSTRUCTION FOR ANY REASON.

OWNERS WILL NOT MOVE ANY POSSESSIONS INTO THE HOME OR OCCUPY THE HOME UNTIL AFTER FINAL PAYMENT HAS BEEN MADE TO THE CONTRACTOR.

ARTICLE IV. Any excess materials are the property of the Contractor.

ARTICLE V. It is understood that the price agreed upon herein does not include possible expense entailed in coping with hidden contingencies found at the job site. In the event that such contingencies arise and the Contractor is required to furnish labor or materials or otherwise perform work not provided for or contemplated by the Contractor, the actual costs, plus 20% thereof will be paid for by the Owners.

The Contractor and Owners for themselves, their successors, executors, administrators and assigns, hereby agree to the full performance of the covenants herein contained.

IN WITNESS WHEREOF, they have executed this agreement the day and year first above written.

Contractor: MICHAEL W. OWENS & SONS

\_\_\_\_\_  
(Witness)

BY:   
Michael W. Owens, Sr., Owner

Owner: Brenda A. Buck  
Brenda A. Buck

\_\_\_\_\_  
(Witness)

Owner: Thomas B. Buck  
Thomas B. Buck

\_\_\_\_\_  
(Witness)

Owner: Yvonne Buck  
Yvonne Buck

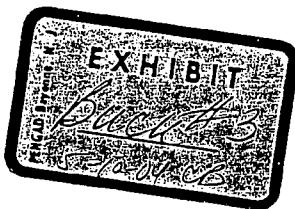
\_\_\_\_\_  
(Witness)

couch	\$ 600.00 A/V
chair	\$ 150.00
chair	\$ 150.00
Curio <del>\$ 200.00</del>	\$ 300.00
chest + mirror	\$ 400.00
coffee table	\$ 150.00
end table	\$ 80.00
china closet	\$ 400.00
Drill	\$ 250.00
Level	\$ 50.00
Guns	\$ 1,400.00
Exercise bike	\$ 300.00
weight Bench	\$ 200.00
Christmas ornaments	\$ 500.00
Halloween	100.00
Easter	100.00
14,8'02.00	\$ 5430.00
-3 1460.00	
<u>11 022.00</u>	
<u>700</u> Home furniture	<u>\$ 5630.00</u>
10322.00 Carpentry	\$ 10,322.00
	<u>39,000.00</u>
	<u>\$ 54,952.00</u> Total
Lawyer	3,000.00
Water line	<u>845.00</u>
	<u>\$ 58,797.00</u>



Cartwright Contracting  
151 Substation Rd.  
Morrisdale Pa. 16858  
345-6694

Brenda Buck  
Morrisdale Rd.  
10 - 30 - 03  
Total Bid price \$14,202.00



Price for replacing treated deck \$2,922.00 Labor included  
Removing old deck  
Treated 2 x 6 floor joists  
Treated 2 x 6 floor decking  
Treated 4 x 4 posts  
Treated 2 x 6 picket railing

Trim Replace steel walk in door ( 9 llight) \$340.00 Labor included

~~New concrete floor \$ 1,180.00 Labor included~~

~~Remove old concrete floor \$2,000.00~~

Dumpster \$600.00

~~? New oil tank and 12' baseboard heater \$700.00 Labor included~~

1200 sq. ft. of carpeting \$6,000.00 Labor included

Replace 24 ft. wall O.S.B. 7/16 on one side. 2 x 4 studs \$460.00 Labor included

Replace French door Trim

Replace Steel Pointed Glass door Trim

Kitchen Floor + Trim

3 Rooms 7 outside corners cracked Fix + Point  
Several Popped screwheads

Fix or replace oak trim as needed

## PROPOSAL

EXHIBIT

BUCK#4  
5/10/04 CB

## BOWMAN MASONRY

1993 Turnpike Ave. Ext  
Clearfield, Pa. 16830  
814-765-6095 fax 814-765-6691

Proposal No.

Sheet No.

Date Dec 1, 2003

Proposal Submitted To	Work To Be Performed At
Name <u>BRENDA RUCK</u>	Street _____
Street <u>2720 Airport Cutoff</u>	City <u>SAME</u> State _____
City <u>Mercersdale</u>	Date of Plans _____
State <u>PA. 16958</u>	Architect _____
Telephone Number <u>(814) 342-5285</u>	

We hereby propose to furnish the materials and perform the labor necessary for the completion of

Masonry work described below in a brief description as to pertaining to wall collapsing.

- 1) Remove the existing concrete floor in the garage measuring appx 4" x 24" x 26" and haul away.
- 2) REMOVE all of the dirt and block in the basement and haul away.
- 3) CLEAN the footer off, Tooth out the blocks on the ends, move the oil tank & hook back up later.
- 4) Redo the ground top plate.
- 5) Lay appx 270 ten inch blocks with pierwall EVERY TWO COURSES.
- 6) Pour and tie the new 270 ten inch blocks on the outside.
- 7) Install a new 4" french drain with appx 2' of 2B stone cover, filter fabric, then all clean shale.
- 8) Rod and core with concrete appx every 4' on the new wall.
- 9) Underpin and pour concrete where the garage footer butts up to the new block wall.
- 10) Pour a new concrete floor the same as before in the garage measuring appx 4" x 24" x 26" with 10' on.
- 11) We will dig dirt out appx 2' wide x 7' deep all the way around the other 3 sides of the house and haul away.
- 12) We will cut a hole in the block every 4' and rod & core from the outside with concrete all the way around.
- 13) The holes will be patched back up and parged and swirled as before.
- 14) A new 4" french drain will be put in, 2B stone cover, filter fabric, then all 2B stone.
- 15) Geotextile filter fabric will be put on top of the 2B stone, then appx 4" of topsoil, grass seed and straw.

All material is guaranteed to be as specified, and the above work to be performed in accordance with the drawings and specifications submitted for above work and completed in a substantial workmanlike manner for the sum of

Thirty Nine Thousand Dollars (\$ 39,000.00)

with payments to be made as follows:

Appx one third of the total amount before we begin of \$13,000.

One third appx half way through the job of \$13,000.

And the balance in full when completed of \$13,000.

Barry Bowman

Any alteration or deviation from above specifications involving extra costs, will be executed only upon written orders, and will become an extra charge over and above the estimate. All agreements contingent upon strikes, accidents or delays beyond our control. Owner to carry fire, tornado and other necessary insurance upon above work. Workmen's Compensation and Public Liability Insurance on above work to be taken out by

Respectfully submitted  
Per Barry Bowman Masonry

Note — This proposal may be withdrawn

by us if not accepted within 180 days

Barry Bowman

## ACCEPTANCE OF PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature \_\_\_\_\_

Date \_\_\_\_\_ Signature \_\_\_\_\_

# Claim # 010110488941      Taken by S. Terry

Insured-Brenda Buck

taken 09/04/03



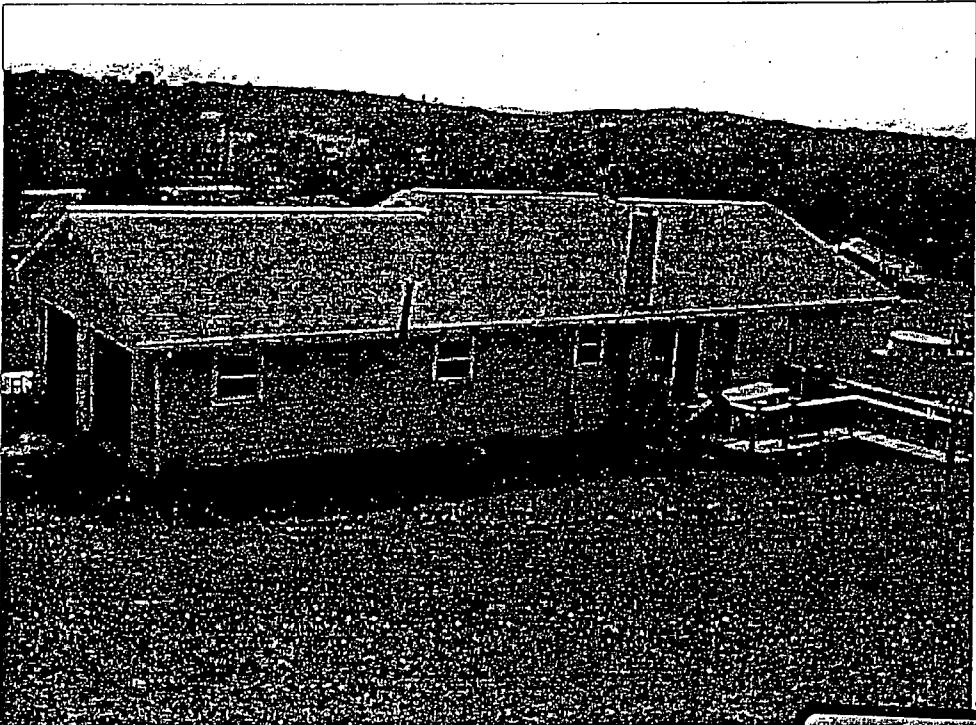
Water bubbling out of ground

HO

OCT 30 2003

Insured-Brenda Buck

taken 09/04/03



Back of insured home

EXHIBIT

DICKERSON

1 A. Yes.

2 Q. Did you explain to him what happened?

3 A. What do you mean?

4 Q. Did you explain to him what you've explained to me in  
5 terms of what you --- what you observed in the basement?

6 A. Yes.

7 Q. Did you explain to him in the way that you explained to  
8 me what you believed was the cause of the incident that  
9 happened?

10 A. I don't know what the cause was.

11 Q. Would that be true as you sit here today that you don't  
12 know what the cause was?

13 A. No, I do not.

14 Q. Have you engaged anyone other than your attorney who  
15 would indicate to you that the cause of the problem  
16 involving the east wall was improper construction of the  
17 house or basement?

18 A. I'm not sure I understand the question. Did I hire  
19 anybody that said that, no.

20 Q. Were you present when a Mr. Hughes inspected your house  
21 in behalf of Erie?

22 A. Yes, I was.

23 Q. Did Mr. Hughes make any statement to you as to what he  
24 believed the cause was?

25 A. Yes, he told me what he believed the cause was.

1 right there, kind of here.

2 Q. Where you put it at, it's basically at the end of the  
3 deck?

4 A. No, that can't be right. It must be on this side in  
5 the indentation. Yes. So here. I'm trying to think as  
6 I'm looking from the back of the house and I'm backwards.  
7 So it would be in here.

8 Q. And I know we can't really see much in the top  
9 photograph on Exhibit Six. But there's an indication that  
10 someone's put a caption on this photograph saying water  
11 bubbling out of ground. And it's a close-up of the back of  
12 the house. Do you know what the two lines are that are  
13 shown in the top picture on Exhibit Six?

14 A. This is my electric.

15 Q. So that has nothing to do with water piping?

16 A. No.

17 Q. Is that where --- is that the area where you saw water  
18 bubbling out of the ground?

19 A. Yes.

20 Q. Would it be true that up until today that you have not  
21 had anyone contractor or an engineer on your behalf go out  
22 and look at the wall to determine cause of the failure?

23 A. We did have an engineer come out and look at it.

24 Q. Who was that?

25 A. Bob Mulholland (phonetic). But he is not an

1 architectural engineer.

2 Q. He is an engineer, though?

3 A. Yes.

4 ATTORNEY MCALLISTER: I would ask that  
5 if you have any expert reports that you make those  
6 available. I don't know from what Ms. Buck is saying  
7 whether they separately engaged this engineer or whether  
8 it's someone that you've retained as an expert in this  
9 case.

10 ATTORNEY MASON: It's not someone that  
11 I've retained.

12 BY ATTORNEY MCALLISTER:

13 Q. When did Mr. Mulholland go to the house and look at the  
14 house?

15 A. I couldn't give you an exact date. But it was probably  
16 a month or so after the wall collapsed. A month or two  
17 maybe.

18 Q. Did he put anything in writing in terms of his  
19 observations?

20 A. Yes, he did send me a letter.

21 Q. Did he speak to you as to any conclusions as to the  
22 cause?

23 A. He didn't really speak to me, no. He spoke with Tim.

24 Q. What opinion did he give from what you're aware either  
25 from conversation or in this letter as to cause?

1 A. I'd have to read the letter.

2 ATTORNEY MCALLISTER: I guess I would  
3 do a letter to you asking for production of the letter.

4 BY ATTORNEY MCALLISTER:

5 Q. Has anyone else looked at the house, examined the  
6 basement or the pipe to render any sort of an opinion as to  
7 what caused this incident?

8 A. No.

9 Q. And as you sit here today, you don't have any idea of  
10 what caused it?

11 A. No, I do not know.

12 Q. You did, in fact, receive a reservation of rights  
13 letter from Erie Insurance Exchange on or about September  
14 8, detailing the reasons as to why they believed that there  
15 was no coverage for this claim?

16 A. Yes, I did.

17 Q. Have you had any other written or oral contact with any  
18 representative of Erie Insurance after the two visits by  
19 Mr. Terry and after the receipt of this letter?

20 A. No. I don't believe.

21 ATTORNEY MASON: Ms. McAllister,  
22 attached to the Plaintiff's complaint is a letter dated  
23 September 18th from Erie. That's after the reservation of  
24 rights letter.

25 BY ATTORNEY MCALLISTER:

Inspection of the Ms. Brenda Buck Residence

At  
RR #1 Box 463 A  
Morrisdale, PA

For  
Erie Insurance Company  
September 8, 2003  
Claim # 010110488941

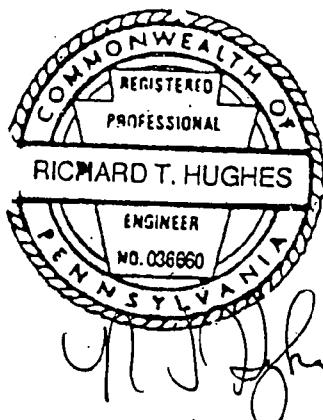
OCT 30 2003

COPY

ERIE-18

Sept 10 2003

CLERKS



Richard T. Hughes, P.E.  
Consulting Engineer  
506 Krebs Avenue  
Clearfield, Pa. 16830(814) 765-8691

EXHIBIT

tabbles

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## INDEX

SUMMARY .....	i
1.0 INVESTIGATION.....	1
2.0 CONCLUSIONS.....	2
3.0 REFERENCES .....	3

HO  
OCT 30 2003  
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## SUMMARY

The week of August 27<sup>th</sup> through September 2, 2003 saw extreme amounts of rain in central Pennsylvania which completely saturated the ground.

The masonry foundation under Ms. Brenda Buck new dwelling collapsed. Concerned about the cause she contacted her insurance carrier and she submitted a claim,

On Friday, September 5, 2003 Mr. Steve Terry claims representative for Erie Insurance contacted Richard T. Hughes, P.E. to determine the cause of the collapse.

The results of this investigation revealed that the collapse was due to lack of reinforcing in the walls combined with soil and hydrostatic pressure.

HO

OCT 30

ERIE 18

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## 1.0 INVESTIGATION

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On September 7, 2003 a site inspection was performed by Richard T. Hughes, P.E. The house in question is a 28 x 40ft one story ranch dwelling with an attached two car garage built in c. 1996 by Michael Owens construction company (see attached photos). A full depth basement is located under the living portion of the house.

The foundation of the dwelling has sustained a collapse along the one sidewall and the back wall has started to fail. It should be noted that the back yard slopes toward the house and the soils are a clay-shale.

The foundation system is built out of 8" block 12 courses high and without either bond joint reinforcing or vertical reinforcing in the manner of grouted cores or pilasters.

The homeowner was surprised at the amount of water, which was seeping in from the cracks. At the time of my inspection a hole was present where the homeowner exposed the water line which the thought has a sprung a leak in a 90 degree bend. The water line entered the house approximately 4 ft above the basement floor slab.

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OCT 3 2003

## 2.0 CONCLUSIONS

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Based on the physical evidence at the site, a review of Industry Standards and finally my experience with other foundation collapses, it is my professional opinion with high degree of engineering certainty that the cause of the wall collapse is due to a lack of reinforcing combined with recent severe rainstorms, which saturated the ground.

Masonry walls must resist 3 types of loading (see attached reference). In this instance, this wall failed under earth pressure and hydrostatic (water) pressure.

This failure was not due to a water line break. The homeowner saw water pouring and shooting side like it was under pressure. This is due to the way the yard is sloped toward the house. A pinhole water leak would increase a home's meter reading to over 18,500 gallons per quarter.

As often the case poor construction practices have caused the problem.

### 3.0 REFERENCES

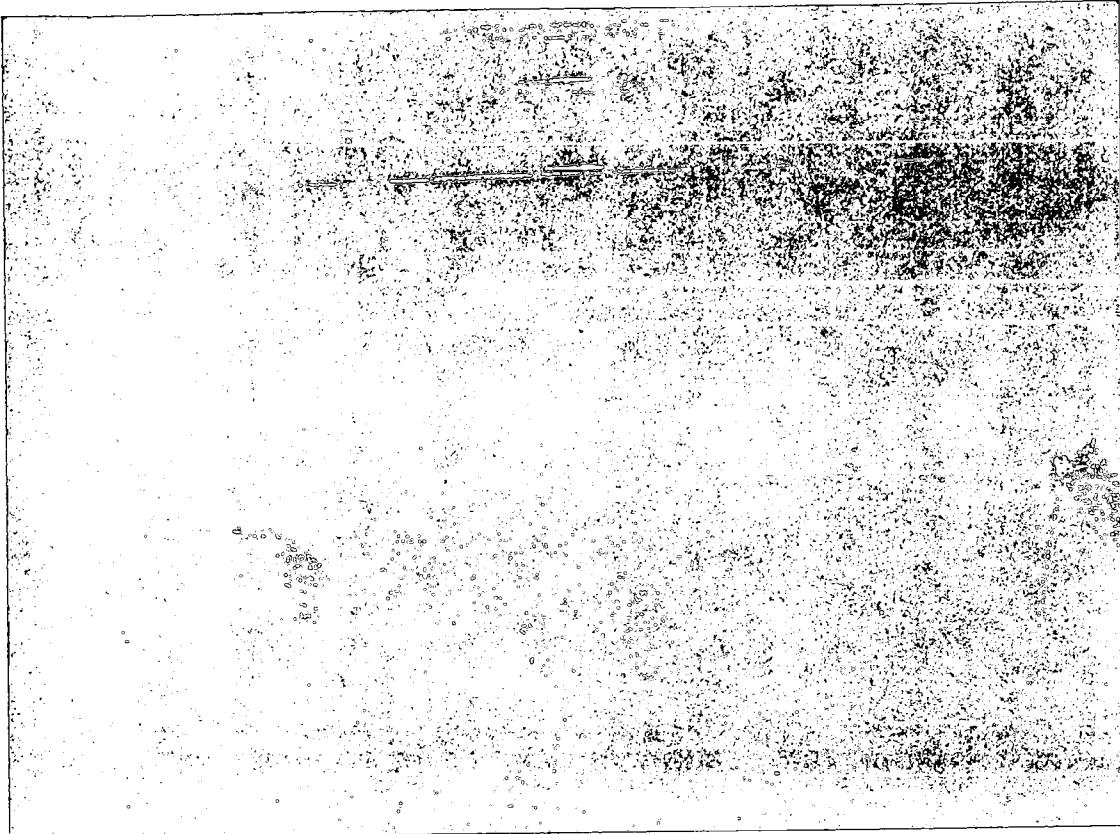
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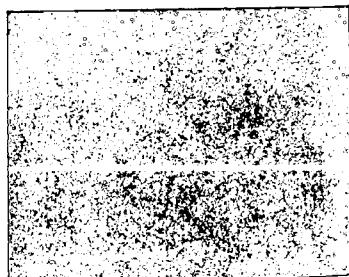
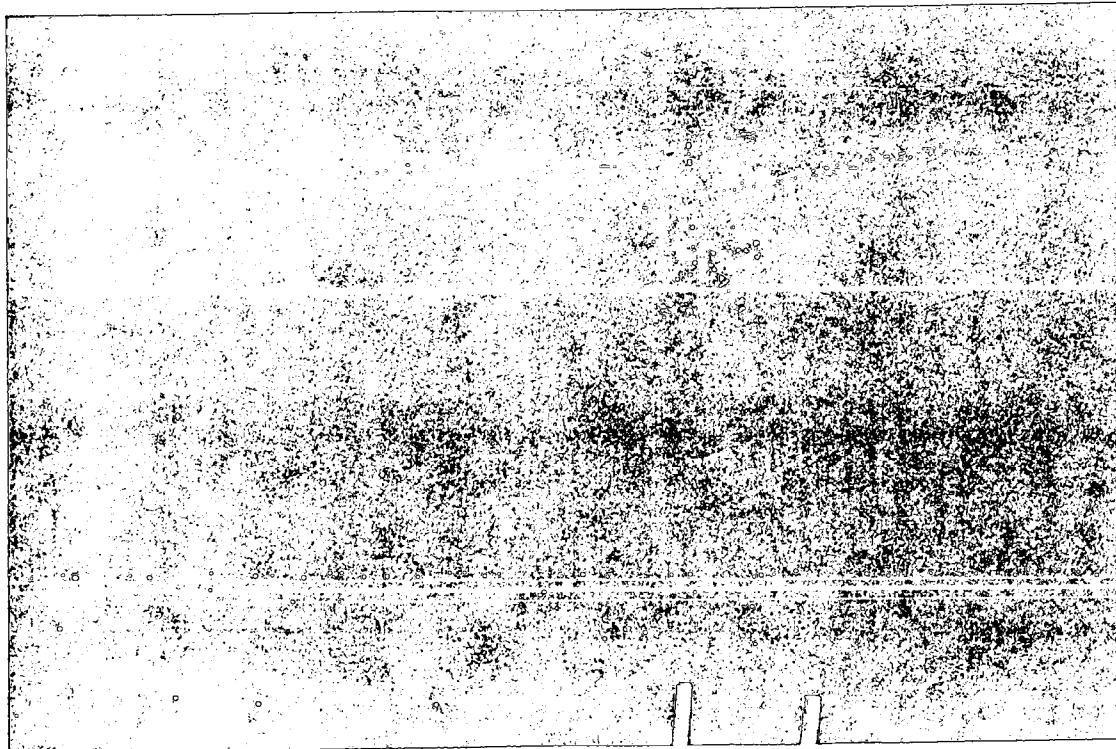
COPY



ERIE-18

OCT 15 2003

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303 3.11.03

ERIE-19

04.15.2003

CLARKS

streams-dia. at 80 psi		waste per quarter		waste per quarter	
inches	mm	gallons	liters	cubic feet	cubic meters
1/4	6.5	1,181,500	4,472,000	158,000	4,475
1/8	3.2	296,000	1,120,360	39,400	1,115
1/16	1.6	74,000	280,100	9,850	280
1/32	.8	18,500	70,020	2,465	70

Water Costs Money Do Not Waste It!

## Foundation Wall Failures

Over the past several years, I have witnessed dozens of residential house foundation collapses in both new and older homes which I believe could have been avoided. A typical foundation under a residential dwelling is approximately 24 feet wide and 50 feet long built of concrete masonry block. Block thickness varies between 8, 10, and 12 inch sizes depending on the length, height and loading conditions. Typical height of basements are 7 to 9 feet (10 to 13 course).

### Loading Conditions

Foundation failures which push the foundation walls into the basement are typically due to three loading conditions; soil pressure, hydrostatic (water) pressure, and surcharges due to high loads directly behind the wall such as an automobile or backhoe. Under normal dry soil conditions, a hollow masonry wall 9 feet high and 40 feet long, whether load-bearing or non-load-bearing, can provide years of useful service. However, the problem arises when wet climatic conditions combined with susceptible soils (clays, shale clays, silty clays) rest directly behind the unreinforced masonry wall. While masonry walls have excellent vertical carrying capacity, they are extremely weak in lateral load resistance. Residential house construction does not typically load walls enough to offset the horizontal (lateral) loads of saturated soils. Wall collapses frequently occur just after laying the walls and during backfilling due to the surcharge of the equipment, and while the walls were unloaded, this problem would occur on the same wall under saturated soil conditions regardless of the house loads.

### Warning Signs

Often a distressed wall will reveal the potential for complete collapse prior to the event. Look for horizontal cracks in the mortar joints the width of a human hair in the upper half of a wall which spans over

20 feet. Sometimes diagonal cracks emanating from the end walls following the mortar joints is associated with the distressed wall. Seldom do vertical cracks have anything to do with lateral earth pressure problems and can sometimes be linked to soil settlement, shrinkage and volume changes (see attached sketch).

### Prevention

The CABO Building Code, which focuses totally on residential construction, stipulates that walls resisting more than 5 feet of earth have reinforcing provided. Three types of wall reinforcing are acceptable. The most difficult but best is grouting the hollow vertical cores of the blocks solid with concrete grout and installing vertical reinforcement in the cores which are connected to the footing (see attached sketch). Mason contractors seldom select this option due to the fact that the bars are difficult to work around. I have experienced many collapsed foundation walls which were grouted but the vertical reinforcement was not attached to the footing and the wall did not have horizontal bed joint reinforcement. Horizontal or bed joint reinforcement is installed in the mortar joints and looks similar to a ladder except it is made of wire the thickness of a coat hanger. Bed joint reinforcement installed without grouting the cores is useless and often I see this concept misused. An acceptable means of bracing is achieved if the wall is grouted solid without vertical reinforcement and the horizontal reinforcement is installed in every horizontal joint (8 inches on center). While horizontal reinforcing is desired over vertical, it too often omitted due to the cumbersome task of installing.

Finally, pilasters protruding from the wall is often the most popular bracing selection. A common mistake is to build these next to the wall without them being tied integrally to the wall. For pilasters to be effective, they must be built into the wall at the same time the wall is laid. A minimum projection of 8 inches is

HO

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ERIE 13

OCT 13 2003

ERIE 13

necessary and a spacing of 18t (as mentioned previously) is required. Due to the obstruction of living space, contractors often leave these braces off severely reducing the structural integrity of a wall. It should be noted that the potential for collapse often does not occur for years due to the fact that all the right conditions, such as an extended rain storm, deep snow melt, clogged trench drain, or a concrete truck pouring a new patio on the back of a house don't occur annually.

### Inspection

To see if your house has these problems, look in your yard to see if any of the ground surfaces slope towards your house foundation instead of away from the walls. A quick glance in the basement will verify if pilasters are present. If pilasters are not observed, tapping the wall with a hammer for varying sounds will determine if the contractor filled the voids with concrete on an even spacing. If you have walls unbraced for over 15 feet and over 8 feet high with a sloping yard, you have a potential problem.

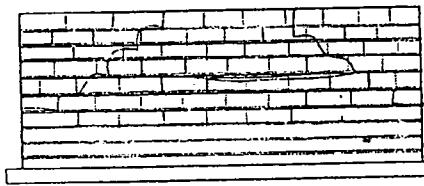
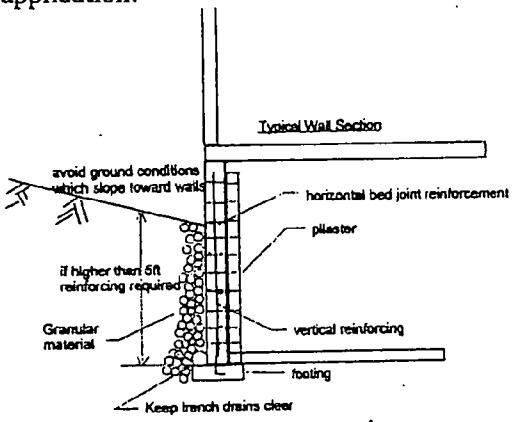
### Repair

Walls which show signs of distress can be braced to stop the movement by installing pilasters to the existing walls. The pilasters can be either added to the interior face or the exterior face, depending on accessibility.

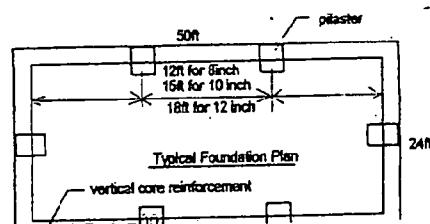
### Conclusion

Many masonry contractors believe that the bracing is not necessary because they have built hundreds of walls without them, but they do not consider the effects of saturated soils and ground water, plus they are not qualified to determine which soils and sites are more susceptible and they cannot predict the future use or weather conditions. The new building codes are not allowing builders to determine when the bracing is not required unless the soil behind the wall is less than 5 feet high. Considering effects of wind, it would be prudent building practices to

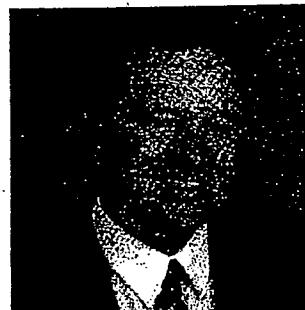
include bracing or reinforcing in all masonry construction, regardless of application.



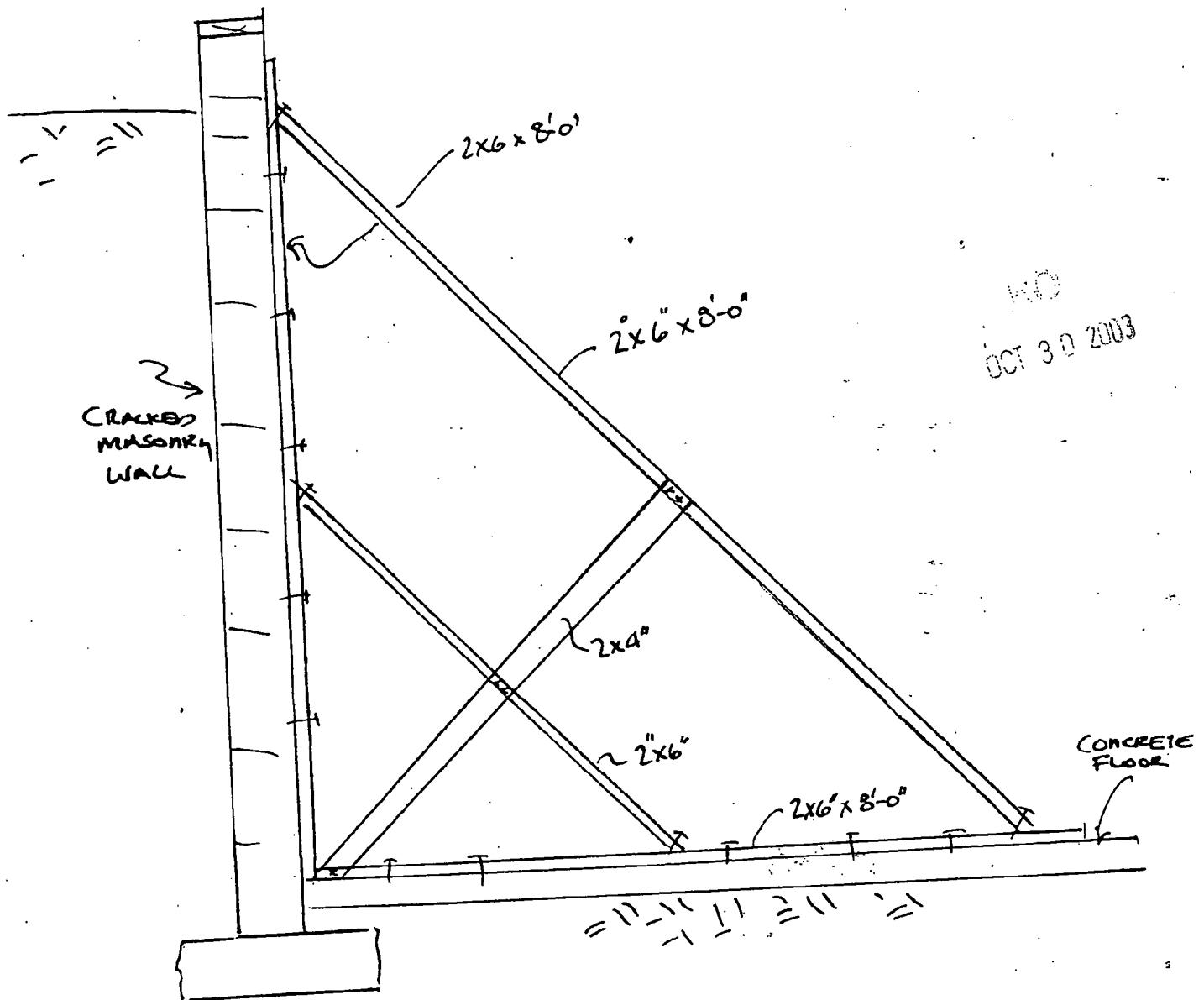
Typical Crack Planes



SPR 18  
2003



Richard T. Hughes is a Consulting Engineer  
From Clearfield, Pennsylvania  
(814) 765-8691



TEMPORARY BRACING DETAIL

# Ultracover Insurance Policy

ERIE-18  
NOV 10 2003  
CLAIMS

EXHIBIT

E

## WHERE TO LOOK IN YOUR POLICY

AGREEMENT .....	4	(11) NON-OWNED RESIDENCES .....	11
ERIE INSURANCE EXCHANGE .....	4	(12) ORDINANCE OR LAW COVERAGE .....	11
ERIE INSURANCE PROPERTY & CASUALTY COMPANY .....	4	(13) TEMPORARY REPAIRS AFTER LOSS .....	11
DEFINITIONS .....	4	(14) TREES, SHRUBS, PLANTS AND LAWNS .....	11
ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS .....	5	DEDUCTIBLE .....	11
ADDITIONAL ERIE INSURANCE PROPERTY & CASUALTY COMPANY DEFINITIONS .....	5	RIGHTS AND DUTIES -- CONDITIONS -- SECTION I .....	11
WHEN AND WHERE THIS POLICY APPLIES ..	5	(1) ABANDONMENT OF PROPERTY ..	11
PROPERTY PROTECTION -- SECTION I .....	6	(2) APPRAISAL .....	11
DWELLING COVERAGE .....	6	(3) AUTOMATIC ADJUSTMENT OF COVERAGE AMOUNTS .....	12
OUR PROMISE .....	6	(4) ERIE OPTION .....	12
OTHER STRUCTURES COVERAGE .....	6	(5) GLASS REPLACEMENT .....	12
OUR PROMISE .....	6	(6) INCREASE OF HAZARD .....	12
PERSONAL PROPERTY COVERAGE .....	6	(7) LOSS PAYMENT .....	12
OUR PROMISE .....	6	(8) LOSS SETTLEMENT .....	12
SPECIAL LIMITS -- PERSONAL PROPERTY .....	7	(9) LOSS TO A PAIR OR SET .....	13
LOSS OF USE COVERAGE .....	7	(10) MORTGAGE CLAUSE .....	13
OUR PROMISE .....	7	(11) NO BENEFIT TO BAILEE .....	13
PERILS WE INSURE AGAINST .....	7	(12) OTHER INSURANCE .....	13
WHAT WE DO NOT COVER -- EXCLUSIONS .....	7	(13) PERMISSION GRANTED TO YOU ..	13
WHAT WE ALSO PAY .....	9	(14) RECOVERED PROPERTY .....	14
(1) AUTOMATIC GARAGE DOOR OPENER .....	9	(15) SUIT AGAINST US .....	14
(2) COLLAPSE .....	9	(16) WHAT TO DO WHEN A LOSS HAPPENS .....	14
(3) CREDIT CARD, CHARGE PLATE, CHECK FORGERY AND COUNTERFEIT MONEY PROTECTION .....	10	HOME AND FAMILY LIABILITY PROTECTION -- SECTION II .....	14
(4) DEBRIS REMOVAL AFTER LOSS ..	10	BODILY INJURY LIABILITY COVERAGE ..	14
(5) EMERGENCY REMOVAL OF PROPERTY .....	10	PROPERTY DAMAGE LIABILITY COVERAGE .....	14
(6) FIRE DEPARTMENT SERVICE CHARGES .....	10	OUR PROMISE .....	14
(7) FIRE EXTINGUISHER RECHARGE ..	10	PERSONAL INJURY LIABILITY COVERAGE .....	14
(8) LOCK REPLACEMENT AFTER LOSS .....	10	OUR PROMISE .....	14
(9) LOSS ASSESSMENT .....	10	MEDICAL PAYMENTS TO OTHERS COVERAGE .....	15
(10) MECHANICAL SERVANT AND ROBOT PROTECTION .....	11	OUR PROMISE .....	15

WHAT WE DO NOT COVER -- EXCLUSIONS .....	15	RIGHTS AND DUTIES -- GENERAL POLICY CONDITIONS -- SECTION I & II .....	18
WHAT WE ALSO PAY .....	16	(1) ACCOUNTING .....	18
(1) CLAIM EXPENSES .....	17	(2) ASSIGNMENT .....	18
(2) DAMAGE TO PROPERTY OF OTHERS .....	17	(3) BANKRUPTCY OF ANYONE WE PROTECT .....	18
(3) FIRST AID EXPENSES .....	17	(4) CANCELLATION .....	19
(4) LOSS ASSESSMENT - PERSONAL LIABILITY COVERAGE ONLY .....	17	(5) CONCEALMENT, FRAUD OR MISREPRESENTATION .....	19
RIGHTS AND DUTIES -- CONDITIONS - SECTION II .....	17	(6) CONTINUOUS POLICY .....	19
(1) DUTIES OF AN INJURED PERSON - MEDICAL PAYMENTS TO OTHERS COVERAGE .....	17	(7) COOPERATION .....	19
(2) LIMITS OF PROTECTION .....	17	(8) HOW YOUR POLICY MAY BE CHANGED .....	19
(3) OTHER INSURANCE - PERSONAL LIABILITY COVERAGE .....	18	(9) OUR RIGHT TO RECOVER FROM OTHERS .....	19
(4) SUIT AGAINST US .....	18	(10) PRIORITY .....	19
(5) WHAT TO DO WHEN AN OCCURRENCE, OFFENSE, CLAIM OR SUIT HAPPENS .....	18	(11) SURVIVORS' COVERAGE .....	20
		(12) TIME OF INCEPTION .....	20

ERIE

NOV 07 2003

CLAIMS

ERIE INSURANCE GROUP is proud to present this Ultracover HomeProtector Policy. This important contract between YOU and The ERIE consists of this policy with coverage agreements, limitations, exclusions and conditions, a Declarations, plus any endorsements. It is written in plain, simple terms so it can be easily understood. We urge YOU to read this policy.

This policy contains many XTRA PROTECTION FEATURES developed by The ERIE. Wherever an "X" appears in the margin of this policy, YOU receive XTRA PROTECTION, either as additional coverage or as a coverage not found in most homeowners policies.

The protection given by this policy is in keeping with the single purpose of our Founders: "To provide YOU with as near PERFECT PROTECTION, as near PERFECT SERVICE, as is humanly possible, and to do so at the LOWEST POSSIBLE COST."

#### ERIE EXCHANGE

##### ERIE INSURANCE EXCHANGES

In return for your timely premium payment, your compliance with all of the provisions of this policy, and your signing of a Subscriber's Agreement with Erie Indemnity Company and other Subscribers, we agree to provide the coverages you have purchased. Your coverages and amounts of insurance are shown on the Declarations, which are part of this policy.

Your signing the Subscriber's Agreement, which includes a limited power-of-attorney, permits Erie Indemnity Company, as Attorney-in-Fact, to make reciprocal insurance contracts between you and other Subscribers and otherwise manage the business of the Erie Insurance Exchange. This power-of-attorney applies only to your insurance business at the Exchange and is limited to the purposes described in the Subscriber's Agreement.

Your responsibility as a Subscriber is determined by this policy and the Subscriber's Agreement. This policy is not assessable. You are not liable for the losses of other Subscribers.

This agreement is made in reliance on the information you have given us, and is subject to all the terms of this policy.

This policy, all endorsements to it, and the Subscriber's Agreement constitute the entire agreement between you and us.

#### ERIE INSURANCE PROPERTY & CASUALTY COMPANY

In return for your timely premium payment and your compliance with all of the provisions of this policy, we agree to provide the coverages you have purchased. Your coverages and amounts of insurance are shown on the Declarations, which are part of this policy.

This agreement is made in reliance on the information you have given us, and is subject to all the terms of this policy.

This policy and all endorsements to it constitute the entire agreement between you and us.

#### DEFINITIONS

Throughout your policy and its endorsements the following words have a special meaning when they appear in bold type:

- "aircraft" means any machine or device capable of atmospheric flight except model airplanes.
- "anyone we protect" means you and the following residents of your household:
  1. relatives and wards;
  2. other persons in the care of anyone we protect.

Under *Home and Family Liability Protection*, anyone we protect also means:

3. any person or organization legally responsible for animals or watercraft which are owned by you, or any person included in 1. or 2., and covered by this policy. Any person or organization using or having custody of these animals or watercraft in the course of any business, or without permission of the owner is not anyone we protect;
4. any person with respect to any vehicle covered by this policy. Any person using or having custody of this vehicle in the course of any busi-

ness use, or without permission of the owner is not anyone we protect.

- "bodily injury" means physical harm, sickness or disease, including mental anguish or resulting death, but does not include:
  1. any communicable disease or condition transmitted by anyone we protect to any other person through a parasite, virus, bacteria or any other organism.
  2. the exposure to or transmission of any disease, parasite, virus, bacteria or other organism by anyone we protect to any other person.
- "business" means any full-time, part-time or occasional activity engaged in as a trade, profession or occupation, including farming.
- "Declarations" means the form which shows your coverages, amounts of insurance, premium charges and other information. This form is part of your policy. Declarations include forms titled Amended Declarations, Renewal Declarations, Revised Declarations, Reinstatement of Coverage, Duplicate Declarations, New Declarations or Continuation Notice.

ERIE-18

NOV 10 2003

- "insured location" means:
  1. the residence premises;
  2. the part of any other premises, other structures, and grounds acquired by you during the policy period which you intend to use as a residence premises;
  3. any premises used by anyone we protect in connection with premises included in 1. or 2.;
  4. any part of a non-owned premises:
    - a. where anyone we protect is temporarily residing; or
    - b. occasionally rented to anyone we protect for non-business purposes;
  5. vacant land, other than farmland, owned by or rented to anyone we protect;
  6. land owned by or rented to anyone we protect on which a one or two family residence is being built for occupancy by anyone we protect;
  7. cemetery plots or burial vaults of anyone we protect.
- "medical expense" means reasonable charges for necessary medical, surgical, x-ray and dental services, including prosthetic devices, eyeglasses, contacts, hearing aids and pharmaceuticals; and also includes ambulance, hospital, licensed nursing and funeral services.
- "occurrence" means an accident, including continuous or repeated exposure to the same general harmful conditions.
- "personal injury" means injury arising out of:
  1. libel, slander or defamation of character;
  2. false arrest, wrongful detention or imprisonment, malicious prosecution, racial or religious discrimination, wrongful entry or eviction, invasion of privacy, or humiliation caused by any of these.
- "property damage" means:
  1. physical injury to or destruction of tangible property, including loss of its use. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;
  2. loss of use of tangible property which is not physically injured or destroyed. All such loss of use shall be deemed to occur at the time of the occurrence.
- "residence employee" means an employee of anyone we protect who performs duties in connection with

## WHEN AND WHERE THIS POLICY APPLIES

This policy applies to losses that occur during the policy period. The policy period is shown on the Declarations. Unless otherwise specified on the Declarations, the policy period begins and ends at 12:01 A.M., Standard Time at the stated address of the Named Insured.

*Property Protection -- Section I.* This policy applies to property losses as designated in the specific coverage

- the maintenance or use of the residence premises, including similar duties elsewhere, not in connection with the business of anyone we protect.
- "residence premises" means the dwelling where you reside, including the structures and grounds, or that part of any other building where you reside and which is shown as residence premises on the Declarations.
- "resident" means a person who physically lives with you in your household. Your unmarried, unemancipated children under age 24 attending school full-time and living away from home will be considered residents of your household.

## ADDITIONAL ERIE INSURANCE EXCHANGE DEFINITIONS

The following words have special meaning in policies issued by Erie Insurance Exchange when they appear in bold type:

- "Subscriber" means the person(s) who signed the Subscriber's Agreement.
- "Subscriber's Agreement" means an agreement, including a limited power-of-attorney, among the Subscribers and the Erie Indemnity Company, as Attorney-in-Fact.
- "We", "us" or "our" means the Subscribers at Erie Insurance Exchange as represented by their common Attorney-in-Fact, Erie Indemnity Company.
- "You", "your" or "Named Insured" means the Subscribers and others named on the Declarations under Named Insured. Except in the GENERAL POLICY CONDITIONS Section, these words include the spouse of the Subscriber if a resident of the same household.

## ADDITIONAL ERIE INSURANCE PROPERTY & CASUALTY COMPANY DEFINITIONS

The following words have special meaning in policies issued by Erie Insurance Property & Casualty Company when they appear in bold type:

- "We", "us" or "our" means the Erie Insurance Property & Casualty Company.
- "You", "your" or "Named Insured" means the person(s) named on the Declarations under Named Insured. Except in the GENERAL POLICY CONDITIONS Section, these words include your spouse if a resident of the same household.

and at the location(s) insured under this policy. In addition, personal property is covered while located anywhere in the world.

*Home and Family Liability Protection -- Section II.* This policy applies to bodily injury, property damage and personal injury losses occurring anywhere in the world.

# PROPERTY PROTECTION -- SECTION I

## DWELLING COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Your dwelling at the residence premises shown on the Declarations. Dwelling includes attached structures, and building equipment and fixtures servicing the premises.
2. Construction material at the residence premises for use in connection with your dwelling.

This coverage does not apply to land and water, including natural water, above or below the surface of the ground.

## OTHER STRUCTURES COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Other structures at the residence premises separated from the dwelling, including garages, fences, shelters, tool sheds or carports.

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

2. Construction material at the residence premises for use in connection with your other structures.

We do not pay for loss to structures:

1. used in whole or in part for business purposes (except rental or holding for rental of structures used for private garage purposes); or
2. used to store business property. However, if the business property is solely owned by anyone we protect, we do provide coverage for the structure. The business property may not include gaseous or liquid fuel, unless the fuel is in a fuel tank that is permanently installed in a vehicle or craft which is parked or stored in the structure.

This coverage does not apply to land and water, including natural water, above or below the surface of the ground.

## PERSONAL PROPERTY COVERAGE

### OUR PROMISE

We will pay for loss to:

1. Personal property owned or used by anyone we protect anywhere in the world.
2. At your option, personal property owned by others while the property is on your residence premises.
3. At your option, personal property of:
  - a. guests and residence employees while the property is in a residence occupied by anyone we protect;

b. residence employees away from the residence premises while actually engaged in the service of anyone we protect.

4. At your option, building additions, alterations, fixtures, improvements or installations made, or acquired at your expense, by you to residences occupied by, but not owned by you, for an amount not exceeding 10% of the amount of insurance under this coverage. Payment will not increase the applicable amount of insurance under this policy.

5. Cemetery property, including monuments, headstones, gravemarkers, and urns.

6. Animals, birds and fish, but only while on the residence premises, for the following perils to the extent covered under *Perils We Insure Against*: fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke and vandalism or malicious mischief.

7. Electronic apparatus and equipment:
  - a. while in or upon a motor vehicle or other motorized land conveyance; and
  - b. if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle or conveyance while retaining its capability of being operated by other sources of power.

Electronic apparatus includes cellular phones, fax machines, radios, tape and disc players, and similar equipment or devices for the recording, reproduction, receiving, or transmitting of sound or pictures. Electronic apparatus also includes accessories used in conjunction with such apparatus, including antennas, tapes, wires, records, discs or other media.

When there is loss of tapes, compact discs or similar media by theft from a motor vehicle or other motorized land conveyance, we will pay up to \$150 for the tapes, compact discs or similar media.

We do not pay for loss to:

1. Land motor vehicles and parts.
  - a. We do cover vehicles not subject to motor vehicle registration which are:
    - 1) Designed to assist the handicapped; or
    - 2) Used solely to service the residence premises.
2. Aircraft and parts.
3. Electronic apparatus and equipment which is solely powered from the electrical system of motor vehicles or any other motorized land conveyances.
4. Property rented or held for rental to others away from the residence premises.
5. Property of roomers, boarders or tenants not related to anyone we protect.
6. Any of the following:
  - a. Books of account, drawings, or other paper records containing business data;
  - b. Electronic data processing tapes, wires, records, discs, or other software media containing business data. This includes business data stored in computers and related equipment.

However, we do cover the cost of unexposed or blank records or media.

7. Radar detectors.
8. Property specifically insured by this or any other insurance.

9. Except as provided under *Special Limits -- Personal Property*, property pertaining to a business conducted away from the residence premises unless at the time of loss such property is on the residence premises. However, we do not cover such property on the residence premises while it is stored, held as samples, or held for sale or delivery after sale.
10. Land and water, including natural water, above or below the surface of the ground.

## SPECIAL LIMITS -- PERSONAL PROPERTY

Limitations apply to the following personal property. These limits do not increase the amount of insurance under *Personal Property Coverage*:

Total Amount of Insurance In Any One Loss	Description of Personal Property Subject to Limitations	10% of Personal Property Coverage (but not less than \$2000)
\$500	• Animals, birds and fish	
X \$500	• Money, travelers checks, stored value cards, bank notes, bullion, numismatic property, gold other than goldware or gold-plated ware, silver other than silverware or silver-plated ware, and platinum other than platinumware	
\$1000	• Theft, misplacing or losing of trading cards, including sports cards	
X \$2000	• Accounts, bills, deeds, evidences of debt, letters of credit, notes other than bank notes, passports, securities, tickets, stamps and philatelic property	
\$2000	• Trailers and campers not otherwise insured, whether licensed or not	
X \$2000	• Watercraft, including their trailers, whether licensed or not, furnishings, equipment and outboard motors	
X \$2000	• Manuscripts	
\$2500	• Property pertaining to a business actually conducted on the residence premises, including property in storage, held as samples, or held for sale or delivery after sale	
\$500	• Business property away from the residence premises, regardless of whether the business is conducted on or away from the residence premises	
X \$3000	• Theft, misplacing or losing of guns and related equipment	
X \$3000	• Theft, misplacing or losing of jewelry, watches, furs, precious and semi-precious stones	
X \$3000	• Theft, misplacing or losing of silverware, silver-plated ware, goldware, gold-plated ware and pewterware	

ERIE 6

NOV 07 2003

CLAIMS

• Personal property usually situated at any residence owned or occupied by anyone we protect other than a residence premises. Personal property in a newly-acquired principal residence is not subject to this limitation for the 30 days immediately after you begin to move property there.

X

## LOSS OF USE COVERAGE

### OUR PROMISE

If an insured property loss makes your residence premises uninhabitable, we will pay all reasonable additional living expenses while you and members of your household reside elsewhere.

Payment shall be for the shortest time required to repair or replace the premises or, if you choose, for you to permanently relocate.

These payments will not exceed a 12 month period.

We will also pay for your loss of normal rents resulting from the loss, less charges and expenses which do not continue while the rented part of the residence premises is uninhabitable. We will pay this loss of normal rents only until the rented part is habitable.

If a loss from a peril covered under *Perils We Insure Against* occurs at a neighboring premises, we will pay additional living expenses and loss of normal rents for up to two weeks should civil authorities prohibit you from occupying your premises.

These periods of time are not limited by the expiration of this policy.

No deductible applies to this coverage.

We will not pay for loss or expense due to the cancellation of any lease or agreement.

This coverage also applies to a loss at a covered secondary location.

## PERILS WE INSURE AGAINST

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited herein.

## WHAT WE DO NOT COVER -- EXCLUSIONS

Under the *Dwelling, Other Structures and Personal Property Coverages*:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. by collapse, other than as provided in *What We Also Pay, (2) Collapse*.

2. caused by freezing by temperature reduction of a plumbing, heating, air conditioning, gutters and drain spouts, or fire protective system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing, while the dwelling is vacant, unoccupied or being constructed.

There is coverage if you have used reasonable care to:

- a. maintain heat in the building; or
- b. shut off the water supply and drain the system or appliances of water.

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock.

4. caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental.

5. caused by:

- a. termites, vermin, insects, rodents, birds (except glass breakage), skunks, raccoons, spiders or reptiles;
- b. mechanical breakdown, deterioration, wear and tear, marring, inherent vice, latent defect, tree roots, rust, smog; wet or dry rot, mold, fungus or spores;
- c. the discharge, disposal, release or escape of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
- d. smoke, unless the loss is sudden and accidental. Smoke from agricultural smudging or industrial operations is not covered even if the loss is sudden and accidental;
- e. bulging, cracking, expansion, settling or shrinking in ceilings, foundations, floors, patios, decks, pavements, roofs or walls.

If a. through e. cause water damage not otherwise excluded, from a plumbing, heating, air conditioning, or fire protective system, household appliance, waterbed or aquarium, we cover loss caused by the water. Coverage includes the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. This does not include loss to the defective system or appliance (other than a waterbed or aquarium) from which the water escaped.

6. caused by animals or birds kept by anyone we protect or kept by a residence employee of anyone we protect.

7. by theft of property from within a dwelling under construction unless that property has become a part of the building, or of materials and supplies for use in the construction until the dwelling is completed and occupied.

Under items 1. through 7. any ensuing loss not excluded is covered.

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock

waves, or tremors before, during, or after a volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising, or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

9. by water damage, meaning:

- a. flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
- b. water or sewage which backs up through sewers or drains or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or
- c. water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

10. by power interruption if the interruption takes place away from the residence premises. However, we will pay for loss to the contents of refrigerator or freezer units on the residence premises, from either power or mechanical failure (other than contents used for business purposes). If a loss from a peril covered under *Perils We Insure Against* happens on the residence premises as a result of a power interruption off premises we will cover only loss caused by that peril. We will pay for loss caused by a power interruption occurring on the residence premises.

11. by war, whether declared or undeclared, discharge of a nuclear weapon (even if accidental), hostile or warlike action in time of peace or war, insurrection, rebellion, revolution, civil war, usurped power, including action taken by governmental authority in defending against such an occurrence.

12. by nuclear action or radiation or radioactive contamination, however caused. Nuclear action includes nuclear reaction, discharge, radiation or radioactive contamination, whether manmade or occurring naturally.

Loss caused by nuclear action is not considered loss by fire, explosion, sonic boom or smoke.

If loss by fire results, we will pay for that resulting loss.

13. by radon gas contamination.

14. by the enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, unless specifically provided under this policy. We do cover loss caused by actions of civil authorities to prevent the spread of a fire caused by a peril covered under *Perils We Insure Against*.

15. by neglect of anyone we protect to use all reasonable means to protect covered property at and after the time of loss or when property is threatened by a peril covered under *Perils We Insure Against*.

16. by intentional loss, meaning any loss arising from an act committed by or at the direction of anyone we protect with the intent to cause a loss.

17. by acts or decisions, including the failure to act or decide, of any person, group, organization, or governmental body.
18. by the destruction, confiscation or seizure of property by order of any governmental or civil authority. We do cover loss caused by actions of governmental or civil authorities to prevent the spread of a fire caused by a peril covered under *Perils We Insure Against*.
19. by the inability to correctly process, recognize, distinguish, interpret or accept any date or time for loss or damage to electronic data processing equipment, computer networks, computer hardware (including microprocessors either as part of a computer system or operating outside of a system), computer programs, software, media or data.

We will not pay for:

- a. any repair, restoration, replacement or modification, to correct any deficiencies or change any features or functions; or
- b. loss or damage, regardless of when the electronic data processing equipment, computer hardware, computer programs, software, media or data were purchased, obtained or installed.

Under the *Dwelling Coverage and Other Structures Coverage*:

We do not pay for loss:

1. by weather conditions if any peril excluded by this policy contributes to the loss in any way.
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance;
 of property whether on or off the residence premises by any person, group, organization, or governmental body.

Under the *Personal Property Coverage*:

We do not pay for loss:

1. caused solely by breakage of eyeglasses, glassware, statuary, marble, bronzes, bric-a-brac, porcelains, jewelry, watches, cameras, photographic lenses and similar fragile articles. There is coverage for breakage of the property by or resulting from fire, lightning, windstorm, hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke (unless caused by agricultural smudging or industrial operations), vandalism or malicious mischief, theft including attempted theft, water unless otherwise excluded, and sudden and accidental tearing apart, cracking, burning or bulging of a steam, hot water or air conditioning system.
2. by dampness of atmosphere or extremes of temperature unless the loss is directly caused by rain, snow, sleet or hail.
3. by damage to property (other than jewelry, watches and furs) being refinished, renovated or repaired.
4. by collision (other than collision with a land vehicle), sinking, swamping or stranding of watercraft including their trailers, furnishings, equipment and outboard motors.

5. by seizure, destruction or confiscation by order of any government or public authority.
6. by theft while at another dwelling or adjacent structures owned by, rented to, or occupied by anyone we protect unless anyone we protect is temporarily residing there.

Property of a student we protect is covered while at a residence away from home. This coverage is not subject to the 10% of *Personal Property Coverage* limit under *Special Limits - Personal Property*.

Theft losses must be promptly reported to us and to the police.

## WHAT WE ALSO PAY

### (1) AUTOMATIC GARAGE DOOR OPENER

We will pay up to \$500 for loss to personal property, including the garage door, at the residence premises resulting from the use or malfunction of an automatic garage door opener.

### (2) COLLAPSE

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. a building or part of a building that is in danger of collapsing;
2. a building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. part of a building still standing but is no longer attached to another part of the building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or weight of ice, snow or sleet;
2. hidden decay, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. weight of people, animals, contents or equipment;
4. weight of rain which collects on a roof;
5. use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not be liable for loss under 2., 3., 4. or 5. above to the following property unless the loss is a direct result of the collapse of a building or any part of a building:

Cloth awning, fences, pavements, patios, swimming pools, decks, underground pipes, flues, drains, cesspools, septic tanks, foundations, retaining walls, bulkheads, piers, wharves or docks.

Payment will not increase the amount of insurance applying to the loss.

**(3) CREDIT CARD, CHARGE PLATE, CHECK FORGERY AND COUNTERFEIT MONEY PROTECTION**

We will pay up to \$2500 for the legal obligation of anyone we protect to pay because of theft, forgery or unauthorized use of any credit or fund transfer card, charge plate, check or negotiable instrument issued to or registered in the name of anyone we protect. We will also pay for loss each time anyone we protect unknowingly accepts counterfeit money.

No deductible applies to this coverage. We require evidence of loss.

We will not pay for:

1. loss arising from any business;
2. loss arising from anyone we protect.

When loss is discovered, anyone we protect must give us immediate notice. If the loss involves a credit or fund transfer card or charge plate, anyone we protect must also give immediate notice to the issuer of the card or plate. Failure to comply with the terms and conditions of the card or plate voids this protection.

If a loss occurring during the policy period is discovered within a year after the policy has been cancelled, we will pay for the loss. If a prior loss is discovered during the policy period and no other insurance applies, we will pay for the loss. We have the right to investigate and settle any claim or suit before making payment. Full payment of the amount of insurance ends our obligation under each claim or suit.

Repeated losses caused by or involving one person are to be considered one loss.

If a claim is made or suit is brought against anyone we protect for liability under the *Credit Card or Charge Plate Protection*, we will provide a defense. The defense will be at our expense, with a lawyer we choose.

We have the option under the *Check Forgery Protection* to defend at our expense anyone we protect or their bank against a suit for the enforcement of payment.

**(4) DEBRIS REMOVAL AFTER LOSS**

We will pay the expense for removal of:

1. debris of covered property following loss under *Perils We Insure Against*;
2. ash, dust or particles from volcanic eruption that has caused direct loss to a building or property within a building; or
3. fallen trees which cause damage to covered property, provided coverage is not afforded elsewhere by this policy.

If the amount of insurance applying to the loss is exhausted, we will pay up to an additional 5% of the amount of insurance applying to the damaged property for removal of debris.

We will also pay up to \$1000 per occurrence with a limit of \$500 per tree for the removal of fallen trees on the residence premises if loss is caused by windstorm, hail or weight of ice, snow or sleet even when covered property is not damaged.

**(5) EMERGENCY REMOVAL OF PROPERTY**

We will pay for property damaged in any way while removed from your residence premises because of danger from an insured peril. Coverage is limited to a 30-day period from date of removal. Payment will not increase the amount of insurance applying to the loss.

**(6) FIRE DEPARTMENT SERVICE CHARGES**

We will pay all reasonable fire department service charges to save or protect insured property. Payment is in addition to the amount of insurance applying to the loss.

No deductible applies to this coverage.

**(7) FIRE EXTINGUISHER RECHARGE**

We will pay expenses incurred to recharge portable fire extinguishers after they are used to fight a fire.

No deductible applies to this coverage.

**(8) LOCK REPLACEMENT AFTER LOSS**

At your request, we will pay up to \$250 to replace keys and locks to the exterior doors of the residence premises, as well as keys and locks to your other property (autos, boats, etc.), if the keys are stolen during a theft loss. This coverage does not apply to keys and locks pertaining to business property.

We will pay for replacement of automatic garage door transmitters when a transmitter has been stolen. Coverage is also provided for the cost to reprogram the frequency on additional transmitters and/or the control unit box.

No deductible applies to this coverage.

**(9) LOSS ASSESSMENT**

*(Applicable to Section I and Section II - Personal Liability Coverage Only)*

We will reimburse you for an assessment charged against you as owner or tenant of the residence premises by an association or corporation of property owners, minus any other valid and collectible insurance available to the association or corporation covering the same assessment. Under *Property Protection - Section I*, the assessment must result from a direct loss to property, owned by all the property owners collectively, caused by any of the *Perils We Insure Against*. Under *Section II - Personal Liability Coverage Only*, the assessment must result from an occurrence covered under this policy.

Unless otherwise shown on the Declarations, our amount of insurance for this protection is \$5000 per assessment.

If you are assessed for a covered water loss, we will pay your share of the cost of tearing out and replacing any part of an insured location necessary to repair the system or appliance.

The policy deductible applies to each dwelling under *Property Protection - Section I* only.

We will not pay if the loss is caused by earthquake or land shock waves or tremors which occur before, during or after a volcanic eruption.

We also will not pay for any loss assessments charged by a governmental body.

#### **(10) MECHANICAL SERVANT AND ROBOT PROTECTION**

We will pay up to \$500 for loss to personal property at the residence premises caused by malfunction of a mechanical servant or robot.

#### **(11) NON-OWNED RESIDENCES**

We will pay up to \$1000 for loss by theft and vandalism or malicious mischief to residences occupied by, but not owned by anyone we protect.

#### **(12) ORDINANCE OR LAW COVERAGE**

If a loss by a *Peril We Insure Against* occurs to covered property, or the building containing the covered property, we will pay for the increased costs incurred due to the enforcement of any ordinance or law that is in force at the time of the loss up to 10% of the amount of insurance under *Dwelling Coverage* or \$5000, whichever is greater.

You may use this coverage for:

1. the construction, demolition, renovation or repair of the portion of the building damaged by a *Peril We Insure Against*; or
2. the demolition and reconstruction of the undamaged portion of the building if the entire building must be demolished because of damage by a *Peril We Insure Against*; or
3. the removal or replacement of the undamaged portion of the building because of the repair or replacement of the portion of the building damaged by a *Peril We Insure Against*; or
4. the removal of debris resulting from the construction, demolition, renovation, repair or replacement of 1., 2. or 3.

Ordinance or Law Coverage does not include coverage for:

1. loss in value to any covered building due to the requirements of any ordinance or law; or
2. the cost to comply with any ordinance or law requiring the testing, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, responding to or assessing the effects of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant in or on any covered building.

#### **(13) TEMPORARY REPAIRS AFTER LOSS**

We will pay for reasonable and necessary expenses for temporary repairs to protect covered property from further damage after loss by a peril covered under *Perils We Insure Against*. Payment will not increase the amount of insurance applying to the loss.

#### **(14) TREES, SHRUBS, PLANTS AND LAWNS**

We will pay up to an additional 5% of the amount of insurance under *Dwelling Coverage* for loss to trees, shrubs, plants and lawns at the residence premises.

Coverage applies only to loss caused by the following perils covered under *Perils We Insure Against*: fire or lightning, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, smoke, vandalism or malicious mischief and theft.

We will not pay for:

1. more than \$500 on any one tree, shrub or plant;
2. damage to lawns by vehicles owned or operated by a resident of the residence premises;
3. trees, shrubs, plants or lawns grown for business purposes.

#### **DEDUCTIBLE**

We will pay for loss minus the deductible shown on the Declarations. Unless otherwise provided in an endorsement, in the event of total loss to the *Dwelling* from a covered peril, the deductible will not apply.

The deductible does not apply to:

1. *Loss of Use Coverage*
2. *Credit Card, Charge Plate, Check Forgery and Counterfeit Money Protection*
3. *Fire Department Service Charges*
4. *Fire Extinguisher Recharge*
5. *Lock Replacement After Loss*

### **RIGHTS AND DUTIES -- CONDITIONS -- SECTION I**

#### **(1) ABANDONMENT OF PROPERTY**

We are not required to accept abandoned property.

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**CLAIMS**

#### **(2) APPRAISAL**

If you and we fail to agree on the amount of loss, on the written demand of either, each party will choose a competent appraiser and notify the other of the appraiser's identity within 20 days after the demand is received. The appraisers will select a competent and impartial umpire. If the appraisers are unable to agree upon an umpire within 15 days after both appraisers have been identified,

you or we can ask a judge of a court of record in the state where your 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 loss. If they cannot agree, they will submit their differences to the umpire. A written award by two will determine the amount of loss.

Each party will pay the appraiser it chooses, and equally bear expenses for the umpire and all other expenses of the appraisal. However, if the written demand for appraisal is made by us, we will pay for the reasonable cost of your appraiser and your share of the cost of the umpire.

We will not be held to have waived any rights by any act relating to the appraisal.

### (3) AUTOMATIC ADJUSTMENT OF COVERAGE AMOUNTS

#### X Dwelling, Other Structures, Personal Property

- Dwelling

The amount of insurance applying to the Dwelling is the replacement cost at the time of loss. We will adjust the premium for the next policy period to reflect any change in the replacement cost.

You are required to notify us or our Agent of any improvements or other changes to the dwelling which exceed \$5000. This notice must be given to us within 90 days after such improvements or changes are started. If we are not notified, we do not cover loss to such improvements or changes. Your premium may be adjusted during the current policy period to reflect the additional amount of insurance.

- Other Structures

The amount of insurance applying to Other Structures is the amount shown on the Declarations. We will keep track of rising costs and at the next policy period we will adjust the amount of your Other Structures Coverage if necessary. Your premium will be adjusted at each policy period to reflect any change.

During the policy period, if there is an increase in construction costs and a loss occurs, we will reflect the increase in the amount of insurance before making payment. There will be no charge for this additional coverage.

- Personal Property

The amount of insurance applying to Personal Property Coverage is the amount shown on the Declarations. Adjustment in this amount will be made proportionately to the adjustment of Other Structures Coverage.

### (4) ERIE OPTION

If we give you written notice within 30 days after we receive your signed, sworn statement of loss, we may repair or replace any part of the property damaged with equivalent property.

### (5) GLASS REPLACEMENT

Loss to glass caused by a peril covered under *Perils We Insure Against* will be settled on the basis of replacement with safety glazing materials when required by law.

### (6) INCREASE OF HAZARD

Unless we agree beforehand, coverage is suspended if the hazard is substantially increased by any means within the control or knowledge of anyone we protect.

### (7) LOSS PAYMENT

We will settle any claim for loss with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. We will pay within 30 days after we receive your proof of loss, and the amount of loss is finally determined by one of the following:

1. we have reached an agreement with you; or
2. there is an entry of final judgment; or
3. there is a filing of an appraisal award on your behalf.

### (8) LOSS SETTLEMENT

The increased cost incurred to comply with any ordinance or law is not included under this condition, except for coverage that is provided under *What We Also Pay, Ordinance or Law Coverage*.

Loss to Dwelling Coverage, Other Structures Coverage and Personal Property Coverage will be settled on a replacement cost basis, without deduction for depreciation.

#### Dwelling and Other Structures Coverage X

Payment will not exceed the smallest of the following amounts:

1. the replacement cost of that part of the dwelling damaged for equivalent construction and use on the same premises; or
2. the amount actually and necessarily spent to repair or replace the damaged dwelling.

We will pay no more than the actual cash value of the damage until the actual repair or replacement is completed. However, when the loss is both less than \$2500 and less than 5% of the amount of insurance applying to the loss, we will pay the replacement cost before actual repair or replacement is completed.

You may disregard the replacement cost provision and make claim for loss or damage to buildings on an actual cash value basis. However, you still have the right to make claim, within 180 days after the loss, for any additional amounts we will be required to pay under this Loss Settlement provision.

#### Personal Property Coverage

1. Payment will equal the cost at the time of loss of a new article identical to the one damaged, destroyed

or stolen. If the identical article is no longer manufactured or is not available, we will pay the cost of a new article similar to that damaged or destroyed and which is of comparable quality and usefulness. This provision also applies under *Damage To Property of Others Coverage* as provided under Section 11.

2. We also cover the cost of repair or replacement of:

- carpeting
- household appliances
- cloth awnings
- outdoor antennas and outdoor equipment.

3. Under *Personal Property Coverage* we do not cover loss to property:

- a. unless maintained in good and workable condition;
- b. unless repaired or replaced;
- c. which is outdated or obsolete and which is stored or not being used;
- d. which by its nature cannot be replaced by a new article including, but not limited to, antiques, fine arts, souvenirs, and collectors' items;
- e. which is at a secondary residence or at a residence rented to others.

When replacement coverage does not apply because of an exclusion under this section we will pay actual cash value at the time of loss.

We will pay the smallest of the following amounts for any one item of insured property:

- 1. replacement cost;
- 2. repair cost;
- 3. any special limitations described in the policy.

When the replacement cost for the entire loss is more than \$2500, we will not pay more than the actual cash value for the loss or damage until actual repair or replacement is completed.

You may make claim for loss on an actual cash value basis and then make claim within one year after the loss for any additional amounts we are required to pay under this *Loss Settlement* provision.

#### (9) LOSS TO A PAIR OR SET

If there is a loss to a pair or set we may:

- 1. repair or replace any part of the pair or set to restore it to its value before the loss; or
- 2. pay the difference between actual cash value of the property before and after the loss.

#### (10) MORTGAGE CLAUSE

Loss under *Dwelling Coverage* or *Other Structures Coverage* shall be payable to mortgagees named on the Declarations, to the extent of their interest and in the order of precedence.

#### Our Duties

We will:

- 1. protect the mortgagee's interests in an insured building. This protection will not be invalidated by any act or neglect of anyone we protect, any breach of warranty, increase in hazard, change of ownership, or foreclosure if the mortgagee has no knowledge of these conditions;
- 2. give mortgagee 30 days prior notice if we cancel or refuse to continue this policy.
- 3. give mortgagee notice if you cancel this policy.

#### Mortgagee's Duties

The mortgagee will:

- 1. furnish proof of loss within 60 days after receiving notice from us if you fail to do so;
- 2. pay upon demand any premium due if you fail to do so;
- 3. notify us of any change of ownership or occupancy or any increase in hazard of which the mortgagee has knowledge;
- 4. give us the right of recovery against any party liable for loss. This shall not impair the mortgagee's right to recover the full amount of the mortgage debt;
- 5. after a loss, permit us to satisfy the mortgage requirements and receive full transfer of the mortgage and all securities held as collateral to the mortgage debt;
- 6. at our request, submit to examinations under oath.

Policy conditions relating to *Appraisal, Loss Payment and Suit Against Us* apply to the mortgagee.

This condition shall also apply to any trustee named on the Declarations.

#### (11) NO BENEFIT TO BAILEE

No bailee shall benefit, directly or indirectly, from this insurance.

#### (12) OTHER INSURANCE

If both this insurance and other insurance apply to a loss, we will pay our share. Our share will be the proportionate amount that this insurance bears to the total amount of all applicable insurance, except insurance in the name of an association or corporation of property owners.

If there is other insurance in the name of an association or corporation of property owners covering the same property covered by this policy, the other insurance applies first.

#### (13) PERMISSION GRANTED TO YOU

Coverage applies even when your described dwelling is vacant or unoccupied, except where limited under *Exclusion (2), Section 1*.

You may make alterations, additions and repairs to your building, and complete structures under construction.

You may waive your rights to recovery against another involving the insured property. This must be done in writing prior to a loss.

#### (14) RECOVERED PROPERTY

If we have made payment on property which has later been recovered by you or us, you or we will notify the other of the recovery. You have a right to the recovered property. If you elect to have the property, you will repay us the amount of our payment to you.

#### (15) SUIT AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy. Suit must be brought within one year (Maryland - three years) after the loss or damage occurs.

#### (16) WHAT TO DO WHEN A LOSS HAPPENS

In case of a loss, anyone we protect must:

1. give us or our Agent immediate notice of the loss. If the loss is due to criminal activity or theft, you must also notify the police;
2. do whatever possible to recover and protect the property from further damage. If it is necessary to protect the property, you must make reasonable repairs, and keep a record of all repair costs;
3. furnish a complete inventory of damaged property including quantity, actual cash value and amount of loss claimed;

4. produce for examination, with permission to copy, all books of accounts, bills, invoices, receipts, other vouchers and other financial information as we may reasonably require;
5. show us or our representative the damaged property, as often as may be reasonably required;
6. at our request, separately submit to examinations and statements under oath and sign a transcript of the same;
7. cooperate with us in our investigation of a loss and any suits;
8. send us, within 60 days after our request, your signed and sworn proof of loss statement which includes an explanation of the following:
  - a. time and cause of loss;
  - b. your interest in the property and the interest of all others involved;
  - c. any encumbrances on the property;
  - d. other policies which may cover the loss;
  - e. any changes in title, use, occupancy or possession of the property which occurred during the policy term;
  - f. when required by us, any plans, specifications and estimates for the repair of the damaged building;
  - g. the inventory of damaged property as prepared in 3. of this condition;
  - h. receipts for any additional living costs as a result of the loss, and records of pertinent rental loss;
  - i. in case of claim under *Credit Card, Charge Plate, Check Forgery and Counterfeit Money Protection*, an affidavit stating amount, time and cause of loss.

## HOME AND FAMILY LIABILITY PROTECTION -- SECTION II

Personal Liability Coverage includes Bodily Injury Liability Coverage, Property Damage Liability Coverage and Personal Injury Liability Coverage.

### BODILY INJURY LIABILITY COVERAGE

### PROPERTY DAMAGE LIABILITY COVERAGE

### OUR PROMISE

We will pay all sums up to the amount shown on the Declarations which anyone we protect becomes legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence during the policy period. We will pay for only bodily injury or property damage covered by this policy.

We may investigate or settle any claim or suit for damages against anyone we protect, at our expense. If anyone we protect is sued for damages because of bodily injury or property damage covered by this policy, we will provide a defense with a lawyer we choose, even if the allegations are not true. We are not obligated to pay any claim or judgment or defend any suit if we have already

used up the amount of insurance by paying a judgment or settlement.

### PERSONAL INJURY LIABILITY COVERAGE

### OUR PROMISE

We will pay all sums up to the amount shown on the Declarations which anyone we protect becomes legally obligated to pay as damages because of personal injury caused by an offense committed during the policy period. We will pay for only personal injury covered by this policy.

We may investigate or settle any claim or suit for damages against anyone we protect, at our expense. If anyone we protect is sued for damages because of personal injury covered by this policy, we will provide a defense with a lawyer we choose, even if the allegations are not true. We are not obligated to pay any claim or judgment or defend any suit if we have already used up the amount of insurance by paying a judgment or settlement.

## MEDICAL PAYMENTS TO OTHERS COVERAGE

### OUR PROMISE

We will pay the necessary medical expenses incurred or medically determined within three years from the date of an accident causing bodily injury or personal injury. This three-year limitation does not apply to funeral expenses.

This coverage does not apply to you or regular residents of your household, other than residence employees.

To others, we will pay only in the following situations:

1. To a person on an insured location with the permission of anyone we protect; or
2. To a person off an insured location if the bodily injury or personal injury:
  - a. arises out of a condition on an insured location, or adjoining ways;
  - b. is caused by the activities of anyone we protect;
  - c. is caused by a residence employee in the course of employment by anyone we protect;
  - d. is caused by an animal anyone we protect owns or is caring for.

Payment under this coverage is not an admission of liability by us or anyone we protect.

### WHAT WE DO NOT COVER -- EXCLUSIONS

**Bodily Injury Liability Coverage**

**Property Damage Liability Coverage**

**Personal Injury Liability Coverage**

**Medical Payments To Others Coverage**

We do not cover under *Bodily Injury Liability Coverage*, *Property Damage Liability Coverage*, *Personal Injury Liability Coverage* and *Medical Payments To Others Coverage*:

1. Bodily injury, property damage or personal injury expected or intended by anyone we protect even if:
  - a. the degree, kind or quality of the injury or damage is different than what was expected or intended; or
  - b. a different person, entity, real or personal property sustained the injury or damage than was expected or intended.

We do cover reasonable acts committed to protect persons and property.

2. Bodily injury, property damage or personal injury arising out of business pursuits of anyone we protect.

We do cover:

- a. activities normally considered non-business;
- b. business pursuits of salespersons, collectors, messengers and clerical office workers employed by others. We do not cover installation, demonstration and servicing operations;
- c. business pursuits of educators while employed by others as educators, including corporal punishment of pupils;

- d. occasional business activities of anyone we protect. These include, but are not limited to, babysitting, caddying, lawn care, newspaper delivery and other similar activities.

We do not cover regular business activities or business activities for which a person is required to be licensed by the state.

- e. the ownership of newly-acquired one or two family dwellings, but only for a period of 30 consecutive days after acquisition unless described on the Declarations.

3. Bodily injury, property damage or personal injury arising out of the rental or holding for rental of the residence premises by anyone we protect.

We do cover if the residence premises is:

- a. occasionally rented or held for rental to others as a residence;
- b. rented or held for rental in part as a residence, unless for the accommodation of more than three roomers or boarders;
- c. rented or held for rental in part as an office, school, studio or private garage.

4. Bodily injury, property damage or personal injury arising out of the rendering or failing to render professional services. Professional services include, but are not limited to:

- a. any architectural, engineering or industrial design services;
- b. any medical, surgical, dental or other services contributing to the health of persons or animals;
- c. any beauty or barber services;
- d. any legal, accounting or insurance services;
- e. the servicing, installation, or maintenance of computer hardware or software;
- f. the selling, designing, licensing, consultation, franchising, furnishing or creation of computer hardware or software, including electronic data processing programs, designs, specifications, manuals or instructions.

5. Bodily injury, property damage or personal injury arising out of any premises owned by or rented to anyone we protect which is not an insured location. This exclusion does not apply to bodily injury or personal injury to a residence employee arising out of and in the course of employment by anyone we protect.

6. Bodily injury, property damage or personal injury arising out of the ownership, maintenance or use of:
  - a. aircraft;
  - b. any land motor vehicle owned or operated by or rented or loaned to anyone we protect.

We do cover motor vehicles if:

- 1) they are used solely at an insured location and not subject to motor vehicle registration;
- 2) they are kept in dead storage at an insured location;
- 3) they are a recreational land motor vehicle not designed for use on public roads while at an insured location;
- 4) they are a golf cart, wherever used or located;
- 5) they are a lawn or farm type vehicle or snowblower, wherever used or located, if not subject to motor vehicle registration;
- 6) they are designed to assist the handicapped.

- c. watercraft:
  - 1) owned by or frequently rented to anyone we protect if it has inboard or inboard-outdrive

- • • motor power of more than 75 horsepower; or
- X 2) owned by or frequently rented to anyone we protect if it is a sailing vessel 26 feet or more in length; or
- X 3) powered by one or more outboard motors with more than 75 total horsepower owned by anyone we protect at the beginning of the policy period.

X However, if anyone we protect acquires watercraft, regardless of horsepower, coverage applies during the policy period. If the watercraft is acquired within 60 days of the end of the policy period, we will provide coverage for a maximum of 60 days. We have the right to charge you an additional premium.

*Exclusion 6. c.* does not apply while the watercraft is stored on shore.

*Exclusion 6.* does not apply to bodily injury or personal injury to any residence employee arising out of and in the course of employment by anyone we protect.

We do not cover liability arising out of the negligent entrustment of an aircraft, motor vehicle or watercraft excluded in 6.

We also do not cover statutorily imposed vicarious parental liability for the actions of a child or minor using an aircraft, motor vehicle or watercraft excluded in 6.

7. Bodily injury, property damage or personal injury arising out of war (declared or undeclared), civil war, insurrection, rebellion or revolution.

Discharge of a nuclear weapon is considered a warlike act, even if accidental.

8. Bodily injury or personal injury which arises out of or results from a communicable disease or condition transmitted by anyone we protect to any other person through a parasite, virus, bacteria or any other organism.

9. Except as provided in paragraph 2. c. under "What We Do Not Cover - Bodily Injury Liability Coverage, Property Damage Liability Coverage, Personal Injury Liability Coverage and Medical Payments To Others Coverage," bodily injury, property damage or personal injury which arises out of the sexual molestation, corporal punishment or physical or mental abuse by anyone we protect.

10. Bodily injury, property damage or personal injury which arises 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.

11. Bodily injury, property damage or personal injury which arises out of the discharge, disposal, release or escape of any solid, liquid, gaseous or thermal irritant, pollutant or contaminant, including smoke, vapors, soot, fumes, acids, alkalis chemicals, and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

12. Punitive or exemplary damages and related defense costs.

We do not cover under Bodily Injury Liability Coverage, Property Damage Liability Coverage or Personal Injury Liability Coverage.

1. Liability assumed under any oral contract or agreement, or by contract or agreement in connection with any business of anyone we protect.
2. Liability for your share of any loss assessment charged against all members of an association or corporation of property owners. This exclusion does not apply to *What We Also Pay, (9) Loss Assessment, Section I* of this policy.
3. Property damage to property owned by anyone we protect.
4. Property damage to property rented to, occupied or used by, or in the care of anyone we protect. This exclusion does not apply to property damage caused by fire, explosion, sonic boom or smoke, or by accidental discharge of water from a waterbed or aquarium.
5. Bodily injury or personal injury to any person eligible to receive any benefits required to be provided or voluntarily provided by anyone we protect under any workers compensation, non-occupational disability or occupational disease law.
6. Bodily injury, property damage or personal injury for which anyone we protect is covered under any nuclear energy liability policy, or would be covered if its amounts of insurance had not been exhausted.
7. Bodily injury or personal injury arising out of business pursuits of anyone we protect, other than business pursuits covered by this policy.
8. Bodily injury or personal injury to employees of anyone we protect arising out of employment.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of employment by anyone we protect.

9. Personal injury arising out of willful violation of a law or ordinance by anyone we protect.
10. Personal injury arising out of civic or public activities performed for pay by anyone we protect.
11. Suits for libel, slander or defamation of character made against anyone we protect if the publication or statement:
  - a. took place before the effective date of this insurance; or
  - b. was knowingly untrue.
12. Bodily injury or personal injury to you and if residents of your household, your relatives, and persons under the age of 21 in your care or in the care of your resident relatives.

Under *Medical Payments To Others Coverage* we do not cover bodily injury or personal injury:

1. to a residence employee if it occurs off an insured location and does not arise out of or in the course of employment by anyone we protect.
2. to any person eligible to receive any benefits required to be provided or voluntarily provided under any workers compensation, non-occupational disability or occupational disease law.
3. from any nuclear reaction, radiation or radioactive contamination, or any consequence of any of these.
4. to anyone we protect or other person(s) who resides on the insured location, except a residence employee.

## WHAT WE ALSO PAY

Payment for the following is in addition to the amounts of insurance shown on the Declarations.

## (1) CLAIM EXPENSES

We pay:

1. court costs, to defend or settle as we believe proper, any claim or suit against anyone we protect, for damages covered under this policy. Our payment of the limit of protection for a settlement, judgment, or deposit in court ends our duty to pay under this item.
2. expenses incurred, to investigate and defend or settle as we believe proper, any claim or suit against anyone we protect for damages covered under this Policy. Our payment of the limit of protection for a settlement, judgment, or deposit in court ends our duty to pay under this item.
3. post-judgment interest, but only that portion of the post-judgment interest which accrues on that part of any judgment that does not exceed the limit of protection on a suit we defend. Our payment, offer in writing, or deposit in court of that part of the judgment which does not exceed the limit of protection ends our duty to pay any post-judgment interest which accrues after the date of our payment, written offer or deposit.
4. prejudgment interest or delay damages awarded on that part of any judgment that does not exceed the limit of protection. If we offer in writing to pay the applicable limit of protection, we will not pay any prejudgment interest or delay damages for the period of time after the offer.
5. reasonable expenses anyone we protect may incur at our request to help us investigate or defend a claim or suit. This includes up to \$300 a day for actual loss of earnings (but not loss of other income) and vacation time or other benefit loss.
6. premiums on the following types of bonds, but not for bond amounts greater than the limit of protection:
  - a. appeal bond in a suit we defend;
  - b. bail bond (with premium of \$500 or less) required due to an accident or related traffic violation involving a vehicle we insure;
  - c. attachment bond to release property of anyone we protect due to an accident or related traffic violation involving a vehicle covered by this policy.

We have no duty to apply for or furnish such bonds. 7. reasonable lawyers' fees up to \$50 which anyone we protect incurs because of arrest, resulting from an accident involving a vehicle covered by this policy.

X

## (2) DAMAGE TO PROPERTY OF OTHERS

We pay, on a replacement cost basis, up to \$1000 per occurrence for property damage to property of others caused by anyone we protect. This coverage also applies to property of others in the possession of anyone we protect.

We will not pay for property damage:

1. to the extent of any amount recoverable under *Section I* of this policy;
2. caused intentionally by anyone we protect who has attained the age of 13;
3. to property owned by anyone we protect;
4. to property owned by or rented to a tenant of anyone we protect or a resident of your household;
5. arising out of:
  - a. an act or omission in connection with a premises (other than an insured location) owned, rented or controlled by anyone we protect;
  - b. business pursuits; or
  - c. ownership, maintenance or use of a motor vehicle, aircraft or watercraft. We will pay for property damage to a land motor vehicle designed for recreational use off public roads while in the possession of or caused by anyone we protect if:
    - 1) not subject to motor vehicle registration, and
    - 2) not owned by anyone we protect.

X

## (3) FIRST AID EXPENSES

We pay reasonable expenses for first aid to other persons and animals at the time of an accident involving anyone we protect.

## (4) LOSS ASSESSMENT - PERSONAL LIABILITY COVERAGE ONLY

See *What We Also Pay*, (9) *Loss Assessment - Section I*.

X

# RIGHTS AND DUTIES -- CONDITIONS -- SECTION II

## (1) DUTIES OF AN INJURED PERSON - MEDICAL PAYMENTS TO OTHERS COVERAGE

The injured person or someone acting on behalf of that person will:

1. give us written proof of claim, as soon as possible, under oath if required;
2. sign papers at our request to allow us to obtain medical reports and copies of records.

The injured person will submit to mental and physical examination by doctors selected by us as often as reasonably required. We may pay the injured person or the provider of the services.

Nov 17 2003

## CLAIMS

Our total liability under *Medical Payments To Others Coverage* for all medical expense payable for bodily injury and personal injury to any one person will not exceed the "Each Person" amount shown on the Declarations.

X

### (3) OTHER INSURANCE - PERSONAL LIABILITY COVERAGE

This insurance is excess over any other valid and collectible insurance. However, if the other insurance is specifically written as excess insurance over this policy, the limits of this policy apply first.

If at the time of loss there is other insurance in the name of an association or corporation of property owners covering the same property covered by this policy, the insurance afforded by this policy shall be excess over the amount recoverable under such other insurance.

### (4) SUIT AGAINST US

We may not be sued unless there is full compliance with all the terms of this policy.

No one has the right to make us a party to a suit to determine the liability of anyone we protect.

The legal liability of anyone we protect must be determined before suit under *Personal Liability Coverage* may be brought against us. This determination may be by a court of law or by written agreement of all parties, including us.

### (5) WHAT TO DO WHEN AN OCCURRENCE, OFFENSE, CLAIM OR SUIT HAPPENS

When there is an occurrence, offense, claim or suit anyone we protect will:

1. notify us or our Agent in writing as soon as possible, stating:
  - a. your name and policy number;

## RIGHTS AND DUTIES -- GENERAL POLICY CONDITIONS -- SECTION I & II

We, you and anyone else protected by this policy must do certain things in order for the terms of this policy to apply.

### (1) ACCOUNTING

If the premium payment plan chosen for this policy includes a service charge, the service charge is paid to the Erie Indemnity Company.

*The following applies only to policies issued by Erie Insurance Exchange:*

Erie Indemnity Company may keep up to 25% of the premium written or assumed by Erie Insurance Exchange as compensation for (A) becoming and acting as Attorney-in-Fact, (B) managing the business and affairs of Erie Insurance Exchange and (C) paying general administrative expenses, including sales commissions, salaries and employee benefits, taxes, rent, depreciation, supplies and data processing.

- b. the time, place, and circumstances of the occurrence, offense, claim or suit;
- c. names and addresses of injured persons and witnesses.

2. give us:
  - a. promptly, any papers that relate to the occurrence, offense, claim or suit;
  - b. a signed statement containing all the facts about the occurrence, offense, claim or suit.
3. at our request:
  - a. assist in making settlement;
  - b. help us enforce any right of recovery against any party liable to anyone we protect;
  - c. cooperate with us in our investigation of a loss and any suit;
  - d. attend hearings and trials;
  - e. assist us in securing and giving evidence and in obtaining the attendance of witnesses;
  - f. separately submit to examinations and statements under oath and sign transcripts of same;
  - g. authorize us to obtain records and other information;
  - h. answer all reasonable questions about the occurrence, offense, claim or suit;
  - i. allow us to inspect and appraise the damaged property before its repair or disposal.
4. under the coverage *Damage To Property Of Others*, send us, within 60 days of our request, sworn proof of loss.
5. not make payments, assume obligations or incur expenses, except at one's own cost, other than for first aid to other persons and animals at the time of the bodily injury.

The rest of the premium will be placed on the books of the Erie Insurance Exchange. We will deposit or invest this amount as permitted by law. This amount will be used to pay losses, loss adjustment expenses, investment expenses, damages, legal expenses, court costs, taxes, assessments, licenses, fees, any other governmental fines and charges, establishment of reserves and surplus, and reinsurance, and may be used for dividends and other purposes Erie Indemnity Company decides are to the advantage of the Subscribers.

### (2) ASSIGNMENT

Interest in this policy may be transferred only with our written consent. We may require evidence that all Named Insureds approve the assignment.

### (3) BANKRUPTCY OF ANYONE WE PROTECT

Bankruptcy or insolvency of anyone we protect or anyone we protect's estate will not relieve us of our obligations.

#### (4) CANCELLATION

##### Your Right to Cancel

You may cancel this policy by mailing or delivering to our Agent or us written notice stating at what future date you want the cancellation to take effect. We may waive these requirements by confirming the date of cancellation to you in writing.

##### Our Right to Cancel or Refuse to Continue

We may cancel or refuse to continue this policy or any coverage by mailing you written notice stating the effective date of our action. Our action will comply with the laws of the state where your residence premises is located. Our cancellation or refusal to continue this policy will not take effect until at least 30 days (Maryland - 45 days), except for non-payment of premium after we send it. The effective date for cancellation for non-payment of premium will be in compliance with the laws of the state in which you reside.

We reserve the right to cancel for your non-compliance with our premium payment plans. We do not waive our right to cancel, even if we have accepted prior late payments.

##### Method of Giving Notice

Mailing notice to the address shown on the Declarations will be sufficient proof of notice. The policy period will end on the date and time stated in the notice.

##### Return of Premium

If your policy is cancelled by you or us, we will return the pro rata unused share of your premium. Cancellation will be effective even if we have not given or offered the returned premium.

#### (5) CONCEALMENT, FRAUD OR MISREPRESENTATION

This entire policy is void as to you and anyone we protect if, whether before or after a loss:

1. you or anyone we protect have intentionally concealed or misrepresented any material fact or circumstance concerning this insurance; or
2. there has been fraud or false swearing by you or anyone we protect as to any matter that relates to this insurance or the subject thereof; or
3. you or anyone we protect engage in fraudulent conduct as to any matter that related to this insurance or subject thereof.

In the event of 1., 2. or 3. above, we will not pay for any loss.

#### (6) CONTINUOUS POLICY

Your policy is a continuous policy. It will continue in force until cancelled by you or terminated by us as explained in the Cancellation Condition. Each year we will send you a Declarations which shows the premium due for the next policy period.

In return for this service, you must mail us written notice

prior to the new policy period if you want to cancel. If we do not receive this notice, your policy remains in force and you must pay us the earned premium due for this time.

#### (7) COOPERATION

You agree to cooperate with us by:

1. truthfully completing and promptly returning questionnaires and audit forms about this insurance;
2. permitting and helping with inspections and audits; and
3. complying with specific recommendations to improve your risk.

#### (8) HOW YOUR POLICY MAY BE CHANGED

This policy conforms to the laws of the state in which your residence premises is located. If the laws of the state change, this policy will comply with those changes.

Your policy may change by asking us. Your request must contain enough information to identify you. Asking our Agent is the same as asking us. If we agree with your request, we will then issue a Declarations.

We will give you the benefit of any change in coverage made by us, if it does not require additional premium. This change will be effective as of the date we implement the change for you in your state.

If the information we use to determine the premium for your coverage(s) changes during the policy period, we may adjust your premium. Premium adjustments will be made using rules and rates in effect for our use.

#### (9) OUR RIGHT TO RECOVER FROM OTHERS

After we make a payment under this policy, we will have the right to recover from anyone else held responsible for the loss. This right will not apply under Section I if you have waived it in writing prior to the loss.

Anyone to whom we have paid will sign papers and do whatever is required to transfer this right to us, and do nothing to harm this right.

Anyone receiving payment from us and someone else for the same loss will reimburse us up to our payment less a proportionate share of the costs (including attorney fees) of such recovery.

We will pay all reasonable expenses anyone may incur at our request to help us recover damages from anyone else held responsible. This includes up to \$300 a day for actual loss of earnings.

This condition does not apply under Section II - Medical Payments To Others Coverage or Damage To Property Of Others.

#### (10) PRIORITY

This insurance will first protect you, your spouse residing in your household and then others we protect.

X

**(11) SURVIVORS' COVERAGE**

If you die, the policy will cover:

1. anyone we protect who is a member of your household at the time of your death, but only while a resident of the residence premises;
2. anyone having lawful possession of insured property until a representative is appointed, but only until the end of the policy period during which your death occurs;

3. your legal representative, but only while performing duties as your representative and only until the end of the policy period during which your death occurs.

**(12) TIME OF INCEPTION**

If this policy replaces coverage in other policies which end on the inception date of this policy, but at a different time, then this policy will take effect when the other coverage ends.

This policy has been signed on our behalf at Erie, Pennsylvania by our President and Secretary. If required by law, it has been countersigned on the Declarations by our authorized Agent.

*J. R. K. Lander*  
Secretary

*Jeffrey A. Buckley*  
President



ERIE INSURANCE GROUP

Home Office • 100 Erie Insurance Place • Erie, PA 16530 • (814) 870-2000  
Visit our Website at [www.erieinsurance.com](http://www.erieinsurance.com)

PICV Q59 1805275 0002 111803 ISS EFF RSN  
\*\*\*\*\*  
ERIE INSURANCE EXCHANGE  
HOMEPROTECTOR POLICY  
ULTRACOVER

CONTINUATION NOTICE

AA4242 HRENKO INS AGENCY, INC. 11/18/03 TO 11/18/04 Q59 1805275 N

BRENDA A BUCK  
RR 1 BOX 463A  
MORRISDALE PA 16858-9513

AS LISTED BELOW  
OR ON REVERSE SIDE

AGENT - HRENKO INS AGENCY, INC.

962 TYRONE PIKE

P O BOX 35

AGENT PHONE - (814) 342-5204

PHILIPSBURG PA 16866 9312

COVERAGE BEGINS AND ENDS AT 12.01 AM STANDARD TIME AT THE LOCATION OF THE

PICV Q59 1805275 0003 111803 ISS EFF RSN

\*\*\*\*\*  
INSURED PROPERTY. UNTIL TERMINATED, THIS POLICY WILL CONTINUE IN FORCE.

LOCATION OF RESIDENCE PREMISES IF OTHER THAN STATED IN ITEM 1 OR IF SPECIFIC  
DESIGNATION IS NEEDED. ZIP CODE - 16858 GRAHAM TWP, CLEAR CO  
RT 668 ALLPORT-BIGLER CUTOFF.

PROPERTY INFORMATION - PRIMARY RESIDENCE, YEAR OF CONSTRUCTION 1999, FRAME,  
UPGRADED.

PROPERTY IS WITHIN 1000 FEET OF A FIRE HYDRANT AND WITHIN 3 MILES OF  
A RESPONDING FIRE DEPARTMENT.

AUTOMATIC ADJUSTMENT OF COVERAGE WAS APPLIED. YEARLY INCREASE ON DWLG IS 3%.

THE AMOUNT OF INSURANCE APPLYING TO THE DWELLING IS THE REPLACEMENT COST  
AT THE TIME OF THE LOSS.

SECTION I - PROPERTY PROTECTION	AMOUNT OF INSURANCE	PREMIUMS
DWELLING	\$ 93,500	\$ 323.00
OTHER STRUCTURES	\$ 18,700	
PERSONAL PROPERTY	\$ 70,125	

PICV Q59 1805275 0004 111803 ISS EFF RSN

\*\*\*\*\*

LOSS OF USE

LOSS SUSTAINED NOT TO  
EXCEED 12 CONSECUTIVE MONTHS

SECTION II - HOME AND FAMILY LIABILITY PROTECTION

PERSONAL LIABILITY - EACH OCCURRENCE \$ 100,000

MEDICAL PAYMENTS TO OTHERS - EACH PERSON \$ 1,000

FULL TERM PREMIUM FOR THIS RESIDENCE - - - - - \$ 323.00

FULL TERM ADDITIONAL COVERAGE PREMIUM - - - - - \$ 16.00

TOTAL PREMIUM FOR THIS POLICY - - - - - \$ 307.00

SECTION I DEDUCTIBLE \$ 250.

APPLICABLE FORMS - 2005 02/01, HP-PA 02/01, UF-8705 06/96\*, UF-6523 08/98\*,

UE9013 04/01\*, HP-FP 02/03\*, UF4043 02/03\*, HP-AAN 01/97, UF2106 05/01\*.

SEE REVERSE SIDE

AGTCMM

10/04/0

PICV Q59 1805275 0005 111803 ISS EFF RSN  
\*\*\*\*\*

PRIMARY RESIDENCE-MORTGAGEE  
COUNTY NATIONAL BANK  
PO BOX 42  
CLEARFIELD PA 16830-0042

NO BUSINESS PURSUITS ARE CONDUCTED AT THE PREMISES, EXCEPT AS FOLLOWS -

ADDITIONAL COVERAGES	PREMIUMS
YOUR BASIC DWELLING PREMIUM REFLECTS OUR NEWER HOME DISCOUNT PREMISES ALARM SYSTEM - TYPE 2	INCL ABOVE \$ 16.00C

PICV Q59 1805275 04 0002 012703 ISS EFF RSN

\*\*\*\*\*  
ERIE INSURANCE EXCHANGE  
HOMEPROTECTOR POLICY  
ULTRACOVER

AMENDED DECLARATIONS 01 \* \*  
EFFECTIVE 01/27/03 ATTACH THIS TO YOUR POLICY.

REASON FOR AMENDMENT - ADDED MORTGAGEE - PRIMARY RESIDENCE

AA4242 HRENKO INS AGENCY, INC. 11/18/02 TO 11/18/03 Q59 1805275 N

BRENDA A BUCK  
RR 1 BOX 463A  
MORRISDALE PA 16858-9513

AS LISTED BELOW  
OR ON REVERSE SIDE

AGENT - HRENKO INS AGENCY, INC.

962 TYRONE PIKE

AGENT PHONE - (814) 342-5204

P O BOX 35

PHILIPSBURG PA 16866 9312

COVERAGE BEGINS AND ENDS AT 12.01 AM STANDARD TIME AT THE LOCATION OF THE

PICV Q59 1805275 04 0003 012703 ISS EFF RSN

\*\*\*\*\*  
INSURED PROPERTY. UNTIL TERMINATED, THIS POLICY WILL CONTINUE IN FORCE.

LOCATION OF RESIDENCE PREMISES IF OTHER THAN STATED IN ITEM 1 OR IF SPECIFIC  
DESIGNATION IS NEEDED. ZIP CODE - 16858 GRAHAM TWP, CLEAR CO  
RT 668 ALLPORT-BIGLER CUTOFF.

PROPERTY INFORMATION - PRIMARY RESIDENCE, YEAR OF CONSTRUCTION 1999, FRAME,  
UPGRADED.

PROPERTY IS WITHIN 1000 FEET OF A FIRE HYDRANT AND WITHIN 3 MILES OF  
A RESPONDING FIRE DEPARTMENT.

THE AMOUNT OF INSURANCE APPLYING TO THE DWELLING IS THE REPLACEMENT COST  
AT THE TIME OF THE LOSS.

SECTION I - PROPERTY PROTECTION	AMOUNT OF INSURANCE
DWELLING	\$ 90,500
OTHER STRUCTURES	\$ 18,100
PERSONAL PROPERTY	\$ 67,875
LOSS OF USE	LOSS SUSTAINED NOT TO EXCEED 12 CONSECUTIVE MONTHS

PICV Q59 1805275 04 0004 012703 ISS EFF RSN  
\*\*\*\*\*  
SECTION II - HOME AND FAMILY LIABILITY PROTECTION  
PERSONAL LIABILITY - EACH OCCURRENCE \$ 100,000  
MEDICAL PAYMENTS TO OTHERS - EACH PERSON \$ 1,000  
NO DIFFERENCE IN PREMIUM DUE TO THE CHANGE \$ .00

SECTION I DEDUCTIBLE \$ 250.

APPLICABLE FORMS - 2005 02/01, HP-PA 02/01, UF8705 06/96, UF6523 08/98,  
UF-9013 04/01, HP-AAN 01/97.

PRIMARY RESIDENCE-MORTGAGEE  
COUNTY NATIONAL BANK  
PO BOX 42  
CLEARFIELD PA 16830-0042

SEE REVERSE SIDE

AGTCMM

01/28/0

PICV Q59 1805275 04 0005 012703 ISS EFF RSN

\*\*\*\*\*  
NO BUSINESS PURSUITS ARE CONDUCTED AT THE PREMISES, EXCEPT AS FOLLOWS -

ADDITIONAL COVERAGES

YOUR BASIC DWELLING PREMIUM REFLECTS OUR NEWER HOME DISCOUNT  
PREMISES ALARM SYSTEM - TYPE 2



## ERIE INSURANCE GROUP

JAMES J. WITKOWSKY, CPCU, AIC, AIM  
Claims Manager

Branch Office • 3410 West 12th Street • Erie, Pennsylvania 16505 • (814) 451-5000  
Toll Free 1-877-771-3743 • Fax (814) 451-5060 • [www.erieinsurance.com](http://www.erieinsurance.com)

ERIE

September 8, 2003

Brenda Buck  
R.R. 1, Box 463A  
Morrisdale, PA 16858-9513

ERIE

### RESERVATION OF RIGHTS

NOV 10 2003

Re: ERIE Claim #010110488941  
ERIE Policy #Q59-1805275  
ERIE Insured: Brenda Buck  
Date of Loss: 9/3/03

CLAIMS

Dear Ms. Buck:

This letter is in regard to a claim that you submitted to Erie Insurance Group on September 4, 2003, involving your foundation wall caving in.

As you are aware, this adjuster conducted an investigation at your dwelling on Thursday, September 4, 2003 and Friday, September 5, 2003. At the current time, Erie Insurance Group has referred a cause inspection to Richard Hughes, engineer out of Clearfield, Pennsylvania.

Please be advised at this time that Erie Insurance Group is continuing to investigate this matter. Investigation of this claim is being conducted with full and completed Reservation of Rights afforded to Erie Insurance Group under the policy of insurance issued to Brenda A. Buck. This policy is the HomeProtector Ultracover Policy Q59-1805275 (Edition 02/01), effective from November 18, 2002 to November 18, 2003. Our investigation of this claim at this time is not to be construed as a waiver of any of the exclusionary provisions of your HomeProtector Ultracover Policy.

Based on the information that we have to date, Erie Insurance Group is reserving the right to deny or disclaim coverage because certain policy exclusions or provisions may apply, or may not have been met. Specifically, we reserve the right to deny this claim based on the following provisions in your HomeProtector Ultracover Policy. Please refer to pages 7, 8 and 9 of your HomeProtector Ultracover Policy, which states under:

#### WHAT WE DO NOT COVER -- EXCLUSIONS

##### Under the Dwelling, Other Structures and Personal Property Coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence to the loss:

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock;
4. caused by 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 fire protective system or a household appliance.

ERIE-18

NOV 10 2003

However, there is coverage if the loss is sudden and accidental Brenda Buck

CLAIMS

747776\_1

EXHIBIT

Brenda Buck  
Page 2  
September 8, 2003

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock waves or tremors before, or during, or after volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.
9. by water damage, meaning:
  - a. flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
  - c. water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

Also, please refer to page 9 of the policy which states:

**Under the Dwelling and Other Structures:**

We do not pay for loss:

1. by weather conditions, if any peril excluded by this policy contributes to the loss in anyway;
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate:
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance

of property whether on or off the resident premises by any person, group, organization or governmental body.

Please be aware that Erie Insurance Group is not, at this time, denying coverage, but is reserving the right to do so at some time in the future. It appears to be in the best interest of all concerned parties that Erie Insurance Group, without prejudice or waiving any of its rights, continues to investigate this matter at this time.

Erie Insurance Group does not waive its right to assert any of the policy exclusions. Additionally, Erie Insurance Group does not waive its right to assert any additional policy exclusions or conditions that were not mentioned in this letter. We suggest that you take a copy of your insurance policy along with this letter to any personal attorney of your choice, if you desire Brenda Buck

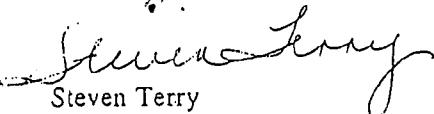
Brenda Buck  
Page 3  
September 8, 2003

We also wish to advise you that a claim should be submitted to any other insurance carrier who may have a potential for coverage of this incident.

Nothing in this letter is intended to waive or alter any of the terms, conditions or defenses under the policy of insurance in question, all of which are expressly reserved and reaffirmed.

If you have any questions or concerns, please feel free to contact me at the number listed below or you may correspond to Erie Insurance Group, P.O. Box 966, Clearfield, Pennsylvania 16830.

Sincerely,



Steven Terry  
Claims Adjuster  
Erie Branch Claims  
(814) 768-3538

ST:gjp

By certified mail - return receipt requested

cc: S. Terry  
cc: File

747776\_1



## ERIE INSURANCE GROUP

Branch Office • 3410 West 12th Street • Erie, Pennsylvania 16505 • (814) 451-5000  
Toll Free 1-877-771-3743 • Fax (814) 451-5060 • [www.erieinsurance.com](http://www.erieinsurance.com)

JAMES J. WITKOWSKY, CPCU, AIC, AIM  
Claims Manager

ERIE 6

September 18, 2003

NOV 07 2003

CLAIMS

Brenda A. Buck  
R.R. 1, Box 463A  
Morrisdale, PA 16858-9513

Re: ERIE Claim #010110488941  
ERIE Policy #Q59-1805275  
ERIE Insured: Brenda Buck  
Date of Loss: 9/3/03

Dear Ms. Buck:

We have reviewed the facts of this case. As you probably know, our obligation as an insurer is to reimburse you only when a covered loss takes place. We must be guided by all information available to us.

We wish to be fair in handling your claim but the facts indicate that there is no coverage under your Ultracover Homeowners Policy effective from November 18, 2002 to November 8, 2003. For this reason, we must respectfully decline to make payment of your claim.

Our decision is based upon the following. Please refer to your Ultracover Homeowners Policy with Erie Insurance Group, pages 7 through 9 where it states under:

### WHAT WE DO NOT COVER -- EXCLUSIONS

#### Under the Dwelling, Other Structures and Personal Property Coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

3. by freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf or dock.
4. caused by 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 fire protective system, or a household appliance.

However, there is coverage if the loss is sudden and accidental.

8. by earth movement, due to natural or manmade events, meaning earthquake, including land shock waves, or tremors before, during, or after a volcanic eruption, mine subsidence, sinkhole, landslide, mudslide, mud flow, earth sinking, rising, or shifting. Direct loss by fire, explosion, sonic boom, theft or breakage of glass resulting from earth movement, mine subsidence, sinkhole

ERIE-1

NOV 10 20

CLAIMS

754674\_1

EXHIBIT

The ERIE Is A  
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ince 1925

Brenda A. Buck  
Page 2  
September 18, 2003

landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

9. by water damage, meaning:

- a. flood, surface water, waves, tides, tidal water or overflow of a body of water. We do not cover spray from any of these, whether or not driven by wind;
- c. water below the surface of the ground. This includes water which exerts pressure on, or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

Additionally, please refer to page 9 of the policy:

**Under the Dwelling Coverage and Other Structures Coverage:**

**We do not pay for loss:**

1. by weather conditions if any peril excluded by this policy contributes to the loss in any way.
2. caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. planning, zoning, development;
  - b. design, development of specifications, workmanship, construction;
  - c. materials used in construction; or
  - d. maintenance;of property whether on or off the residence premises by any person, group, organization, or governmental body.

As you are aware, our investigation revealed that the cause of the loss was subsurface rain water putting pressure on your foundation and ultimately causing the one foundation wall to cave in, coupled with improper construction of the foundation itself. As outlined in the above paragraphs, these causes of losses are specifically excluded under your Ultracover Homeowners Policy; therefore, once again, no coverage exists on this loss.

It should be noted that you had brought to light a pin hole leak in the underground water line caused by a "kink" due to improper construction. As you are aware, both Erie Insurance Group and the engineer, Rich Hughes, believe that this had no bearing whatsoever on the failure of the wall. Be advised even if it did, the exclusion listed earlier in the above paragraphs would still apply and there would still be no coverage for the loss at hand.

ERIE-18

W 10 2003



ERIE INSURANCE GROUP  
The ERIE Is Above All In SERVICE • Since 1925

CLAIMS 754674\_1

Brenda A. Buck  
Page 3  
September 18, 2003

After your review of the policy and the language of this letter, should you have any questions or comments, please feel free to contact me. If you have any disagreements with this determination with respect to the denial of coverage, please advise in writing, in detail, the basis of any disagreement that you may have. We will, of course, review any documentation or additional information that you provide us with.

As always, Erie Insurance Group reserves all of its rights, exclusions, defenses and limitations under this policy, and by this notification, it is not waiving any of its rights, limitations, defenses or other exclusions under the Ultracover Policy. In the event that information becomes available and would constitute an additional basis for denial of coverage, we will advise.

If you wish to discuss this matter further, please contact me at (814) 768-3538, or correspond to Erie Insurance Group, P.O. Box 966, Clearfield, Pennsylvania 16830.

Sincerely,

*Steven Terry*

Steven Terry  
Claims Adjuster  
Erie Branch Claims

**ERIE 6**

ST:ca

**NOV 07 2003**

**CLAIMS**

cc: Hrenko Insurance Agency  
P.O. Box 35  
Phillipsburg, PA 16866  
cc: S. Terry  
cc: File



ERIE INSURANCE GROUP  
The ERIE Is Above All In SERVICE, Since 1925

754674\_1

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Summary Judgment has been forwarded to all counsel of record by first class mail this day 12th of August, 2004.

David C. Mason, Esquire  
P.O. Box 28  
Philipsburg, PA 16866

DiBELLA, GEER, McALLISTER & BEST

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

Plaintiff,

vs.

ERIE INSURANCE GROUP,

Defendant.

CIVIL DIVISION

No. 03-1648 - CD

ORDER OF COURT SETTING FORTH  
HEARING DATE FOR MOTION FOR  
SUMMARY JUDGMENT

Filed on behalf of Defendant,  
ERIE INSURANCE GROUP

Counsel of Record for this Party:

KATHLEEN S. McALLISTER, ESQUIRE  
Pa. I.D. No. 30764

DiBELLA, GEER, McALLISTER & BEST  
Firm I.D. No. 099

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 - CD

vs.

ERIE INSURANCE GROUP,

Defendant.

ORDER OF COURT

AND NOW, to-wit, this 16<sup>th</sup> day of August, 2004, upon consideration of the Motion for Summary Judgment filed on behalf of Erie Insurance Exchange, it is hereby ORDERED, ADJUDGED and DECREED that the Motion will be heard before the Honorable Judge Cherry on September 23, 2004, at 1:30PM.

BY THE COURT:

/s/ Paul E. Cherry

J.

I hereby certify this to be a true and attested copy of the original statement filed in this case.

AUG 17 2004

Attest.

*Lee L. R.*  
Prothonotary/  
Clerk of Courts

5  
FILE COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03 - 1648 - CD

\*

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

\*

\*

ERIE INSURANCE GROUP

DEFENDANT

\*

\* TYPE OF PLEADING: Plaintiff's Motion

\* Summary Judgment

\*

\* FILED ON BEHALF OF:

\* Plaintiff

\*

\* COUNSEL OF RECORD FOR

\* THIS PARTY:

\* David C. Mason, Esquire

\* I.D. No. 39180

\* MASON LAW OFFICE

\* P.O. Box 28

\* Philipsburg, PA 16866

\* 814 342-2240

\*

\* COUNSEL OF RECORD FOR

\* DEFENDANT:

\* Richard W. DiBella, Esquire

\* DiBella & Greer

\* 312 Blvd. of Allies, 3<sup>rd</sup>. Floor

\* Pittsburgh, PA 15222

\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

AND NOW, comes the Plaintiff, BRENDA A. BUCK, by and through her attorney, DAVID C. MASON, and files this MOTION FOR SUMMARY JUDGMENT, and in support thereof avers as follows:

1. Plaintiff is Brenda A. Buck (hereinafter "Buck"), who filed an Action in Declaratory Judgment against Defendant ERIE INSURANCE GROUP (hereinafter "Erie"), arising out of the collapse of a portion of the foundation of her residence. This residence is in Graham Township, Clearfield County, Pennsylvania.
2. Erie insured the Buck premises under a product it called a **HomeProtector Ultracover Policy**. Attached as Exhibit "A" is a true and correct copy of **HomeProtector Ultracover Policy** number Q59 - 1805275 (Edition 2/01) in effect for the policy period November 18, 2002, to November 18, 2003.
3. The **HomeProtector Ultracover Policy** is an "All Risk Policy" meaning that all losses to the dwelling and its contents are covered except for those specifically excluded.
4. Despite the titling of the policy as an "ultra-cover" homeowners' insurance

product, following the sudden collapse of a portion of the basement of Plaintiff's home Erie denied coverage, claiming that the loss fell under one or more "exclusions" to the policy. Attached as Exhibit "B" is a true and correct copy of the denial letter from Erie dated September 18, 2003.

5. "Where an insurer relies on a policy exclusion as the basis for its denial of coverage..., the insurer has asserted an affirmative defense, and accordingly, bears the burden of proving such a defense." Spece v. Erie Insurance Group, 2004 PA Super 154, 2004 Pa. Super. LEXIS 798. Madison Construction Co. v. Harleysville Mutual Insurance Co., 557 Pa. 595, 735 A.2d 100 (1999).

6. If the exclusion(s) under which the insurer denies coverage is not clear, any doubts must be resolved in favor of coverage for the insured and against the insurer. Spece v. Erie Insurance Group, 2004 PA Super 154, 2004 Pa. Super. LEXIS 798.

7. The **HomeProtector Ultracover Policy** issued by Erie in this case is ambiguous, confusing, and capable of more than one interpretation. The contract provides as follows on page 7:

#### **PERILS WE INSURE AGAINST**

We pay for direct physical loss to property insured under the *Dwelling, Other Structures and Personal Property Coverages*, except as excluded or limited herein.

#### **WHAT WE DO NOT COVER -- EXCLUSIONS:**

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. by collapse, other than as provided in *What We Also Pay, (2) Collapse*.

8. The Erie Insurance Group "Home Protector - Ultracover Insurance Policy" also provides as follows:

**WHAT WE ALSO PAY:**

**(2) COLLAPSE**

**We** will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purposes.

9. Plaintiff is entitled to the entry of summary judgment in her favor and against Defendant, Erie Insurance, for the reasons set forth in the accompanying Memorandum of Law.

**WHEREFORE**, Plaintiff prays Your Honorable Court for the entry of an Order:

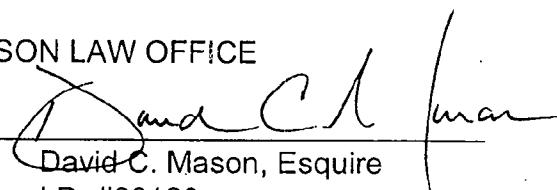
- (a) Declaring that the Defendant Erie Insurance Group's "Home Protector - Ultracover Insurance Policy" provides indemnity and coverage for the collapse of the wall of the foundation of Plaintiff's home in accordance with the contract's coverages and limits;
- (b) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses occasioned by the collapse of the wall of the foundation of Plaintiff's home, including the loss of personal property, loss of use and other damages as may be proved;

(c) Declaring that the Defendant Erie Insurance Group is required to indemnify Plaintiff for all losses associated with the loss and this action, including all of her costs and legal fees incurred in the instant action;

(d) Such other and further relief as the Court deems just and proper.

Respectfully submitted,

MASON LAW OFFICE

By: 

David C. Mason, Esquire  
I.D. #39180  
Attorney for Plaintiff

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FILE COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03 - 1648 - CD

\*

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

\*

ERIE INSURANCE GROUP

\*

\*

DEFENDANT

\*

\*

\* TYPE OF PLEADING: Plaintiff's Reply

\* To Defendant's Motion for

\* Summary Judgment

\*

\*

\* FILED ON BEHALF OF:

\* Plaintiff

\*

\* COUNSEL OF RECORD FOR

\* THIS PARTY:

\* David C. Mason, Esquire

\* I.D. No. 39180

\* MASON LAW OFFICE

\* P.O. Box 28

\* Philipsburg, PA 16866

\* 814 342-2240

\*

\* COUNSEL OF RECORD FOR

\* DEFENDANT:

\* Richard W. DiBella, Esquire

\* DiBella & Greer

\* 312 Blvd. of Allies, 3<sup>rd</sup>. Floor

\* Pittsburgh, PA 15222

\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

PLAINTIFF'S REPLY TO  
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

AND NOW, comes the Plaintiff, BRENDA A. BUCK, by and through her attorney, DAVID C. MASON, and files this REPLY to DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, and in support thereof avers as follows:

1. Defendant Erie Insurance Group filed a Motion for Summary Judgment on or about August 12, 2004.
2. The basis for Defendant's Motion for Summary Judgment is the insurer's position that the insurance policy excludes coverage for the loss sustained by the Plaintiff as described in her Complaint.
3. For the reasons set forth in the Memorandum of Law in support of Plaintiff's Motion for Summary Judgment, filed contemporaneously herewith, and incorporated herein by reference, Plaintiff avers that the "**HomeProtector Ultracover Policy**" is vague and ambiguous.
4. All doubt regarding the interpretation of insurance coverage should be resolved in favor of the Insured and against the Insurer, the drafter of the Agreement. Specie v. Erie

Insurance Company, 850 A.2d 679 (Pa. Super. 2004).

5. Defendant's Motion for Summary Judgment should be denied because the policy provisions at issue are ambiguous. Ambiguous is defined as "*doubtful or uncertain, especially from obscurity or indistinctness*", and "*capable of being understood in two or more possible senses or ways*". A synonym offered is "*obscure*". Merriam-Webster's Collegiate Dictionary, Eleventh Edition, 2003 Edition. Black's Law Dictionary, (Fifth Edition 1979) defines ambiguity as follows: "doubtfulness; doubleness of meaning; duplicity, indistinctness or uncertainty of meaning of an expression used in a written instrument. Want of clearness or definiteness, difficult to comprehend or distinguish; of doubtful import".

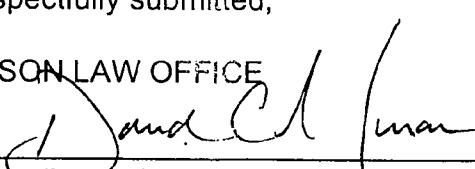
6. Where an Insurer denies coverage based on a policy exclusion, it has asserted an affirmative defense and they bear the burden of proving its defense, and also that the exclusion was not ambiguous. Madison Construction Company v. Harleysville Mutual Insurance Company, 557 Pa. 595, 735 A.2d 100 (1999).

**WHEREFORE**, Plaintiff prays Your Honorable Court for the entry of an Order dismissing Defendant's Motion for Summary Judgment.

Respectfully submitted,

MASON LAW OFFICE

By:

  
David C. Mason, Esquire  
I.D. #39180  
Attorney for Plaintiff

5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03 - 1648 - CD

\*

PLAINTIFF

\*

\*

vs.

\* JURY TRIAL DEMANDED

\*

ERIE INSURANCE GROUP

\*

\*

DEFENDANT

\*

\*

\*

\* TYPE OF PLEADING: CERTIFICATE OF  
\* SERVICE

\*

\* FILED ON BEHALF OF: Plaintiff

\*

\*

\* COUNSEL OF RECORD FOR

\* THIS PARTY:

\* David C. Mason, Esq.

\* MASON LAW OFFICE

\* Supreme Court No. 39180

\* P. O. Box 28

\* Philipsburg, PA 16866

\* (814) 342-2240

\*

\* COUNSEL OF RECORD FOR DEFENDANT:

\* Richard W. DiBella, Esquire

\* DiBella & Greer

\* 312 Blvd. of Allies, 3<sup>rd</sup>. Floor

\* Pittsburgh, PA 15222

\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

**CIVIL ACTION - LAW**

BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

## CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served true and correct copies of **PLAINTIFF'S REPLY TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

Richard W. DiBella, Esquire  
DiBella & Greer  
312 Blvd. of Allies, 3<sup>rd</sup>. Floor  
Pittsburgh, PA 15222

DATED: 9-13-04

MASON LAW OFFICE  
BY: D and C  
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK \* No. 03 - 1648 - CD  
\*  
PLAINTIFF \*  
\*  
VS. \* JURY TRIAL DEMANDED  
\*  
ERIE INSURANCE GROUP \*  
\*  
DEFENDANT \*  
\*  
\*  
\*  
\* TYPE OF PLEADING: CERTIFICATE OF  
\* SERVICE  
\*  
\* FILED ON BEHALF OF: Plaintiff  
\*  
\*  
\* COUNSEL OF RECORD FOR  
\* THIS PARTY:  
\* David C. Mason, Esq.  
\* MASON LAW OFFICE  
\* Supreme Court No. 39180  
\* P. O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240  
\*  
\* COUNSEL OF RECORD FOR DEFENDANT:  
\* Richard W. DiBella, Esquire  
\* DiBella & Greer  
\* 312 Blvd. of Allies, 3<sup>rd</sup>. Floor  
\* Pittsburgh, PA 15222  
\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served true and correct copies of **PLAINTIFF'S REPLY TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

Richard W. DiBella, Esquire  
DiBella & Greer  
312 Blvd. of Allies, 3<sup>rd</sup>. Floor  
Pittsburgh, PA 15222

DATED: 9-13-04

MASON LAW OFFICE  
BY: I and CM  
David C. Mason, Esquire

5

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK :  
:  
vs. : No. 03-1648-CD  
:  
ERIE INSURANCE GROUP :

ORDER

AND NOW, this 16<sup>th</sup> day of September, 2004, upon consideration of Plaintiff's Motion for Summary Judgment filed in the above matter, it is the ORDER of the Court that argument on said Motion has been scheduled for the 22 day of October, 2004, at 1:30 PM, in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

*/s/ Paul E. Cherry*

---

PAUL E. CHERRY  
Judge

I hereby certify this to be a true and attested copy of the original statement filed in this case.

SEP 16 2004

Attest.

*W. E. Cherry*  
P.O. Notary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK :  
vs. : No. 03-1648-CD  
ERIE INSURANCE GROUP :  
:

**ORDER**

AND NOW, this 10<sup>th</sup> day of September, 2004, it is the ORDER  
of the Court that argument on Defendant's Motion for Summary Judgment has  
been rescheduled from September 23, 2004 to Friday, October 22, 2004 at 1:30  
P.M., in Courtroom No. 2, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

*/s/ Paul E. Cherry*

---

PAUL E. CHERRY  
Judge

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

SEP 16 2004

Attest.

*W. L. R.*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,  
Plaintiff,  
vs.  
ERIE INSURANCE GROUP,  
Defendant.

CIVIL DIVISION

No. 03-1648 – CD

RESPONSE TO MOTION FOR  
SUMMARY JUDGMENT

Filed on behalf of Defendant,  
ERIE INSURANCE GROUP

Counsel of Record for this Party:

KATHLEEN S. McALLISTER, ESQUIRE  
Pa. I.D. No. 30764

DiBELLA, GEER, McALLISTER & BEST  
Firm I.D. No. 099

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK, CIVIL DIVISION  
Plaintiff, No. 03-1648 – CD  
vs.  
ERIE INSURANCE GROUP,  
Defendant.

RESPONSE TO MOTION FOR  
SUMMARY JUDGMENT

AND NOW, comes the Defendant, Erie Insurance Exchange, (incorrectly designated as Erie Insurance Group), by its attorneys, DiBella, Geer, McAllister & Best, and presents this Response to the Motion for Summary Judgment filed on behalf of the Plaintiff, Brenda A. Buck as follows:

1. It is admitted that the Plaintiff, Brenda A. Buck filed a Complaint for Declaratory Judgment against the Defendant, Erie Insurance Exchange (incorrectly designated as Erie Insurance Group), with regard to an occurrence at her residence in Clearfield County.
2. It is admitted that at all times relevant and material hereto, Erie Insurance Exchange (hereinafter referred to as "Erie"), had in force and effect a homeowner's policy, specifically Erie Ultra-Cover Insurance Policy at policy number Q59-1805275. It is further admitted that the loss claimed occurred on or about September 3, 2003, and that therefore the policy was in fact in force and effect at the time of the claimed loss.

3. While Erie contends that the policy itself is the sole evidence of its terms, conditions, limitations and exclusions, Erie agrees and stipulates that the policy in question is an all-risk policy subject to enumerated exclusions and limitations.

4. Erie stipulates and agrees that it denied the claim submitted by the Plaintiff, Brenda A. Buck, by letter dated September 18, 2003, and as more fully set out in the Motion for Summary Judgment and Supporting Brief filed on behalf of Erie.

5. The allegations contained in paragraphs 5 and 6 of the Plaintiff's Motion for Summary Judgment are simply conclusions of law. Erie has fully briefed the law of Pennsylvania in connection with interpretation of insurance contracts and unambiguous exclusions contained in insurance policies and incorporates herein by reference its Brief in Support of Erie's Motion for Summary Judgment.

6. See answer to Number 5 above.

7. It is denied that the Erie policy or any of the exclusions contained in the Erie policy are ambiguous. The policy fully, clearly and adequately sets forth the available coverages and fully, clearly and adequately sets forth "**WHAT WE DO NOT COVER – EXCLUSIONS.**" Moreover, longstanding Pennsylvania law supports a conclusion that a clear and unambiguous exclusion is enforceable under its terms. Erie's Brief in Support of its Motion for Summary Judgment sets out the applicable Pennsylvania law with regard to the exclusions claimed to be applicable to Ms. Buck's claim. That Brief is incorporated herein by reference. As set forth in the Motion for Summary Judgment and Brief in Support of Motion for Summary Judgment filed on behalf of Erie, collapse is not covered under the Erie policy. Collapse is excluded. Longstanding Pennsylvania case law supports the collapse exclusion as clear and

unambiguous and therefore enforceable on its terms. As is clearly set forth in the exclusion, there are additional coverages available under this Ultra-Cover insurance policy. There is additional coverage provided for collapse but only for collapse caused by certain enumerated perils, none of which apply to the claim presented by Ms. Buck.

8. As set forth in Erie's Brief in Support of its Motion for Summary Judgment and as is indicated in the preceding paragraph, collapse is not a covered occurrence under the Erie policy. It is clearly and unambiguously excluded. While the policy does provide additional coverage for collapse, such coverage is limited. Additional coverage for Collapse is available only for collapse caused by one or more of five specified perils. More specifically, the policy provides:

Loss to an insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. Fire or lightning, windstorm or hail, explosion, sonic bomb, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects or weight of ice, snow or sleet;
2. Hidden decay, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. Weight of people, animals, contents or equipment;
4. Weight of rain which collects on a roof; and,
5. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

None of these specified perils can be implicated as the cause of the collapse claimed by Ms. Buck and therefore, the additional coverage for collapse is not invoked. Exclusions do not grant coverage. Here, collapse is clearly and unambiguously excluded in the

Erie policy. Under certain circumstances involving specific perils, collapse coverage is provided but, none of those perils apply to this claim.

9. Erie denies that summary judgment is warranted in favor of the Plaintiff and contends, to the contrary, that the denial issued by Erie was proper under the policy terms, conditions, limitations and exclusions. With the filing of her own Motion for Summary Judgment, Plaintiff agrees and stipulates that there are no genuine issues of material fact and therefore, the facts as set forth in the Motions filed on behalf of both parties including the deposition testimony of the Plaintiff and the expert report submitted by Erie are the operative facts that the court must consider in interpreting the Erie policy. Erie submits and contends that there are no genuine issues of material fact with regard to the Plaintiff's claim and further submits that the loss as claimed is clearly and unambiguously excluded under one or more of the exclusions referenced in the Motion for Summary Judgment and Support Brief filed on behalf of the Defendant, Erie.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST

BY:   
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Response to Motion for Summary Judgment has been forwarded to all counsel of record by first class mail this day 8 of October, 2004.

David C. Mason, Esquire  
P.O. Box 28  
Philipsburg, PA 16866

DiBELLA, GEER, McALLISTER & BEST

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

## Notice of Proposed Termination of Court Case

November 5, 2007

RE: 2003-01648-CD

Brenda A. Buck

Vs.

Erie Insurance Exchange

Dear Kathleen S. McAllister, Esquire:

Please be advised that the Court intends to terminate the above captioned case without notice, because the Court records show no activity in the case for a period of at least two years.

You may stop the Court terminating the case by filing a Statement of Intention to Proceed. The Statement of Intention to Proceed must be filed with the **Prothonotary of Clearfield County, PO Box 549, Clearfield, Pennsylvania 16830**. The Statement of Intention to Proceed must be filed on or before **January 4, 2008**.

**If you fail to file the required statement of intention to proceed within the required time period, the case will be terminated.**

By the Court,



Daniel J. Nelson  
Court Administrator

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK \* No. 03 - 1648 - CD  
\*  
PLAINTIFF \*  
\*  
VS. \*  
\*  
ERIE INSURANCE GROUP \*  
\*  
DEFENDANT \*  
\*  
\*  
\*  
\* TYPE OF PLEADING: STATEMENT OF  
\* INTENTION TO PROCEED  
\*  
\* FILED ON BEHALF OF: Plaintiff  
\*  
\*  
\* COUNSEL OF RECORD FOR  
\* THIS PARTY:  
\* David C. Mason, Esq.  
\* MASON LAW OFFICE  
\* Supreme Court No. 39180  
\* P. O. Box 28  
\* Philipsburg, PA 16866  
\* (814) 342-2240  
\*  
\* COUNSEL OF RECORD FOR DEFENDANT:  
\* Kathleen S. McCallister, Esquire  
\* DiBella & Greer  
\* 312 Blvd. of Allies, 3<sup>rd</sup>. Floor  
\* Pittsburgh, PA 15222  
\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

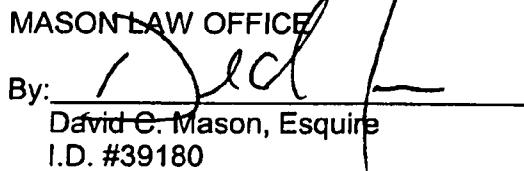
BRENDA A. BUCK \* No. 03 - 1648 - CD  
\*  
PLAINTIFF \*  
\*  
vs. \*  
\*  
ERIE INSURANCE GROUP \*  
\*  
DEFENDANT \*

STATEMENT OF INTENTION  
TO PROCEED

TO THE PROTHONOTARY:

Be advised that this case should not be terminated for inactivity. Plaintiff intends to proceed once the Motions for Summary Judgment have been resolved.

Respectfully submitted,

MASON LAW OFFICE  
By:   
David C. Mason, Esquire  
I.D. #39180  
Attorney for Plaintiff

S

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK : NO. 03-1648-CD  
: :  
V. : :  
: :  
ERIE INSURANCE EXCHANGE : :

**ORDER**

AND NOW, this 13th day of November, 2007, it is the ORDER of this Court that Status Conference be and is hereby scheduled for the 12<sup>th</sup> day of December, 2007, at 10:00 A.M., in Courtroom No. 2 at the Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,

*/s/ Paul E. Cherry*

---

PAUL E. CHERRY,  
JUDGE

I hereby certify this to be a true and attested copy of the original statement filed in this case.

NOV 14 2007

Attest.

*William L. Cherry*  
Prothonotary/  
Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK,

CIVIL DIVISION

Plaintiff,

No. 03-1648 – CD

vs.

ERIE INSURANCE GROUP,

MOTION FOR NON PROS

Defendant.

Filed on behalf of Defendant,  
ERIE INSURANCE GROUP

Counsel of Record for this Party:

KATHLEEN S. McALLISTER, ESQUIRE  
Pa. I.D. No. 30764

DiBELLA, GEER, McALLISTER & BEST  
Firm I.D. No. 099

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK, CIVIL DIVISION  
Plaintiff, No. 03-1648 - CD  
vs.  
ERIE INSURANCE GROUP,  
Defendant.

**MOTION FOR NON PROS**

AND NOW, comes the Defendant, Erie Insurance Exchange (incorrectly designated as "Erie Insurance Group,"), by its attorneys, DiBella, Geer, McAllister & Best, P.C. and, pursuant to Local Rule 319, presents this Motion For Non Pros as follows:

1. This matter arises out of an incident of September 2, 2003, involving Plaintiff's residence. A basement foundation wall at the residence caved in or collapsed causing serious damage to the Plaintiff's home.
2. Following that incident, the Plaintiff made a claim with Erie Insurance Exchange.
3. After investigation and review, including a review by a consulting engineer, Erie Insurance Exchange denied Ms. Buck's claim for insurance coverage on or about September 18, 2003.
4. The matter proceeded to litigation with the Plaintiff, Brenda A. Buck filing a Complaint against Erie Insurance Group on or about November 7, 2003.
5. Defendant, Erie Insurance Exchange took the deposition of the Plaintiff,

Brenda Buck on May 10, 2004. No other discovery was initiated and the Plaintiff, for her part, served no discovery requests and took no depositions.

6. Following the deposition of Brenda Buck, Erie Insurance Exchange filed its Motion for Summary Judgment on or about August 12, 2004.

7. Although the original hearing date on the Motion for Summary Judgment was scheduled for September 23, 2004, that date was pushed back on account of the fact that the Plaintiff filed her own Motion for Summary Judgment on or about September 14, 2004.

8. There has been no activity on this file following the hearing of October 22, 2004.

9. On or about October 17, 2007, a Notice of Termination of Inactive Civil Cases was served on all parties in the above matter pursuant to Local Rule 319 due to docket inactivity for at least two years.

10. Failure of a Plaintiff to bring an action to trial in due time may be grounds for the grant of non pros upon Motion by a Defendant. See *Penn Piping, Inc. v. Insurance Company of North America*, 529 Pa. 350, 603 A.2d 1006 (1992). In *Penn Piping*, *supra*, the Supreme Court held:

We now hold that in cases involving a delay for a period of two years or more, the delay will be presumed prejudicial for purposes of any proceeding to dismiss for lack of activity on the docket. Thus, if there is a lack of due diligence in failing to proceed with reasonable promptitude; if there is no compelling reason for the delay; and if the delay is for two years or more, the case may be dismissed for lack of activity on the docket.

*Penn Piping*, *supra* at 356, 603 A.2d at 1009.

11. Erie Insurance Exchange is prejudiced in the prosecution of this matter due to passage of time, the potential unavailability of material witnesses and/or the impairment of memory of witnesses.

12. Plaintiff's counsel filed a request for status conference only after three years had expired and after receiving the Notice of Termination of Inactive Civil Case from the court. Obviously, prior to the receipt of such Notice, Plaintiff's counsel had no interest in moving the case forward.

13. Due to both the passage of time and the prejudice to the Defendant, it is appropriate and proper to terminate this case under Local Rule 319.

WHEREFORE, Defendant, Erie Insurance Exchange respectfully requests an Order terminating the case under Local Rule 319 for inactivity.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BRENDA A. BUCK, CIVIL DIVISION  
Plaintiff, No. 03-1648 - CD  
vs.  
ERIE INSURANCE GROUP,  
Defendant.

**ORDER OF COURT**

AND NOW, to-wit, this \_\_\_\_\_ day of December, 2007, upon consideration of the Motion for Non Pros filed on behalf of Defendant, Erie Insurance Exchange, it is hereby ORDERED, ADJUDGED and DECREED that the Motion be and the same hereby is granted.

BY THE COURT:

J.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Motion for Non Pros has been forwarded to all counsel of record by first class mail this day 4 of December, 2007.

David C. Mason, Esquire  
P.O. Box 28  
Philipsburg, PA 16866

DiBELLA, GEER, McALLISTER & BEST

BY: Kathleen S. McAllister  
KATHLEEN S. McALLISTER, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

CA

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK  
Plaintiff  
vs.  
ERIE INSURANCE EXCHANGE  
Defendant

\* NO. 2003-1648-CD  
\*  
\*  
\*  
\*

ORDER

NOW, this 1<sup>st</sup> day of March, 2013, it is the ORDER of this Court that a status conference in the above-captioned case be and is hereby scheduled for the 3<sup>rd</sup> day of May, 2013 at 9:00 am. in Chambers, Clearfield County Courthouse, Clearfield, Pennsylvania.

BY THE COURT,



FREDRIC J. AMMERMAN  
President Judge

**FILED**

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071051  
William A. Shaw  
Prothonotary/Clerk of Courts

Chancery to Mason  
McAllister

DAVID C. MASON

*Attorney at Law*

409 NORTH FRONT STREET  
P.O. Box 28  
PHILIPSBURG, PENNSYLVANIA 16866  
(814) 342-2240  
FAX (814) 342-5318

December 17, 2007

Honorable Paul E. Cherry  
Judge's Chambers  
Clearfield County Courthouse  
Clearfield, PA 16830

10/22/07

In Re: Brenda A. Buck v. Erie Insurance Exchange  
No. 2003-01648-CD

Dear Judge Cherry:

At our status conference on December 12, 2007, the Court requested counsel provide it with copies of the previous submissions. Evidently the original file on this case has become mislaid. Accordingly, enclosed please find the following documents:

1. Plaintiff's Complaint – Declaratory judgment. The attachments are:
  - (a) Insurance policy
  - (b) Reservation of rights letter
  - (c) Denial of coverage letter
2. Acceptance of Service
3. Plaintiff's Motion for Summary Judgment
4. Plaintiff's Reply to Defendant's Motion for Summary Judgment
5. Plaintiff's Memorandum of Law in Support of Motion for Summary Judgment and in Opposition to Defendant's Motion.

If anything further is required for the Court to dispose of Plaintiff's Motion, please contact me.

Very truly yours,

MASON LAW OFFICE



David C. Mason

DCM:blb  
Enclosure

cc Kathleen S. McCallister, Esquire (w/o enc.)  
Brenda A. Buck n/k/a Brenda A. Ryder (w/o enc.)

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK

\* No. 03 - 1648 - CD

PLAINTIFF

\*

\*

\*

\* JURY TRIAL DEMANDED

\*

\*

ERIE INSURANCE GROUP

\*

\*

DEFENDANT

\*

\*

\* TYPE OF PLEADING: Memorandum of  
\* Law in Support of Plaintiff's Motion  
\* for Summary Judgment and In  
\* Opposition to Defendant's Motion For  
\* Summary Judgment

\* FILED ON BEHALF OF:

\* Plaintiff

\*

\* COUNSEL OF RECORD FOR

\* THIS PARTY:

\* David C. Mason, Esquire  
\* I.D. No. 39180  
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\* DEFENDANT:

\* Richard W. DiBella, Esquire  
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\* Pittsburgh, PA 15222  
\* (412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
vs.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

**MEMORANDUM OF LAW IN SUPPORT OF**  
**PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**  
**AND IN OPPOSITION TO DEFENDANT'S**  
**MOTION FOR SUMMARY JUDGMENT**

**I. BACKGROUND:**

Plaintiff Brenda Buck is the owner of premises in Clearfield County, Pennsylvania, having constructed her home in Graham Township, Clearfield County in 1999. The one story home was built by general contractor Michael W. Owens and Sons. It has a full foundation/basement which Plaintiff utilizes as a family room. In November of 1998, during construction of her home, Buck purchased a homeowners' insurance policy from Erie Insurance to insure her home against peril. The policy sold to Buck was entitled a **HomeProtectors UltraCover Insurance Policy**, and is attached to the Plaintiffs' Motion for Summary Judgment as Exhibit "A". This policy remained in effect through the incident of September 3, 2002.

On September 3, 2002, Buck returned to her home to find that a portion of her basement wall had collapsed exposing the earthen wall behind it and leaving a sea of mud, dirt and debris in the family room. Ms. Buck suffered the loss and/or damage to her personality (furniture, furnishings, toys, etc.) but the bulk of the loss was to the structure

itself.

Erie Insurance denied coverage by letter dated September 18, 2002, claiming that the loss suffered by its insured, Plaintiff herein, was not a covered event as the same was an exclusion to the policy, and this action followed.

## II. DISCUSSION:

### A. OVERVIEW -

The policy issued by Erie is an all risks policy, meaning that the policy insures the structure against "all-risks", except those clearly and unambiguously excluded. Where an Insurer denies coverage based on a policy exclusion, it has asserted an affirmative defense and bears the burden of proving its defense, and also that the exclusion was not ambiguous. Madison Construction Company v. Harleysville Mutual Insurance Company, 557 Pa. 595, 735 A.2d 100 (1999). Ambiguous is defined as "*doubtful or uncertain, especially from obscurity or indistinctness*", and "*capable of being understood in two or more possible senses or ways*". A synonym offered is "*obscure*". Merriam-Webster's Collegiate Dictionary, Eleventh Edition, 2003 Edition. Black's Law Dictionary, (Fifth Edition 1979) defines ambiguity as follows: "doubtfulness; doubleness of meaning; duplicity, indistinctness or uncertainty of meaning of an expression used in a written instrument. Want of clearness or definiteness, difficult to comprehend or distinguish; of doubtful import".

The policy at issue does not clearly and unambiguously exclude the type of loss suffered by this Plaintiff as the policy is both structurally and legally confusing and the policy language is obscure, indistinct and capable of being understood in two or more

possible senses or ways. "Contractual language is ambiguous if it is reasonably susceptible of different constructions and capable of being understood in more than one sense." Madison Construction Company v. Harleysville Mutual Insurance Company, *supra*. Steele v. Statesman Insurance Company, 530 Pa. 190, 607 A.2d 742 (1992).

Under Pennsylvania law, a Court's focus for determining issues of insurance coverage is on the reasonable expectations of the insured. Reliance Insurance Company v. Moessner, 121 F.3<sup>rd</sup>, 895 (3rd. Cir. 1997). Spece v. Erie Insurance Company, 850 A.2d 679 (Pa. Super. 2004). It is well settled that where a provision of an insurance policy is ambiguous, the policy provision is to be construed in favor of the insured and against the insurer, the drafter of the agreement. Spece v. Erie, *supra*.

On the one hand, the policy in the instant matter declares its intention to provide indemnification to the policy holder against all losses and risks, except those specifically, clearly and unambiguously excluded. While collapse is listed under the headline of an exclusion, within the exclusion is a reference to another portion of the policy, set forth in bold, upper case letters, which is entitled "**WHAT WE ALSO PAY**". Collapse is the second type of event which the carrier "*also pays*". There exists a patent ambiguity.

Plaintiff filed an action seeking a declaratory judgment that the Erie Insurance policy afforded her protection for the loss as a "collapse". Defendant filed an Answer Containing New Matter alleging that despite its offering as an "ultracover" type of policy, one or more of seven (7) "exclusions" under the HomeProtectors UltraCover Insurance Policy excused Erie from coverage. The exclusions to the policy offered by the insurer will be addressed in this memorandum.

**B. COLLAPSE -**

Plaintiff advances two separate arguments that the Defendant insurer must provide indemnity to her, the policy holder, relative to the collapse section. First, the language as written is patently vague and ambiguous, excluding from coverage all collapse with the one hand, while offering it as "what we also pay", or purporting to do, so with the other. Is the controlling portion of the policy the purported exclusion, or a limitation on the exception to an exclusion? Secondly, the policy provisions on which the insurer relies provides severe limitations on the definition of "collapse" in a graphically and legally indistinct, obscure and inconspicuous manner.

The policy has a section entitled "**WHAT WE DO NOT COVER-EXCLUSIONS.**" which includes the following language:

*"Under the dwelling, other structures and personal property coverages: We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:*

- 1. By collapse, other than as provided for in what we also pay, (2), collapse."*

The HomeProtectors UltraCover Insurance Policy included the following coverage:

**WHAT WE ALSO PAY:**

**(2) COLLAPSE**

*We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purposes.*

*Collapse does not include:*

1. *A building or part of a building that is in danger of collapsing;*
2. *A building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or*
3. *Part of a building still standing but is no longer attached to another part of a building.*

If the policy were written with any intent on the part of the Insurer to explain to its policy holder the limited types of causes of collapse which would be covered under the "ultracover" policy, the policy would have had a notice, a limitation, or a modification in the first paragraph of the section on collapse, where collapse coverage is offered (1<sup>st</sup> sentence), where it is defined (2<sup>nd</sup> sentence), and where the definition of the coverage is refined (3<sup>rd</sup> sentence). Even following the initial paragraph, an exception or a modification is very conspicuously set forth which states what "collapse" does not mean, in terms of total, as opposed to partial or threatened collapse.

Thereafter, the policy language continues but without any distinct or conspicuous notice that the coverage clearly included above is about to have its heart ripped out by an innocuous sounding and looking paragraph which does not contain any words commonly associated with limitations, restrictions, or negative or exclusionary items. What it tries to say, however, after the inclusive language which reassures the policy holder and which sounds very broad and expansive (the type of language one would expect of an "ultracover homeprotector" type of insurance policy) is that in order for the collapse coverage to apply one or more of the subsequently listed stimuli must be present at the time of the collapse.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. Fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, air craft, vehicles, vandalism, or malicious mischief, breakage of glass, falling objects, or weight of ice, snow or sleet;
2. Hidden decay or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. Weight of people, animals, contents or equipment;
4. Weight of rain which collects on a roof;
5. Use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

We will not be liable for loss under 2, 3, 4, or 5, above to the following property unless the loss is a direct result of the collapse of a building or any part of a building:

Cloth awning, fences, pavements, patios, swimming pools, decks, underground pipes, flues, drains, cesspools, septic tanks, foundations, retaining walls, bulk heads, piers, wharfs or docks.

The policy language referenced above is ambiguous and capable of two or more distinct interpretations. If a collapse is not covered unless it occurs as the result of one and only one of the listed events, what if two or more of the listed events contributed jointly, as in the case of a collapse resulting from hidden termite damage which did not manifest itself until the home owner held a dinner party, and the weight of people, animals, contents or equipment contributed to the collapse? What if the collapse was partly the result of

vandalism in plugging the roof drains (malicious mischief) and collection of rain on the roof as the result? Additionally, what if the collapse occurred partly as the result of one (or more) of the above events, and was "...sudden and accidental?"

#### **C. WEATHER EXTREMES TO DOCKS, PIERS, SWIMMING POOLS -**

Additionally, the defendant insurer also advances another exclusion which it claims covers the occurrence which resulted in the loss to Plaintiff's residence, denying the Plaintiff indemnification under the HomeProtectors UltraCover Insurance Policy. This exclusion could be characterized as a weather exclusion for it describes perils arising from weather extremes that could befall certain portions of residences or their appurtenant facilities. It reads as follows:

#### **WHAT WE DO NOT COVER - EXCLUSIONS.**

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

3. By freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, deck, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock.

Of the eleven categories of property identified in this exclusion, the first five and the last five are types of property which constitute facilities appurtenant to the home, e. g.

dock, pier, wharf, or fence, swimming pool, etc. Camouflaged nicely in the center is a *foundation* which is of a distinctly different category than a fence, a wharf or a pier. It is Plaintiff's position that this exclusion is ambiguous as it is not clearly set out, and is hidden within the list or categories of structures which are not present at every home. Further, this exclusion is capable of two or more different meanings. Does the foundation referenced above refer to the foundations of the types of facilities listed? Does it include a basement under the home? Does the exclusion for "pressure or weight of water or ice, whether driven by wind or not" override other policy language and deny coverage for collapse from "...windstorm or hail...or weight of rain which collects on a roof?"

Furthermore, what does "*We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss.*" really mean? Does a loss to the structure resulting from "freezing and thawing of water or ice" trump a loss from "windstorm or hail"? Or, is it covered if the loss is "sudden and accidental"? See the next section regarding "water seepage".

#### **D. WATER SEEPAGE -**

The defendant insurer also advances another exclusion which it claims covers the occurrence which resulted in the loss to Plaintiff's residence, denying the Plaintiff indemnification under the HomeProtectors UltraCover Insurance Policy. This exclusion could be called a chronic leaking water exclusion for it describes damage to the structure arising from chronically leaking appliances that could damage the insured premises over time. The exception to the exclusion says, or at least appears to say, that the exclusion would not apply (and coverage would be afforded) if the loss is sudden and accidental.

It reads as follows:

#### **WHAT WE DO NOT COVER EXCLUSIONS.**

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

4. Caused by 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 fire protective system, or a household appliance.

**HOWEVER, there is coverage if the loss is sudden and accidental.** (Emphasis added).

This paragraph defines an excluded peril, yet gives it all back (meaning the coverage is there) if the loss is sudden and accidental. Plaintiff submits that the loss she experienced was sudden, and it certainly was accidental, and it may have been caused, at least in part, by a water line leaking as it entered the home. Therefore, the exception to the exclusion defined above is controlling, to the extent a water leak contributed in any manner to the collapse of Plaintiff's basement.

#### **E. MUDSLIDE, VOLCANIC ERUPTION-**

Defendant advances yet another exclusion to the bravely titled "**HomeProtectors UltraCover Insurance Policy**" by attempting to call the occurrence at the home of the Plaintiff a "mudslide". Please read on.

#### **WHAT WE DO NOT COVER - EXCLUSIONS.**

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even

if other events or happenings contributed concurrently, or in sequence, to the loss:

8. By earth movement, due to natural or manmade events, meaning earthquake, including land shock waves, or tremors before, during or after a volcanic eruption, mine subsidence, sink hole, landslide, mudslide, mud flow, earth sinking, rising or shifting. Direct loss by fire, explosion, sonic boom, theft or mine subsidence, sink hold, landslide, mudslide, mud flow, earth sinking, rising or shifting is covered.

The loss at Plaintiff's home was not and has never been attributed by anybody as a mudslide, an earthquake, mine subsidence, volcanic eruption, or any of the other events described in this 'Exclusion'.

#### **F. FLOOD, TIDAL WAVES, SEWERAGE, GROUND WATER-**

The exclusions are prefaced by the inclusion of the following language:

#### **WHAT WE DO NOT COVER - EXCLUSIONS.**

Under the dwelling, other structures and personal property coverages:

We do not pay for loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

Paragraph 9 of the "HomeProtectors UltraCover Insurance Policy" reads as follows:

9. By water damage, meaning:

- a. flood, ....
- b. water or sewage....
- c. water below the surface of the ground. This includes water which exerts pressure on or flows, seeps or leaks through any part of a building or other structure, including sidewalks, driveways, foundations, pavements, patios, swimming pools or decks.

We do pay for direct loss that follows, caused by fire, explosion, sonic boom or theft.

This paragraph, this attempt at exclusion, is in direct conflict with paragraph 4, where the loss is covered if "...the loss is sudden and accidental". The paragraph is patently vague and ambiguous, to the extent it is capable of more than one meaning.

#### **G. WEATHER CONDITIONS-**

\*\*\*\*\*

Under the dwelling, other structures coverage:

We do not pay for loss:

1. By weather conditions if any peril excluded by this policy contributes to the loss in any way.

Following the section of the policy entitled "WHAT WE DO NOT COVER - EXCLUSIONS" are nineteen (19) paragraphs. Thereafter is another section of the policy which purports to exclude losses to the dwelling "by weather conditions if any peril excluded by this policy contributes to the loss in any way."

Initially, Plaintiff is unsure of the applicability of this exclusion or the need for the advancement of this exclusion by the Defendant insurer. How this paragraph can be read in conjunction with paragraph 2 of the exclusions (providing coverage for freezing pipes if the homeowners used "reasonable care" to maintain heat in the building), or the paragraph allowing for coverage from the collapse if the loss occurs as the result of weight of water on a roof, illustrates the ambiguity of these clauses.

## **H. DEFECTIVE PLANNING, DESIGN, CONSTRUCTION OR MAINTENANCE - WHAT WE DO NOT COVER - EXCLUSIONS.**

\*\*\*\*\*

Under the dwelling, other structures coverage:

We do not pay for loss:

2. Caused by, resulting from, contributed to or aggravated by faulty or inadequate
  - a. Planning, zoning, development;
  - b. Design, development of specifications, workmanship, construction;
  - c. Materials used in construction; or
  - d. Maintenance;

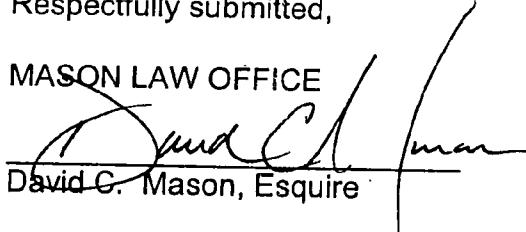
This catchall paragraph would permit an Insurer to deny coverage whenever and however it chooses. For example, if whipping wind tears shingles from the roof, the Insurer could claim under this paragraph that the loss was "contributed to or aggravated by faulty or inadequate . . . [a] workmanship . . . [or b] materials used in construction; [or c] maintenance. A fire which destroys a residence which had as its origin a pinched wire or a defective switch could be excluded from coverage under the "**HomeProtectors UltraCover Insurance Policy**" on the same basis.

## CONCLUSION

The policy jacket of the insurance sold to the Plaintiff states that it is a "HomeProtectors UltraCover Insurance Policy. The policy sold by the Defendant is not an "UltraCover", all risks policy. It is a policy built on shifting sands where almost any loss could be "not covered". If the Court's focus is truly on the reasonable expectations of the Insured, the policy provisions on which the Insurer relies to deny coverage are ambiguous, and should be construed in doubtful cases in favor of the Insured, Plaintiff herein.

Respectfully submitted,

MASON LAW OFFICE

  
\_\_\_\_\_  
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PA.

CIVIL ACTION - LAW

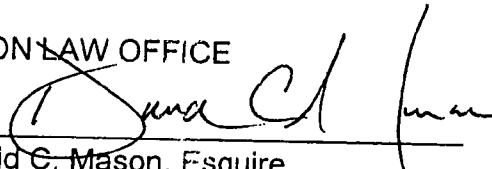
BRENDA A. BUCK	* No. 03 - 1648 - CD
	*
PLAINTIFF	*
	*
VS.	* JURY TRIAL DEMANDED
	*
ERIE INSURANCE GROUP	*
	*
DEFENDANT	*

CERTIFICATE OF SERVICE

I, DAVID C. MASON, Esquire, do hereby certify that I served true and correct copies of **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** filed to the above captioned action, by placing the same in the United States mail, postage prepaid and addressed as follows:

Richard W. DiBella, Esquire  
DiBella & Greer  
312 Blvd. of Allies, 3<sup>rd</sup>. Floor  
Pittsburgh, PA 15222

DATED: 9-13-04

MASON LAW OFFICE  
BY:   
David C. Mason, Esquire

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK, :  
Plaintiff, :  
vs. : NO: 2003-1648-CD  
ERIE INSURANCE GROUP, :  
Defendant. :

**OPINION AND ORDER**

Presently before the Court are cross-motions for summary judgment filed by Defendant on or about August 13, 2004 and by Plaintiff on or about September 14, 2004. The parties allege that pursuant to Rules 1035.1 and 1035.2 of the Pennsylvania Rules of Civil Procedure that there are no genuine issues of material fact as to whether Plaintiff's claim is covered under her home insurance policy issued by Defendant, and that judgment should be granted in their respective favor as a matter of law.

**Background and Procedural History**

On or about October 21, 1998, Plaintiff Brenda A. Buck entered into a contract with Michael W. Owens and Sons, Contractors, for the construction of a house at 2720 Allport Cutoff, Morrisdale, Clearfield County, Pennsylvania, 16858. Construction of the house was completed in approximately February 1999, and thereafter Plaintiff moved into and resided in the residence. Plaintiff purchased a "Home Protector – Ultracover Insurance Policy" (hereinafter "policy"), policy number Q59-1806275, from Defendant Erie Insurance Exchange, incorrectly designated as Erie Insurance Group, for the residence at 2720 Allport Cutoff in Morrisdale. On September 3, 2003, Plaintiff discovered that the wall closest to the attached garage in her basement had collapsed, resulting in mud and debris covering the

5 **FILED** 1cc Atty's:  
2 9:30 am  
2 JUL 05 2013 K. mason  
William A. Shaw 1cc Law Library  
Prothonotary/Clerk of Courts 1cc mikesell GK

basement floor. Plaintiff submitted a claim to Defendant for the resulting damage of the collapse, and the claim was denied on September 18, 2003.

Plaintiff filed a Complaint Action in Declaratory Judgment on November 4, 2003, alleging that, in accordance with the language of the insurance contract, Defendant is required to indemnify Plaintiff for the damage to her residence. Defendant filed an Answer and New Matter on or about January 8, 2004, denying that Plaintiff's claims are covered under the policy and alleging Plaintiff fails to state a claim upon which relief can be granted.

Following the filing of the motions for summary judgment, this Court held a hearing on said Motions on October 22, 2004. After argument, neither of the parties nor the Court requested briefs on this matter.

## **Analysis**

### *I. Standard*

Both parties request this Court to grant summary judgment in their respective favor. In accordance with the Pennsylvania Rules of Civil Procedure, the Court will grant summary judgment, in whole or in part, where upon the conclusion of the pleadings and discovery: 1) there is no genuine issue of material fact, or 2) the party who bears the burden of proof has failed to produce sufficient evidence essential to the cause of action. Pa.R.C.P. 1035.2 (West 2013).

The Superior Court of Pennsylvania has announced that, in consideration of a motion of summary judgment, the trial court must "review[] all of the evidence of record to determine whether there exists a genuine issue of material fact. In the absence of a factual dispute, [the court] must discern whether the moving party is entitled to judgment as a matter of law."

*Miller v. Sacred Heart Hosp.*, 753 A.2d 829, 832 (Pa. Super. Ct. 2000) (citing *Swartley v.*

*Hoffner*, 734 A.2d 915, 918 (Pa. Super. Ct. 1999)) (Internal citations omitted). Further, the Court must “view the record in the light most favorable to the non-moving party, and resolve all doubts as to the existence of a genuine issue of material fact in its favor.” *Herr v. Herr*, 957 A.2d 1280, 1284 (Pa. Super. Ct. 2008) (citing *Juniata Valley Bank v. Martin Oil Co.*, 736 A.2d 650, 655 (Pa. Super. Ct. 1999)).

Guided by these principles, the Court must consider the pleadings and evidence produced by both parties in order to determine if summary judgment is proper in this case. In this inquiry, the Court finds in favor of Defendant.

## *II. The Policy Language is Not Ambiguous*

Plaintiff argues that the policy issued by Defendant is ambiguous, confusing, and capable of more than one interpretation. The Court disagrees.

In addressing this issue, the Supreme Court of Pennsylvania has stated, “[p]reliminarily, we note that ‘[t]he interpretation of an insurance contract regarding the existence or non-existence of coverage is ‘generally performed by the court.’” *Donegal Mutual Ins. Co. v. Baumhammers, et al.*, 938 A.2d 286, 290 (Pa. 2007) (quoting *Minnesota Fire and Cas. Co. v. Greenfield*, 855 A.2d 854, 861 (Pa. 2004)). In this, “[t]he goal of insurance contract interpretation is ‘to ascertain the intent of the parties as manifested by the language of the written instrument.’” *D’Adamo v. Erie Ins. Exchange*, 4 A.3d 1090, 1096 (Pa. Super. Ct. 2010) (quoting *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999)).

When interpreting an insurance contract, the court must give effect to clear, unambiguous language, and “construe words of common usage in their natural, plain, and

ordinary sense.’’ *Id.* (quoting *Continental Cas. Co. v. Pro Machine*, 916 A.2d 1111, 1118 (Pa. Super. Ct. 2007)). Further,

Contractual language is ambiguous ‘if it is reasonably susceptible of different constructions and capable of being understood in more than one sense.’ This is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts. We will not, however, distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity.

*Madison*, 735 A.2d at 106 (internal citations omitted). If a provision is found to be ambiguous, the court must construe the policy in favor of the insured, as the insurance company drafts each policy and controls the terms of the coverage. *Donegal*, 938 A.2d at 290.

Plaintiff directs the Court’s attention to the exclusions paragraph, section 1 of the policy, which states:

#### WHAT WE DO NOT COVER – EXCLUSIONS

Under the *Dwelling, Other Structures and Personal Property Coverages*:

We do not pay for the loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. By collapse, other than as provided in *What We Also Pay, (2) Collapse*.

Def.’s Mot. for Summ. J., Ex. E, at 7. Plaintiff also directs this Court’s attention to the ‘What We Also Pay’ paragraph, section 2, referenced above, which states:

#### WHAT WE ALSO PAY

##### (2) Collapse

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. a building or part of a building that is in danger of collapsing;
2. a building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. part of a building still standing but is no longer attached to another part of the building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or weight of ice, snow or sleet;
2. hidden decay, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. weight of people, animals, contents or equipment;
4. weight of rain which collects on a roof;
5. use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Def.'s Mot. for Summ. J., Ex. E, at 9. Plaintiff argues that these provisions create an ambiguity as to whether or not a collapse is covered under the policy. Pl.'s Mot. for Summ. J., ¶¶ 7-9. Further, Plaintiff argues that she is only bound by terms which are clear and unambiguous; as such, she argues that she is not bound by the collapse exclusion provision of the policy. Pl.'s Mot. for Summ. J., ¶¶ 7-9. The Court disagrees.

After a plain, ordinary reading of the language of the policy, the Court fails to find an ambiguity concerning the terms regarding the coverage in the event of a collapse. The policy clearly states that a collapse is not covered by the policy except as provided in section 2 of the paragraph "What We Also Pay". *See* Def.'s Mot. for Summ. J., Ex. E. at 7. Section 2 of "What We Also Pay" clearly specifies five instances where a collapse would be covered under the policy. As Defendant argues, the Court finds that these provisions are not susceptible or capable of being understood in more than one way. Further, the language of these paragraphs

shows a clear intent of the parties for coverage to only extend to a collapse caused by or occurring during certain instances.

For the reasons discussed above, the Court finds that the policy language concerning coverage in the event of a collapse is not ambiguous, confusing, nor capable of more than one interpretation. Therefore, Plaintiff is bound by the language and provisions of the policy as stated.

### *III. Plaintiff's Claim is Not Covered Under the Policy*

In finding that the language of the policy is unambiguous, this Court must next consider whether Defendant is liable under the policy based on Plaintiff's claim. In this inquiry, the Court finds that Plaintiff's collapse was not among the covered instances listed in the policy, and as such, Defendant is not liable.

To begin, “[w]here an insurer relies on a policy exclusion as the basis for its denial of coverage and refusal to defend, the insurer has asserted an affirmative defense and, accordingly, bears the burden of proving such defense.” *Madison*, 735 A.2d at 106. Defendant argues that Plaintiff's collapse was excluded under the policy, and therefore bears the burden of proving its defense.

As stated in its Motion, Defendant retained the services of a consulting engineer, Richard T. Hughes, P.E, to investigate Plaintiff's collapse and prepare a report based on the same. Def.'s Mot. for Summ. J., ¶ 7. In the documentation of his investigation, Mr. Hughes states, “[t]he foundation system is built out of 8” block 12 courses high and without either bond joint reinforcing or vertical reinforcing in the manner of grouted cores or pilasters.” Def.'s Mot. for Summ. J., Ex. D, at 1. Further, Mr. Hughes' report draws the following conclusion:

Based on the physical evidence at the site, a review of the Industry Standards and finally my experience with other foundation collapses, it is my professional opinion with high degree of engineering certainty that the cause of the wall collapse is due to a lack of reinforcing combined with recent severe rainstorms, which saturated the ground.

Masonry walls must resist 3 types of loading (see attached reference). In this instance, this wall failed under earth pressure and hydrostatic (water) pressure.

This failure was not due to a water line break. The homeowner saw water pouring and shooting side like it was under pressure. This is due to the way the yard is sloped toward the house. A pinhole water leak would increase a home's meter reading to over 18,500 gallons per quarter.

As often is the case poor construction practices have caused the problem.

Def.'s Mot. for Summ. J., Ex. D, at 2.

Although Plaintiff does not accept Defendant's expert report for the purposes of summary judgment, Plaintiff offered no expert report of her own nor any other plausible explanation for the collapse, different from that of the expert. Therefore, the Court must determine whether the policy covers the collapse upon consideration of Defendant's expert report and conclusions.

In this, “[t]he polestar of [the court's] inquiry, therefore, is the language of the insurance policy.” The policy clearly states that a collapse is generally excluded under the policy. Def.'s Mot. for Summ. J., Ex. E, at 7. However, as described above, the policy includes coverage for a collapse caused by or resulting from specific instances. Def.'s Mot. for Summ. J., Ex. E, at 9. Here, Defendant's expert concluded that the collapse was caused by a lack of proper reinforcement in the foundation wall combined with a saturated ground. As the policy states, a collapse caused by faulty materials or methods in construction is covered only if the collapse occurs during the course of the construction or remodeling. Unfortunately,

Plaintiff's collapse did not occur during the course of the construction of her home.

Therefore, Plaintiff's type of collapse was not among those contemplated to be covered under the policy.

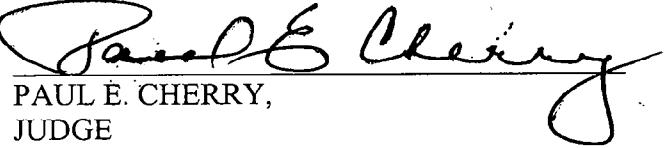
The Court finds that Defendant has met its burden of proving that Plaintiff's wall collapse was not covered under the insurance policy; and therefore, Defendant is not liable under the policy. As such, the Court finds that Defendant acted in good faith and had a reasonable basis for its decision to deny the claim of Plaintiff.

Based on the forgoing, the Court enters the following:

**ORDER**

AND NOW, this 5<sup>th</sup> day of July, 2013, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment, and arguments heard before the Court, it is the ORDER of this Court that Defendant's Motion for Summary Judgment shall be and is hereby GRANTED. The Court finds that no genuine issue of material fact exists, and that Plaintiff's claim is not covered under the insurance policy; therefore, Defendant is granted judgment as a matter of law. Plaintiff's Motion for Summary Judgment shall be and is hereby DENIED.

BY THE COURT,

  
PAUL E. CHERRY,  
JUDGE

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

William A. Shaw  
Prothonotary/Clerk of Courts  
Po Box 549  
Clearfield, PA 16830.

NO: 2003-1648-CD

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William A. Shaw  
Prothonotary/Clerk of Courts  
Po Box 549  
Clearfield, PA 16830.

**FILED**

July 18 2013

William A. Shaw  
Prothonotary Clerk of Courts

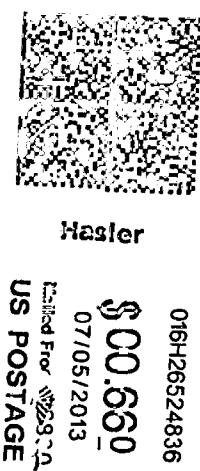
GR

Kathleen S. McAllister, Esq.  
312 Blvd. of the Allies, 3rd Floor  
Pittsburgh, PA 15222

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IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

BRENDA A. BUCK, :  
Plaintiff, :  
vs. : NO: 2003-1648-CD  
: :  
ERIE INSURANCE GROUP, :  
Defendant. :  
:

**OPINION AND ORDER**

Presently before the Court are cross-motions for summary judgment filed by Defendant on or about August 13, 2004 and by Plaintiff on or about September 14, 2004. The parties allege that pursuant to Rules 1035.1 and 1035.2 of the Pennsylvania Rules of Civil Procedure that there are no genuine issues of material fact as to whether Plaintiff's claim is covered under her home insurance policy issued by Defendant, and that judgment should be granted in their respective favor as a matter of law.

**Background and Procedural History**

On or about October 21, 1998, Plaintiff Brenda A. Buck entered into a contract with Michael W. Owens and Sons, Contractors, for the construction of a house at 2720 Allport Cutoff, Morrisdale, Clearfield County, Pennsylvania, 16858. Construction of the house was completed in approximately February 1999, and thereafter Plaintiff moved into and resided in the residence. Plaintiff purchased a "Home Protector – Ultracover Insurance Policy" (hereinafter "policy"), policy number Q59-1806275, from Defendant Erie Insurance Exchange, incorrectly designated as Erie Insurance Group, for the residence at 2720 Allport Cutoff in Morrisdale. On September 3, 2003, Plaintiff discovered that the wall closest to the attached garage in her basement had collapsed, resulting in mud and debris covering the

basement floor. Plaintiff submitted a claim to Defendant for the resulting damage of the collapse, and the claim was denied on September 18, 2003.

Plaintiff filed a Complaint Action in Declaratory Judgment on November 4, 2003, alleging that, in accordance with the language of the insurance contract, Defendant is required to indemnify Plaintiff for the damage to her residence. Defendant filed an Answer and New Matter on or about January 8, 2004, denying that Plaintiff's claims are covered under the policy and alleging Plaintiff fails to state a claim upon which relief can be granted.

Following the filing of the motions for summary judgment, this Court held a hearing on said Motions on October 22, 2004. After argument, neither of the parties nor the Court requested briefs on this matter.

## **Analysis**

### *I. Standard*

Both parties request this Court to grant summary judgment in their respective favor. In accordance with the Pennsylvania Rules of Civil Procedure, the Court will grant summary judgment, in whole or in part, where upon the conclusion of the pleadings and discovery: 1) there is no genuine issue of material fact, or 2) the party who bears the burden of proof has failed to produce sufficient evidence essential to the cause of action. Pa.R.C.P. 1035.2 (West 2013).

The Superior Court of Pennsylvania has announced that, in consideration of a motion of summary judgment, the trial court must "review[] all of the evidence of record to determine whether there exists a genuine issue of material fact. In the absence of a factual dispute, [the court] must discern whether the moving party is entitled to judgment as a matter of law."

*Miller v. Sacred Heart Hosp.*, 753 A.2d 829, 832 (Pa. Super. Ct. 2000) (citing *Swartley v.*

*Hoffner*, 734 A.2d 915, 918 (Pa. Super. Ct. 1999)) (Internal citations omitted). Further, the Court must “view the record in the light most favorable to the non-moving party, and resolve all doubts as to the existence of a genuine issue of material fact in its favor.” *Herr v. Herr*, 957 A.2d 1280, 1284 (Pa. Super. Ct. 2008) (citing *Juniata Valley Bank v. Martin Oil Co.*, 736 A.2d 650, 655 (Pa. Super. Ct. 1999)).

Guided by these principles, the Court must consider the pleadings and evidence produced by both parties in order to determine if summary judgment is proper in this case. In this inquiry, the Court finds in favor of Defendant.

## *II. The Policy Language is Not Ambiguous*

Plaintiff argues that the policy issued by Defendant is ambiguous, confusing, and capable of more than one interpretation. The Court disagrees.

In addressing this issue, the Supreme Court of Pennsylvania has stated, “[p]reliminarily, we note that ‘[t]he interpretation of an insurance contract regarding the existence or non-existence of coverage is ‘generally performed by the court.’’” *Donegal Mutual Ins. Co. v. Baumhammers, et al.*, 938 A.2d 286, 290 (Pa. 2007) (quoting *Minnesota Fire and Cas. Co. v. Greenfield*, 855 A.2d 854, 861 (Pa. 2004)). In this, “[t]he goal of insurance contract interpretation is ‘to ascertain the intent of the parties as manifested by the language of the written instrument.’” *D’Adamo v. Erie Ins. Exchange*, 4 A.3d 1090, 1096 (Pa. Super. Ct. 2010) (quoting *Madison Const. Co. v. Harleysville Mut. Ins. Co.*, 735 A.2d 100, 106 (Pa. 1999)).

When interpreting an insurance contract, the court must give effect to clear, unambiguous language, and ““construe words of common usage in their natural, plain, and

ordinary sense.’’ *Id.* (quoting *Continental Cas. Co. v. Pro Machine*, 916 A.2d 1111, 1118 (Pa. Super. Ct. 2007)). Further,

Contractual language is ambiguous ‘if it is reasonably susceptible of different constructions and capable of being understood in more than one sense.’ This is not a question to be resolved in a vacuum. Rather, contractual terms are ambiguous if they are subject to more than one reasonable interpretation when applied to a particular set of facts. We will not, however, distort the meaning of the language or resort to a strained contrivance in order to find an ambiguity.

*Madison*, 735 A.2d at 106 (internal citations omitted). If a provision is found to be ambiguous, the court must construe the policy in favor of the insured, as the insurance company drafts each policy and controls the terms of the coverage. *Donegal*, 938 A.2d at 290.

Plaintiff directs the Court’s attention to the exclusions paragraph, section 1 of the policy, which states:

#### WHAT WE DO NOT COVER – EXCLUSIONS

Under the *Dwelling, Other Structures and Personal Property Coverages*:

We do not pay for the loss resulting directly or indirectly from any of the following, even if other events or happenings contributed concurrently, or in sequence, to the loss:

1. By collapse, other than as provided in *What We Also Pay, (2) Collapse*.

Def.’s Mot. for Summ. J., Ex. E, at 7. Plaintiff also directs this Court’s attention to the ‘What We Also Pay’ paragraph, section 2, referenced above, which states:

#### WHAT WE ALSO PAY

##### (2) Collapse

We will pay for direct physical loss to insured property involving collapse of a building or any part of a building. Collapse means the sudden caving in or falling down of a building or part of a building. Collapse of a building, or part of a building must result in the inability of that property to be used for its current intended purpose.

Collapse does not include:

1. a building or part of a building that is in danger of collapsing;
2. a building or part of a building that is standing even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage, expansion; or
3. part of a building still standing but is no longer attached to another part of the building.

Loss to insured property involving collapse of a building or any part of a building must be caused only by one or more of the following:

1. fire or lightning, windstorm or hail, explosion, sonic boom, riot or civil commotion, aircraft, vehicles, vandalism or malicious mischief, breakage of glass, falling objects, or weight of ice, snow or sleet;
2. hidden decay, or hidden insect or vermin damage not known to anyone we protect prior to the collapse;
3. weight of people, animals, contents or equipment;
4. weight of rain which collects on a roof;
5. use of defective materials or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

Def.'s Mot. for Summ. J., Ex. E, at 9. Plaintiff argues that these provisions create an ambiguity as to whether or not a collapse is covered under the policy. Pl.'s Mot. for Summ. J., ¶¶ 7-9. Further, Plaintiff argues that she is only bound by terms which are clear and unambiguous; as such, she argues that she is not bound by the collapse exclusion provision of the policy. Pl.'s Mot. for Summ. J., ¶¶ 7-9. The Court disagrees.

After a plain, ordinary reading of the language of the policy, the Court fails to find an ambiguity concerning the terms regarding the coverage in the event of a collapse. The policy clearly states that a collapse is not covered by the policy except as provided in section 2 of the paragraph "What We Also Pay". *See* Def.'s Mot. for Summ. J., Ex. E. at 7. Section 2 of "What We Also Pay" clearly specifies five instances where a collapse would be covered under the policy. As Defendant argues, the Court finds that these provisions are not susceptible or capable of being understood in more than one way. Further, the language of these paragraphs

shows a clear intent of the parties for coverage to only extend to a collapse caused by or occurring during certain instances.

For the reasons discussed above, the Court finds that the policy language concerning coverage in the event of a collapse is not ambiguous, confusing, nor capable of more than one interpretation. Therefore, Plaintiff is bound by the language and provisions of the policy as stated.

### *III. Plaintiff's Claim is Not Covered Under the Policy*

In finding that the language of the policy is unambiguous, this Court must next consider whether Defendant is liable under the policy based on Plaintiff's claim. In this inquiry, the Court finds that Plaintiff's collapse was not among the covered instances listed in the policy, and as such, Defendant is not liable.

To begin, “[w]here an insurer relies on a policy exclusion as the basis for its denial of coverage and refusal to defend, the insurer has asserted an affirmative defense and, accordingly, bears the burden of proving such defense.” *Madison*, 735 A.2d at 106. Defendant argues that Plaintiff's collapse was excluded under the policy, and therefore bears the burden of proving its defense.

As stated in its Motion, Defendant retained the services of a consulting engineer, Richard T. Hughes, P.E, to investigate Plaintiff's collapse and prepare a report based on the same. Def.'s Mot. for Summ. J., ¶ 7. In the documentation of his investigation, Mr. Hughes states, “[t]he foundation system is built out of 8” block 12 courses high and without either bond joint reinforcing or vertical reinforcing in the manner of grouted cores or pilasters.” Def.'s Mot. for Summ. J., Ex. D, at 1. Further, Mr. Hughes' report draws the following conclusion:

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This failure was not due to a water line break. The homeowner saw water pouring and shooting side like it was under pressure. This is due to the way the yard is sloped toward the house. A pinhole water leak would increase a home's meter reading to over 18,500 gallons per quarter.

As often is the case poor construction practices have caused the problem.

Def.'s Mot. for Summ. J., Ex. D, at 2.

Although Plaintiff does not accept Defendant's expert report for the purposes of summary judgment, Plaintiff offered no expert report of her own nor any other plausible explanation for the collapse, different from that of the expert. Therefore, the Court must determine whether the policy covers the collapse upon consideration of Defendant's expert report and conclusions.

In this, "[t]he polestar of [the court's] inquiry, therefore, is the language of the insurance policy." The policy clearly states that a collapse is generally excluded under the policy. Def.'s Mot. for Summ. J., Ex. E, at 7. However, as described above, the policy includes coverage for a collapse caused by or resulting from specific instances. Def.'s Mot. for Summ. J., Ex. E, at 9. Here, Defendant's expert concluded that the collapse was caused by a lack of proper reinforcement in the foundation wall combined with a saturated ground. As the policy states, a collapse caused by faulty materials or methods in construction is covered only if the collapse occurs during the course of the construction or remodeling. Unfortunately,

Plaintiff's collapse did not occur during the course of the construction of her home.

Therefore, Plaintiff's type of collapse was not among those contemplated to be covered under the policy.

The Court finds that Defendant has met its burden of proving that Plaintiff's wall collapse was not covered under the insurance policy; and therefore, Defendant is not liable under the policy. As such, the Court finds that Defendant acted in good faith and had a reasonable basis for its decision to deny the claim of Plaintiff.

Based on the forgoing, the Court enters the following:

**ORDER**

AND NOW, this 5th day of July, 2013, upon consideration of Defendant's Motion for Summary Judgment and Plaintiff's Motion for Summary Judgment, and arguments heard before the Court, it is the ORDER of this Court that Defendant's Motion for Summary Judgment shall be and is hereby GRANTED. The Court finds that no genuine issue of material fact exists, and that Plaintiff's claim is not covered under the insurance policy; therefore, Defendant is granted judgment as a matter of law. Plaintiff's Motion for Summary Judgment shall be and is hereby DENIED.

BY THE COURT,

*/s/ Paul E. Cherry*

I hereby certify this to be a true  
and attested copy of the original  
statement filed in this case.

PAUL E. CHERRY,  
JUDGE

JUL 05 2013

*William E. Cherry*  
Prothonotary/  
Clerk of Courts

Attest.