

05-1543-CD  
PA National vs Ray Medred et al

Penna. Nation Mutua vs Ray Medred et al  
2005-1543-CD

FILED  
m/11/15 10:00  
OCT 06 2005 AM  
William A. Shaw  
Prothonotary/Clerk of Courts

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF JEFFERSON

ss: }

05-1543-CD

I Tonya S. Geist, Prothonotary of the  
Court of Common Pleas in and for said County, do hereby certify that the foregoing is a  
full, true and correct copy of the whole record of the case therein stated, wherein  
PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY,

Plaintiff  
and RAY MEDRED, ROBERTA BUEHLER, MEDRED REALITY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO POST INC. and ERIE INSURANCE  
GROUP, CHARLES J. GRAHAM ETC. Defendant

as the same remains of record before the said Court at No. 814 of 2004 C.D.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 23rd day of  
September 2005.

Tonya S. Geist  
Prothonotary

I JOHN H. FORADORA, President Judge of the 54th Judicial District, composed of the County  
of Jefferson in the Commonwealth of Pennsylvania, do certify that TONYA S. GEIST, by whom  
the annexed record, certificate and attestation were made and given, and who in his own proper handwriting, thereunto subscribed his name and  
affixed the seal of the Court of Common Pleas of said County was at the time of so doing and now is Prothonotary, in and for said County of Jefferson in the Commonwealth of Pennsylvania, duly commissioned and qualified, to all of whose acts as such full faith and credit are and ought to be given as well in Courts of judicature as elsewhere; and that the said record, certificate and attestation are in due form of law, and made by the proper officer.

John H. Foradora  
President Judge

COMMONWEALTH OF PENNSYLVANIA,  
COUNTY OF JEFFERSON

ss: }

I TONYA S. GEIST, Prothonotary of the Court of Common Pleas in and for the said County, do certify that the  
Honorable JOHN H. FORADORA, PRESIDENT JUDGE by whom the foregoing attestation was made, and who has  
thereunto subscribed his name was at the time of making thereof and still is President Judge of the Court of Common Pleas, Orphans' Court and  
Court of Quarter Sessions of the Peace in and for said County, duly Commissioned and qualified; to all whose acts as such full faith and credit are and ought to be given, as well in Courts of judicature or elsewhere.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said  
Court, this 23rd day of September 2005.

Tonya S. Geist  
Prothonotary

NO. 814 - 2004 C.D.

PENNSYLVANIA NATIONAL MUTUAL

CASUALTY INSURANCE COMPANY

VERSUS

RAY MEDRED, ROBERTA BUEHLER, MEDRED

REALITY ASSOCIATES, MARCELINE OBERLY,

PILLAR TO POST, INC., and ERIE etc.

## Exemplified Record

From Jefferson County

Debt	-\$	N/A
Interest from		N/A
Costs	T & E	\$95.50
RETN/COMPLAIN		21.00
EXEMPLIFIED OUT		15.00

Entered and Filed 19

Prothonotary

AMONG THE RECORDS AND PROCEEDINGS enrolled in the Court of Common Pleas in and for the County of Jefferson, in the Commonwealth of Pennsylvania, to No. 814 - 2004 C.D., is contained the following:

**COPY OF DOCKET ENTRY**

---

PENNSYLVANIA NATIONAL  
MUTUAL CASUALTY INSURANCE  
COMPANY,

Plaintiff

vs

RAY MEDRED, ROBERTA BUEHLER  
MEDRED REALITY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE  
GROUP, CHARLES J. GRAHAM.  
JENNIFER L. GRAHAM, DAN  
CANTON i/d/b/a PILLAR TO POST,  
d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

814 - 2004 C.D.

ACTUAL DOCUMENT ATTACHED W/DOCKET PRINTOUT

2004-00814 PENNSYLVANIA NATIONAL MUTUAL (vs) RAY MEDRED ET AL

Reference No...: Filed.....: 11/12/2004  
 Case Type....: DECLARATORY JUDGEMENT Time.....: 12:00  
 Judgment....: .00 Execution Date: 0/00/0000  
 Judge Assigned: Jury Trial...  
 Disposed Desc.: Disposed Date: 9/23/2005  
 Case Comments: Higher Crt 1.:  
 TRANSFERED TO CLEARFIELD COUNTY Higher Crt 2.:

\*\*\*\*\*  
General Index\*\*\*\*\*  
Attorney Info

/ PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY HARRISBURG PA	PLAINTIFF	GEIS, DENNIS J., JR.
/ MEDRED RAY RR #8 BOX 22 DUBOIS PA 15801	DEFENDANT	CHERRY, TONI M.
/ BUEHLER ROBERTA RR #8 BOX 22 DUBOIS PA 15801	DEFENDANT	CHERRY, TONI M.
/ MEDRED REALTY ASSOCIATES RR#8 BOX 22 DUBOIS PA 15801	DEFENDANT	CHERRY, TONI M.
/ OBERLY MARCELLENE 37240 IRISH LANE GLADE SPRING VA 24240	DEFENDANT	MARRONE THOMAS MORE
/ PILLAR TO POST INC RD #4 BOX 419 DUBOIS PA 15801	DEFENDANT	MAYER, PAUL G., JR., ESQUIRE
/ ERIE INSURANCE GROUP 100 ERIE INSURANCE PLACE ERIE PA 16530	DEFENDANT	MACZUZAK TARA L
/ GRAHAM CHARLES J	DEFENDANT	DUBOIS, JEFFREY S., ESQUIRE
/ GRAHAM JENNIFER L	DEFENDANT	DUBOIS, JEFFREY S., ESQUIRE
/ CANTON DAN I/D/B/A	DEFENDANT	DUBOIS, JEFFREY S., ESQUIRE MAYER, PAUL G., JR., ESQUIRE
PILLAR TO POST D/B/A	DEFENDANT	DUBOIS, JEFFREY S., ESQUIRE MAYER, PAUL G., JR., ESQUIRE
DAN CANTON HOMES INSPECTION	DEFENDANT	DUBOIS, JEFFREY S., ESQUIRE MAYER, PAUL G., JR., ESQUIRE

\*\*\*\*\*  
\* Date Entries  
\*\*\*\*\*

11/12/2004	FIRST ENTRY COMPLAINT FOR DECLARATORY JUDGMENT FLD BY DENNIS J GEIS, JR., ESQ. C/CVR SHT RTND DM
12/16/2004	PRAECIPE TO REINSTATE COMPLAINT FOR DECLARATORY JUDGMENT ADDING PARTY DEFTS FLD BY DENNIS GEIS, ESQ ON B/OF PLTF C/CVR RTND. DS
1/13/2005	ACCEPTANCE OF SERVICE OF THE REINSTATED COMPLAINT FOR DECLARATORY JUDGMENT ON B/OF DEFTS CHARLES & JENNIFER GRAHAM SIGNED BY JEFFREY DUBOIS, ESQ FLD BY DENNIS GEIS, ESQ ON B/OF PLTF C/CVR SHEET RTND DS
1/18/2005	ENTRY OF APPEARANCE FLD BY THOMAS MARRONE, ESQ ON B/OF DEFT MARCELLENE OBERLY. C/RTND. DS
2/07/2005	ACCEPTANCE OF SERVICE REINSTATE COMPLAINT SIGNED BY THOMAS MORE MARRONE, ESQ ON B/OF DEFT MARCELLENE OBERLY. & SIGNED BY RICHARD DIBELLA, ESQ & TARA MACZUZAK, ESQ ON B/OF DEFT ERIE INSURANCE

PROTHONOTARY-CLERK  
KUKUK  
1/18/2005  
C/RTND

2004-00814 PENNSYLVANIA NATIONAL MUTUAL (vs) RAY MEDRED ET AL

Reference No...: Filed.....: 11/12/2004  
 Case Type....: DECLARATORY JUDGEMENT Time.....: 12:00  
 Judgment....: .00 Execution Date: 0/00/0000  
 Judge Assigned: Jury Trial...:  
 Disposed Desc.: Disposed Date: 9/23/2005  
 Higher Crt 1.:  
 Higher Crt 2.:

## Case Comments -----

TRANSFERED TO CLEARFIELD COUNTY EXCHANGE. FLD BY DENNIS GEIS, ESQ ON B/OF PLTF C/RTND. DS  
 1/24/2005 PRAECIPE FOR ENTRY OF APPEARANCE FLD BY TARA MACZUZAK, ESQ ON B/OF DEFT ERIE INSURANCE GROUP W/CERT OF SRV. N/CPS DS  
 3/18/2005 PRAECIPE TO REINSTATE COMPLAINT FLD BY DENNIS GEIS, JR. ON B/OF PLTF C/CVR RTND. C/O REINSTATED COMPLAINT RTD. DS  
 3/23/2005 AMENDED PRAECIPE TO REINSTATE COMPLAINT FOR DECLARATORY JUDGMENT FLD BY DENNIS J GEIS, ESQ. CPY RTND DM  
 4/26/2005 SHERIFF'S RETURN: ON MARCH 28, 2005 I DEPUTIZED SHERIFF OF CLEARFIELD COUNTY TO SERVE AMENDED PRAECIPE TO RE-INSTATE COMPLAINT FOR DECLARATORY JUDGMENT AND COMPLAINT FOR DECLARATORY JUDGMENT UPON RAY MEDRED, ROBERTA BUEHLER, MEDRED REALITY ASSOCIATES  
 MY COSTS: \$86.00 DM  
 5/04/2005 PRAECIPE TO REINSTATE COMPLAINT FLD BY DENNIS GEIS, ESQ ON B/OF PLTF C/RTND. DS  
 5/19/2005 AFFIDAVIT OF SERVICE OF PLTFS COMPLAINT FOR DECLARATORY JUDGMENT BY CERT MAIL FLD BY DENNIS J GEIS, JR, ESQ. W/CERT OF SERVICE C/CVR RTND DM  
 6/21/2005 ENTRY OF APPEARANCE OF THOMAS MORE MARRONE, ESQ. ON B/OF MARCELINE OBERLY. CPY RTND DM  
 6/27/2005 ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT FLD BY TARA L MACZUZAK, ESQ. ON B/OF DEFT ERIE INSURANCE EXCHANGE W/CERT OF SERVICE CPY TKN C/C BY ATTY DM  
 6/27/2005 PRELIMINARY OBJECTIONS TO COMPLAINT FOR DECLARATORY JUDGMENT FLD BY TONI M CHERRY, ESQ. ON B/OF DEFTS RAY MEDRED, ROBERT BUEHLER, AND MEDRED REALTY ASSOCIATES W/CERT OF SERVICE. CPS RTND C/C DM  
 7/05/2005 ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT FLD BY PAUL MAYER, ESQ W/CERT OF SRV. C/CVR RTND. DS  
 7/18/2005 RESPONSE TO PRELIMINARY OBJECTIONS FLD BY DENNIS J GEIS, ESQ. ON B/OF PLTF W/CERT OF SERVICE. C/CVR RTND C/C DM  
 9/15/2005 ORDER OF COURT: PROTHONOTARY IS HEREBY DIRECTED TO TRANSFER THIS CASE TO THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY COST OF TRANSFER TO PAID BY THE PLTF. CPS TO ATTY TONI CHERRY & MILES A. KIRSHNER C/O MARGOLIS EDELSTEIN DS  
 9/30/2005 CASE SENT TO CLEARFIELD COUNTY PROTHONOTARY'S OFFICE BY CERT MAIL #7160 3901 9842 0647 0182 DS  
 - - - - - LAST ENTRY - - - - -

\*\*\*\*\*  
 \* Escrow Information \*  
 \* Fees & Debits Beg Bal Pymts/Adj End Bal \*  
 \*\*\*\*\*

COMPLAINT	80.00	80.00	.00
COMPLAINT TAX	.50	.50	.00
COMPLAINT JCP	10.00	10.00	.00
COMPLAINT AUTO	5.00	5.00	.00
REIN/COMPLAINT	7.00	7.00	.00
REIN/COMPLAINT	7.00	7.00	.00
REIN/COMPLAINT	7.00	7.00	.00
	116.50	116.50	.00

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2004-00814 PENNSYLVAN NATIONAL MUTUAL (vs) RAY FREDRED ET AL

Reference No...: Filed.....: 11/12/2004  
Case Type.....: DECLARATORY JUDGEMENT Time.....: 12:00  
Judgment.....: .00 Execution Date: 0/00/0000  
Judge Assigned: Jury Trial...:  
Disposed Desc.: Disposed Date: 9/23/2005  
----- Case Comments -----  
TRANSFERED TO CLEARFIELD COUNTY Higher Crt 1.:  
\* End of Case Information Higher Crt 2.:  
\*\*\*\*\*

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

Plaintiff,

DECLARATORY JUDGMENT

vs.

No. 814 - 2004 CD

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

FILED

SEP 15 2005

TONYA S. GEIST  
PRO. & CLERK of COURTS

Defendants

ORDER OF COURT

AND NOW, this 15<sup>th</sup> day of September, 2005, upon  
consideration of Defendant Roberta Buehler's preliminary objections relating to venue, it is hereby  
Ordered that said preliminary objections are sustained and the Prothonotary is hereby directed to  
transfer this case to the Court of Common Pleas of Clearfield County, Pennsylvania, costs of transfer  
to be paid by Plaintiff. Defendant may re-file her remaining preliminary objections within twenty  
(20) days of the date of the transfer.

BY THE COURT:



John J. Bradna  
J.

ENTERED

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IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

TONYA S. GEIST  
JEFFERSON COUNTY  
DECLARATORY JUDGMENT

No. 814 - 2004 CD

**RESPONSE TO PRELIMINARY  
OBJECTIONS**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

ENTERED

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IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

CIVIL ACTION

2005 JUL 18 P 12:15

TONYA S. GEIST  
DEclaratory JUDGMENT

No. 814 - 2004 CD

**RESPONSE TO PRELIMINARY OBJECTIONS**

AND NOW, comes the Plaintiff, Pennsylvania National Mutual Casualty Insurance Company, by its attorneys Margolis Edelstein, Miles A. Kirshner, Esquire, and Dennis J. Geis, Jr., Esquire, and files the within Response to Defendants' Preliminary Objections:

**Preliminary Objections Raising Question of Lack of Subject Matter Jurisdiction**

1. Denied as stated. The Complaint for Declaratory Judgment speaks for itself. By way of further answer, Plaintiff Penn National Mutual Casualty Insurance Company (hereinafter "Penn National") seeks a declaration that its insurance policy, issued to Medred Realty Associates, provides no coverage to Medred Realty Associates, Ray Medred and Roberta Buehler, for claims against these defendants made by Marceline Oberly in an underlying action filed in the United Stated District Court for the Western District of Pennsylvania, for violations of the Real Estate Sellers Disclosure

Law, the Pennsylvania Consumer Protection Law, or for claims based upon allegations of fraud and intentional misrepresentation, or for claims of punitive damages.

2. Denied. It is denied that the United States District Court has exclusive jurisdiction over the subject matter of this action, i.e. the coverage action. To the contrary, the federal court case involves the liability of the Medred Defendants, not the issue of whether Penn National owes coverage under its policies to the Medred Defendants. The issue of such coverage will not be litigated in the underlying action.

3. Denied. The Declaratory Judgments Act, 42 Pa.C.S. §7531 et seq. vests jurisdiction in the courts of common pleas over complaints arising thereunder. Furthermore, a declaratory judgment action is particularly appropriate in construing contracts of insurance to determine whether an insurer is obligated to defend or indemnify one claiming under the policy.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objections raising Question of lack of Personal Jurisdiction**

4. It is admitted that the cause of action at issue in the underlying action arose in Clearfield County.

5. It is admitted that Defendant Roberta Buehler currently resides in the state of Louisiana. By way of further Answer, at the time of the incidents alleged in the underlying complaint, Roberta Buehler was a resident of the Commonwealth of Pennsylvania.

6. Admitted.

7. Denied. At the time of the incidents alleged in the underlying complaint, Roberta Buehler was a resident of the Commonwealth of Pennsylvania and is alleged to have been doing business in Pennsylvania. By way of further answer, Roberta Buehler was alleged to have been the

listing agent for the property at issue in the underlying action, along with Ray Medred and Medred Realty. By way of further answer, Roberta Buehler was a licensed real estate salesperson in the Commonwealth of Pennsylvania. A copy of the License Verification for Real Estate License RS207374L, issued to Roberta Buehler is attached hereto as Exhibit A.

8. Denied. This court has jurisdiction over Roberta Buehler as this defendant was a resident of the Commonwealth of Pennsylvania at the time of the incidents alleged in the underlying complaint, was a licensed real estate salesperson in Pennsylvania, and is claiming coverage under a Penn National policy issued in Pennsylvania.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objection Raising Question of Venue**

9-19. Admitted. By way of further answer, Plaintiff mistakenly believed the property at issue in the underlying case was located in Jefferson County. Upon further investigation, Plaintiff agrees venue is proper in Clearfield County and respectfully request this Honorable Court transfer this action to the Court of Common Pleas of Clearfield County pursuant to Pa.R.Civ.P. No. 1006(e).

WHEREFORE, Plaintiff respectfully requests this Honorable Court transfer this action to the Court of Common Pleas of Clearfield County pursuant to Pa.R.Civ.P. No. 1006(e).

**Preliminary Objections to Service of Complaint**

20. Denied. Plaintiff's counsel filed an Affidavit of Service stating that Defendant Roberta Buehler was served in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service on defendants located outside the Commonwealth. A copy of this Affidavit of Service is attached hereto as Exhibit B. Sheriff's Returns indicating service on Defendants Ray Medred and Medred Realty Associates are attached hereto as Exhibit C.

21. Denied. Defendant Robert Buehler was served on May 9, 2005 in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service on defendants located outside the Commonwealth. A copy of Plaintiff's counsel's Affidavit of Service, including the certified mail receipt signed by Roberta Buehler, is attached hereto as Exhibit B.

As Defendants Ray Medred and Medred Realty were located in Clearfield County, the Jefferson County Sheriff deputized the Clearfield County Sheriff who personally served Ray Medred individually and on behalf of Medred Realty with copies of the Reinstated Complaint for Declaratory Judgment on April 5, 2005. The Sheriff return received by the Jefferson County Sheriff, including the returns prepared by the Clearfield County Sheriff, are attached hereto as Exhibit C.

22. Denied. Service of all Defendants was proper and in accordance with the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objections Raising Pendency of Prior Action**

23. Admitted.

24. It is admitted a Complaint was filed in the United States District Court for the Western District of Pennsylvania on April 2, 2004. It is denied this complaint was filed by Plaintiff Penn National or that Penn National was a party to the federal court action filed on April 2, 2004. Penn National has since sought to intervene in the federal court action for the limited purpose of propounding special interrogatories to the jury in connection with the instant Declaratory Judgment action.

25. Denied. The issue before the court in this Declaratory Judgment action is separate from the matters at issue in the underlying case. The causes of action, the rights, and relief sought

in the underlying federal court action is different from that at issue in the instant case. The issue of insurance coverage is not an issue to be determined in the underlying case.

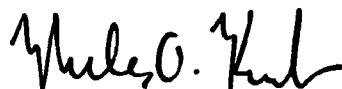
26. Denied. Penn National is entitled to a Declaration as to its obligations to those claiming coverage in the underlying case.

27. Denied. A declaratory judgment action is particularly appropriate in construing contracts of insurance to determine whether an insurer is obligated to defend or indemnify one claiming under the policy in an underlying lawsuit.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

Respectfully submitted,

MARGOLIS EDELSTEIN



Miles A. Kirshner, Esquire  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff



*Pennsylvania Department of  
State Bureau of Professional and  
Occupational Affairs*



*License Verification*

**Person Information**

**Name:** ROBERTA J BUEHLER

**Address(city, state zipcode):** BROCKWAY PA 15824

**Employer Information**

**Name**

Inactive

**Address(city, state zipcode):**

Harrisburg PA 17105

**License Information**

**Type:** Real Estate Salesperson-  
Standard

**Secondary Type:** N/A

**Number:** RS207374L

**Profession:** Real Estate Commission

**Status:** Inactive

**Obtained By:** Application

**Issue Date:** 1/27/1995

**Expires:** 5/31/2004

**Last Renewed:** 5/23/2002

**Standing:** This license is not in good standing based on the license status 'Inactive'.

**Disciplinary action history:** No disciplinary actions were found for this license.

[Return to Licensee Search](#) | [Back to Results](#)

**EXHIBIT**

**A**

tabbed

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLEK,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

**AFFIDAVIT OF SERVICE  
BY CERTIFIED MAIL**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

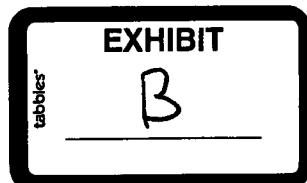
MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

Defendants

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

I, DENNIS J. GEIS, JR., ESQUIRE, Counsel for Plaintiff Pennsylvania National Mutual Casualty Insurance Company, do certify that I have caused to be served by Certified Mail - Return Receipt Requested, Plaintiff's Complaint for Declaratory Judgment in the above-captioned action upon the following Defendant:

Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

and the same was received by said Defendant on the 9th day of May, 2005 as evidenced by the attached Certified Mail Receipt Card, No. 7000 1670 0003 7999 4657, the original of which is attached hereto and marked as Exhibit "A".

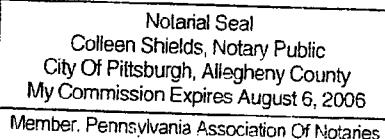
Respectfully submitted,

MARGOLIS EDELSTEIN



Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

SWORN TO and subscribed before me  
this 17th day of May, 2005.

  
Colleen Shields  
Notary Public

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Ms. Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

21500.2-00109/MAK

**2. Article Number (Copy from service label)**  
7000 1670 0003 7999 4657**COMPLETE THIS SECTION ON DELIVERY****A. Received by (Please Print Clearly)**

Roberta Buehler

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No. 814 C.D. 2004

Now, March 28, 2005, after due and diligent search, could not find the within named RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, and DAN CANTON, Defendants, in my bailwick; viz, County of Jefferson, State of Pennsylvania. Therefore, I deputized the Sheriff of Clearfield County to serve the Amended Praeclipe to Re-Instate Complaint for Declaratory Judgment and Complaint for Declaratory Judgment, whose Return of Service is attached hereto and hereby made a part of this Return.

Advance Costs Received:	\$125.00
My Costs:	86.00
Clearfield Co. Costs	Paid
Pd. Directly by Atty:	100.00
Total Costs:	186.00
REFUNDED:	\$ 39.00

So Answers,

  
\_\_\_\_\_  
Sheriff

JEFFERSON COUNTY, PENNSYLVANIA

EXHIBIT

tabbies

C

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 3 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS a

**SHERIFF RETURN**

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON MEDRED REALTY ASSOCIATES DEFENDANT AT c/o  
RR 8 BOX 22, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, OWNER A  
TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY  
JUDGT. AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 1 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

SHERIFF RETURN

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON RAY MEDRED DEFENDANT AT c/o RR 8 BOX 22,  
DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, DEFENDANT A TRUE AND  
ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. AND  
MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

Plaintiff,

DECLARATORY JUDGMENT

vs.

No. 814 - 2004 CD

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, upon  
consideration of the Preliminary Objections filed by Defendants Ray Medred, Robert A. Buehler and  
medred Realty Associates, it is hereby Ordered that the Preliminary Objections raising question of  
Venue are Sustained. This case shall be transferred to the Court of Common Pleas of Clearfield  
County, Pennsylvania. All other Preliminary Objections are hereby Overruled.

BY THE COURT:

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

FILED

CERTIFICATE OF SERVICE

2005 JUL 18 P 12: 15

The undersigned does hereby certify that a true and correct copy of the foregoing Response  
to Preliminary Objections was sent to the following parties/counsel of record, by First-class mail,  
postage pre-paid, this 15<sup>th</sup> day of July, 2005:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, L.L.P.  
P.O. Box 505  
DuBois, PA 15801-0505

Thomas M. Marrone, Esquire  
FELDMAN SHEPHERD & WOHLGELERNTER  
1845 Walnut Street, 25<sup>th</sup> Floor  
Philadelphia, PA 19103

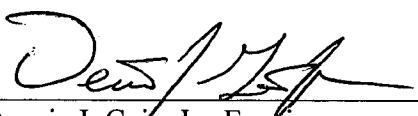
Paul G. Mayer, Jr., Esquire  
LAW OFFICE OF JERRY S. EISENBERG  
301 Grant Street  
1225 One Oxford Centre  
Pittsburgh, PA 15219

Tara Maczuzak, Esquire  
DiBELLA & GEER  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

Jeffrey S. DuBois, Esquire  
HANAK GUIDO & TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

MARGOLIS EDELSTEIN

By:

  
Dennis J. Geist, Jr., Esquire  
Attorneys for Plaintiff

FILED

2005 JUL -5 A 10: 5b

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE  
GROUP, CHARLES J. GRAHAM,  
JENNIFER L. GRAHAM, DAN  
CANTON, i/d/b/a PILLAR TO POST,  
d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL DIVISION

DECLARATORY JUDGMENT

No.: 814-2004 CD

**ANSWER TO COMPLAINT FOR  
DECLARATORY JUDGMENT**

Filed on behalf of: Defendants

Counsel of record for this party:

Paul G. Mayer, Jr., Esquire  
LAW OFFICES OF JERRY S.  
EISENBERG  
1225 One Oxford Center  
301 Grant Street  
Pittsburgh, PA 15219

Atty. State I.D. No. 37461

Tel. (412) 281-7761

**JURY TRIAL DEMANDED**

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, ~~PENNSYLVANIA~~ FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO POST  
INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL DIVISION 2005 JUL -5 A 10:56

DECLARATORY JUDGMENT

JOHN S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

No.: 814-2004

**ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT**

AND NOW, comes the Defendants, Pillar to Post, Inc., and Dan Canton i/d/b/a Pillar to Post d/b/a Dan Canton Home Inspections by its attorney, Paul G. Mayer, Jr., and sets forth the following Answer to New Matter:

1. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 1.
2. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 2.
3. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 3.

**ENTERED**

4. Paragraph 4 is denied as stated. On the contrary, Defendant Dan Canton is a franchisee of Pillar to Post, Inc. and has his principal place of business at R.D. 4, Box 419, DuBois, PA 15801. It is admitted that the Complaint filed in this action sets forth no claim against Pillar to Post.

5. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 5.

6. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 6.

7. Paragraph 7 is admitted.

8. Paragraph 8 is admitted as to the allegations set forth in the Complaint.

9. Paragraph 9 is admitted.

10. Paragraph 10 is admitted.

11. After reasonable investigation, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 11.

12. After reasonable investigation, these Defendants are without knowledgeable or information sufficient to form a belief as to the truth of the averments of Paragraph 12.

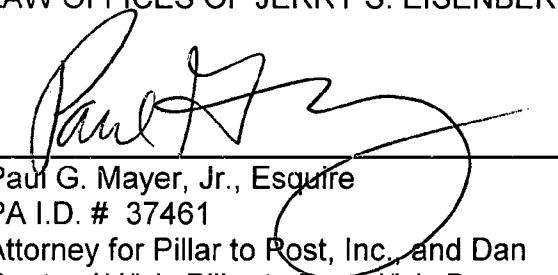
13. After reasonable investigation, these Defendants are without knowledge or information sufficient to form a belief as to the truth of the averments of Paragraph 13.

14. Paragraph 14 contains conclusions of law to which no responsive pleading is required. To the extent a responsive pleading may be deemed required, Paragraph 14 is denied pursuant to Pa. R.C.P. 1029(e).

WHEREFORE, Defendant Pillar to Post, Inc. and Dan Canton demand judgment in their favor.

Respectfully submitted,

LAW OFFICES OF JERRY S. EISENBERG

  
\_\_\_\_\_  
Paul G. Mayer, Jr., Esquire  
PA I.D. # 37461  
Attorney for Pillar to Post, Inc., and Dan  
Canton i/d/b/a Pillar to Post d/b/a Dan  
Canton Home Inspections, Defendants

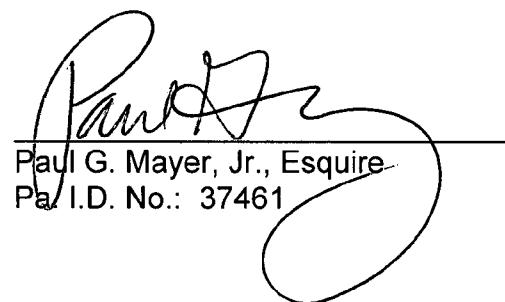
**VERIFICATION**

I, PAUL G. MAYER, JR, ESQUIRE, do hereby verify that I am counsel for PILLAR TO POST, INC., and DAN CANTON i/d/b/a PILLAR TO POST d/b/a DAN CANTON HOME INSPECTION, Defendants herein, and that as such, I have the authority to make this verification on behalf of PILLAR TO POST, INC., and DAN CANTON i/d/b/a PILLAR TO POST d/b/a DAN CANTON HOME INSPECTION, Defendants herein. I verify that the averments of fact set forth in the foregoing ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT are true and correct to the best of my knowledge, information and belief based upon information provided to me by others.

This verification is made subject to the penalties of 18 PA CS 4904 relating to unsworn falsification to authorities.

Dated:

6/30/05

  
Paul G. Mayer, Jr., Esquire  
Pa. I.D. No.: 37461

FILED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Answer to Complaint for Declaratory Judgment was served upon the following at their address <sup>copy of record</sup> by first class mail, postage prepaid, this **30th** day of **June, 2005**.

2005 JUL -5 A 10:56  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

Thomas Marrone, Esquire  
Feldman, Shepherd, Wohlgelernter & Tanner  
1845 Walnut Street, 25<sup>th</sup> Floor  
Philadelphia, PA 19103

Robert A. Weinheimer, Esquire  
602 Law & Finance Building  
Pittsburgh, PA 15219

Tara L. Maczuzak, Esquire  
DiBella & Geer  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

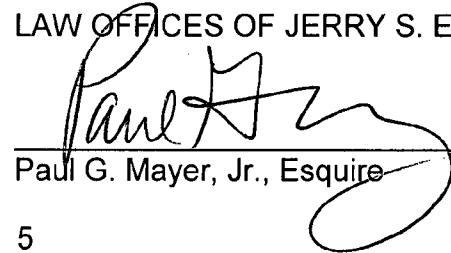
Jeffrey S. DuBois, Esquire  
Hanak Guido & Taladay  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

D.J. Geis, Esquire  
Margolis Edelstein  
1500 Grant Building  
Pittsburgh, PA 15219-2203

Arthur Leonard, Esquire  
2300 One Mellon Bank Center  
Pittsburgh, PA 15219

Stacey F. Vernallis, Esquire  
1424 Frick Building  
Pittsburgh, PA 15219

LAW OFFICES OF JERRY S. EISENBERG

  
Paul G. Mayer, Jr., Esquire

ENTERED

FILED

2005 JUN 21 P 2:07

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA  
TONYA S. GEIST  
JEFFERSON COUNTY, PENNSYLVANIA  
PROTHONOTARY AND  
CLERK OF COURTS

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

: CIVIL ACTION

: DECLARATORY JUDGMENT

:

:

: No. 814 - 2004 C.D.

: Type of Pleading: PRELIMINARY

: OBJECTIONS TO COMPLAINT

: FOR DECLARATORY JUDGMENT

:

: Filed on Behalf of: Defendants, RAY

: MEDRED, ROBERTA BUEHLER, and

: MEDRED REALTY ASSOCIATES

:

: Counsel of Record for these Parties:

: TONI M. CHERRY, ESQ.

: Supreme Court No.: 30205

: GLEASON, CHERRY AND

: CHERRY, L.L.P.

: Attorneys at Law

: P. O. Box 505

: One North Franklin Street

: DuBois, PA 15801

:

: (814) 371-5800

ENTERED

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FILED

2005 JUN 27 P 2:07

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

TONYA S. GEIS  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,  
Plaintiff

: CIVIL ACTION

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

: No. 814 - 2004 C.D.

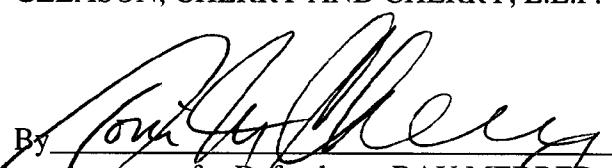
### NOTICE TO PLEAD

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO PLEAD  
TO THE WITHIN PRELIMINARY  
OBJECTIONS WITHIN TWENTY (20)  
DAYS FROM THE DATE OF SERVICE  
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

FILED

2005 JUN 27 P 2:07

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,  
Plaintiff

: CIVIL ACTION

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

: No. 814 - 2004 C.D.

Defendants

:

**DEFENDANTS' PRELIMINARY OBJECTIONS**  
**TO PLAINTIFF'S COMPLAINT**  
**FOR DECLARATORY JUDGMENT**

Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY  
ASSOCIATES, by their undersigned attorneys, GLEASON, CHERRY AND CHERRY,  
L.L.P., preliminarily object to Plaintiff's Complaint as follows:

**Preliminary Objection Raising Question of Lack of Subject  
Matter Jurisdiction Pursuant to Pa. R.C.P. 1028(a)(1)**

1. The action set forth in the Complaint seeks to have the Court of Common Pleas of  
Jefferson County, Pennsylvania, determine the duties that Plaintiff Insurance Company owes to  
Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY

ASSOCIATES, in defense of an action brought in the United States District Court for the Western District.

2. The jurisdiction over the subject matter of this action is vested in the Federal Court while the action is pending in that Court.

3. This Court has no jurisdiction over the subject matter of this action under the Declaratory Judgments Act found at 42 Pa. C.S.A. §7531, *et seq.*

WHEREFORE, Defendants request that the Plaintiff's Complaint be dismissed.

**Preliminary Objection Raising Question of Lack of Personal Jurisdiction**

4. The cause of action asserted herein arose in Clearfield County, Pennsylvania.

5. Defendant, ROBERTA BUEHLER, resides in the State of Louisiana.

6. Defendant, RAY MEDRED, resides in Clearfield County and his business, MEDRED REALTY ASSOCIATES, is located in Clearfield County.

7. Defendant, ROBERTA BUEHLER, has not had the minimum contacts sufficient for *in personam* jurisdiction under the Pennsylvania Long Arms Statute, 42 Pa. Const. Stat. §5322.

8. This Court does not have personal jurisdiction over Defendant, ROBERTA BUEHLER.

WHEREFORE, Defendant, ROBERTA BUEHLER, requests that Plaintiff's Complaint be dismissed.

**Preliminary Objection Raising Question of Improper Venue**

9. This action has been instituted in Jefferson County.

10. Plaintiff, PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, is an insurance company with its principal place of business in Harrisburg, Dauphin County, Pennsylvania.

11. Defendant, RAY MEDRED, is an adult individual who resides in Sandy Township, Clearfield County, Pennsylvania.

12. ROBERTA BUEHLER is an adult individual who resides in the State of Louisiana.

13. MEDRED REALTY ASSOCIATES is a real estate company located on Route 255 North, Sandy Township, Clearfield County, Pennsylvania.

14. That none of the remaining Defendants named herein are residents of Jefferson County.

15. The venue of this action is improper in this county, since under Pa. R.C.P. 2179, plaintiff may only bring this action against defendants in the county where the cause of action arose or where defendants reside or where a defendant business is located.

16. That none of the Defendants have an office or place of business or residence in Jefferson County.

17. That no transaction or occurrence related to the action that is the subject of the Declaratory Judgment Complaint took place in Jefferson County.

18. That none of the Defendants were personally served in Jefferson County.

19. Venue in this county is accordingly improper under Pa. R.C.P. 2179.

WHEREFORE, Defendants request that Plaintiff's Complaint be dismissed for improper venue.

**Preliminary Objection to Service of Complaint for Declaratory Judgment**

20. That no return of service evidencing that RAY MEDRED, ROBERTA BUEHLER or MEDRED REALTY ASSOCIATES have been served in this action is filed of record.
21. That the Complaint was never served upon any of the foregoing three Defendants or upon anyone authorized to accept service on behalf of these Defendants.
22. Service of the Complaint was improper under Pa. R.C.P. 402.

WHEREFORE, Defendants respectfully request that Plaintiff's Complaint be stricken.

**Preliminary Objection Raising Pendency of Prior Action**

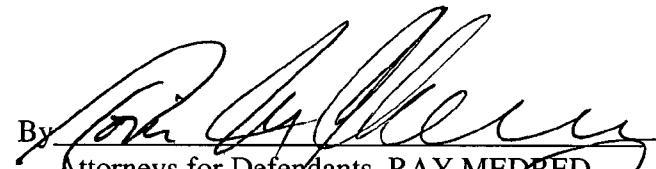
23. The instant civil action for declaratory judgment was commenced by Plaintiff on November 12, 2004.
24. Previously on April 2, 2004, a Complaint was filed in the United States District Court for the Western District of Pennsylvania to No. 04 - 515, a copy of which is attached to Plaintiff's Complaint for Declaratory Judgment.
25. That any action on the instant Complaint is dependent upon the outcome of the matter filed in the Federal Court.
26. That until a decision is actually rendered in Federal Court, it cannot be determined if there is coverage under the policy that forms the basis for the instant Complaint.
27. That a decision on the instant Complaint will not act to resolve the pending matter in Federal Court and thus Your Honorable Court cannot grant relief as it would be contrary to the enumerated purposes of the Declaratory Judgments Act, 42 Pa. C.S.A. §7531, *et seq.*

WHEREFORE, Defendant respectfully requests that the Court sustain Defendants'

Preliminary Objection and dismiss this action as barred by the pending action in Federal Court.

Respectfully submitted,

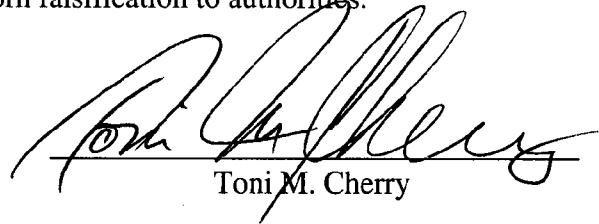
GLEASON, CHERRY AND CHERRY, L.L.P.

By 

Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

## VERIFICATION

I, TONI M. CHERRY, ESQ., counsel for Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY ASSOCIATES, verify that the information provided in the foregoing Preliminary Objections is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S. §4904, relating to unsworn falsification to authorities.



A handwritten signature in black ink, appearing to read "Toni M. Cherry".

Toni M. Cherry

DATED: June 24, 2005

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,  
Plaintiff

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

: CIVIL ACTION  
: 2005 JUN 27 P 2:07

: TONYA S. GEIST  
: JEFFERSON COUNTY  
: PROTHONOTARY AND  
: CLERK OF COURTS  
: NO. 814-2004 C.D.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of June, 2005, a true and correct copy of the Preliminary Objections to Plaintiff's Complaint for Declaratory Judgment filed on behalf of Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY ASSOCIATES, was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MILES A. KIRSHNER, ESQ.  
DENNIS J. GEIS, JR., ESQ.  
Margolis Edelstein  
Attorneys at Law  
310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219

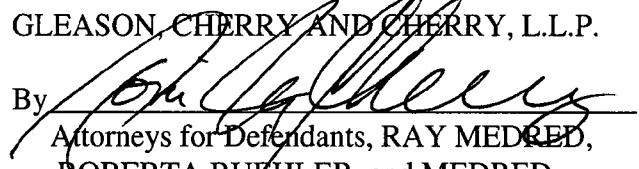
THOMAS MORE MARRONE, ESQ.  
Attorney at Law  
25<sup>th</sup> Floor  
1845 Walnut Street  
Philadelphia, PA 19103

TARA MACZUZAK, ESQ.  
Dibella, Geer, McAllister & Best  
Attorneys at Law  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

JEFFREY S. DUBOIS, ESQ.  
Attorney at Law  
190 West Park Avenue, Suite #5  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

Dated: June 24, 2005

FILED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, A 10:45  
PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
EXCHANGE, (improperly designated  
as "Erie Insurance Group")

Defendants.

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CIVIL DIVISION CLERK OF COURTS

No. 814 - 2004 CD

ANSWER TO COMPLAINT FOR  
DECLARATORY JUDGMENT

Filed on behalf of Defendant,  
Erie Insurance Exchange

Counsel of Record for this Party:

RICHARD W. DiBELLA,  
ESQUIRE  
Pa. I.D. No. 24711

TARA L. MACZUZAK, ESQUIRE  
Pa. I.D. No. 86709

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

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

ENTERED

Scanned

FILED

NOTICE TO PLEAD

2005 JUN 27 A 10:45

You are hereby notified to plead to the enclosed ANSWER TO  
COMPLAINT FOR DECLARATORY JUDGMENT directed to you within twenty (20) DURTS  
days from service hereof or a judgment may be entered against you.

DiBELLA GEER McALLISTER BEST

BY: Tara L. Maczuzak  
TARA L. MACZUZAK, ESQUIRE  
Attorney for Defendant

FILED

2005 JUN 27 A 10:45  
IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY,  
PENNSYLVANIA

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,

No. 814 - 2004 CD

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
EXCHANGE, (improperly designated  
as "Erie Insurance Group")

Defendants.

ANSWER TO COMPLAINT  
FOR DECLARATORY JUDGMENT

AND NOW, comes the Defendant, Erie Insurance Exchange (incorrectly designated "Erie Insurance Group", hereinafter referred to as "Erie") by and through its attorneys DiBella, Geer, McAllister & Best, P.C., and files the within Answer to Complaint for Declaratory Judgment, and in support thereof avers as follows:

PARTIES

1. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of

paragraph 1 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

2. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 2 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

3. Paragraph 3 is admitted to the extent that Marceline H. Oberly is a party to an action filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 3 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

4. Paragraph 4 is admitted to the extent that Pillar to Post, Inc. is a party to an action filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph 4 of Plaintiff's Complaint, therefore the same are denied and strict proof thereof is demanded at the time of trial.

5. Paragraph 4 is admitted to the extent that Erie is a party to an action filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. The remaining allegations of

paragraph 5 are denied as stated. Erie Insurance Exchange is a licensed reciprocal insurance exchange, organized under the Insurance Code of the Commonwealth with an office and principal place of business at 100 Erie Insurance Place, Erie, Pennsylvania.

JURISDICTION AND VENUE

6. The allegations of paragraph 6 of Plaintiffs complaint are a conclusion of law to which no response is necessary.

THE UNDERLYING ACTION

7. The allegations of paragraph 7 are admitted to the extent that Oberly has caused a civil action to be filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. Further it is admitted that a copy of the Complaint filed by Oberly is attached to the Complaint in the instant action. The remaining allegations of paragraph 7 are denied.

8. The allegations of paragraph 8 are denied wherein they attempt to summarize, characterize or set forth the allegations of Oberly's Complaint as filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. To the contrary, the original of such Complaint constitutes the best evidence of its allegations, assertions and claims, and shall speak for itself regarding the same.

9. The allegations of paragraph 9 are denied wherein they attempt to summarize, characterize or set forth the allegations of Oberly's Complaint as filed in the United States District Court for the Western District of Pennsylvania at Civil

Action No. 04-0515. To the contrary, the original of such Complaint constitutes the best evidence of its allegations, assertions and claims, and shall speak for itself regarding the same.

10. The allegations of paragraph 10 are denied wherein they attempt to summarize, characterize or set forth the allegations of Oberly's Complaint as filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515. To the contrary, the original of such Complaint constitutes the best evidence of its allegations, assertions and claims, and shall speak for itself regarding the same.

THE PENN NATIONAL POLICY

11. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11 of Plaintiff's Complaint. Therefore, the same is denied and strict proof thereof is demanded at the time of trial.

12. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 12 of Plaintiff's Complaint. Therefore, the same is denied and strict proof thereof is demanded at the time of trial.

13. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 13 of Plaintiff's Complaint. Therefore, the same is denied and strict proof thereof is demanded at the time of trial.

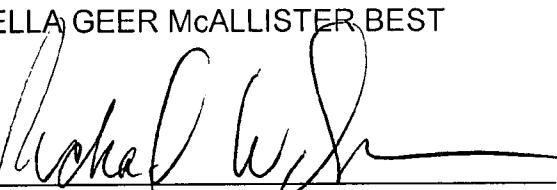
DECLARATORY RELIEF SOUGHT

14. After reasonable investigation, Defendant, Erie is without information sufficient to form a belief as to the truth or falsity of the allegations of paragraph 14 of Plaintiff's Complaint. Therefore, the same is denied and strict proof thereof is demanded at the time of trial.

WHEREFORE, Defendant, Erie Insurance Exchange requests that this Honorable Court enter judgment in its favor, to include costs.

Respectfully submitted,

DiBELLA GEER McALLISTER BEST

BY: 

RICHARD W. DiBELLA, ESQUIRE

BY: 

TARA L. MACZUZAK, ESQUIRE  
Attorneys for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY,  
PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 814 - 2004 CD

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
EXCHANGE, (improperly designated  
as "Erie Insurance Group")

Defendants.

VERIFICATION

I, Ronald G. Habursky of Erie Insurance Exchange hereby  
verify the statements set forth in the foregoing ANSWER TO COMPLAINT FOR  
DECLARATORY JUDGMENT 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.

BY: Ronald G. Habursky

CERTIFICATE OF SERVICE

**FILED**

I hereby certify that a true and correct copy of the within <sup>Answer to A 10:45</sup> Complaint for Declaratory Judgment was forwarded to all counsel of record by <sup>TONYA S. GEIST</sup> <sup>first</sup> class mail this 24 day of June <sup>2005</sup>, 2005. <sup>JEFFERSON COUNTY</sup> <sup>PROTHONOTARY AND</sup> <sup>Clerk of the Courts</sup>

D.J. Geis, Esquire  
1500 Grant Building  
Pittsburgh, PA 15219

Thomas Marrone, Esquire  
1845 Walnut Street  
25<sup>th</sup> Floor  
Philadelphia, PA 19103

Stacey F. Vernallis, Esquire  
1424 Frick Building  
Pittsburgh, PA 15219

Paul Mayer, Jr., Esquire  
1225 One Oxford Centre  
Pittsburgh, PA 15219

Arthur Leonard, Esquire  
2300 One Mellon Center  
Pittsburgh, PA 15219

Robert Weinheimer, Esquire  
602 Law & Finance Building  
Pittsburgh, PA 15219

Jeffrey DuBois, Esquire  
Suite 5 - 190 W. Park Avenue  
DuBois, PA 15801

DiBELLA GEER McALLISTER BEST

BY: 

TARA L. MACZUZAK, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

**FILED**

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY, : CIVIL ACTION  
Plaintiff : 2005 JUN 21 P 3:49  
vs. : DECLARATORY JUDGMENT  
: TONYA S. GEIST  
: NO. 814-2004 CD AND  
: PROTHONOTARY AND  
: CLERK OF COURTS  
Defendants :  
:

**ENTRY OF APPEARANCE**

TO THE PROTHONOTARY:

Kindly enter my appearance as counsel for defendant Marceline Oberly in the within matter.

FELDMAN, SHEPHERD, WOHLGELERNTER,  
TANNER & WEINSTOCK

THOMAS MORE MARRONE

*ENTERED*

*Scanned*

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLEK,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

2005 MAY 19 A 10:48

DECLARATORY JUDGMENT  
TANIA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK'S COURTS  
No. 814 - 2004 CD

**AFFIDAVIT OF SERVICE  
BY CERTIFIED MAIL**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

2005 MAY 19 A 10:49

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**

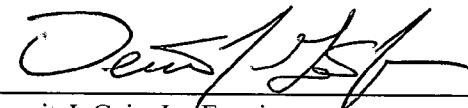
I, DENNIS J. GEIS, JR., ESQUIRE, Counsel for Plaintiff Pennsylvania National Mutual Casualty Insurance Company, do certify that I have caused to be served by Certified Mail - Return Receipt Requested, Plaintiff's Complaint for Declaratory Judgment in the above-captioned action upon the following Defendant:

Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

and the same was received by said Defendant on the 9th day of May, 2005 as evidenced by the attached Certified Mail Receipt Card, No. 7000 1670 0003 7999 4657, the original of which is attached hereto and marked as Exhibit "A".

Respectfully submitted,

MARGOLIS EDELSTEIN

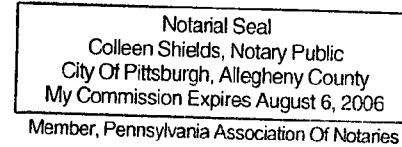


Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

SWORN TO and subscribed before me  
this 19th day of May, 2005.



Colleen Shields  
Notary Public



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

## 1. Article Addressed to:

Ms. Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

21500.2-00109/MAK

2. Article Number (Copy from service label)  
7000 1670 0003 7999 4657**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

*Roberta Buehler 5-9-05*

## C. Signature

 Robert Buehler  Agent  AddresseeD. Is delivery address different from item 1?  YesIf YES, enter delivery address below:  No

## 3. Service Type

 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.4. Restricted Delivery? (Extra Fee)  Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

**EXHIBIT**

tabbed

*A*

FILED

CERTIFICATE OF SERVICE

2005 MAY 19 A 10:49

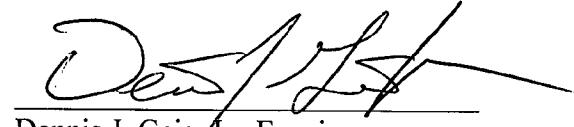
The undersigned does hereby certify that a true and correct copy of the foregoing <sup>JURIA S. GEIST</sup>  
<sup>JEFFERSON COUNTY</sup>  
<sup>PARTIES/COUNSEL OF AND</sup>  
<sup>CLERK OF COURTS</sup>  
AFFIDAVIT OF SERVICE BY CERTIFIED MAIL was sent to the following parties/counsel of and  
record, by First-class mail, postage pre-paid, this 17<sup>th</sup> day of May, 2005:

Ray Medred and Medred Realty Associates  
c/o RR 8, Box 22  
DuBois, PA 15801  
[Defendants]

Pillar to Post, Inc., Dan Canton, i/d/b/a Pillar to Post,  
d/b/a Canton Home Inspection  
c/o RD 4, Box 149  
DuBois, PA 15801  
[Defendant]

MARGOLIS EDELSTEIN

By:

  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

**FILED**

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

2005 MAY -4 A C 41

DECLARATORY JUDGMENT A. S. GEIST  
JEFFERSON COUNTY  
PROBATE AND  
CUSTODY COURTS

No. 814 - 2004 CD

**PRAECIPE TO REINSTATE  
COMPLAINT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

**ENTERED**

**Scanned**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, ~~PENNSYLVANIA~~

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION ~~10~~ MAY -4 A 9:41

TONYA S. GEIST  
DECLARATORY JUDGMENT  
JEFFERSON COUNTY PROTHONOTARY AND  
PROTHONOTARY AND  
COURT CLERKS

No. 814 - 2004 CD

**PRAECIPE TO REINSTATE COMPLAINT**

TO: PROTHONOTARY, JEFFERSON COUNTY  
JEFFERSON COUNTY COURTHOUSE  
200 Main Street  
Brookville, PA 15825

Kindly Reinstate the Complaint for Declaratory Judgment in the above-captioned matter.

Respectfully submitted,

MARGOLIS EDELSTEIN



Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff,  
Pennsylvania National Mutual  
Casualty Insurance Company

DATED: May 3, 2005

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT **NOV 12 2004**

No. 814-2004 CD

**TONYA S. GEIST**  
PRO. & CLERK of COURTS

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

AS OF NOW, 12-16-04 The within  
Complaint is Reinstated.

**Scanned**

Douglas Buehler, Esq. Prothonotary

FILED

2005 APR 26 P 12:31

No. 814 C.D. 2004

TONYA S. GEIST  
JEFFERSON COUNTY

Now, March 28, 2005, after due and diligent search, <sup>SEARCHED</sup> ~~COULD NOT FIND~~ <sup>INDEXED</sup> ~~ANSWERED~~ <sup>FILED</sup> ~~COURTS~~  
within named RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, and DAN  
CANTON, Defendants, in my bailwick; viz, County of Jefferson, State of Pennsyl-  
vania. Therefore, I deputized the Sheriff of Clearfield County to serve the  
Amended Praeclipe to Re-Instate Complaint for Declaratory Judgment and Complaint  
for Declaratory Judgment, whose Return of Service is attached hereto and hereby  
made a part of this Return.

Advance Costs Received:	\$125.00	
My Costs:	86.00	Paid
Clearfield Co. Costs		
Pd. Directly by Atty:	100.00	
Total Costs:	186.00	
REFUNDED:	\$ 39.00	

So Answers,

  
Tonya S. Geist  
Sheriff  
JEFFERSON COUNTY, PENNSYLVANIA

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF ~~CLEARFIELD~~ COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 1 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

**SHERIFF RETURN**

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON RAY MEDRED DEFENDANT AT c/o RR 8 BOX 22,  
DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, DEFENDANT A TRUE AND  
ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. AND  
MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

In The Court of Common Pleas of Clearfield County, Pennsylvania

Service # 2 of 4 Services

Sheriff Docket # **100361**

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

Case # **814-2004-CD**

vs.

RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES,  
DAN CANTON i/d/b/a PILLAR TO POST d/b/a DAN CANTON HOME

**SHERIFF RETURNS**

NOW April 21, 2005 AFTER DILIGENT SEARCH IN MY BAILIWICK I RETURNED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. "NOT FOUND" AS TO ROBERTA BUEHLER, DEFENDANT.  
MOVED TO NEW ORLEANS.

SERVED BY: /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 3 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

**SHERIFF RETURN**

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON MEDRED REALTY ASSOCIATES DEFENDANT AT c/o  
RR 8 BOX 22, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, OWNER A  
TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY  
JUDGT. AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 4 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

SHERIFF RETURN

---

NOW, April 18, 2005 AT 11:15 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON DAN CANTON i/d/b/a PILLAR TO POST d/b/a DAN  
CANTON HOME INSPECTIONS DEFENDANT AT 810 SHAMOKIN TRAIL, TROUTVILLE, CLEARFIELD COUNTY,  
PENNSYLVANIA, BY HANDING TO DAN CANTON, DEFENDANT A TRUE AND ATTESTED COPY OF THE  
ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. AND MADE KNOWN THE  
CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICES 4  
AMENDED

PRAECLP/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

**SHERIFF RETURN**

---

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	MARGOLIS	10260	100.00

Sworn to Before Me This

21 Day of April 2005

WILLIAM A. SHAW  
Prothonotary  
My Commission Expires  
1st Monday in Jan. 2006  
Clearfield Co., Clearfield, PA

So Answers,

*Chester A. Hawkins  
by Marilyn Harris*

Chester A. Hawkins  
Sheriff

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

MAR 23 2005

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendant.

CIVIL ACTION

DECLARATORY JUDGMENT

TONYA S. GEIST  
PRO. & CLERK of COURTS

No. 814 - 2004 CD

**AMENDED PRAECIPE TO REINSTATE  
COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

CIVIL ACTION

DECLARATORY JUDGMENT **FILED**

**MAR 23 2005**

TONYA S. GEIST  
PRO. & CLERK of COURTS

Defendants.

**AMENDED  
PRAECIPE TO REINSTATE COMPLAINT FOR  
DECLARATORY JUDGMENT**

TO: PROTHONOTARY, JEFFERSON COUNTY  
JEFFERSON COUNTY COURTHOUSE  
200 Main Street  
Brookville, PA 15825

Kindly Reinstate the Complaint for Declaratory Judgment in the above-captioned matter.

Respectfully submitted,

MARGOLIS EDELSTEIN



Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff,  
Pennsylvania National Mutual  
Casualty Insurance Company

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

CIVIL ACTION

**FILED**

DECLARATORY JUDGMENT **NOV 12 2004**

No. 814-2004 CD

TONYA S. GEIST  
PRO. & CLERK of COURTS

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

ALL NOW, 3-23-05 The within  
Complaint is Reinstated.

*Levya S. Geist* Prothonotary

ALL NOW, 3-18-04 The within  
Complaint is Reinstated.

*Levya S. Geist* Prothonotary

JURY TRIAL DEMANDED

ALL NOW, 12-16-04 The within  
Complaint is Reinstated.

*D. Lundbom, his deputy* Prothonotary

**Sealed**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendant.

CIVIL ACTION

DECLARATORY JUDGMENT

FILED

MAR 13 2005

No. 814 - 2004 CD

TOMAS S. GEIST  
PRO. & CLERK of COURTS

PRAECIPE TO REINSTATE  
COMPLAINT

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

FILED

MAR 18 2005

No. 814 - 2004 CD

TONYA S. GEIST  
PRO. & CLERK of COURTS

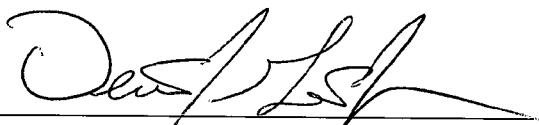
**PRAECIPE TO REINSTATE COMPLAINT**

TO: PROTHONOTARY, JEFFERSON COUNTY  
JEFFERSON COUNTY COURTHOUSE  
200 Main Street  
Brookville, PA 15825

Kindly Reinstate the Complaint for Declaratory Judgment in the above-captioned matter.

Respectfully submitted,

MARGOLIS EDELSTEIN



Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff,  
Pennsylvania National Mutual  
Casualty Insurance Company

DATED: March 17, 2005

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

CIVIL ACTION

**FILED**

DECLARATORY JUDGMENT **NOV 12 2004**

No. 814-2004 CD

TONYAS. GEIST  
PRO. & CLERK of COURTS

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

*3-18-04*  
The within  
Complaint is Reinstated.  
*Janay S. Geist*  
Prothonotary

JURY TRIAL DEMANDED

*12-11-04*  
The within  
Complaint is Reinstated.

*Donald B. Lers, Prothonotary*

**REINSTATED**

**FILED**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA  
2005 JAN 24 A 11:57

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
GROUP,

Defendants.

CIVIL DIVISION  
NYA S. GEIST  
JEFFERSON COUNTY  
NOTARY AND  
No. 814 - 2004 CD COURTS

**PRAECIPE FOR APPEARANCE**

Filed on behalf of Defendant,  
Erie Insurance Exchange

Counsel of Record for this Party:

RICHARD W. DiBELLA, ESQUIRE  
Pa. I.D. No. 24711

TARA L. MACZUZAK, ESQUIRE  
Pa. I.D. No. 86709

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

312 Boulevard of the Allies  
Third Floor  
Pittsburgh, PA 15222

412-261-2900

Scanned

# FILED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

TONYA S. GEIST  
JEFFERSON COUNTY  
CIVIL DIVISION AND  
CIRCUIT COURTS

No. 814 – 2004 CD

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
GROUP,

Defendants.

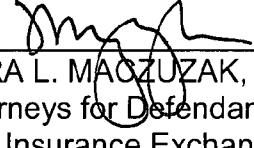
### PRAECIPE FOR APPEARANCE

TO: PROTHONOTARY

Please enter the appearance of DiBella Geer McAllister Best, by Richard W. DiBella, Esquire, and Tara L. Maczuzak, Esquire, on behalf of Erie Insurance Exchange, Defendant, in connection with the above-noted case.

DiBELLA GEER McALLISTER BEST

BY: \_\_\_\_\_  
RICHARD W. DiBELLA, ESQUIRE

BY:   
TARA L. MACZUZAK, ESQUIRE  
Attorneys for Defendant  
Erie Insurance Exchange

ENTERED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within Praepte for Appearance was forwarded to all counsel of record by <sup>first class mail</sup> this 20 day of January, 2005.

D.J. Geis, Esquire  
1500 Grant Building  
Pittsburgh, PA 15219

Thomas Marrone, Esquire  
1845 Walnut Street  
25<sup>th</sup> Floor  
Philadelphia, PA 19103

Stacey F. Vernallis, Esquire  
1424 Frick Building  
Pittsburgh, PA 15219

Paul Mayer, Jr., Esquire  
1225 One Oxford Centre  
Pittsburgh, PA 15219

Arthur Leonard, Esquire  
2300 One Mellon Center  
Pittsburgh, PA 15219

Robert Weinheimer, Esquire  
602 Law & Finance Building  
Pittsburgh, PA 15219

Jeffrey DuBois, Esquire  
Suite 5 - 190 W. Park Avenue  
DuBois, PA 15801

DIBELLA GEER McALLISTER BEST

BY: TARA L. MACZUZAK, ESQUIRE  
Attorney for Defendant  
Erie Insurance Exchange

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

FILED

CIVIL ACTION

DECLARATORY JUDGMENT JAN 20 2005

No. 814 - 2004 CD

TONYAS. GEIST  
PRO. & CLERK of COURTS

ACCEPTANCES OF SERVICE

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED  
**ENTERED**

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

**FILED**

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

**JAN 2 6 2005**

Defendants.

TONYA S. GEIST  
PRO. & CLERK of COURTS

**ACCEPTANCE OF SERVICE**

I accept service of the Reinstated Complaint for Declaratory Judgment on behalf of  
Defendant MARCELINE OBERLY, and certify that I am authorized to do so.

FELDMAN SHEPHERD & WOHLGELERNTER

By:

\_\_\_\_\_  
Mark W. Tanner, Esquire

Thomas More Monroe

DATED: 12 Jan, 2005

**ENTERED**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC. and ERIE INSURANCE  
GROUP,

Defendants.

CIVIL DIVISION

DECLARATORY JUDGMENT

No. 814 – 2004 CD

FILED

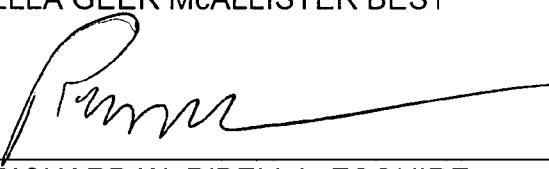
JAN 20 2005

TONYA G. SEISI  
PRO. & CLERK of COURTS

ACCEPTANCE OF SERVICE

We accept service of the Reinstated Complaint for Declaratory Judgment on behalf of Defendant, Erie Insurance Exchange, incorrectly designated as Erie Insurance Group, and certify that we are authorized to do so.

DiBELLA GEER McALLISTER BEST

BY: 

RICHARD W. DiBELLA, ESQUIRE

BY: 

TARA L. MACZUZAK, ESQUIRE

DATED: 1-17, 2005.

ENTERED

**FELDMAN, SHEPHERD, WOHLGELERNTER, TANNER & WEINSTOCK**  
BY: THOMAS MORE MARRONE  
IDENTIFICATION NO.: 49463  
25TH FLOOR  
1845 WALNUT STREET  
PHILADELPHIA, PA 19103  
(215) 567-8300

ATTORNEY FOR DEFENDANT,  
MARCELINE OBERLY

**FILED**

2005 JAN 18 P 2: 25

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

---

PENNSYLVANIA NATIONAL MUTUAL	:	COURT OF COMMON PLEAS
CASUALTY INSURANCE COMPANY,	:	JEFFERSON COUNTY
Plaintiff,	:	CIVIL ACTION
v.	:	DECLARATORY JUDGMENT
RAY MEDRED, ROBERTA BUEHLER,	:	No. 814-2004 CD
MEDRED REALTY ASSOCIATES,	:	
MARCELINE OBERLY, PILLAR TO	:	
POST INC. and ERIE INSURANCE	:	
GROUP,	:	
Defendants.	:	

---

**ENTRY OF APPEARANCE**

**TO THE PROTHONOTARY:**

Kindly enter my appearance as counsel for defendant Marceline Oberly.

FELDMAN, SHEPHERD, WOHLGELERNTER, TANNER & WEINSTOCK

THOMAS MORE MARRONE

**ENTERED**

**Scanned**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

2005 JAN 13 A 11:47

TONYA S. GEIST  
DECLARATORY JUDGMENT  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK OF COURTS

No. 814 - 2004 CD

ACCEPTANCE OF SERVICE

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

ENTERED

Scanned

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

CIVIL ACTION

2005 JAN 13 A 11:47

DECLARATORY JUDGMENT

TONYA S. GEIST  
JEFFERSON COUNTY  
PROTHONOTARY AND  
CLERK - COURTS

No. 814 - 2004 CD

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

**ACCEPTANCE OF SERVICE**

I accept service of the Reinstated Complaint for Declaratory Judgment on behalf of  
Defendants CHARLES GRAHAM and JENNIFER GRAHAM, and certify that I am authorized to  
do so.

HANAK GUIDO & TALADAY

By:

Jeffrey S. DuBois, Esquire

DATED: Dec 29, 2004

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

FILED

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DEC 16 2004

DEclaratory JUDGMENT

TONYAS. GEIST.

PRO. & CLERK of COURTS

No. 814 - 2004 CD

**PRAECLPICE TO REINSTATE  
COMPLAINT FOR DECLARATORY  
JUDGMENT ADDING PARTY  
DEFENDANTS**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

ENTERED

Complaint

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, P

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDG

FILED

TONYAS GEIST  
DEC 16 2004

No. 814 - 2004 CD

TONYAS GEIST  
PRO. & CLERK of COURTS

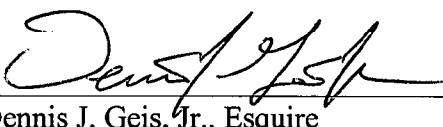
**PRAECLPICE TO REINSTATE COMPLAINT FOR  
DECLARATORY JUDGMENT ADDING PARTY DEFENDANTS**

TO: PROTHONOTARY, JEFFERSON COUNTY  
JEFFERSON COUNTY COURTHOUSE  
200 Main Street  
Brookville, PA 15825

Kindly Reinstate the Complaint for Declaratory Judgment in the above-captioned matter,  
adding new party defendants pursuant to Pa.R.C.P. No. 401(b)(2).

Respectfully submitted,

MARGOLIS EDELSTEIN

  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff,  
Pennsylvania National Mutual  
Casualty Insurance Company

ENTERED

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

CIVIL ACTION

**FILED**

DECLARATORY JUDGMENT **NOV 12 2004**

No. 814-2004 CD

**TONYAS. GEIST  
PRO. & CLERK of COURTS**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

AS OF NOW, 12-16-04 The within  
Complaint is Reinstated.

*Dorothy B. Liers, Deputy Prothonotary*

**Scanned**

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

Defendants.

**FILED**

CIVIL ACTION

DECLARATORY JUDGMENT **NOV 12 2004**

No. 814-2004 CD

**TONYAS. GEIST  
PRO. & CLERK of COURTS**

**COMPLAINT FOR DECLARATORY  
JUDGMENT**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED

AS NOW, 12-16-04 The within  
Complaint is Reinstated.

**Complaint**

Douglas B. Lers, Prothonotary

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

DECLARATORY JUDGMENT

Plaintiff,

vs.

No. 814-2004 CD

**FILED**

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,

**NOV 12 2004**

**TONYAS. GEIST  
PRO. & CLERK of COURTS**

Defendants.

**Complaint for Declaratory Judgment**

AND NOW, comes the Plaintiff, Pennsylvania National Mutual Casualty Insurance Company, by its attorneys Margolis Edelstein, Miles A. Kirshner, Esquire, and Dennis J. Geis, Jr., Esquire, and files the within Complaint for Declaratory Judgment:

**Parties**

1. Plaintiff Pennsylvania National Mutual Casualty Insurance Company (hereinafter Penn National) is an insurance company with its principal place of business in Harrisburg, PA. Penn National is authorized by the Commonwealth of Pennsylvania Insurance Commissioner to underwrite various policies of insurance within said Commonwealth, including but not limited to policies providing comprehensive general liability coverage .

2. Defendants Ray Medred, Roberta Buehler and Medred Realty Associates (hereinafter referred to collectively as "Medred" or "the Medred defendants") are adult individuals and a business

entity who do business as realtors in Jefferson County, and who maintain a business address at RR 8, Box 22, DuBois, PA 15801.

3. Defendant Marceline H. Oberly is an adult individual residing at 37240 Irish Lane, Glade Spring, VA 24240. While this Complaint makes no claim against Oberly, she is named as a defendant herein because, as a party to the underlying action described below, she has or may have an interest in the declaration sought herein.

4. Defendant Pillar to Post, Inc. is a business entity having its principal place of business at RD 4, Box 419, DuBois, PA 15801. While this Complaint makes no claim against Pillar to Post, Inc., it is named as a defendant herein because, as a party to the underlying action described below, it has or may have an interest in the declaration sought herein.

5. Defendant Erie Insurance Group (Erie) is a business entity maintaining its principal place of business at 100 Erie Insurance Place, Erie, PA 16530. While this Complaint makes no claim against Erie, it is named as a defendant herein because, as a party to the underlying action described below, it has or may have an interest in the declaration sought herein.

#### Jurisdiction and Venue

6. The instant Complaint for Declaratory Judgment is filed pursuant to the Declaratory Judgments Act, 42 Pa. C.S. §§7531-7541. Venue is derived from the fact that several of the defendants are located in Jefferson County. Moreover, both the underlying action and the events giving rise to that action arose in Jefferson County.

#### The Underlying Action

7. Oberly has caused a certain civil action to be filed in the United States District Court for the Western District of Pennsylvania at Civil Action No. 04-0515 (hereinafter the underlying

action). A true and correct copy of the Complaint filed by Oberly in the underlying action is adopted by reference, attached hereto and marked as Exhibit "A".

8. Oberly claims generally that "after moving into a newly purchased home, [she] discovered that it was moisture, mold and pest ridden." With respect to the Medred defendants, Oberly claims that they "did not disclose these problems to [her] before she purchased the home." Further, Oberly claims that the conditions complained of forced her to vacate the premises, and that she sustained personal injury. See Oberly Complaint at 1.

9. The Complaint filed by Oberly alleges that the defendants named therein caused her damages, and contains three separate counts against the Medred defendants, entitled:

- a. Count Two - Fraud and/or Negligent Misrepresentation;
- b. Count Three - Consumer Protection Law; and
- c. Count Four - Violation of the Real Estate Seller Disclosure Law.

10. Each Count filed against the Medred defendants seeks identical damages. The damages sought by Oberly are set forth at paragraphs 26-28 of her Complaint, which is incorporated by reference as if set forth more fully at length herein.

#### The Penn National Policy

11. From April 24, 2003 until April 24, 2004 there existed, in full force and effect, a certain insurance policy providing commercial lines coverage issued by Penn National to named insured Medred Realty Associates, bearing policy number BP9 0078589 (hereinafter, the Penn National policy). A certified copy of the entire Penn National policy is adopted by reference, attached hereto and marked as Exhibit "B".

12. The Penn National policy included, *inter alia*, the following coverage forms, each of which is adopted and incorporated by reference as if set forth more fully at length herein:

- a. Businessowners Liability Coverage Form - BP 0006 (1/97); and
- b. Fungi or Bacteria Exclusion (Liability) - 71 1031 (01/03).

13. Following service of process in the underlying action, the Medred defendants tendered the claims asserted therein to Penn National seeking a defense and indemnification under the Penn National policy. Pending the declaration sought herein, Penn National has provided an independent defense for the Medred defendants, pursuant to a written reservation of rights.

**Declaratory Relief Sought**

14. Comparison of the allegations set forth in the Complaint filed in the underlying action, to the coverages provided by the Penn National leads to the following conclusions:

- a. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Three of the Complaint filed in the underlying action, seeking damages for violation of the Pennsylvania Real Estate Sellers Disclosure law;
- b. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Four of the Complaint filed in the underlying action, seeking damages for violation of the Pennsylvania Consumer Protection Law;
- c. The Penn National policy provides no coverage to the Medred defendants for any claim seeking punitive damages;
- d. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Two of the Complaint filed in the underlying action, to the extent said claims are based on allegations of fraudulent and/or intentional misrepresentation.

WHEREFORE, Plaintiff Pennsylvania National Mutual Casualty Insurance Company demands a declaration that:

- a. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Three of the Complaint filed in the underlying action, seeking damages for violation of the Pennsylvania Real Estate Sellers Disclosure law;

- b. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Four of the Complaint filed in the underlying action, seeking damages for violation of the Pennsylvania Consumer Protection Law;
- c. The Penn National policy provides no coverage to the Medred defendants for any claim seeking punitive damages;
- d. The Penn National policy provides no coverage to the Medred defendants for the claims asserted against them in Count Two of the Complaint filed in the underlying action, to the extent said claims are based on allegations of fraudulent and/or intentional misrepresentation.

Respectfully submitted,

MARGOLIS EDELSTEIN



Miles A. Kirshner, Esquire  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff,  
Pennsylvania National Mutual  
Casualty Insurance Company

IN THE UNITED STATES DISTRICT OF PENNSYLVANIA  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**COPY**MARCELINE H. OBERLY  
37240 Irish Lane  
Glade Spring, Virginia 24340

CIVIL ACTION

NO.

04 0515

v.

CHARLES J. GRAHAM  
and JENNIFER L. GRAHAM  
2413 Viking Way  
Grayling, Michigan 49738

and

RAY MEDRED and ROBERTA  
BUEHLER and MEDRED REALTY  
ASSOCIATES  
RR 8 Box 22  
Du Bois, Pennsylvania 15801

and

DANIEL CANTON, Individually and  
d/b/a PILLAR TO POST, d/b/a PILLAR  
TO POST, INC., and d/b/a DAN CANTON  
HOME INSPECTION

RD 4, Box 419

Du Bois, Pennsylvania 15801

and

PILLAR TO POST, INC.  
13902 North Dale Mabry Highway  
Suite 300

Tampa, Florida 33618

and

ERIE INSURANCE GROUP and  
ERIE INSURANCE EXCHANGE  
100 Erie Insurance Place  
Erie, Pennsylvania 16530

JURY TRIAL DEMANDED

U.S. DISTRICT COURT  
CLERK

2004 APR -2 AM 11:25

**FILED****COMPLAINT**

NATURE OF CLAIM

1. This case involves the several claims of a single mother, Marceline Oberly, who after moving into a newly purchased home discovered that it was moisture, mold, and pest ridden. The sellers of the home, and their real estate agents, did not disclose these problems to Ms. Oberly before she purchased the home, and Ms. Oberly's home inspector did not uncover them. Ms. Oberly's homeowners insurance company has denied coverage. As a result of these problems, Ms. Oberly and her 5 year old son were forced to permanently vacate the premises, which are uninhabitable and virtually worthless. In addition, Ms. Oberly has suffered, and continues to suffer, physical injuries and emotional distress from her exposure to toxic mold and the ordeal that began nearly one year ago. Ms. Oberly brings this action to recover economic damage, plus unliquidated damages for personal injuries and emotional distress.

JURISDICTION

2. Jurisdiction is founded upon diversity of citizenship. Plaintiff is a citizen of the state of Virginia, and each defendant is a citizen of a state other than Virginia. The matter in controversy, exclusive of interest and costs, exceeds the sum specified by 28 U.S.C. §1332.

PARTIES

3. Plaintiff Marceline H. Oberly is an adult citizen of the state of Virginia, residing at 37240 Irish Lane, Glade Spring, Virginia 24340.

4. Defendants Charles and Jennifer Graham are adult citizens of the state of Michigan, residing at 2413 Viking Way, Grayling, Michigan 49738.

5. Defendants Ray Medred and Roberta Buehler are adult citizens of the Commonwealth of Pennsylvania, who conduct business at RR8, Box 22, Du Bois, Pennsylvania, 15801.

6. Defendant Medred Realty Associates is a corporation or other business entity organized and existing under the laws of a state other than Virginia, with its principal place of business in Du Bois, Pennsylvania. It is a citizen of a state other than Virginia.

7. Defendant Daniel Canton individually and d/b/a Pillar to Post, d/b/a Pillar to Post, Inc., and d/b/a Dan Canton Home Inspection ("Canton"), is an adult citizen of the Commonwealth of Pennsylvania, residing at RD4, Box 419, Du Bois, Pennsylvania 15801.

8. Defendant Pillar to Post, Inc. ("PTPI") is a corporation organized and existing under the laws of a state other than Virginia, with its principal place of business in the state of Florida, at 13902 North Dale Mabry Highway, Suite 300, Tampa, Florida 33618. It is a citizen of a state other than Virginia.

9. Defendants Erie Insurance Group and Erie Insurance Exchange (collectively "Erie") are corporations organized and existing under the laws of a state other than Virginia, with their principal places of business located in the Commonwealth of Pennsylvania, which maintain offices at 100 Erie Insurance Place, Erie, Pennsylvania 16530. They are citizens of a state other than Virginia.

10. At all material times defendants Charles and Jennifer Graham, Ray Medred, Roberta Buehler, and Medred Realty Associates acted as an agent, employee and/or servant of each other, and acted within the scope of such agency, service and/or employment.

11. At all material times defendant Daniel Canton individually and d/b/a Pillar to Post, d/b/a Pillar to Post, Inc., and d/b/a Don Canton Home Inspection, and defendant Pillar to Post, Inc., acted as an agent, employee and/or servant of each other, and acted within the scope of such agency, service and/or employment.

FACTSThe Home

12. This case arises from plaintiff Marceline Oberly's purchase of a home located at Section 12, Lot 131 Treasure Lake, Du Bois, Pennsylvania, northeast of Pittsburgh.

Defendants Canton's/PTPI's Pre-Purchase Home Inspection

13. On May 15, 2003, at Ms. Oberly's request, defendants Canton and PTPI conducted a home inspection of the home at Lot 131.

14. The invoice Ms. Oberly received from Canton and PTPI for the home inspection referred to, among other things, a separate charge for "pest and dry rot inspection."

15. The report Canton and PTPI issued to Ms. Oberly did not mention any moisture, mold, or pest problems with the ceiling or basement of the home at Lot 131.

The Home Purchase

16. Plaintiff purchased Lot 131 from defendants Charles and Jennifer Graham on June 11, 2003. The purchase price was \$67,500.

17. The listing agents were defendants Ray Medred, Roberta Buehler, and Medred Realty Associates.

18. Prior to Ms. Oberly's purchase of the home, defendants Charles and Jennifer Graham and defendant's Ray Medred, Roberta Buehler, and Medred Realty Associates, did not reveal the existence of any ceiling, basement, mold, moisture, or pest problem with respect to the home at Lot 131.

The Moisture, Mold, and Pest Ridden Ceiling

19. On June 14, 2003 Ms. Oberly moved into the house along with her then 4 year old

son, Patrick. On this first day in her new home, she noticed that the cathedral ceiling in the loft bedroom was dripping water, even though it was not raining.

20. After several days, she and defendant Canton determined that the problem was a lack of ventilation. Because of the lack of ventilation, moisture from the house was becoming trapped in the home's ceilings.

21. After further inspection, Ms. Oberly determined that there was a substantial mold problem behind the ceiling panels and in the basement. There was also evidence of pest infestation in the area of the mold and moisture. Later testing revealed that there were indeed three toxic molds in the ceiling, including Penicillium and Aspergillus.

#### Ms. Oberly's Homeowner's Claim

22. In June 26, 2003, Ms. Oberly made a claim with her homeowner's carrier, Erie, under policy no. Q54 1106743 N, for costs associated with the moisture and mold problems at Lot 131.

23. Erie has wrongfully denied the claim.

#### Ms. Oberly's Claim To Canton And PTPI

24. On July 2, 2003, Ms. Oberly submitted to defendants Canton and PTPI a written claim for losses sustained as a result of Canton's and PTPI's failure to properly inspect the home.

25. Canton and PTPI, through their insurer, Lexington Insurance Company, ultimately agreed to pay for some costs associated with inadequate repairs or changes to the roof system and ceiling, but they have refused to pay the costs associated with adequate repairs, mold and/or contamination remediation, and any other necessary costs.

#### Damages And Losses

26. On August 3, 2003, Ms. Oberly permanently vacated the house after learning that it

was a breeding ground for mold, had extensive structural damage, and was uninhabitable. Her young son had vacated the house weeks earlier. Ms. Oberly continues to be obligated to pay the mortgage, taxes, and other costs and expenses on the property, even while she and her son reside elsewhere.

27. The cost of repairing the roof and ceiling of the home is estimated to be more than \$25,000. The house, however, cannot be remediated or razed and rebuilt for an amount less than \$75,000, and in all likelihood will cost in excess of \$100,000.

28. As a result of defendants' wrongful acts and/or omissions, Ms. Oberly has suffered serious personal injuries, including "sick building syndrome" and asthma, due to her exposure to toxic molds, together with grievous physical pain and mental suffering. Ms. Oberly continues to treat for her medical conditions, including her mental suffering.

29. Meanwhile, Erie Insurance Company has canceled Ms. Oberly's homeowner's insurance as of December 8, 2003. The cancellation was based upon an alleged "increase in hazard" due to Ms. Oberly no longer living at the house because it was uninhabitable.

#### COUNT ONE - BREACH OF CONTRACT

##### Marceline Oberly v. Charles Graham and Jennifer Graham

30. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.

31. Defendants Charles Graham and Jennifer Graham expressly and/or impliedly agreed to sell to plaintiff the home at Lot 131 free from serious and dangerous defects and conditions, including problems associated with excessive ceiling and basement moisture and mold, and pest infestation.

32. Charles Graham and Jennifer Graham breached this agreement because the house they sold to plaintiff Marceline Oberly had serious and dangerous latent defects and conditions, i.e., a

basement and ceilings at Lot 131 which were of inadequate design and/or construction, which collected and trapped condensation and other water, which were breeding grounds for mold and moisture, which were moisture and mold ridden, and which were or had been infested with pests.

33. As a result of defendants' breach of their agreement with plaintiff Marceline Oberly, Ms. Oberly was caused to suffer injuries, damages, and losses as described above.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Charles Graham and Jennifer Graham for consequential, compensatory, and punitive damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT TWO - FRAUD AND/OR NEGLIGENCE MISREPRESENTATION**

**Marceline Oberly v. Charles Graham, Jennifer Graham, Ray Medred,  
Roberta Buehler, And Medred Realty Associates**

34. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.

35. At all material times, defendants Charles Graham, Jennifer Graham, Ray Medred, Roberta Buehler, and Medred Associates failed to disclose to Marceline Oberly the house's serious and dangerous latent defects and conditions, i.e., that the basement and ceilings of the home at Lot 131 were of inadequate design and/or construction, that they collected and trapped condensation and other water, that they were breeding grounds for mold and moisture, that they were moisture and mold ridden, and that they were or had been infested with pests.

36. Defendants' non-disclosures were material in encouraging Marceline Oberly to purchase the property at Lot 131, to obtain a mortgage on the property, to relocate from her previous residence, along with her then 4 year old son, Patrick, and to establish residence at Lot 131.

37. Defendants' non-disclosures were false when made, and defendants' non-disclosures were made with knowledge of their falsity, with recklessness as to their truth or falsity, without knowledge as to their truth or falsity and/or under circumstances in which they ought to have known of their falsity.

38. Defendants intended that Ms. Oberly rely upon defendants' non-disclosures.

39. Ms. Oberly relied upon defendants' non-disclosures as described above.

40. The damages and losses sustained by Marceline Oberly were caused by defendants' fraudulent and/or negligent non-disclosures.

41. As a result of defendants' fraudulent and/or negligent non-disclosures, Marceline Oberly was caused to suffer injuries, damages, and losses described above.

42. Defendants' conduct was intentional, willful, wanton, reckless and outrageous because they knew that there were problems with the basement and ceilings at Lot 151, or were recklessly indifferent to those problems and the risks they posed, but concealed these facts from Marceline Oberly to her detriment, and for the purpose of enabling defendants to obtain financial gain by virtue of the sale of the property.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Charles Graham, Jennifer Graham, Ray Medred, Roberts Buehler and Medred Realty Associates for consequential, compensatory, and punitive damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT THREE - CONSUMER PROTECTION LAW**

Marceline Oberly v. Charles Graham, Jennifer Graham, Ray Medred,  
Roberta Buehler And Medred Realty Associates

43. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.
44. Plaintiff purchased the home at Lot 131 primarily for personal, family, or household purposes.
45. The damages and losses plaintiff has sustained were caused by defendants' violation of Pennsylvania Unfair Trade Practices and Consumer Protection Law ("UTPCPL"), 73 Pa. Stat. §201-1 *et seq.*
46. At all relevant times defendants utilized deceptive misrepresentations and/or material non-disclosures, as described above, in order to encourage plaintiff to purchase the real property at Lot 131, including the house upon the property.
47. As a result of defendants' violations of the UTPCPL, plaintiff has suffered the injuries, damages, and losses described above.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Charles Graham, Jennifer Graham, Ray Medred, Roberts Buehler and Medred Realty Associates for consequential, compensatory, treble, and punitive damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT FOUR - VIOLATIONS OF THE REAL ESTATE  
SELLER DISCLOSURE LAW**

Marceline Oberly v. Charles Graham, Jennifer Graham, Ray Medred,  
Roberta Buehler And Medred Realty Associates

48. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.

49. The damages and losses plaintiff has sustained were caused by defendants' violation of Pennsylvania's Real Estate Seller Disclosure Law ("RESDL"), 68 Pa. Cons. Stat. Ann. §7301 *et seq.*

50. As a result of defendants' violations of the RESDL, plaintiff has suffered the injuries, damages, and losses described above.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Charles Graham, Jennifer Graham, Ray Medred, Roberts Buchler and Medred Realty Associates for consequential, compensatory, treble, and punitive damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT FIVE - NEGLIGENCE**

**Marceline Oberly v. Daniel Canton, Individually And d/b/a Pillar To Post, d/b/a Pillar To Post, Inc., and d/b/a Dan Canton Home Inspection, and Pillar to Post, Inc.**

51. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.

52. Defendants Canton and Pillar to Post, Inc. failed to adequately inspect the home at Lot 131 in the following particular respects:

- (a) failing to recognize the absence of ventilation for the ceilings, which should have alerted them to the potential problem involving moisture\mold\pest infestation;
- (b) failing to discover that the ceilings were moisture, mold, and pest ridden;
- (c) failing to discover that the basement was moisture, mold, and pest ridden.
- (d) failing to advise Ms. Oberly to obtain separate mold inspection;

(e) failing to conduct an adequate inspection for pests, which would have included an inspection of the basement and of the roof and ceiling structures, which would and should have alerted them to the moisture and mold problems.

53. Defendants failed to exercise the ordinary care and skill of a reasonable professional home inspector.

54. As a result of defendants' professional negligence and failure to exercise the ordinary care and skill of a professional home inspector, plaintiff was caused to suffer injuries, damages, and losses as described above.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Daniel Canton, Individually and d/b/a Pillar to Post, d/b/a Pillar to Post, Inc., and d/b/a Dan Canton Home Inspection, and Pillar to Post, Inc. for consequential, compensatory, and punitive damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT SIX - BREACH OF CONTRACT**

**Marceline Oberly v. Daniel Canton, Individually And d/b/a Pillar To Post, d/b/a Pillar To Post, Inc., and d/b/a Dan Canton Home Inspection, and Pillar to Post, Inc.**

55. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.

56. Defendants Dan Canton and Pillar to Post, Inc. expressly agreed to perform a home inspection of the home located at Lot 131, and expressly and/or impliedly agreed to conduct such an inspection with due care.

57. Defendants expressly or impliedly agreed to inspect, among other things, the basement and ceilings for design and structural integrity, and for moisture, mold, rot, and pests.

58. Plaintiff paid defendants to conduct the home inspection.
59. Defendants conducted a home inspection, but did not exercise due care, as described above.
60. Additionally, defendants did not inspect, among other things, the basement and ceilings for design and structural integrity, and for moisture, mold, rot, and pests.
61. Defendants failed to provide the professional services they agreed or undertook to provide to plaintiff. This constitutes a breach of their agreement with plaintiff.
62. As a result of defendants' breach of their agreement with plaintiff Marceline Oberly, Ms. Oberly was caused to suffer injuries, damages, and losses as described above.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Daniel Canton, Individually and d/b/a Pillar to Post, d/b/a Pillar to Post, Inc., and d/b/a Dan Canton Home Inspection, and Pillar to Post, Inc. for consequential and compensatory damages, together with interest, costs, attorney's fees, and all other damages recoverable under the law.

**COUNT SEVEN - BREACH OF CONTRACT**

**Marceline Oberly v. Erie Insurance Group and Erie Insurance Exchange**

63. Plaintiff incorporates herein by reference all other paragraphs of this Complaint.
64. Under the terms of the policy issued by Erie to Ms. Oberly, Erie is obligated to pay Ms. Oberly for damages and losses sustained as a result of the moisture and mold problems described above.
65. Despite its contractual obligation to do so, defendant has failed and refused to pay Ms. Oberly's claim, and has in fact wrongfully denied the claim, in violation of the terms of the policy. This constitutes a breach of Erie's agreement with Ms. Oberly.

66. As a result of Erie's breach of contract, plaintiff has suffered and continues to suffer damages, including but not limited to all amounts to which she is entitled under the policy, and the expense of having to prosecute this coverage claim, interests and costs.

WHEREFORE, plaintiff Marceline Oberly demands judgment in her favor and against defendants Erie Insurance Group and Erie Insurance Exchange for consequential and compensatory damages, including all sums due under the subject policy, attorney's fees and costs in connection with this litigation against Erie, and all other damages recoverable under the law.

FELDMAN, SHEPHERD, WOHLGELERNTER & TANNER

---

MARK W. TANNER  
Validation of Signature Code MT1112  
THOMAS MORE MARRONE  
Validation of Signature Code TM642  
1845 Walnut Street, 25th Floor  
Philadelphia, PA 19103  
215-567-8300  
Attorneys for Plaintiff



**PENN NATIONAL  
INSURANCE**

Pennsylvania National Mutual Casualty Insurance Company  
P.O. Box 2361 Harrisburg, PA 17105-2361

I certify that this is a true copy of what was mailed.

Sign. B Beckwold

Date 4-30-04

THIS POLICY JACKET WITH THE INFORMATION PAGE, POLICY, FORMS AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETES THIS POLICY.



### **MUTUAL POLICY CONDITIONS**

THIS POLICY IS NON-ASSESSABLE. THE POLICYHOLDER IS A MEMBER OF THE COMPANY AND SHALL PARTICIPATE TO THE EXTENT AND UPON THE CONDITIONS FIXED AND DETERMINED BY THE BOARD OF DIRECTORS IN ACCORDANCE WITH THE PROVISIONS OF LAW, IN THE DISTRIBUTION OF DIVIDENDS SO FIXED AND DETERMINED.

### **ANNUAL MEETING**

THE INSURED IS HEREBY NOTIFIED THAT BY VIRTUE OF THIS POLICY, HE IS A MEMBER OF THE PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY AND IS ENTITLED TO VOTE EITHER IN PERSON OR BY PROXY AT ANY AND ALL MEETINGS OF SAID COMPANY. THE ANNUAL MEETINGS OF THE COMPANY ARE HELD AT ITS HOME OFFICE IN THE CITY OF HARRISBURG, PA. ON THE SECOND MONDAY OF APRIL IN EACH YEAR, AT 10:00 O'CLOCK A.M. AND THE INCLUSION OF THIS NOTICE IN THIS POLICY SHALL CONSTITUTE NOTICE TO THE MEMBER OF THE ANNUAL MEETING.

IN WITNESS WHEREOF, The company has caused this policy to be signed by its president and secretary but this policy shall not be valid unless completed by the attachment hereto of a Declaration Page, Policy or Coverage Part(s) and Endorsements, if any, and countersigned on the aforesaid declarations page by a duly authorized representative of the company.

### **VIRGINIA EXCEPTION**

Lack of countersignature does not invalidate the policy.

*Kenneth R. Shultz*  
Secretary

*Dennis C. Rose*  
President



**PENN NATIONAL  
INSURANCE**

Pennsylvania National Mutual Casualty Insurance Company  
Penn National Security Insurance Company  
P.O. Box 2361  
Harrisburg, PA 17105-2361

**BUSINESS OWNERS DECLARATIONS**

RENEWAL OF BP9 0078589

**THIS POLICY IS SUBJECT TO A GENERAL AGGREGATE LIMIT**

POLICY NUMBER	FROM	POLICY PERIOD	TO	COVERAGE IS PROVIDED IN	AGENCY
BP9 0078589		04/24/03	04/24/04	PA NATIONAL MUTUAL CAS INS CO	0173
NAMED INSURED AND ADDRESS					AGENCY
MEDRED REALTY ASSOCIATES RAYMOND PAUL MEDRED DBA RR #8 BOX 22 DUBOIS PA 15801					SWIFT KENNEDY & CO PO BOX 1032 DUBOIS PA 15801

POLICY PERIOD: POLICY COVERS FROM: 12:01 A.M. STANDARD TIME AT THE ADDRESS OF THE INSURED STATED ABOVE.  
FORM OF BUSINESS: INDIVIDUAL BUSINESS DESCRIPTION: REAL ESTATE AGENCY

IN RETURN FOR PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE  
WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

**LIABILITY AND MEDICAL EXPENSES**

Liability and Medical Expenses

**LIMITS OF INSURANCE**

\$1,000,000 Per Occurrence

Medical Expenses

\$5,000 Per Person

Fire Legal Liability

\$50,000 Any One Fire or Explosion

Business Income - Actual Business Loss Sustained, at Described Premises, not exceeding 12 consecutive months.

PROPERTY DEDUCTIBLE: \$250

**DESCRIPTION OF PREMISES AND COVERAGES PROVIDED**

INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR THE COVERAGES SHOWN:

PREMISES NO. 1 RTE 255  
DUBOIS CLEARFIELD CO PA 15801

BUILDING NO.: 1

PROTECTION CLASS: 07

CONSTRUCTION: FRAME

DESCRIPTION: REAL ESTATE AGENTS

COVERAGE: BUILDING

REPLACEMENT COST

LIMIT OF INSURANCE: \$ 164,900

AUTOMATIC INCREASE: 8 %

SEE SUPPLEMENTAL DECLARATIONS - FORM 710502S

OPTIONAL COVERAGES - SEE ATTACHED SCHEDULE - FORM 710502T

COMMISSION: 17.5% \$92.22

TOTAL ADVANCED PREMIUM: \$164,900

FORMS APPLICABLE TO THIS COVERAGE PART:

SEE ATTACHED FORMS SCHEDULE, FORM 710803

DIRECT BILL

COUNTERSIGNED BY: \_\_\_\_\_

Authorized Representative

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART COVERAGE FORM(S), AND FORMS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY.  
71 0502 08 01 ISSUED 03/24/03

# FORMS SCHEDULE

POLICY NUMBER	FROM	POLICY PERIOD	TO	COVERAGE IS PROVIDED IN			AGENCY
BP9 0078589	04/24/03		04/24/04	PA	NATIONAL	MUTUAL	CAS INS CO

710442	07/96	710477	05/93	710544	12/93	710547	01/94
710578	05/94	710880	07/02	711026	01/03	711028	01/03
711029	01/03	711030	01/03	711031	01/03	711061	02/03
BP0002	12/99	BP0006	01/97	BP0009	01/97	BP0142	01/99
BP0404	01/96	BP0417	01/96	BP0418	06/89	BP0496	10/01
BP0523	11/02	BP1004	04/98	BP1006	09/98	IL0246	09/00
IL0910	07/02						

**BUSINESS OWNERS SUPPLEMENTAL DECLARATIONS**

POLICY NUMBER	FROM	POLICY PERIOD	TO	COVERAGE IS PROVIDED IN	AGENCY
BP9 0078589	04/24/03		04/24/04	PA NATIONAL MUTUAL CAS INS CO	0173

**DESCRIPTION OF PREMISES AND COVERAGES PROVIDED**

**INSURANCE AT THE DESCRIBED PREMISES APPLIES ONLY FOR THE COVERAGES SHOWN:**

**BUILDING NO.: 1** **PROTECTION CLASS: 07**  
**CONSTRUCTION: FRAME**  
**DESCRIPTION: REAL ESTATE AGENTS**

**COVERAGE: YOUR BUSINESS PERSONAL PROPERTY** **REPLACEMENT COST**  
**LIMIT OF INSURANCE: \$ 30,000**

BUSINESS OWNERS OPTIONAL COVERAGES

POLICY NUMBER	FROM	POLICY PERIOD TO	COVERAGE IS PROVIDED IN	AGENCY
BP9 0078589	04/24/03	04/24/04	PA NATIONAL MUTUAL CAS INS CO	0173

THE FOLLOWING OPTIONAL COVERAGES ARE INCLUDED ON THIS POLICY:

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POLICY LEVEL OPTIONAL COVERAGES:

---

HIRED AUTO LIABILITY

SEE FORM BP0404

NON-OWNED AUTO LIABILITY

SEE FORM BP0404

ADDITIONAL MISC. BUSINESS OWNERS COVERAGE PREMIUMS:

INCLUDED

**POLICY SCHEDULE OF NAMES AND ADDRESSES**

POLICY NUMBER	FROM	POLICY PERIOD	TO	COVERAGE IS PROVIDED IN	AGENCY
BP9 0078589	04/24/03		04/24/04	PA NATIONAL MUTUAL CAS INS CO	0173

**THE FOLLOWING ARE INSUREDS ON THIS POLICY**

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**BUSINESS OWNERS NAMES AND ADDRESSES**

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**PREMISES NO.: 1 BUILDING NO.: 1**

**S & T BANK  
PO BOX 190  
INDIANA PA 15701**

**MORTGAGEE**

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# INSURANCE

Pennsylvania National Mutual Casualty Insurance Company  
Penn National Security Insurance Co.  
P.O. Box 2361  
Harrisburg, PA 17105-2361

## IMPORTANT NOTICE BILLING INFORMATION

This policy is written on a direct bill basis. You will receive all invoices from us under separate cover.

If you have more than one commercial policy written by Penn National Insurance, they can be combined into one billing plan. If this has not been done for you, please contact your agent for details.

There will be times when changes are made to your policy. When this happens we will calculate the additional or return premium and spread the change in premium equally over the remaining installments.

You will receive a premium invoice approximately (20) twenty days prior to the due date. If your premium payment is not received by the due date shown on the invoice, we will send a Notice of Cancellation. If premium is not paid by the cancellation date all coverages will terminate. Repetitive notices of cancellation for non-payment of premium may result in your pay plan being converted to a prepaid (no installment) basis.

While it is our desire to keep our invoices simple and easy to read, questions may arise on your billings. When you have billing questions, please call us at 1-800-388-4764 extension 2441 for our Commercial Lines Automated Response Attendant (CLARA). CLARA will be able to answer all 'basic billing' questions. If more detailed information is needed, you may press the (\*) star key at any time during your call which will connect you with one of our customer service representatives.

Thank you for choosing Penn National Insurance, we appreciate your business. Please let us know how we are doing.



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This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS LIABILITY COVERAGE FORM.**

**COVERAGE 1. BUSINESS LIABILITY**  
**COVERAGE 2. MEDICAL EXPENSES**

### **EXCLUSION - LEAD CONTAMINATION**

This insurance does not apply to:

1. "Bodily Injury", "property damage", "advertising injury", or "personal injury" which would not have occurred in whole or part but for the actual, alleged, or threatened ingestion, inhalation, absorption, dispersal, disposal, seepage, migration, release, or escape of lead in any form at any time.
2. Any loss, cost, or expense arising out of any:
  - a. request, demand, or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to or assess the effects of lead; or
  - b. claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, or neutralizing, or in any way responding to, or assessing the effects of lead.



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**NOTICE TO INSURED - PLEASE READ YOUR POLICY CAREFULLY**

Your policy contains an exclusion for lead contamination in any form at any time. Refer to endorsement 71 0544, Exclusion - Lead Contamination.



# PENN NATIONAL INSURANCE

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## EQUIPMENT BREAKDOWN COVERAGE

This endorsement modifies insurance provided under the following:

### BUSINESS OWNERS SPECIAL PROPERTY COVERAGE FORM

The following is added to 5. Additional Coverages of the Businessowners Special Property Coverage Form.

#### Equipment Breakdown

1. We will pay for loss caused by or resulting from an "Accident" to "covered equipment". As used in this Additional Coverage, an "Accident" means direct physical loss as follows:
  - (a) mechanical breakdown, including rupture or bursting caused by centrifugal force;
  - (b) artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires;
  - (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control;
  - (d) loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
  - (e) loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.

If an initial "Accident" causes other "Accidents", all will be considered one "Accident". All "Accidents" that are the result of the same event will be considered one "Accident".

"Covered equipment" means Covered Property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy.

2. The following coverages also apply to loss caused by or resulting from an "Accident" to "covered equipment". These coverages do not provide additional amounts of insurance.

#### (a) Expediting Expenses

With respect to your damaged Covered Property, we will pay, up to \$50,000, the reasonable extra cost to:

- (i) make temporary repairs; and
- (ii) expedite permanent repairs or permanent replacement.

#### (b) Hazardous Substances

We will pay for the additional cost to repair or replace Covered Property because of contamination by a "hazardous substance". This includes the additional costs to clean up or dispose of such property.

"Hazardous substance" means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency. Additional costs mean those beyond what would have been required had no "hazardous substance" been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Perishable Goods coverage, is \$50,000.

(c) Perishable Goods

- (i) We will pay for your loss of "perishable goods" due to spoilage.
- (ii) We will also pay for your loss of "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia.
- (iii) We will also pay any necessary expenses you incur to reduce the amount of loss under this coverage. We will pay for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- (iv) If you are unable to replace the "perishable goods" before its anticipated sale, the amount of our payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "Accident", less discounts and expenses you otherwise would have had. Otherwise, our payment will be determined in accordance with the Loss Payment condition.
- (v) Additional Definition. For the purpose of this coverage, "perishable goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.

The most we will pay for loss or damage under this coverage is \$50,000.

(d) CFC Refrigerants

We will pay for the additional cost to repair or replace Covered Property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional cost to do the least expensive of the following:

- (i) Repair the damaged property and replace any lost CFC refrigerant;
- (ii) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (iii) Replace the system with one using a non-CFC refrigerant.

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

The most we will pay for loss or damage under this coverage, including actual loss of Business Income you sustain, necessary Extra Expense you incur and loss under Perishable Goods coverage, is \$50,000.

(e) Service Interruption

The insurance provided for Business Income, Extra Expense and Perishable Goods is extended to apply to loss caused by or resulting from an "Accident" to equipment that is owned by a utility, landlord, or other supplier with whom you have a contract to provide you with any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam.

3. Exclusions

- (a) All exclusions and limitations apply except:
  - (i) Exclusions B.2.a., B.2.d. and B.2.k.(6); and
  - (ii) Limitations A.4.a.(1) and A.4.a.(2).
- (b) The exclusions are modified as follows:
  - (i) The following is added to Exclusion B.1.g.:  
However, if electrical "covered equipment" requires drying out because of the above, we will pay for the direct expenses of such drying out subject to the applicable Limit of Insurance and deductible for Building or Business Personal Property, whichever applies.
  - (ii) As respects this endorsement only, the last paragraph of Exclusion B.2.k. is deleted and replaced with the following:  
But if an excluded cause of loss that is listed in B.2.k.(1) through B.2.k.(7) results in an "Accident", we will pay for the loss or damage caused by that "Accident".
- (c) None of the following is "covered equipment":
  - (i) structure, foundation, cabinet, compartment or air supported structure or building;
  - (ii) insulating or refractory material;
  - (iii) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;

- (iv) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
- (v) vehicle, dragline, excavation equipment or construction equipment;
- (vi) However, any property that is stationary, permanently installed at a covered location and that receives electrical power from an external power supplier will not be considered a vehicle.
- (vii) equipment manufactured by you for sale; or
- (viii) electronic data processing equipment, unless used to control or operate "covered equipment." Electronic data processing equipment includes programmable electronic equipment that is used to store, retrieve and process data; and associated peripheral equipment.

(d) We will not pay under this endorsement for loss or damage caused by or resulting from:

- (i) your failure to use all reasonable means to protect the "perishable goods" from damage following an "Accident"; or
- (ii) any of the following tests:
  - a hydrostatic, pneumatic or gas pressure test of any boiler or pressure vessel; or
  - an insulation breakdown test of any type of electrical equipment.

(e) With respect to Service Interruption coverage and Perishable Goods coverage, we will also not pay for loss or damage caused by or resulting from: fire; lightning; windstorm or hail; explosion (except for steam or centrifugal explosion); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; falling objects; weight of snow, ice or sleet; freezing or collapse.

#### 4. Conditions

##### (a) Suspension

When any "covered equipment" is found to be in, or exposed to a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an "Accident" to that "covered equipment". We can do this by mailing or delivering a written notice of suspension to your address as shown in the Declarations, or at the address where the equipment is located. Once suspended in this way, your insurance can be reinstated only by an endorsement for that "covered equipment". If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

##### (b) Jurisdictional Inspections

If any property that is "covered equipment" under this endorsement requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

##### (c) Environmental, Safety and Efficiency Improvements

If "covered equipment" requires replacement due to an "accident", we will pay your additional cost to replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced.

However, we will not pay more than 125% of what the cost would have been to repair or replace with like kind and quality. This condition does not increase any of the applicable limits. This condition does not apply to any property to which Actual Cash Value applies.

The most we will pay for loss or damage under this endorsement is the applicable Limit of Insurance shown in the Declarations. Coverage provided under this endorsement does not provide an additional amount of insurance.



# PENN NATIONAL INSURANCE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## BUSINESS OWNERS PENNPAC ENDORSEMENT

This endorsement modifies insurance provided under the following:

### BUSINESS OWNERS SPECIAL PROPERTY COVERAGE FORM BUSINESS OWNERS LIABILITY COVERAGE FORM

#### THE BUSINESS OWNERS SPECIAL PROPERTY COVERAGE FORM IS AMENDED AS FOLLOWS:

##### I. COVERAGE

###### A. Extension of the Premises Perimeter

1. All references to distance from or within the described premises are increased from "100 feet" to read "1,000 feet" for the following:

- a. Section A.1. Covered Property
- b. Section A.5.f. Business Income
- c. Section A.5.g. Extra Expense
- d. Section A.6. Coverage Extensions

###### B. Amended Limits

The amount we pay provisions in items 5. Additional Coverages and 6. Coverage Extensions are amended as follows:

###### 1. Fire Department Service Charge

In paragraph A.5.c. of the Additional Coverages, the amount we will pay is increased to \$2,500.

###### 2. Personal Property Off Premises

In paragraph A.6.b. of the Coverage Extensions, the most we will pay is increased to \$15,000.

###### 3. Personal Effects

In paragraph A.6.d.(2) of the Coverage Extensions, the most we will pay is increased to \$5,000.

###### 4. "Valuable Papers and Records"

In paragraph A.6.e.(3) of the Coverage Extensions, the most we will pay for loss or damage to "Valuable Papers and Records" in any one occurrence at the described premises is increased to \$20,000, unless a higher Limit of Insurance for "Valuable Papers and Records" at the described premises is shown in the Declarations.

For "Valuable Papers and Records" not at the described premises, the most we will pay is \$15,000.

###### 5. Accounts Receivable

In paragraph A.6.f.(2) of the Coverage Extensions, the most we will pay for loss or damage in any one occurrence at the described premises is increased to \$20,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$15,000.

###### 6. Money Orders And Counterfeit Paper Currency

In paragraph A.5.j. of the Additional Coverages, the most we will pay is increased to \$5,000.

###### 7. Forgery and Alteration

In paragraph A.5.k.(3) of the Additional Coverages, the most we will pay is increased to \$5,000, unless a higher limit is shown on the Declarations.

##### II. ADDITIONAL COVERAGES

###### A. Section A.5.l. Increased Cost of Construction, is deleted and replaced by the following:

###### I. Ordinance or Law Coverages

If a Covered Cause of Loss occurs to covered Building property, we will pay for:

- (1) The loss in value of the undamaged portion of the building as a consequence of enforcement of any ordinance or law that:

- (a) Requires the demolition of parts of the same property not damaged by a Covered Cause of Loss;
- (b) Regulates the construction or repair of buildings, or establishes zoning or land use requirements at the described premises; and
- (c) Is in force at the time of loss.

(2) The cost to demolish and clear the site of undamaged parts of the property caused by enforcement of building, zoning or land use ordinance or law.

(3) The increased cost to repair or reconstruct damaged portions of that Building property and/or reconstruct or remodel undamaged portions of that Building property, whether or not demolition is required when the increased cost is a consequence of enforcement of building, zoning or land use ordinance or law. This coverage applies only if the restored or remodeled property is intended for similar occupancy as the current property unless such occupancy is not permitted by zoning or land use ordinance or law.

We will not pay for the increased cost of construction until the building is actually repaired, reconstructed or remodeled and unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.

Under this coverage, we will not pay for the enforcement of any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria.

We will not pay for the costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet or dry rot or bacteria.

If the Building property is repaired or replaced at the same premises, we will pay the lesser of:

(1) The amount you actually spend to demolish and clear the site of the described premises, plus the amount you actually spend to repair, rebuild or reconstruct the property but not for more than buildings of the same height, floor area, and style; or

(2) \$50,000 in any one occurrence, unless a higher limit is shown in the Declarations.

If the Building property is not repaired or replaced, we will pay the lesser of:

(1) The amount you actually spend to demolish and clear the site of the described premises, plus the cost to replace the damaged or destroyed property with other property:

- (a) of like kind, and quality
- (b) of the same height, floor area, and style; and
- (c) used for the same purpose; or

(2) \$50,000 in any one occurrence, unless a higher limit is shown in the Declarations.

**Exclusion B.1.a. does not apply to this Additional Coverage.**

**B. The following Coverages are added to A.5. Additional Coverages**

**n. Back Up of Sewers and Drains**

(1) We will pay for loss or damage to Covered Property caused by a back up from a sewer or drain or an overflow from a sump within a building at the described premises provided:

- (a) the back up or overflow is not expected or intended from your standpoint and
- (b) the expenses must be reported to us in writing no later than 90 days after the occurrence.

(2) The most we will pay for each location under this Additional Coverage is \$10,000 for the sum of all expenses arising from back up or overflow during each 12 month period of this policy.

**(3) Deductible**

We will not pay for loss or damage in any one Occurrence until the amount of the loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the limit indicated above.

(4) Exclusion B.1.g.(3) does not apply to this Additional Coverage.

**o. Fire Protection Device Recharge**

When the fire protective devices that are permanently installed in buildings at the described premises have been discharged to save or protect a covered property from a Covered Cause of Loss, we will pay up to \$5,000 to recharge or refill the fire protective devices.

**p. Special Form Computer Coverage**

(1) Paragraph A.1. **Covered Causes of Loss** is amended to include the following causes of loss but only as respects loss to "Electronic Data Processing Equipment (Hardware)" and "Electronic Media and Records (including Software)":

**(a) Mechanical Breakdown**

(i) We will extend coverage to pay for loss or damage to Electronic Data Processing Equipment (Hardware) and Electronic Media and Records (including Software) due to mechanical breakdown if such loss or damage exceeds in any one occurrence the applicable deductible shown in the Declarations.

(ii) We will then pay the amount of loss or damage in excess of the deductible up to the applicable Limit of Insurance for Electronic Data Processing Equipment (Hardware) specified in Limit of Insurance p.(2) below.

(iii) This Coverage Extension is included within the Limit of Insurance applying to Electronic Data Processing Equipment (Hardware).

**(b) Artificially Generated Electrical Current**

(i) We will extend coverage to pay for loss or damage to Electronic Data Processing Equipment (Hardware) and Electronic Media and Records (including Software) due to artificially generated electrical current if such loss or damage is caused by or results from:

i An occurrence that took place within 1,000 feet of the described premises; or

ii Interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place within 1,000 feet of the described premises.

(ii) If such loss or damage as specified above, exceeds in any one occurrence the applicable deductible shown in the Declarations, we will then pay the amount of loss or damage in excess of the deductible up to the applicable Limit of Insurance for Electronic Data Processing Equipment (Hardware) specified in Limit of Insurance p.(2) below.

(iii) This Coverage Extension is included within the Limit of Insurance applying to Electronic Data Processing Equipment (Hardware).

(iv) The Electrical Apparatus Exclusion B.2.a. does not apply to this Coverage Extension.

**(2) Limit of Insurance**

The most we will pay for this Additional Coverage is as follows:

(a) \$15,000 for Electronic Data Processing Equipment (Hardware) unless a higher limit is shown in the Declarations or Schedule and

(b) \$5,000 for Electronic Media and Records (Including Software) unless a higher limit is shown in the Declarations or Schedule;

except as described below;

We will pay up to \$10,000 for any loss or damage by a Covered Cause of loss to laptop computers and cell phones while away from any of your described premises. Coverage is provided on a worldwide basis, including while in transit, or temporarily at your home or at a premises you do not own, lease or operate.

**(3) The following is added to Paragraph A.2. Property Not Covered :**

g. Electronic data processing equipment which is permanently installed or designed to be permanently installed in any aircraft, watercraft, motor truck or other vehicle subject to motor vehicle registration; or

- h. Accounts, bills, evidences of debt and valuable papers and records. However, such property is Covered Property in its "converted data" form.

(4) Under A.4. Limitations, paragraph a.(1) and (2) do not apply.

(5) Coverage Extension A.6.b. Personal Property Off Premises applies to Covered Property including duplicate or back-up electronic media and records while in the course of transit or that are stored at a separate location which is at least 1,000 feet from the premises described in the Schedule or Declarations.

(6) The following is added to B. Exclusions:

- (a) The following exclusions do not apply to coverage provided under this Additional Coverage:
  - B.1.e. Power Failure, B.2.c. Smoke, B.2.d. Steam Apparatus, B.2.i. Collapse, B.2.k. (3), (4) & (5) Other Types of Loss exclusions and B.3.b. Acts or Decisions.
- (b) Exclusions B.2.k.(7)(a) and (b) are replaced by the following:
  - (a) Dampness or dryness of atmosphere, unless such conditions result from physical damage caused by a covered cause of loss to an air conditioning unit or system, including equipment and parts, which is part of, or used with the electronic data processing equipment.
  - (b) Changes in or extremes of temperature, unless such conditions result from physical damage caused by a covered cause of loss to an air conditioning unit or system, including equipment and parts, which is part of, or used with the electronic data processing equipment.

(7) Additional Exclusions

The following exclusions apply in addition to the exclusions listed under B. Exclusions :

We will not pay for loss or damage caused by or resulting from any of the following:

(a) Human errors or omissions in processing, recording or storing information on electronic media and records and electronic data processing equipment.

But we will pay for direct loss or damage caused by resulting fire or explosion if these causes of loss would be covered by this Additional Coverage.

(b) Electrical or magnetic injury, disturbance or erasure of electronic recordings, except as provided for under the Coverage Extensions of this Additional Coverage.

But we will pay for direct loss or damage caused by Lightning.

(c) Failure, breakdown or malfunction of electronic media and records and electronic data processing equipment, including parts, while the media is being run through the equipment.

But, we will pay for direct loss or damage caused by resulting fire or explosion if these causes of loss are covered by this additional coverage.

(d) Installation, testing, repair or other similar service performed upon the electronic data processing media and records or electronic data processing equipment, including parts.

#### (8) Property Loss Conditions

(a) Property Loss Condition, Paragraph E. 6.d.(6) Loss Payment does not apply to electronic media and records that are actually replaced or restored.

(b) Loss Payment, E.6. is amended to add the following:

- i. For Electronic Data Processing Equipment and Electronic Media and Records, if the same Equipment model and/or type of Electronic Media and Records have become obsolete we will replace them with property of similar quality, including property of greater processing capability.

#### (9) The following are added to H. Property Definitions:

8. "Converted data" means information that is stored on electronic media, that is capable of being communicated, processed or interpreted by electronic data processing equipment.

9. "Electronic Data Processing Equipment (Hardware)" means:

- a. Any programmable electronic equipment that is used to store, retrieve and process data; and
- b. Any associated peripheral equipment that provides communication including input and output functions such as printing, or auxiliary functions such as data transmission;

10. Electronic Media and Records (Including Software) means:

- a. Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;
- b. Data stored on such media; and
- c. Programming records used for electronic data processing or electronically controlled equipment.

q. **Lock Replacement**

We will pay up to \$1,000 for the cost to replace your locks if your key(s) are lost or stolen.

We will not pay for the replacement of locks if you discharge an employee and you do not have the employee return their key(s).

r. **Arson Rewards**

We will pay up to \$5,000 as a reward to any person or persons, other than you or your officers, for information leading to an arson conviction in connection with a fire loss to the described premises. This is the most we will pay regardless of the number of persons who provided information.

s. **Loss Data Preparation Costs**

We will pay up to \$2,500 for reasonable costs you incur in preparing loss data required by policy conditions after a covered property loss. This includes the cost of taking inventory, making appraisals and preparing other data to determine the extent of your loss.

t. **Brands and Labels**

If branded or labeled merchandise that is Business Personal Property is damaged by a Covered Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may extend the insurance that applies to Business Personal Property to pay expenses you incur to:

- (1) Stamp the word "salvage" on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
- (2) Remove the brands or labels, if doing so will not physically damage the merchandise or its containers, and relabel the merchandise or its containers to comply with the law.

Payments under this Additional Coverage will not increase the applicable Limit of Insurance.

u. **Utility Services - Direct Damage**

- (1) We will pay up to \$10,000 for loss of or damage to Covered Property described in this Additional Coverage, caused by the interruption of utility services listed below to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the property described in Paragraph (2) of this Additional Coverage if such property is located beyond 1,000 feet outside of the covered building described in the Declarations.

The limit of insurance for this Additional Coverage is an additional limit of insurance, unless a higher limit is shown in the Declarations.

(2) **Utility Services**

- (a) Water Supply Services, meaning the following types of property supplying water to the described premises:
  - (i) Pumping stations; and
  - (ii) Water mains.
- (b) Communication Supply Services, meaning property supplying communication services, including overhead transmission lines, telephone, radio, microwave or television services to the described premises, such as:

- (i) Communication transmission lines, including optic fiber transmission lines;
- (ii) Coaxial cables, and
- (iii) Microwave radio relays except satellites.
- (c) Power Supply Services, meaning the following types of property supplying electricity, including overhead transmission lines, steam or gas to the described premises:
  - (i) Utility generating plants;
  - (ii) Switching stations;
  - (iii) Substations;
  - (iv) Transformers; and
  - (v) Transmission lines.
- (3) This Additional Coverage does not apply to loss or damage you incur during the first 12 consecutive hours after the direct loss or damage to utility supply equipment.
- (4) This Additional Coverage for Utilities Services - Direct Damage does not apply to loss or damage to electronic data.
- (5) Power Failure Exclusion B.1.e. does not apply to this additional coverage.
- (6) Coverage provided under this Additional Coverage is excess of any coverage that may be provided under the Equipment Breakdown Coverage Endorsement.

**v. Utility Services - Time Element**

- (1) We will pay up to \$10,000 for loss of Business Income or Extra Expense at the described premises caused by the interruption of utility services listed below to the described premises. The interruption must result from direct physical loss or damage by a Covered Cause of Loss to the property described in Paragraph (2) of this Additional Coverage if such property is located beyond 1,000 feet outside of a covered building described in the Declarations.

The limit of insurance for this Additional Coverage is an additional limit of insurance.

**(2) Utility Services**

- (a) Water Supply Services, meaning the following types of property supplying water to the described premises:
  - (i) Pumping stations; and
  - (ii) Water mains.

- (b) Communication Supply Services, meaning property supplying communication services, including overhead transmission lines, telephone, radio, microwave or television services to the described premises, such as:

- (i) Communication transmission lines, including optic fiber transmission lines;
- (ii) Coaxial cables; and
- (iii) Microwave radio relays except satellites.
- (c) Power Supply Services, meaning the following types of property supplying electricity, including overhead transmission lines, steam or gas to the described premises:
  - (i) Utility generating plants;
  - (ii) Switching stations;
  - (iii) Substations;
  - (iv) Transformers; and
  - (v) Transmission lines.

- (3) This Additional Coverage does not apply to loss or damage you incur during the first 12 consecutive hours after the direct loss or damage to utility supply equipment.
- (4) Coverage under this endorsement does not apply to Business Income loss or Extra Expenses related to interruption in utility service, which causes loss or damage to electronic data, including destruction or corruption of electronic data.
- (5) Power Failure Exclusion B.1.e. does not apply to this additional coverage.
- (6) Coverage provided under this Additional Coverage is excess of any coverage that may be provided under the Equipment Breakdown Coverage Endorsement.

**w. Business Income From Dependent Properties**

- (1) We will pay for the actual loss of Business Income you sustain due to physical loss or damage at the premises of a dependent property caused by or resulting from a Covered Cause of Loss.

However, coverage under this endorsement does not apply when the only loss to dependent property is loss or damage to electronic data, including destruction or corruption of electronic data. If the dependent property sustains loss or damage to electronic data and other property, coverage under this Additional Coverage will not continue once the other property is repaired, rebuilt, or replaced.

The most we will pay under the Additional Coverage is \$5,000.

- (2) We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:
  - (a) Source of materials; or
  - (b) Outlet for your products.
- (3) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.
- (4) Dependent property means property owned by others whom you depend on to:
  - (a) Deliver materials or services to you or to others for your account. But services does not mean water supply services; power supply services; or communication supply services, including services related to Internet access or access to any electronic network;
  - (b) Accept your products or services;
  - (c) Manufacture your products for delivery to your customers under contract for sale; or
  - (d) Attract customers to your business.The dependent property must be located in the coverage territory of this policy.
- (5) The coverage period for Business Income under this Additional Coverage:
  - (a) Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the dependent property; and
  - (b) Ends on the date when the property at the premises of the dependent property should be repaired, rebuilt or replaced with reasonable speed and similar quality.
- (6) The Business Income coverage period, as stated in Paragraph (5), does not include any increased period required due to the enforcement of any ordinance or law that:
  - (a) Regulates the construction, use or repair, or requires the tearing down of any property; or
  - (b) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not reduce the Business Income coverage period.

- (7) The definition of Business Income contained in the Business Income Additional Coverage A.5.f also applies to this Business Income From Dependent Properties Additional Coverage.

#### x. Storage Buildings, Garages and Other Appurtenant Structures

We will extend the insurance that applies to Buildings to apply to detached storage buildings and garages and other detached appurtenant structures not specifically described at each premises described in the Declarations. This extension of coverage does not apply to outdoor fixtures.

Under this Additional Coverage the most we will pay for loss or damage is \$5,000 at each premises described in the Declarations.

### III. COVERAGE EXTENSIONS

A. Personal Property At Newly Acquired Premises, A.6.a. is deleted and replaced by the following:

#### a. Newly Acquired or Constructed Property

##### (1) Buildings

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

(a) Your new buildings while being built on the described premises; and

(b) Buildings you acquire at locations, other than the described premises, intended for:

(i) Similar use as the building described in the Declarations; or

(ii) Use as a warehouse.

The most we will pay for loss or damage under this extension is \$1,000,000 at each building.

##### (2) Business Personal Property

If this policy covers Business Personal Property, you may extend that insurance to apply to:

(a) Business Personal Property including such property that you newly acquire, at any location you acquire

- (b) Business Personal Property including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations; or
- (c) Business Personal Property that you newly acquire, located at the described premises.

The most we will pay for loss or damage under this extension is \$500,000 at each building.

**(3) Business Income and Extra Expense**

You may extend the insurance that applies to Business Income and Extra Expense to apply to newly acquired or constructed locations.

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

**(4) Insurance under this extension for each newly acquired or constructed property will end when any of the following first occurs:**

- (a) This policy expires;
- (b) 90 days expire after you acquire or begin to construct the property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date construction begins or you acquire the property.

**B. Coverage Extension A.6.c. Outdoor Property is deleted.**

**C. The following Coverage Extensions are added:**

**g. Outdoor Property - Fences**

You may extend the insurance provided by this policy to apply to your outdoor fences, including debris removal expense, caused by or resulting from any of the Covered Causes of Loss.

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

**h. Outdoor Property - Other than Fences**

You may extend the insurance provided by this policy to apply to your Outdoor Property (other than fences), including radio and television antennas (including satellite dishes), signs, (other than signs attached to buildings), trees, shrubs and plants, including debris removal expense, caused by or resulting from any of the Covered Causes of Loss.

The most we will pay for loss or damage under this Extension is \$5,000, but not more than \$1,000 for any one tree, shrub or plant.

**i. Fine Arts**

You may extend the insurance that applies to Business Personal Property to apply to paintings, etchings, pictures, tapestries, art glass windows and other bona fide works of art or articles of rarity, historical value or artistic merit that you own or are in your care, custody and control.

The most we will pay for loss or damage under this Extension is \$15,000 at each described premises.

The following exclusions do not apply to this coverage:

- (1) Exclusion B.1.b. Earth Movement
- (2) Exclusion B.1.g. Water

**j. Salespersons Samples**

You may extend the insurance that applies to Business Personal Property to apply to Salesperson's Samples, while more than 1,000 feet from the "described premises." This coverage applies to samples of goods or products you own while in the custody of a salesperson or any employee who travels with sales samples, including while in transit.

Salespersons Samples does not include:

- (1) Property that has been sold;
- (2) Property shipped by mail; or
- (3) Drugs, jewelry, costume jewelry, furs, fur garments or garments trimmed with fur.

The most we will pay for loss of or damage to property in the custody of any one salesperson or employee in any one occurrence is \$5,000.

The following exclusions do not apply to this coverage:

- (1) Exclusion B.1.b. Earth Movement
- (2) Exclusion B.2.c.(4) Settling, cracking, shrinking, expansion.

**k. Seasonal Increase**

Limits of Insurance, C.5.(a) is deleted and replaced by the following:

- (a) The Limit of Insurance for Business Personal Property will automatically increase by 30% to provide for seasonal variations.

**l. Loss Payment for Property of Others**

Property Loss Conditions E.6.d.(3) (b) Property of Others is deleted from the list of property that is valued at actual cash value.

**m. Extended Business Income**

Extended Business Income, A.5.f.(2)(b)(ii), is amended from 30 to 60 days. This Coverage Extension is not subject to the Limits of Insurance.

#### IV. LIMITS OF INSURANCE

The Businessowners Special Property Coverage Form Subparagraph 3. of Paragraph C., LIMITS OF INSURANCE, is deleted and replaced by the following:

3. The limits applicable to the Coverage Extensions and the Additional Coverages are on an occurrence basis unless otherwise indicated. The limits applicable to the Coverage Extensions and the following Additional Coverages are in addition to the Limits of Insurance:
  - a. Accounts Receivable
  - b. Arson Rewards
  - c. Back Up of Sewers and Drains
  - d. Business Income From Dependent Properties
  - e. Fine Arts
  - f. Fire Department Service Charge
  - g. Fire Protection Device Recharge
  - h. Forgery and Alteration
  - i. Lock Replacement
  - j. Loss Data Preparation Costs
  - k. Money Orders and Counterfeit Paper
  - Currency
  - l. Ordinance or Law Coverages
  - m. Outdoor Property - Fences
  - n. Outdoor Property - Other Than Fences
  - o. Personal Property Off Premises
  - p. Pollutant Clean Up and Removal
  - q. Salespersons Samples
  - r. Special Form Computer Coverage
  - s. Utilities Services – Direct Damage
  - t. Utilities Services – Time Element
  - u. Valuable Papers and Records

#### V. DEDUCTIBLES

Section D.2. Deductibles, is deleted and replaced by the following:

2. Regardless of the amount of the deductible shown in the Declarations, the most we will deduct from any loss or damage under all the following Optional Coverages and the Additional Coverage – Exterior Building Glass, in any one occurrence is \$500
  - a. Money and Securities;
  - b. Employee Dishonesty
  - c. Interior Glass; and
  - d. Outdoor Sign

But this Optional Coverage/Exterior Building Glass Deductible will not increase the deductible shown in the Declarations. This Deductible will be used to satisfy the requirements of the Deductible in the Declarations.

#### VI. PROPERTY LOSS CONDITIONS

- A. Paragraph E.6.d Loss Payment is amended as follows:

1. Paragraph (1)(a) is replaced by the following:

(1) At replacement cost without deduction for depreciation, subject to the following:

(a) We will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:

(i) The Limit of Insurance that applies to the lost or damaged property;

(ii) The cost to replace, on the same premises, the lost or damaged property with other property:

i. Of comparable material and quality; and

ii. Used for the same purpose; or

(iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost is limited to the cost which would have been incurred had the building been built at the original premises.

2. Paragraph (1)(b) does not apply.

B. Property Loss Conditions E.6. is amended to add:

##### h. Pairs, Sets, Loss to Parts

The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.

The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

#### VII. OPTIONAL COVERAGES

A. The first sentence under "Optional Coverages" is amended as follows:

If shown as applicable in the Declarations or if included in the Businessowners PennPac Endorsement, the following Optional Coverages also apply.

B. The following Optional Coverages are amended:

1. **Outdoor Signs**

- a. Paragraph G.1.d. Outdoor Signs is deleted and replaced by the following:
  - d. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Outdoor Signs, shown in the Declarations or Schedule, or \$5,000, whichever is higher.
- b. Paragraph G.1.e. is deleted.

2. **Money And Securities**

Paragraph G.3.c. Money and Securities is deleted and replaced by the following:

- c. The most we will pay for loss in any one occurrence is:

- (1) The limit shown in the Declarations for Inside the Premises or \$10,000, whichever is higher, for "money" and "securities" while:
  - (a) In or on the described premises; or
  - (b) Within a bank or savings institution; and
- (2) The limit shown in the Declarations for Outside the Premises or \$5,000, whichever is higher, for "money" and "securities" while anywhere else.

3. **Employee Dishonesty**

Paragraph G.4.c. Employee Dishonesty, is deleted and replaced by the following:

- c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations or \$10,000, whichever is higher.

4. **ERISA**

The following is added to G.4. Employee Dishonesty:

- j. In compliance with certain provisions of the Employee Retirement Income Security Act (ERISA):

- (1) Employee also includes any natural person who is:
  - (a) A trustee, an officer, employee, administrator or a manager, except an administrator or a manager who is an independent contractor, of any Employee Welfare or Pension Benefit Plan (hereafter called Plan) insured under this insurance, and

(b) Your director or trustee while that person is handling funds or other property of any Plan insured under this insurance.

(2) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator must obtain a Limit of Insurance for Employee Dishonesty Coverage that is sufficient to provide an amount of insurance for each Plan that is at least equal to that required if each Plan were separately insured.

(3) If the insured first named in the Declarations is an entity other than a Plan, any payment we make to that Insured for loss sustained by any Plan will be held by that Insured for the use and benefit of the Plan(s) sustaining the loss.

(4) If two or more Plans are insured under this insurance, any payment we make for loss:

- (a) Sustained by two or more plans or
- (b) Of commingled funds or other property of two or more Plans

that arises out of one "occurrence", is to be shared by each Plan sustaining loss in the proportion that the amount of insurance required for each such Plan under ERISA provisions bears to the total of those amounts.

(5) The Deductible provision does not apply to loss sustained by any Plan subject to ERISA, which is insured under this insurance.

(6) Any Plan(s) administered by the Named Insured is considered a Named Insured under this Additional Coverage.

**THE BUSINESS OWNERS LIABILITY COVERAGE FORM IS AMENDED AS FOLLOWS:**

**I. COVERAGE**

**A. Coverage Extension – Supplementary Payments**

Section A.1.d.(2) Coverage Extension-Supplementary Payments is amended as follows:

The limit for the cost of bail bonds is increased from \$250 to \$2000.

## II. EXCLUSIONS

### A. Non-Owned Watercraft

1. Section B.1.g., sub-paragraph (2)(a) is deleted and replaced by the following:
  - (2) A watercraft you do not own that is:
    - (a) Less than 51 feet long; and
2. Paragraph A.1. above applies to any person who, with your express or implied consent, either uses or is responsible for the use of a watercraft.
3. Paragraphs B.g.1.(2)(a) and (2)(b) do not apply if the insured has any other insurance for "bodily injury" or "property damage" liability that would also apply to loss covered under this provision, whether the other insurance is primary, excess, contingent or on any other basis. In that case, this Provision (2) does not provide any insurance.
  - (a) Paragraph A.3. above does not apply to a policy written to apply specifically in excess of this policy.

## III. WHO IS AN INSURED

### A. Incidental Malpractice Liability

1. Section C. WHO IS AN INSURED, Paragraph 2.a.(1)(d) is deleted and replaced by the following:
  - (d) Arising out of his or her providing or failing to provide professional health care services. However, if you have "employees":
    - (i) Who are pharmacists in your retail druggist or drugstore operation; or
    - (ii) Who are a nurse, emergency medical technician or paramedic;They are insured with respect to their providing or failing to provide professional health care services; or

### B. Broad Form Named Insured

1. Section C. WHO IS AN INSURED, Paragraph 2. is amended to add:
  - e. Any organization or subsidiary thereof, other than a partnership, joint venture, or limited liability corporation, which is a legally incorporated entity of which you own a financial interest of more than 50 percent of the voting stock on the effective date of this endorsement.

(1) Coverage under this provision does not apply to injury or damage with respect to which an insured under this policy is also an insured under another policy or would be an insured under such policy but for its termination or upon the exhaustion of its limits of insurance.

(2) Coverage under this provision does not apply to a policy written to apply specifically in excess of this policy.

### C. Newly Formed or Acquired Organizations

1. Section C. WHO IS AN INSURED is amended to add:
  - f. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
    - (1) Coverage under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - (2) No coverage under this provision applies to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - (3) No coverage under this provision applies to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

### D. Blanket Additional Insured for Written Contracts

1. Section C. WHO IS AN INSURED is amended to add:
  - g. Each of the following is also an insured:
    - (1) Any person(s) or organization(s) with whom you are required in a written contract, to name as an additional insured but only for "your" acts or omissions arising from "your" ongoing operations at the location or project described in the written contract.

This provision does not apply:

- (a) To any vendor, concessionaire, lessor of leased equipment, grantor of a franchise, engineer, architect or surveyor; or
- (b) Unless the contract has been signed prior to the date of "bodily injury", "property damage", or "personal or advertising injury."

(2) Any person(s) or organization(s) to whom you are required in a written "insured contract" to name as an additional insured, but only for "your" acts or omissions with respect to liability arising out of the ownership, maintenance, or use of that part of any premises leased to you. This does not apply to:

- (a) Any "occurrence" that takes place after you cease to be a tenant on those premises.
- (b) Structural alterations, new construction or demolition operations performed by or on behalf of such insured.

(3) The insurance provided to the additional insureds described above does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury":

- (a) Arising out of any act or omission of the additional insured(s) or any of their "employees", including supervision of "your work" or the work of any other person or organization.
- (b) Occurring after that portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- (c) Arising out of an architect's, engineer's, or surveyor's rendering of or failure to render any professional services including:

- (i) The preparing, approving or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; and
- (ii) Supervisory, inspection or engineering services.

(4) These exclusions for Blanket Additional Insured for Written Contracts apply in addition to those contained in the Businessowners Liability Coverage Form.

(5) The limits of insurance applicable to the additional insureds described above in Blanket Additional Insured for Written Contracts are those specified in the written contract or agreement or in the Declarations for this policy, whichever are less. These limits of insurance are inclusive of and not in addition to the limits of insurance shown in the Declarations.

(6) This coverage does not apply to any person(s) or organization(s) specifically named as additional insured in any policy issued by "us".

#### IV. LIABILITY AND MEDICAL EXPENSE LIMITS OF INSURANCE

##### A. Aggregate Limits of Insurance Amendment

The Aggregate Limit under D. Liability and Medical Expenses Limit of Insurance, 4. Aggregate Limits, applies separately to each of your:

1. Projects away from premises owned by or rented to you;
2. "Locations" owned by or rented to you.  
"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

## **V. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS**

### **A. Duties in the Event of Occurrence, Offense, Claim or Suit Redefined**

1. The requirement in Section E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS, paragraph 2.a. that you must see to it that we are notified of an "occurrence" only applies when the "occurrence" or offense is known to:
  - a. You, if you are an individual;
  - b. A partner, if you are a partnership;
  - c. A member or manager, if you are a limited liability company; or
  - d. An officer of the corporation or insurance manager, if you are a corporation.
2. The requirement in Section E. LIABILITY AND MEDICAL EXPENSES GENERAL CONDITIONS, paragraph 2.b. that you must see to it that we receive notice of a claim or "suit" will not be considered breached unless the breach occurs after such claim or "suit" is known to:
  - a. You, if you are an individual;
  - b. A partner, if you are a partnership;
  - c. A member or manager, if you are a limited liability company; or
  - d. An officer of the corporation or insurance manager, if you are a corporation.

## **VI. LIABILITY AND MEDICAL EXPENSES DEFINITIONS**

### **A. Bodily Injury Redefined**

The definition of "bodily injury" in Section F.3. LIABILITY AND MEDICAL EXPENSES DEFINITIONS is deleted and replaced by the following:

2. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

## **VII. UNINTENTIONAL ERRORS OR OMISSIONS**

We will not deny coverage under this Coverage Part because of the unintentional omission of, or unintentional error in, any information provided by you. However, this provision does not affect our right to collect additional premium or exercise our right of cancellation or non-renewal.



**PENN NATIONAL  
INSURANCE**

Pennsylvania National Mutual Casualty Insurance Company  
P.O. Box 2361  
Harrisburg, PA 17105-2361

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**INTELLECTUAL PROPERTY EXCLUSION**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS LIABILITY COVERAGE FORM**

**A. The following is added to section B. Exclusions:**

**r. "Personal and Advertising Injury" arising out of infringement of copyright, patent, trademark, trade secret or other intellectual property rights.**

However, this exclusion does not apply to infringement, in your advertisement, of copyright, trade dress or slogan.



Pennsylvania National Mutual Casualty Insurance Company  
P.O. Box 2361  
Harrisburg, PA 17105-2361

## NOTICE TO POLICYHOLDERS

### CHANGES OF COVERAGE

This notice has been prepared in conjunction with the implementation of changes to your policy. It contains a brief synopsis of any significant broadenings, restrictions and clarifications of coverage that were made in certain policy forms and/or endorsements.

This policyholder notice provides no coverage nor can it be construed to replace any provisions of your policy. You should read your policy and review your declarations page for complete information on the coverages you are provided. If there is any conflict between the policy and this notice, the provisions of the policy shall prevail.

*Please read your policy carefully to determine which forms listed below are attached to your policy.*

### RESTRICTIONS OR CHANGES OF COVERAGE

COVERAGE	FORMS and CHANGES
Limited Fungi or Bacteria Coverage - Property	Limited Fungi or Bacteria Coverage, 71 1030 0103: The \$15,000 property Annual Aggregate for this coverage is both a clarification and a reduction in coverage. With respect to "fungi" losses, the limits of insurance are reduced. Losses that would have been subject to the full policy limits on an occurrence basis (or capped at losses/expenses incurred in 30 days for time element coverage) are reduced. "Fungi" or bacteria coverage relates only to "fungi" which results from named perils or "specified perils" rather than from any covered peril. Under Ordinance or Law Coverage there is no change in the limit of \$50,000 and coverage language was clarified that mold and "fungi" are not covered.
Fungi or Bacteria Exclusion - Liability	Fungi or Bacteria Exclusion (Liability), 71 1031 0103: There is no coverage applying to bodily injury or property damage arising out of a "Fungi or Bacteria incident". There is no coverage under Personal or Advertising Injury Liability for damage resulting from "fungi" or bacteria.
Intellectual Property Exclusion	Intellectual Property Exclusion, 71 1028 0103: Added an exclusion to clarify that we only cover Personal and Advertising Injury arising out of infringement in your advertisement, of copyright, trade dress or slogan. Intellectual property was not previously addressed in the policy. This clarification may be viewed as a reduction in coverage.
Deductibles for some Optional Coverages and/or Exterior Building Glass	Businessowners PennPac, 711026 0103, or Businessowners PennPac Plus, 71 1027 0103: Increased the deductible from \$250 to \$500

## ENHANCEMENTS OR CHANGES OF COVERAGE

Coverage	Businessowners PennPac (Form 71-1026 0103)	Businessowners PennPac Plus (Form 71-1027 0103)
Accounts Receivable	Increased limit from \$10,000 to \$20,000 on premises/\$15,000 off-premises	Increased limit from \$10,000 to \$30,000 on premises/\$15,000 off-premises
Amended Aggregate Limits of Insurance	Increased coverage by adding a per project or per location aggregate	Increased coverage by adding a per project or per location aggregate
Appurtenant Buildings & Structures	Added \$5,000 limit for unscheduled appurtenant buildings and structures per premises	Added \$5,000 limit for unscheduled appurtenant buildings and structures per premises
Back Up of Sewers and Drains	Increased limit from \$5,000 to \$10,000	Increased limit from \$5,000 to \$15,000
Blanket Additional Insured for Written Contracts	Added limited additional insured coverage for certain persons or organizations you are required in a written "insured contract" to name as an additional insured	Added limited additional insured coverage for certain persons or organizations you are required in a written "insured contract" to name as an additional insured
Brands and Label Coverage	Added coverage extension to pay expenses to stamp "salvage" on branded or labeled merchandise or to remove the brands and labels and relabel damaged or destroyed merchandise. This coverage does not increase the applicable Business Personal Property limit of insurance.	Added coverage extension to pay expenses to stamp "salvage" on branded or labeled merchandise or to remove the brands and labels and relabel damaged or destroyed merchandise. This coverage does not increase the applicable Business Personal Property limit of insurance.
Business Income From Dependent Properties	Added \$5,000 limit	Added \$10,000 limit
Computer Electronic Data Processing Equipment, Media and Records	Added a \$15,000 limit for Computer Electronic Data Processing Equipment and \$5,000 for Computer Electronic Data Processing Media and Records including mechanical breakdown coverage and including computer equipment and media upgrade coverage.	Added a \$20,000 limit for Computer Electronic Data Processing Equipment and \$5,000 for Computer Electronic Data Processing Media and Records including mechanical breakdown coverage and including computer equipment and media upgrade coverage.
Employee Dishonesty	Added a \$10,000 limit for Employee Dishonesty coverage	Added a \$10,000 limit for Employee Dishonesty coverage
Extended Business Income	Broadened coverage by increasing the period for Extended Business Income from 30 days to 60 days	Broadened coverage by increasing the period for Extended Business Income from 30 days to 60 days

<b>Coverage</b>	<b>Businessowners PennPac (Form 71-1026 0103)</b>	<b>Businessowners PennPac Plus (Form 71-1027 0103)</b>
Extension of Premises Perimeter	Broadened coverage by increasing the perimeter of the premises from within 100 feet to within 1,000 feet of the described premises for Building, Business Personal Property, Business Income, Extra Expense and for Coverage Extensions and Additional Coverages except as otherwise provided.	Broadened coverage by increasing the perimeter of the premises from within 100 feet to within 1,000 feet of the described premises for Building, Business Personal Property, Business Income, Extra Expense and for Coverage Extensions and Additional Coverages except as otherwise provided.
Fine Arts	Increased the limit from \$10,000 to \$15,000 and broadened coverage adding coverage for earth movement, water damage and pairs, sets and parts coverage	Increased the limit from \$10,000 to \$20,000 and broadened coverage adding coverage for earth movement, water damage and pairs, sets and parts coverage
Fire Protection Device Recharge	Increased the limit for Fire Protection Device Recharge from \$1,500 to \$5,000	Increased the limit for Fire Protection Device Recharge from \$1,500 to \$5,000
Forgery and Alteration	Increased the limit for Forgery and Alteration from \$2,500 to \$5,000	Increased the limit for Forgery and Alteration from \$2,500 to \$10,000
Laptop Computer and Cell Phones	Added \$10,000 for laptop computers and cell phones with worldwide coverage	Added \$10,000 for laptop computers and cell phones with worldwide coverage
Money and Securities	Increased the limit for Money and Securities from \$10,000 on premises to \$10,000 on premises/\$5,000 off premises	Increased the limit for Money and Securities from \$10,000 on premises to \$15,000 on premises/\$10,000 off premises
Money Orders and Counterfeit Paper Currency	Increased the limit for Money Orders and Counterfeit Paper Currency from \$1,000 to \$5,000.	Increased the limit for Money Orders and Counterfeit Paper Currency from \$1,000 to \$10,000.
Newly Acquired Business Personal Property	Increased the limit from \$250,000/90 days to \$500,000/90 days	Increased the limit from \$250,000/90 days to \$500,000/90 days
Newly Acquired or Constructed Locations-Business Income and Extra Expense	Added \$250,000/90 days coverage for Business Income and Extra Expense at newly acquired or constructed locations	Added \$250,000/90 days coverage for Business Income and Extra Expense at newly acquired or constructed locations
Newly Acquired or Constructed Property-Building	Increased the limit from \$500,000/90 days to \$1,000,000/90 days	Increased the limit from \$500,000/90 days to \$1,000,000/90 days
Outdoor Property-Fences	No change in coverage or limit	Increased the limit from \$10,000 to \$15,000

<b>Coverage</b>	<b>Businessowners PennPac (Form 71-1026 0103)</b>	<b>Businessowners PennPac Plus (Form 71-1027 0103)</b>
Outdoor Property - Other Than Fences	Increased the limit for Outdoor Property other than fences from \$2,500/\$500 maximum for any one tree, shrub or plant to \$5,000/\$1,000 maximum for any one tree, shrub or plant.	Increased the limit for Outdoor Property other than fences from \$2,500/\$500 maximum for any one tree, shrub or plant to \$10,000/\$1,000 maximum for any one tree, shrub or plant.
Outdoor Signs	Added \$5,000 Outdoor Signs coverage	Added \$5,000 Outdoor Signs coverage
Pairs, Sets, Loss to Parts	Added loss conditions to clarify how the covered loss of a part of a pair or set or part will be valued.	Added loss conditions to clarify how the covered loss of a part of a pair or set or part will be valued.
Personal Property of Others	Broadened coverage by changing from an Actual Cash Value to a Replacement Cost basis for Personal Property of Others.	Broadened coverage by changing from an Actual Cash Value to a Replacement Cost basis for Personal Property of Others.
Personal Property Off Premises	Increased the limit for Personal Property Off Premises from \$10,000 to \$15,000	Increased the limit for Personal Property Off Premises from \$10,000 to \$25,000
Salespersons Samples	Added \$5,000 Salespersons Samples	Added \$5,000 Salespersons Samples
Seasonal Increase	Increased the Business Personal Property Seasonal Increase from 25% to 30%	Increased the Business Personal Property Seasonal Increase from 25% to 35%
Utilities Services-Direct Damage	Added \$10,000 Utilities Services - Direct Damage	Added \$15,000 Utilities Services - Direct Damage
Utilities Services-Time Element	Added \$10,000 Utilities Services - Time Element	Added \$15,000 Utilities Services - Time Element
Valuable Papers and Records	Increased the limit from \$10,000 on premises to \$20,000 on premises/\$15,000 off premises.	Increased the limit from \$10,000 on premises to \$30,000 on premises/\$15,000 off premises.



# PENN NATIONAL INSURANCE

Pennsylvania National Mutual Casualty Insurance Company  
P.O. Box 2361  
Harrisburg, PA 17105-2361

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## LIMITED FUNGI OR BACTERIA COVERAGE

This endorsement modifies insurance provided under the following:

### BUSINESS OWNERS SPECIAL PROPERTY COVERAGE FORM

#### SCHEDULE\*

Revised Limit \$
Separate Premises Or Locations Option    YES <input type="checkbox"/> NO <input type="checkbox"/> If YES, describe the separate premises or locations:
Business Income/Extra Expense - Revised number of days
*Information required to complete this Schedule, if not shown on this endorsement, will be shown in the Declarations.

#### A. Fungi Or Bacteria Exclusions

1. The following exclusions are added to Paragraph B.1. Exclusions:

(h) "Fungi", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria.

But if "fungi", wet or dry rot or bacteria result in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- (1) When "fungi", wet or dry rot or bacteria result from fire or lightning; or

- (2) To the extent that coverage is provided in the Additional Coverage - Limited Coverage For "Fungi", Wet or Dry Rot and Bacteria (contained in the Limited Fungi or Bacteria Coverage) if any, with respect to loss or damage by a cause of loss other than fire or lightning.

(i) Continuous or repeated seepage or leakage of water, or the presence of condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.

2. Paragraph B.2.k.(2) of the Exclusions is replaced by the following:

(2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;

#### B. Limited Fungi Or Bacteria Coverage

1. The following Additional Coverage is added to Paragraph A.5.

y. Limited Coverage for "Fungi", Wet Rot, Dry Rot And Bacteria

(1) The coverage described in Paragraphs B.1.y.(2) and B.1.y.(6) only applies when the "fungi", wet or dry rot or bacteria are the result of a "specified cause of loss" other than fire or lightning that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

- (2) We will pay for loss or damage by "fungi", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
  - (a) Direct physical loss or damage to Covered Property caused by "fungi", wet or dry rot or bacteria, including the cost of removal of the "fungi", wet or dry rot or bacteria;
  - (b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet or dry rot or bacteria; and
  - (c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet or dry rot or bacteria are present.
- (3) Unless a higher limit is selected in Schedule, the coverage described under this Limited Coverage is limited to \$15,000. If the Schedule indicates that the Separate Premises Or Locations Options applies, then the amount of coverage is made applicable to separate premises or locations as described in the Schedule. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungi", wet or dry rot or bacteria, we will not pay more than the total of \$15,000 unless a higher limit is selected in the Schedule even if the "fungi", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.
- (4) The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungi", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungi", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungi", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

- (5) The terms of this Limited Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder Or Molten Material Damage or Collapse Additional Coverages.
- (6) The following applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the suspension of "operations" satisfies all the terms and conditions of the applicable Business Income and/or Extra Expense Additional Coverage.
  - a. If the loss which resulted in "fungi", wet or dry rot or bacteria does not in itself necessitate a suspension of "operations", but such suspension is necessary due to loss or damage to property caused by "fungi", wet or dry rot or bacteria, then our payment under the Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days unless another number of days is indicated in the Schedule. The days need not be consecutive.
  - b. If a covered suspension of "operations" was caused by loss or damage other than "fungi", wet or dry rot or bacteria, but remediation of "fungi", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days unless another number of days is indicated in the Schedule. The days need not be consecutive.

#### C. Fungi Definition

- 1. The following definition is added to Paragraph H. Property Definitions:
- 11. "Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.



# PENN NATIONAL INSURANCE

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **FUNGI OR BACTERIA EXCLUSION (LIABILITY)**

This endorsement modifies insurance provided under the following:

### **BUSINESS OWNERS LIABILITY COVERAGE FORM**

**A. The following exclusion is added to Paragraph B.1., Exclusions - Applicable To Business Liability Coverage:**

**s. Fungi or Bacteria**

(1) "Bodily injury", "property damage" or "personal or advertising injury" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.

(2) Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, goods or products intended for consumption.

**B. The following definition is added Paragraph F. Liability And Medical Expenses Definitions:**

20. "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents, or by-products produced or released by fungi.



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**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT OF 2002. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

#### **NOTICE - DISCLOSURE OF TERRORISM INSURANCE COVERAGE PREMIUM**

The Terrorism Risk Insurance Act of 2002 establishes a program within the Department of the Treasury under which the federal government shares with the insurance industry the risk of loss from future terrorist attacks. The Act applies when the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States, certifies that an event meets the definition of an act of terrorism. The Act provides that, to be certified, an act of terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States.

In accordance with the federal Terrorism Risk Insurance Act of 2002 we are required to offer you coverage for losses resulting from certified acts of terrorism. The policy's other provisions will still apply to any such act.

#### **DISCLOSURE OF PREMIUM**

The portion of your annual premium that is attributable to coverage for acts of terrorism is \$ 0.00.

#### **SELECTION OR REJECTION OF TERRORISM INSURANCE COVERAGE**

Under Federal Law, you have thirty (30) days to consider this offer of coverage for terrorist acts.

You may choose to reject the offer by signing the enclosed statement and returning it to us and your policy will be written to exclude the described coverage to the extent permissible by statute in your state.

#### **Commercial Umbrella Policies Only**

If you choose to accept this offer of coverage for certified acts of terrorism, coverage provided under your Commercial Umbrella Policy will be excess over any underlying policy limits regardless of whether you have accepted or rejected coverage on those policies for certified acts of terrorism.

#### **DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

Effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States Government, Department of the Treasury pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage.



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**REJECTION OF TERRORISM INSURANCE COVERAGE**

I hereby reject the offer of terrorism coverage. I understand that an exclusion of certain terrorism losses will be made part of this Coverage Part/Policy.

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Policyholder Signature

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Print Name

---

Date

---

Policy Number

## BUSINESS OWNERS SPECIAL PROPERTY COVERAGE FORM

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

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

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

### A. Coverage

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

#### 1. Covered Property

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

a. Buildings, meaning the buildings and structures at the premises described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Your personal property in apartments or rooms furnished by you as landlord;
- (5) Personal property owned by you that is used to maintain or service the buildings or structures or the premises, including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (6) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the buildings or structures;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the buildings or structures.

b. Business Personal Property located in or on the buildings at the described premises or in the open (or in a vehicle) within 100 feet of the described premises, including:

- (1) Property you own that is used in your business;
- (2) Property of others that is in your care, custody or control, except as otherwise provided in Loss Payment Property Loss Condition E.6.d.(3)(b);
- (3) Tenant's improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove; and
- (4) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Paragraph A.1.b.(2).

#### 2. Property Not Covered

Covered Property does not include:

- a. Aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration;
- b. "Money" or "securities" except as provided in the:
  - (1) Money and Securities Optional Coverage; or
  - (2) Employee Dishonesty Optional Coverage;
- c. Contraband, or property in the course of illegal transportation or trade;
- d. Land (including land on which the property is located), water, growing crops or lawns;
- e. Outdoor fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, signs (other than signs attached to buildings), trees, shrubs or plants, all except as provided in the:
  - (1) Outdoor Property Coverage Extension; or
  - (2) Outdoor Signs Optional Coverage;
- f. Watercraft (including motors, equipment and accessories) while afloat.

#### 3. Covered Causes Of Loss

Risks Of Direct Physical Loss unless the loss is:

- a. Excluded in Section B., Exclusions; or
- b. Limited in Paragraph A.4., Limitations; that follow.

#### 4. Limitations

- a. We will not pay for loss of or damage to:
  - (1) Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
  - (2) Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
  - (3) Property that is missing, but there is no physical evidence to show what happened to it, such as shortage disclosed on taking inventory. This limitation does not apply to the Optional Coverage for Money and Securities.
  - (4) Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
- b. With respect to glass (other than glass building blocks) that is part of the interior of a building or structure, or part of an outdoor sign, we will not pay more than \$500 for the total of all loss or damage in any one occurrence. Subject to the \$500 limit on all loss or damage, we will not pay more than \$100 for each plate, pane, multiple plate insulating unit, radiant or solar heating panel, jalousie, louver or shutter. This limitation does not apply to loss or damage by the "specified causes of loss", except vandalism.
- c. We will not pay for loss of or damage to fragile articles such as glassware, statuary, marbles, chinaware and porcelains, if broken, unless caused by the "specified causes of loss" or building glass breakage. This restriction does not apply to:
  - (1) Glass that is part of the interior of a building or structure;
  - (2) Containers or property held for sale; or
  - (3) Photographic or scientific instrument lenses.
- d. For loss or damage by theft, the following types of property are covered only up to the limits shown:
  - (1) \$2,500 for furs, fur garments and garments trimmed with fur.
  - (2) \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - (3) \$2,500 for patterns, dies, molds and forms.

#### 5. Additional Coverages

##### a. Debris Removal

- (1) We will pay your expense to remove debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the earlier of:
  - (a) The date of direct physical loss or damage; or
  - (b) The end of the policy period.
- (2) The most we will pay under this Additional Coverage is 25% of:
  - (a) The amount we pay for the direct physical loss of or damage to Covered Property; plus
  - (b) The deductible in this policy applicable to that loss or damage.

But this limitation does not apply to any additional debris removal limit provided in Paragraph (4) below.

- (3) This Additional Coverage does not apply to costs to:
  - (a) Extract "pollutants" from land or water; or
  - (b) Remove, restore or replace polluted land or water.
- (4) If:
  - (a) The sum of direct physical loss or damage and debris removal expense exceeds the Limit of Insurance; or
  - (b) The debris removal expense exceeds the amount payable under the 25% Debris Removal Coverage limitation in Paragraph (2) above;

we will pay up to an additional \$10,000 for each location in any one occurrence under the Debris Removal Additional Coverage.

##### b. Preservation of Property

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

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

##### c. Fire Department Service Charge

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

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

**d. Collapse**

- (1) We will pay for direct physical loss or damage to Covered Property, caused by collapse of a building or any part of a building insured under this policy, if the collapse is caused by one or more of the following:
  - (a) The "specified causes of loss" or breakage of building glass, all only as insured against in this policy;
  - (b) Hidden decay;
  - (c) Hidden insect or vermin damage;
  - (d) Weight of people or personal property;
  - (e) Weight of rain that collects on a roof;
  - (f) Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation. However, if the collapse occurs after construction, remodeling or renovation is complete and is caused in part by a cause of loss listed in d.(1)(a) through d.(1)(e), we will pay for the loss or damage even if use of defective material or methods in construction, remodeling or renovation, contributes to the collapse.
- (2) If the direct physical loss or damage does not involve collapse of a building or any part of a building, we will pay for loss or damage to Covered Property caused by the collapse of personal property only if:
  - (a) The personal property which collapses is inside a building insured under this policy; and
  - (b) The collapse was caused by a cause of loss listed in d.(1)(a) through d.(1)(f) above.
- (3) With respect to the following property:
  - (a) Awnings;
  - (b) Gutters and downspouts;
  - (c) Yard fixtures;
  - (d) Outdoor swimming pools;
  - (e) Piers, wharves and docks;
  - (f) Beach or diving platforms or appurtenances;

- (g) Retaining walls; and
- (h) Walks, roadways and other paved surfaces;

if the collapse is caused by a cause of loss listed in d.(1)(b) through d.(1)(f), we will pay for loss or damage to that property only if such loss or damage is a direct result of the collapse of a building insured under this policy and the property is Covered Property under this policy.

- (4) Collapse does not include settling, cracking, shrinkage, bulging or expansion.

**e. Water Damage, Other Liquids, Powder or Molten Material Damage**

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

We will not pay the cost to repair any defect that caused the loss or damage; but we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage:

- (1) Results in discharge of any substance from an automatic fire protection system; or
- (2) Is directly caused by freezing.

**f. Business Income**

**(1) Business Income**

We will pay for the actual loss of Business Income you sustain due to the necessary suspension of your "operations" during the "period of restoration". The suspension must be caused by direct physical loss of or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

We will only pay for loss of Business Income that you sustain during the "period of restoration" and that occurs within 12 consecutive months after the date of direct physical loss or damage. We will only pay for ordinary payroll expenses for 60 days following the date of direct physical loss or damage.

Business Income means the:

- (i) Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses; and
- (ii) Continuing normal operating expenses incurred, including payroll.

Ordinary payroll expenses mean payroll expenses for all your employees except:

- (a) Officers;
- (b) Executives;
- (c) Department Managers;
- (d) Employees under contract; and
- (e) Additional Exemptions shown in the Declarations as:
  - (i) Job Classifications; or
  - (ii) Employees.

Ordinary payroll expenses include:

- (a) Payroll;
- (b) Employee benefits, if directly related to payroll;
- (c) FICA payments you pay;
- (d) Union dues you pay; and
- (e) Workers' compensation premiums.

## **(2) Extended Business Income**

If the necessary suspension of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property except finished stock is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the Business Income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 30 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

This Additional Coverage is not subject to the Limits of Insurance.

## **g. Extra Expense**

(1) We will pay necessary Extra Expense you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property at the described premises. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of the site at which the described premises are located.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (a) The portion of the building which you rent, lease or occupy; and
- (b) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

### **(2) Extra Expense means expense incurred:**

- (a) To avoid or minimize the suspension of business and to continue "operations":
  - (i) At the described premises; or
  - (ii) At replacement premises or at temporary locations, including relocation expenses, and costs to equip and operate the replacement or temporary locations.

- (b) To minimize the suspension of business if you cannot continue "operations".

### **(c) To:**

- (i) Repair or replace any property; or
- (ii) Research, replace or restore the lost information on damaged "valuable papers and records":
  - to the extent it reduces the amount of loss that otherwise would have been payable under this Additional Coverage or Additional Coverage f. Business Income.

We will only pay for Extra Expense that occurs within 12 consecutive months after the date of direct physical loss or damage. This Additional Coverage is not subject to the Limits of Insurance.

**h. Pollutant Clean Up And Removal**

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

- (1) The date of direct physical loss or damage; or
- (2) The end of the policy period.

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

**i. Civil Authority**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises due to direct physical loss of or damage to property, other than at the described premises, caused by or resulting from any Covered Cause of Loss.

The coverage for Business Income will begin 72 hours after the time of that action and will apply for a period of up to three consecutive weeks after coverage begins.

The coverage for necessary Extra Expense will begin immediately after the time of that action and ends:

- (1) 3 consecutive weeks after the time of that action; or
- (2) When your Business Income coverage ends;

whichever is later.

The definitions of Business Income and Extra Expense contained in the Business Income and Extra Expense Additional Coverages also apply to this Civil Authority Additional Coverage. The Civil Authority Additional Coverage is not subject to the Limits of Insurance.

**j. Money Orders And Counterfeit Paper Currency**

We will pay for loss due to the good faith acceptance of:

- (1) Any U.S. or Canadian post office, express company, or national or state (or Canadian) chartered bank money order that is not paid upon presentation to the issuer; or
- (2) Counterfeit United States or Canadian paper currency;

in exchange for merchandise, "money" or services or as part of a normal business transaction.

The most we will pay for any loss under this Additional Coverage is \$1,000.

**k. Forgery And Alteration**

(1) We will pay for loss resulting directly from forgery or alteration of, any check, draft, promissory note, bill of exchange or similar written promise of payment in "money", that you or your agent has issued, or that was issued by someone who impersonates you or your agent.

(2) If you are sued for refusing to pay the check, draft, promissory note, bill of exchange or similar written promise of payment in "money", on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur in that defense.

(3) The most we will pay for any loss, including legal expenses, under this Additional Coverage is \$2,500.

**l. Increased Cost Of Construction**

(1) This Additional Coverage applies only to buildings insured on a replacement cost basis.

(2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with enforcement of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in l.(3) through l.(9) of this Additional Coverage.

(3) The ordinance or law referred to in l.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises, and is in force at the time of loss.

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

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

(5) Under this Additional Coverage, we will not pay any costs associated with the enforcement of an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$5,000.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

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

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

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

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

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

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

(9) The costs addressed in the Loss Payment Property Loss Condition in this Coverage Form do not include the increased cost attributable to enforcement of an ordinance or law. The amount payable under this Additional Coverage, as stated in I.(6) of this Additional Coverage, is not subject to such limitation.

#### m. Exterior Building Glass

(1) We will pay for direct physical loss of or damage to glass, including lettering or ornamentation, that is part of the exterior of a covered building or structure at the described premises. The glass must be owned by you, or owned by others but in your care, custody or control. We will also pay for necessary:

(a) Expenses incurred to put up temporary plates or board up openings;

(b) Repair or replacement of encasing frames; and

(c) Expenses incurred to remove or replace obstructions.

(2) Paragraph A.3., Covered Causes Of Loss and Section B., Exclusions do not apply to this Additional Coverage, except for:

(a) Paragraph B.1.b., Earth Movement;

(b) Paragraph B.1.c., Governmental Action;

(c) Paragraph B.1.d., Nuclear Hazard;

(d) Paragraph B.1.f., War And Military Action; and

(e) Paragraph B.1.g., Water.

(3) We will not pay for loss or damage caused by or resulting from:

(a) Wear and tear;

(b) Hidden or latent defect;

(c) Corrosion; or

(d) Rust.

(4) The most we pay under this Additional Coverage is the Building Limit of Insurance shown in the Declarations.

However, if you are a tenant and no Limit of Insurance is shown in the Declarations for Building property, the most we will pay under this Additional Coverage is the Tenant's Exterior Building Glass Limit of Insurance shown in the Declarations.

#### 6. Coverage Extensions

In addition to the Limits of Insurance, you may extend the insurance provided by this policy as provided below.

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

##### a. Personal Property at Newly Acquired Premises

(1) You may extend the insurance that applies to Business Personal Property to apply to that property at any premises you acquire.

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

(2) Insurance under this Extension for each newly acquired premises will end when any of the following first occurs:

(a) This policy expires;

(b) 30 days expire after you acquire or begin construction at the new premises; or

(c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the premises.

**b. Personal Property Off Premises**

You may extend the insurance that applies to Business Personal Property to apply to covered Business Personal Property, other than "money" and "securities", "valuable papers and records" or accounts receivable, while it is in the course of transit or temporarily at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is \$5,000.

**c. Outdoor Property**

You may extend the insurance provided by this policy to apply to your outdoor fences, radio and television antennas (including satellite dishes), signs (other than signs attached to buildings), trees, shrubs and plants, including debris removal expense, caused by or resulting from any of the following causes of loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$2,500, but not more than \$500 for any one tree, shrub or plant.

**d. Personal Effects**

You may extend the insurance that applies to Business Personal Property to apply to personal effects owned by you, your officers, your partners or your employees. This extension does not apply to:

- (1) Tools or equipment used in your business; or
- (2) Loss or damage by theft.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises.

**e. "Valuable Papers And Records"**

(1) You may extend the insurance that applies to Business Personal Property to apply to direct physical loss or damage to "valuable papers and records" that you own, or that are in your care, custody or control caused by or resulting from a Covered Cause of Loss. This Coverage Extension includes the cost to research lost information on "valuable papers and records" for which duplicates do not exist.

(2) This Coverage Extension does not apply to:

- (a) Property held as samples or for delivery after sale;
- (b) Property in storage away from the premises shown in the Declarations.

(3) The most we will pay under this Coverage Extension for loss or damage to "valuable papers and records" in any one occurrence at the described premises is \$5,000, unless a higher Limit of Insurance for "valuable papers and records" is shown in the Declarations.

For "valuable papers and records" not at the described premises, the most we will pay is \$2,500.

(4) Section B. Exclusions of this Coverage Form does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.3.; and
- (g) The Accounts Receivable and "Valuable Papers And Records" Exclusions.

**f. Accounts Receivable**

(1) You may extend the insurance that applies to Business Personal Property to apply to accounts receivable. We will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by loss or damage; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable; that result from direct physical loss or damage by any Covered Cause of Loss to your records of accounts receivable.

(2) The most we will pay under this Coverage Extension for loss or damage in any one occurrence at the described premises is \$5,000, unless a higher Limit of Insurance for accounts receivable is shown in the Declarations.

For accounts receivable not at the described premises, the most we will pay is \$2,500.

(3) Section B. Exclusions of this Coverage Form does not apply to this Coverage Extension except for:

- (a) Paragraph B.1.c., Governmental Action;
- (b) Paragraph B.1.d., Nuclear Hazard;
- (c) Paragraph B.1.f., War And Military Action;
- (d) Paragraph B.2.f., Dishonesty;
- (e) Paragraph B.2.g., False Pretense;
- (f) Paragraph B.3.; and
- (g) The Accounts Receivable and "Valuable Papers And Records" Exclusions.

**B. Exclusions**

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

**a. Ordinance Or Law**

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (1) An ordinance or law that is enforced even if the property has not been damaged; or
- (2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property or removal of its debris, following a physical loss to that property.

**b. Earth Movement**

(1) Any earth movement (other than sinkhole collapse), such as an earthquake, landslide, mine subsidence or earth sinking, rising or shifting. But if earth movement results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

(2) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the loss or damage caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust, or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss of or damage to Covered Property.

**c. Governmental Action**

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this policy.

**d. Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

**e. Power Failure**

The failure of power or other utility service supplied to the described premises, however caused, if the failure occurs away from the described premises.

But if failure of power or other utility service results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**f. War And Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**g. Water**

(1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;

(2) Mudslide or mudflow;

(3) Water that backs up or overflows from a sewer, drain or sump; or

(4) Water under the ground surface pressing on, or flowing or seeping through:

- (a) Foundations, walls, floors or paved surfaces;
- (b) Basements, whether paved or not; or
- (c) Doors, windows or other openings.

But if Water, as described in B.1.g.(1) through B.1.g.(4), results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

2. We will not pay for loss or damage caused by or resulting from any of the following:

**a. Electrical Apparatus**

Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.

But if artificially generated electrical current results in fire, we will pay for the loss or damage caused by fire.

**b. Consequential Losses**

Delay, loss of use or loss of market.

**c. Smoke, Vapor, Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**d. Steam Apparatus**

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

**e. Frozen Plumbing**

Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:

- (1) You do your best to maintain heat in the building or structure; or
- (2) You drain the equipment and shut off the supply if the heat is not maintained.

**f. Dishonesty**

Dishonest or criminal acts by you, anyone else with an interest in the property, or any of your partners, employees, directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:

- (1) Acting alone or in collusion with others;
- (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees; but theft by employees is not covered.

With respect to accounts receivable and "valuable papers and records", this exclusion does not apply to carriers for hire.

**g. False Pretense**

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

**h. Exposed Property**

Rain, snow, ice or sleet to personal property in the open.

**i. Collapse**

Collapse, except as provided in the Additional Coverage for Collapse. But if collapse results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**j. Pollution**

We will not pay for loss or damage caused by or resulting from the discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

**k. Other Types Of Loss**

- (1) Wear and tear;
- (2) Rust, corrosion, fungus, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force; or
- (7) The following causes of loss to personal property:
  - (a) Dampness or dryness of atmosphere;
  - (b) Changes in or extremes of temperature; or
  - (c) Marring or scratching.

But if an excluded cause of loss that is listed in B.2.k.(1) through B.2.k.(7) results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

3. We will not pay for loss or damage caused by or resulting from any of the following B.3.a. through B.3.c. But if an excluded cause of loss that is listed in B.3.a. through B.3.c. results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

**a. Weather Conditions**

Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph 1. above to produce the loss or damage.

**b. Acts Or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

**c. Negligent Work**

Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

**4. Business Income And Extra Expense Exclusions**

We will not pay for:

- a. Any Extra Expense, or increase of Business Income loss, caused by or resulting from:
  - (1) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - (2) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the suspension of "operations", we will cover such loss that affects your Business Income during the "period of restoration".
- b. Any other consequential loss.

**5. Accounts Receivable and "Valuable Papers And Records" Exclusions**

The following additional exclusions apply to the Accounts Receivable and "Valuable Papers And Records" Coverage Extensions:

- a. We will not pay for loss or damage caused by or resulting from electrical or magnetic injury, disturbance or erasure of electronic recordings that is caused by or results from:

- (a) Programming errors or faulty machine instructions;
  - (b) Faulty installation or maintenance of data processing equipment or component parts;

But we will pay for direct loss or damage caused by lightning.

- b. Applicable to "Valuable Papers and Records" only:

We will not pay for loss or damage caused by or resulting from any of the following:

○ Error or omissions in processing or copying. But if errors or omissions in processing or copying results in fire or explosion, we will pay for the direct loss or damage caused by the fire of explosion.

- (2) Wear and tear, gradual deterioration or latent defects.

**c. Applicable to Accounts Receivable only:**

We will not pay for:

- (1) Loss or damage caused by or resulting from alteration, falsification, concealment or destruction of records of accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- (2) Loss or damage caused by or resulting from bookkeeping, accounting or billing errors or omissions.
- (3) Any loss or damage that requires any audit of records or any inventory computation to prove its factual existence.

**C. Limit Of Insurance**

1. The most we will pay for loss or damage in any one occurrence is the applicable Limit of Insurance shown in the Declarations.
2. The most we will pay for loss of or damage to outdoor signs attached to buildings is \$1,000 per sign in any one occurrence.
3. The limits applicable to the Coverage Extensions and the Fire Department Service Charge and Pollutant Clean Up and Removal Additional Coverages are in addition to the Limits of Insurance.

**4. Building Limit - Automatic Increase**

- a. The Limit of Insurance for Buildings will automatically increase by the annual percentage shown in the Declarations.

b. The amount of increase will be:

- (1) The Building limit that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Building limit, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year of the effective date of the most recent policy change amending the Building limit, divided by 365.

Example:

If: The applicable Building limit is \$100,000. The annual percentage increase is 8%. The number of days since the beginning of the policy year (or last policy change) is 146.

The amount of increase is

$$\$100,000 \times .08 \times 146 \div 365 = \$3,200.$$

**5. Business Personal Property Limit - Seasonal Increase**

- a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.
- b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the loss or damage occurs; or
  - (2) The period of time you have been in business as of the date the loss or damage occurs.

**D. Deductibles**

1. We will not pay for loss or damage in any one occurrence until the amount of loss or damage exceeds the Deductible shown in the Declarations. We will then pay the amount of loss or damage in excess of the Deductible up to the applicable Limit of Insurance.
2. Regardless of the amount of the Deductible, the most we will deduct from any loss or damage under all of the following Optional Coverages and the Additional Coverage - Exterior Building Glass in any one occurrence is the Optional Coverage/Exterior Building Glass Deductible shown in the Declarations:
  - a. Money and Securities;
  - b. Employee Dishonesty;
  - c. Interior Glass; and
  - d. Outdoor Signs.But this Optional Coverage/Exterior Building Glass Deductible will not increase the Deductible shown in the Declarations. This Deductible will be used to satisfy the requirements of the Deductible in the Declarations.
3. No deductible applies to the following Additional Coverages:
  - a. Fire Department Service Charge;
  - b. Business Income;
  - c. Extra Expense; and
  - d. Civil Authority.

**E. Property Loss Conditions**

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

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

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

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

**3. Duties in The Event Of Loss Or Damage**

- a. You must see that the following are done in the event of loss or damage to Covered Property:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (8) Cooperate with us in the investigation or settlement of the claim.
- (9) Resume all or part of your "operations" as quickly as possible.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Legal Action Against Us

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

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

#### 5. Limitation - Electronic Media and Records

We will not pay for any loss of Business Income caused by direct physical loss of or damage to Electronic Media and Records after the longer of:

- a. 60 consecutive days from the date of direct physical loss or damage; or
- b. The period, beginning with the date of direct physical loss or damage, necessary to repair, rebuild or replace with reasonable speed and similar quality, other property at the described premises due to loss or damage caused by the same occurrence.

Electronic Media and Records are:

- (1) Electronic data processing, recording or storage media such as films, tapes, discs, drums or cells;
- (2) Data stored on such media; or
- (3) Programming records used for electronic data processing or electronically controlled equipment.

#### Example No.1:

A Covered Cause of Loss damages a computer on June 1. It takes until September 1 to replace the computer, and until October 1 to restore the data that was lost when the damage occurred. We will only pay for the Business Income loss sustained during the period June 1 - September 1. Loss during the period September 2 - October 1 is not covered.

#### Example No. 2:

A Covered Cause of Loss results in the loss of data processing programming records on August 1. The records are replaced on October 15. We will only pay for the Business Income loss sustained during the period August 1 - September 29 (60 consecutive days). Loss during the period September 30 - October 15 is not covered.

#### 6. Loss Payment

In the event of loss or damage covered by this policy:

- a. At our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to d.(1)(e) below.
- b. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- c. We will not pay you more than your financial interest in the Covered Property.
- d. Except as provided in (2) through (8) below, we will determine the value of Covered Property as follows:
  - (1) At replacement cost without deduction for depreciation, subject to the following:
    - (a) If, at the time of loss, the Limit of Insurance on the lost or damaged property is 80% or more of the full replacement cost of the property immediately before the loss, we will pay the cost to repair or replace, after application of the deductible and without deduction for depreciation, but not more than the least of the following amounts:
      - (i) The Limit of Insurance under this policy that applies to the lost or damaged property;
      - (ii) The cost to replace, on the same premises, the lost or damaged property with other property:
        - i. Of comparable material and quality; and
        - ii. Used for the same purpose; or
      - (iii) The amount that you actually spend that is necessary to repair or replace the lost or damaged property.

- (b) If, at the time of loss, the Limit of Insurance applicable to the lost or damaged property is less than 80% of the full replacement cost of the property immediately before the loss, we will pay the greater of the following amounts, but not more than the Limit of Insurance that applies to the property:
  - (i) The actual cash value of the lost or damaged property; or
  - (ii) A proportion of the cost to repair or replace the lost or damaged property, after application of the deductible and without deduction for depreciation. This proportion will equal the ratio of the applicable Limit of Insurance to 80% of the cost of repair or replacement.
- (c) You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim on a replacement cost basis if you notify us of your intent to do so within 180 days after the loss or damage.
- (d) We will not pay on a replacement cost basis for any loss or damage:
  - (i) Until the lost or damaged property is actually repaired or replaced; and
  - (ii) Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.
- (e) The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.

(2) If the "Actual Cash Value - Buildings" option applies, as shown in the Declarations, Paragraph (1) above does not apply to Buildings. Instead, we will determine the value of Buildings at actual cash value.

(3) The following property at actual cash value:

- (a) Used or second-hand merchandise held in storage or for sale;
- (b) Property of others, but this property is not covered for more than the amount for which you are liable, plus the cost of labor, materials or services furnished or arranged by you on personal property of others;
- (c) Household contents, except personal property in apartments or rooms furnished by you as landlord;
- (d) Manuscripts;
- (e) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac.

- (4) Glass at the cost of replacement with safety glazing material if required by law.
- (5) Tenants' Improvements and Betterments at:
  - (a) Replacement cost if you make repairs promptly.
  - (b) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (i) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (ii) Divide the amount determined in (i) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
- (c) Nothing if others pay for repairs or replacement.
- (6) "Valuable papers and records", including those which exist on electronic or magnetic media (other than prepackaged software programs), at the cost of:
  - (a) Blank materials for reproducing the records; and
  - (b) Labor to transcribe or copy the records.

This condition does not apply to "valuable papers and records" that are actually replaced or restored.
- (7) Applicable only to the Optional Coverages:
  - (a) "Money" at its face value; and
  - (b) "Securities" at their value at the close of business on the day the loss is discovered.
- (8) Applicable only to Accounts Receivable:
  - (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of loss or damage:
    - (i) We will determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the loss or damage occurs; and
    - (ii) We will adjust that total for any normal fluctuations in the amount of accounts receivable for the month in which the loss or damage occurred or for any demonstrated variance from the average for that month.

- (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
  - (i) The amount of the accounts for which there is no loss or damage;
  - (ii) The amount of the accounts that you are able to re-establish or collect;
  - (iii) An amount to allow for probable bad debts that you are normally unable to collect; and
  - (iv) All unearned interest and service charges.
- e. Our payment for loss of or damage to personal property of others will only be for the account of the owners of the property. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, provided you have complied with all of the terms of this policy, and
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

## 7. Recovered Property

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

## 8. Resumption of Operations

We will reduce the amount of your:

- a. Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- b. Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.

## 9. Vacancy

### a. Description Of Terms

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

- (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
- (b) When this policy is issued to the owner of a building, building means the entire building. Such building is vacant when 70% or more of its total square footage:
  - (i) Is not rented; or
  - (ii) Is not used to conduct customary operations.

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

### b. Vacancy Provisions

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

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.

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

## F. Property General Conditions

### 1. Control of Property

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

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

**2. Mortgageholders**

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

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

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

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

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.

- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**3. No Benefit to Bailee**

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

**4. Policy Period, Coverage Territory**

Under this form:

- a. We cover loss or damage commencing:
  - (1) During the policy period shown in the Declarations; and
  - (2) Within the coverage territory or, with respect to property in transit, while it is between points in the coverage territory.
- b. The coverage territory is:
  - (1) The United States of America (including its territories and possessions);
  - (2) Puerto Rico; and
  - (3) Canada.

**G. Optional Coverage**

If shown as applicable in the Declarations, the following Optional Coverages also apply. These coverages are subject to the terms and conditions applicable to property coverage in this policy, except as provided below.

**1. Outdoor Signs**

- a. We will pay for direct physical loss of or damage to all outdoor signs at the described premises:

- (1) Owned by you; or
  - (2) Owned by others but in your care, custody or control.

- b. Paragraph A.3., Covered Causes Of Loss, and Section B., Exclusions, do not apply to this Optional Coverage, except for:

- (1) Paragraph B.1.c., Governmental Action;
  - (2) Paragraph B.1.d., Nuclear Hazard; and
  - (3) Paragraph B.1.f., War and Military Action.

- c. We will not pay for loss or damage caused by or resulting from:

- (1) Wear and tear;
  - (2) Hidden or latent defect;
  - (3) Rust;
  - (4) Corrosion; or
  - (5) Mechanical breakdown.

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

- e. The provisions of this Optional Coverage supersede all other references to outdoor signs in this policy.

**2. Interior Glass**

a. We will pay for direct physical loss of or damage to items of glass that are permanently affixed to the interior walls, floors or ceilings of a covered building or structure at the described premises, provided each item is:

- (1) Described in the Declarations as covered under this Optional Coverage; and
- (2) Located in the basement or ground floor level of the building or structure, unless the Declarations show that this Optional Coverage is applicable to interior glass at all floors; and
- (3) Owned by you, or owned by others but in your care, custody or control.

b. We will also pay for necessary:

- (1) Expenses incurred to put up temporary plates or board up openings;
- (2) Repair or replacement of encasing frames; and
- (3) Expenses incurred to remove or replace obstructions.

c. Paragraph A.3., **Covered Causes Of Loss**, and Section B., **Exclusions**, do not apply to this Optional Coverage, except for:

- (1) Paragraph B.1.c., Governmental Action;
- (2) Paragraph B.1.d., Nuclear Hazard; and
- (3) Paragraph B.1.f., War and Military Action.

d. We will not pay for loss or damage caused by or resulting from:

- (1) Wear and tear;
- (2) Hidden or latent defect;
- (3) Corrosion; or
- (4) Rust.

e. This Optional Coverage supersedes all limitations in this policy that apply to interior glass.

**3. Money and Securities**

a. We will pay for loss of "money" and "securities" used in your business while at a bank or savings institution, within your living quarters or the living quarters of your partners or any employee having use and custody of the property, at the described premises, or in transit between any of these places, resulting directly from:

- (1) Theft, meaning any act of stealing;
- (2) Disappearance; or
- (3) Destruction.

b. In addition to the Limitations and Exclusions applicable to property coverage, we will not pay for loss:

- (1) Resulting from accounting or arithmetical errors or omissions;
- (2) Due to the giving or surrendering of property in any exchange or purchase; or
- (3) Of property contained in any "money"-operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

c. The most we will pay for loss in any one occurrence is:

- (1) The limit shown in the Declarations for Inside the Premises for "money" and "securities" while:
  - (a) In or on the described premises; or
  - (b) Within a bank or savings institution; and

- (2) The limit shown in the Declarations for Outside the Premises for "money" and "securities" while anywhere else.

d. All loss:

- (1) Caused by one or more persons; or
- (2) Involving a single act or series of related acts;

is considered one occurrence.

e. You must keep records of all "money" and "securities" so we can verify the amount of any loss or damage.

**4. Employee Dishonesty**

a. We will pay for direct loss of or damage to Business Personal Property and "money" and "securities" resulting from dishonest acts committed by any of your employees acting alone or in collusion with other persons (except you or your partner) with the manifest intent to:

- (1) Cause you to sustain loss or damage; and also
- (2) Obtain financial benefit (other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions or other employee benefits earned in the normal course of employment) for:
  - (a) Any employee; or
  - (b) Any other person or organization.

b. We will not pay for loss or damage:

- (1) Resulting from any dishonest or criminal act that you or any of your partners commit whether acting alone or in collusion with other persons.

- (2) The only proof of which as to its existence or amount is:
  - (a) An inventory computation; or
  - (b) A profit and loss computation;
- c. The most we will pay for loss or damage in any one occurrence is the Limit of Insurance for Employee Dishonesty shown in the Declarations.
- d. All loss or damage:
  - (1) Caused by one or more persons; or
  - (2) Involving a single act or series of related acts;
 is considered one occurrence.
- e. We will pay only for loss or damage you sustain through acts committed or events occurring during the Policy Period. Regardless of the number of years this policy remains in force or the number of premiums paid, no Limit of Insurance cumulates from year to year or period to period.
- f. This Optional Coverage does not apply to any employee immediately upon discovery by:
  - (1) You; or
  - (2) Any of your partners, officers or directors not in collusion with the employee;
 of any dishonest act committed by that employee before or after being hired by you.
- g. We will pay only for covered loss or damage discovered no later than one year from the end of the Policy Period.
- h. If you (or any predecessor in interest) sustained loss or damage during the period of any prior insurance that you could have recovered under that insurance except that the time within which to discover loss or damage had expired, we will pay for it under this Optional Coverage, provided:
  - (1) This Optional Coverage became effective at the time of cancellation or termination of the prior insurance; and
  - (2) The loss or damage would have been covered by this Optional Coverage had it been in effect when the acts or events causing the loss or damage were committed or occurred.
- i. The insurance under paragraph h. above is part of, not in addition to, the Limit of Insurance applying to this Optional Coverage and is limited to the lesser of the amount recoverable under:
  - (1) This Optional Coverage as of its effective date; or
  - (2) The prior insurance had it remained in effect.

#### 5. Mechanical Breakdown

- a. We will pay for direct damage to Covered Property caused by an Accident to an Object. The Object must be:
  - (1) Owned by you or in your care, custody or control; and
  - (2) At the described premises.
- b. Accident means a sudden and accidental breakdown of the Object or a part of the Object. At the time the breakdown occurs, it must manifest itself by physical damage to the Object that necessitates repair or replacement.
- c. None of the following is an Accident:
  - (1) Depletion, deterioration, corrosion or erosion;
  - (2) Wear and tear;
  - (3) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
  - (4) Breakdown of any vacuum tube, gas tube or brush;
  - (5) Breakdown of any electronic computer or electronic data processing equipment;
  - (6) Breakdown of any structure or foundation supporting the Object or any of its parts;
  - (7) The functioning of any safety or protective device; or
  - (8) The explosion of gases or fuel within the furnace of any Object or within the flues or passages through which the gases of combustion pass.
- d. Object means any of the following equipment:
  - (1) Boiler and Pressure Vessels:
    - (a) Steam heating boilers and condensate return tanks used with them;
    - (b) Hot water heating boilers and expansion tanks used with them;
    - (c) Hot water supply boilers;
    - (d) Other fired or unfired vessels used for maintenance or service of the described premises but not used for processing or manufacturing;
    - (e) Steam boiler piping, valves, fittings, traps and separators, but only if they:
      - (i) Are on your premises or between parts of your premises;
      - (ii) Contain steam or condensate or steam; and
      - (iii) Are not part of any other vessel or apparatus;
    - (f) Feed water piping between any steam boiler and a feed pump or injector.

- (2) Air Conditioning Units - Any air conditioning unit that has a capacity of 60,000 Btu or more, including:
  - (a) Inductors, convectors and coils that make use of a refrigerant and form part of a cooling, humidity control or space heating system;
  - (b) Interconnecting piping, valves and fittings containing only a refrigerant, water, brine or other solution;
  - (c) Vessels heated directly or indirectly that:
    - (i) Form part of an absorption type system; and
    - (ii) Function as a generator, regenerator or concentrator;
  - (d) Compressors, pumps, fans and blowers used solely with the system together with their driving electric motors; and
  - (e) Control equipment used solely with the system.

e. Object does not mean:

- (1) As Boiler and Pressure Vessels:
  - (a) Equipment that is not under internal vacuum or internal pressure other than weight of contents;
  - (b) Boiler settings;
  - (c) Insulating or refractory material; or
  - (d) Electrical, reciprocating or rotating apparatus within or forming a part of the boiler or vessel.
- (2) As Air Conditioning Units, any:
  - (a) Vessel, cooling tower, reservoir, or other source of cooling water for a condenser or compressor, or any water piping leading to or from that source; or
  - (b) Wiring or piping leading to or from the unit.

f. We will not pay for an Accident to any Object while being tested.

g. Suspension

Whenever an Object is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against loss from an Accident to that Object. This can be done by delivering or mailing a written notice of suspension to:

- (1) Your last known address; or
- (2) The address where the Object is located.

If we suspend your insurance, you will get a pro rata refund of premium. But the suspension will be effective even if we have not yet made or offered a refund.

**H. Property Definitions**

- 1. "Money" means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
- 2. "Operations" means your business activities occurring at the described premises.
- 3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
  - caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. Ends on the earlier of:
  - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
  - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

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

5. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:

- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connections with credit or charge cards, which cards are not issued by you;

but does not include "money".

6. "Specified Causes of Loss" means the following: Fire; lightning; explosion, windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism, leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.

a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:

- (1) The cost of filling sinkholes; or
- (2) Sinking or collapse of land into man-made underground cavities.

b. Falling objects does not include loss of or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.

c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

7. "Valuable papers and records" means inscribed, printed, or written:

- a. Documents;
- b. Manuscripts; and
- c. Records;

including abstracts, books, deeds, drawings, films, maps or mortgages.

But "valuable papers and records" does not mean:

- d. "Money" or "Securities";
- e. Converted Data;
- f. Programs or instructions used in your data processing operations, including the materials on which the data is recorded.

## BUSINESS OWNERS LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under Section C - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F - Liability And Medical Expenses Definitions.

### A. Coverages

#### 1. Business Liability

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury", "property damage", "personal injury", or "advertising injury" to which this insurance does not apply. We may at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section D - Liability And Medical Expenses Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements or medical expenses.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Coverage Extension - Supplementary Payments.

#### b. This insurance applies:

(1) To "bodily injury" and "property damage" only if:

- (a) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (b) The "bodily injury" or "property damage" occurs during the policy period.

(2) To:

- (a) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (b) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services;

but only if the offense was committed in the "coverage territory" during the policy period.

c. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

#### d. Coverage Extension - Supplementary Payments

In addition to the Limit of Insurance we will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- (1) All expenses we incur.
- (2) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which Business Liability Coverage for "bodily injury" applies. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.

- (4) All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the insured in the "suit".
- (6) Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- (7) All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

- (1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph B.1.b.(2) of Exclusions, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above are no longer met.

## 2. Medical Expenses

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;provided that:
  - (a) The accident takes place in the "coverage territory" and during the policy period;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the Limit of Insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

## B. Exclusions

### 1. Applicable To Business Liability Coverage

This insurance does not apply to:

#### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

#### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

(1) That the insured would have in the absence of the contract or agreement; or

(2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

#### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

#### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily Injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (a) Whether the insured may be liable as an employer or in any other capacity; and
- (b) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations;

- (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
- (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

(b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the following equipment:
  - (a) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(b) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition or stunting activity.

**i. War**

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

**j. Professional Services**

"Bodily injury", "property damage", "personal injury" or "advertising injury" due to rendering or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications;
- (3) Supervisory, inspection or engineering services;
- (4) Medical, surgical, dental, x-ray or nursing services treatment, advice or instruction;
- (5) Any health or therapeutic service treatment, advice or instruction;
- (6) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- (7) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

- (8) Body piercing services; and
- (9) Services in the practice of pharmacy; but this exclusion does not apply to an insured whose operations include those of a retail druggist or drugstore.

**k. Damage To Property**

"Property damage" to:

- (1) Property you own, rent or occupy;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractor or subcontractor working directly or indirectly on your behalf is performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**l. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**m. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**n. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**o. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**p. Personal Or Advertising Injury**

"Personal injury" or "advertising injury":

- (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;

- (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured;
- (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or
- (5) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (6) With respect to any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize or in any way respond to, or assess the effects of pollutants; or
  - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or in any way responding to, or assessing the effects of pollutants.

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

#### **q. Advertising Injury**

"Advertising injury" arising out of:

- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
- (2) The failure of goods, products or services to conform with advertised quality or performance;
- (3) The wrong description of the price of goods, products or services; or
- (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.

Exclusions c., d., e., f., g., h., i., k., l., m., n. and o. do not apply to damage by fire or explosion to premises while rented to you, or temporarily occupied by you with permission of the owner. A separate Limit of Insurance applies to this coverage as described in Section D., Limits of Insurance.

#### **2. Applicable To Medical Expenses Coverage**

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Business Liability Coverage.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

#### **3. Applicable To Both Business Liability Coverage And Medical Expenses Coverage - Nuclear Energy Liability Exclusion**

This insurance does not apply:

- a. Under Business Liability Coverage, to "bodily injury" or "property damage":
  - (1) With respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

- (a) Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof; or
- (b) The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

b. Under Medical Expenses Coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

c. Under Business Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of the "nuclear material"; if:

- (1) The "nuclear material":
  - (a) Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
  - (b) Has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility"; but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

As used in this exclusion:

"By-product material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for:
  - (1) Separating the isotopes of uranium or plutonium;
  - (2) Processing or utilizing "spent fuel"; or
  - (3) Handling, processing or packaging "waste";
- (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;

"Property damage" includes all forms of radioactive contamination of property.

"Source material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Special nuclear material" has the meaning given it in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor";

"Waste" means any waste material:

- (a) Containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content; and
- (b) Resulting from the operation by any person or organization of any "nuclear facility", included under Paragraphs (a) and (b) of the definition of "nuclear facility".

### C. Who Is An Insured

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
  - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
    - (1) "Bodily injury" or "personal injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages of the injury described in Paragraphs (1)(a) or (1)(b); or

(d) Arising out of his or her providing or failing to provide professional health care services. However, if you have "employees" who are pharmacists in your retail druggist or drugstore operation, they are insured with respect to their providing or failing to provide professional health care services; or

#### (2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
- b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this policy.
- 3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
  - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
  - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

#### **D. Liability And Medical Expenses Limits Of Insurance**

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
- 2. The most we will pay for the sum of all damages because of all:
  - a. "Bodily injury", "property damage" and medical expenses arising out of any one "occurrence"; and
  - b. "Personal injury" and "advertising injury" sustained by any one person or organization;

is the Liability and Medical Expenses limit shown in the Declarations. But the most we will pay for all medical expenses because of "bodily injury" sustained by any one person is the Medical Expenses limit shown in the Declarations.

- 3. The most we will pay under Business Liability Coverage for damages because of "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire or explosion is the Fire Legal Liability limit shown in the Declarations.

#### **4. Aggregate Limits**

The most we will pay for:

- a. Injury or damage under the "products-completed operations hazard" arising from all "occurrences" during the policy period is the Liability and Medical Expenses limit; and
- b. All other injury or damage, including medical expenses, arising from all "occurrences" during the policy period is twice the Liability and Medical Expenses limit. This limitation does not apply to "property damage" to premises while rented to you or temporarily occupied by you with permission of the owner, arising out of fire or explosion.

The Limits of Insurance of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

#### **E. Liability And Medical Expenses General Conditions**

##### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

##### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the claim or "suit" and the date received; and
  - (2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, or settlement of the claim or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

### 3. Financial Responsibility Laws

- a. When this policy is certified as proof of financial responsibility for the future under the provisions of any motor vehicle financial responsibility law, the insurance provided by the policy for "bodily injury" liability and "property damage" liability will comply with the provisions of the law to the extent of the coverage and limits of insurance required by that law.
- b. With respect to "mobile equipment" to which this insurance applies, we will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverage required by any motor vehicle law. We will provide the required limits for those coverages.

### 4. Legal Action Against Us

No person or organization has a right under this policy:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 5. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

### F. Liability And Medical Expenses Definitions

- 1. "Advertising injury" means injury arising out of one or more of the following offenses:
  - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - b. Oral or written publication of material that violates a person's right of privacy;
  - c. Misappropriation of advertising ideas or style of doing business; or
  - d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
  - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
  - c. All parts of the world if:
    - (1) The injury or damage arises out of:
      - (a) Goods or products made or sold by you in the territory described in a. above; or
      - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
    - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits in the territory described in a. above or in a settlement we agree to.
  5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
  6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
  7. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
    - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
    - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- (1) The repair, replacement, adjustment or removal of "your product" or "your work"; or
- (2) Your fulfilling the terms of the contract or agreement.

8. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or

- (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection or engineering services.
- 9. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 10. "Loading or unloading" means the handling of property:
  - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
 but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
- 11. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
  - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b. Vehicles maintained for use solely on or next to premises you own or rent;
  - c. Vehicles that travel on crawler treads;
  - d. Vehicles, whether self-propelled or not, on which are permanently mounted:
    - (1) Power cranes, shovels, loaders, diggers or drills; or
    - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
 

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

  - (1) Equipment designed primarily for:
    - (a) Snow removal;
    - (b) Road maintenance, but not construction or resurfacing; or
    - (c) Street cleaning;
  - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- 12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 13. "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:
  - a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, by or on behalf of its owner, landlord or lessor;

- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- e. Oral or written publication of material that violates a person's right of privacy.

14. "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at the job site has been put to its intended use by any other person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

The "bodily injury" or "property damage" must occur away from premises you own or rent, unless your business includes the selling, handling or distribution of "your product" for consumption on premises you own or rent.

- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

- (2) The existence of tools, uninstalled equipment or abandoned or unused materials.

15. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

16. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

17. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

18. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

19. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.

## BUSINESS OWNERS COMMON POLICY CONDITIONS

All coverages of this policy are subject to the following conditions.

### A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 5 days before the effective date of cancellation if any one of the following conditions exists at any building that is Covered Property in this policy.
    - (1) The building has been vacant or unoccupied 60 or more consecutive days. This does not apply to:
      - (a) Seasonal unoccupancy; or
      - (b) Buildings in the course of construction, renovation or addition.
    - Buildings with 65% or more of the rental units or floor area vacant or unoccupied are considered unoccupied under this provision.
  - (2) After damage by a covered cause of loss, permanent repairs to the building:
    - (a) Have not started, and
    - (b) Have not been contracted for, within 30 days of initial payment of loss.
  - (3) The building has:
    - (a) An outstanding order to vacate;
    - (b) An outstanding demolition order; or
    - (c) Been declared unsafe by governmental authority.
  - (4) Fixed and salvageable items have been or are being removed from the building and are not being replaced. This does not apply to such removal that is necessary or incidental to any renovation or remodeling.

### (5) Failure to:

- (a) Furnish necessary heat, water, sewer service or electricity for 30 consecutive days or more, except during a period of seasonal unoccupancy; or
- (b) Pay property taxes that are owing and have been outstanding for more than one year following the date due, except that this provision will not apply where you are in a bona fide dispute with the taxing authority regarding payment of such taxes.
- b. 10 days before the effective date of cancellation if we cancel for nonpayment of premium.
- c. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. Changes

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

#### C. Concealment, Misrepresentation Or Fraud

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

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

#### D. Examination Of Your Books And Records

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

#### E. Inspections And Surveys

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

#### F. Insurance Under Two Or More Coverages

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

#### G. Liberalization

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

#### H. Other Insurance

1. If there is other insurance covering the same loss or damage, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.
2. Business Liability Coverage is excess over any other insurance that insures for direct physical loss or damage.
3. When this insurance is excess, we will have no duty under Business Liability Coverage to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so; but we will be entitled to the insured's rights against all those other insurers.

#### I. Premiums

1. The first Named Insured shown in the Declarations:
  - a. Is responsible for the payment of all premiums; and
  - b. Will be the payee for any return premiums we pay.
2. The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.
3. With our consent, you may continue this policy in force by paying a continuation premium for each successive one-year period. The premium must be:

- a. Paid to us prior to the anniversary date; and
- b. Determined in accordance with Paragraph 2. above.

Our forms then in effect will apply. If you do not pay the continuation premium, this policy will expire on the first anniversary date that we have not received the premium.

- 4. Undeclared exposures or change in your business operation, acquisition or use of locations may occur during the policy period that are not shown in the Declarations. If so, we may require an additional premium. That premium will be determined in accordance with our rates and rules then in effect.

#### **J. Premium Audit**

- 1. This policy is subject to audit if a premium designated as an advance premium is shown in the Declarations. We will compute the final premium due when we determine your actual exposures.
- 2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 3. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **K. Transfer Of Rights Of Recovery Against Others To Us**

- 1. Applicable to Businessowners Property Coverage:

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

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

You may also accept the usual bills of lading or shipping receipts limiting the liability of carriers.

This will not restrict your insurance.

- 2. Applicable to Businessowners Liability Coverage:

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them. This condition does not apply to Medical Expenses Coverage.

#### **L. Transfer Of Your Rights And Duties Under This Policy**

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

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

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PENNSYLVANIA CHANGES**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS POLICY**

**A. The Transfer Of Your Rights And Duties Under This Policy** Common Policy Condition is replaced by the following:

**K. Transfer Of Your Rights And Duties Under This Policy**

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

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

If you die, this Policy will remain in effect as provided in 1. or 2. below, whichever is later:

1. For 180 days after your death regardless of the policy period shown in the Declarations, unless the insured property is sold prior to that date; or
2. Until the end of the policy period shown in the Declarations, unless the insured property is sold prior to that date.

Coverage during the period of time after your death is subject to all provisions of this policy including payment of any premium due for the policy period shown in the Declarations and any extension of that period.

**B. The following is added to the Loss Payment Property Loss Condition and supersedes any provision to the contrary:**

**NOTICE OF ACCEPTANCE OR DENIAL OF CLAIM**

1. Except as provided in 3. below, we will give you notice, within 15 working days after we receive a properly executed proof of loss, that we:

- a. Accept your claim;
- b. Deny your claim; or
- c. Need more time to determine whether your claim should be accepted or denied.

If we deny your claim, such notice will be in writing, and will state any policy provision, condition or exclusion used as a basis for the denial.

If we need more time to determine whether your claim should be accepted or denied, the written notice will state the reason why more time is required.

2. If we have not completed our investigation, we will notify you again in writing, within 30 days after the date of the initial notice as provided in 1.c. above, and thereafter every 45 days. The written notice will state why more time is needed to investigate your claim and when you may expect us to reach a decision on your claim.
3. The notice procedures in 1. and 2. above do not apply if we have a reasonable basis, supported by specific information, to suspect that an insured has fraudulently caused or contributed to the loss by arson or other illegal activity. Under such circumstances, we will notify you of the disposition of your claim within a period of time reasonable to allow full investigation of the claim, after we receive a properly executed proof of loss.

- C. The following is added to any provision which uses the term actual cash value:

Actual cash value is calculated as the amount it would cost to repair or replace Covered Property, at the time of loss or damage, with material of like kind or quality, subject to a deduction for deterioration, depreciation and obsolescence. Actual cash value applies to Covered Property regardless of whether that property has sustained a partial or total loss or damage.

The actual cash value of the lost or damaged property may be significantly less than its replacement cost.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## HIRED AUTO AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

### BUSINESS OWNERS POLICY

SCHEDULE		
	Coverage	Additional Premium
Hired Auto Liability	X	SEE DEC
Non-Owned Auto Liability	X	SEE DEC

A. Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in the Schedule.

#### 1. HIRED AUTO LIABILITY

The insurance provided under the Businessowners Liability Coverage Form, Paragraph A.1. Business Liability, applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

#### 2. NON-OWNED AUTO LIABILITY

The insurance provided under the Businessowners Liability Coverage Form, Paragraph A.1. Business Liability, applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person other than you.

B. For insurance provided by this endorsement only:

1. The exclusions, under the Businessowners Liability Coverage Form, Paragraph B.1. Applicable to Business Liability Coverages, other than exclusions a., b., d., f. and i. and the Nuclear Energy Liability Exclusion, are deleted and replaced by the following:

a. "Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (a) Whether the insured may be liable as an employer or in any other capacity; and
- (b) To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

- (i) Liability assumed by the insured under an "insured contract"; or
- (ii) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers compensation law.

b. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

2. WHO IS AN INSURED in the Businessowners Liability Coverage Form, Paragraph C., is replaced by the following:

Each of the following is an insured under this endorsement to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. For a "non-owned auto", any partner or "executive officer" of yours, but only while such "non-owned auto" is being used in your business; and
- d. Any other person or organization, but only for their liability because of acts or omissions of an insured under a., b. or c. above.

None of the following is an insured:

- (1) Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
- (2) Any partner or "executive officer" for any "auto" owned by such partner or officer or a member of his or her household;

(3) Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;

- (4) The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee;
- (5) Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

C. The following additional definitions apply:

- 1. **"Auto Business"** means the business or occupation of selling, repairing, servicing, storing or parking "autos".
- 2. **"Hired Auto"** means any "auto" you lease, hire or borrow. This does not include any "auto" you lease, hire or borrow from any of your "employees" or members of their households, or from any partner or "executive officer" of yours.
- 3. **"Non-Owned Auto"** means any "auto" you do not own, lease, hire or borrow which is used in connection with your business. However, if you are a partnership, a "non-owned auto" does not include any "auto" owned by any partner.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EMPLOYMENT - RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS POLICY**

The following exclusion is added to Section B. EXCLUSIONS of the Businessowners Liability Coverage Form:

This insurance does not apply to:

1. "Bodily injury" or "personal injury" to:
  - a. A person arising out of any:
    - (1) Refusal to employ that person;
    - (2) Termination of that person's employment; or
    - (3) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or

- b. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" or "personal injury" to that person at whom any of the employment-related practices described in paragraphs (1), (2) or (3) above is directed.

This exclusion applies:

- a. Whether the insured may be liable as an employer or in any other capacity; and
- b. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**AMENDMENT - LIQUOR LIABILITY EXCLUSION**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS POLICY**

Under Section B. EXCLUSIONS in the Businessowners Liability Coverage Form, exclusion 1.c. is replaced by the following exclusion:

This insurance does not apply to "bodily injury" or "property damage" for which any insured may be held liable by reason of:

- a. Causing or contributing to the intoxication of any person;
- b. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- c. Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
  - (a) requires a license;
  - (b) is for this purpose of financial gain or livelihood; or
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**PREMIUM AUDIT ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS POLICY**

**A. Paragraph 2. of the Premium Audit Common Policy Condition is replaced by the following:**

**2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

### BUSINESS OWNERS COVERAGE FORM

A. The following provisions are added to the Businessowners Policy and apply to Property and Liability Coverages:

#### CAP ON CERTIFIED TERRORISM LOSSES

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The criteria contained in that Act for a "certified act of terrorism" include the following:

1. The act resulted in aggregate losses in excess of \$5 million; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

With respect to any one or more "certified acts of terrorism" under the federal Terrorism Risk Insurance Act of 2002, we will not pay any amounts for which we are not responsible under the terms of that Act (including subsequent action of Congress pursuant to the Act) due to the application of any clause which results in a cap on our liability for payments for terrorism losses.

B. The following provision is added to Businessowners Standard Property Coverage Form BP 00 01, Businessowners Special Property Coverage Form BP 00 02 or Section I - Property of Businessowners Coverage Form BP 00 03:

#### APPLICATION OF OTHER EXCLUSIONS

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Form or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES

This endorsement modifies insurance provided under the following:

BUSINESS OWNERS STANDARD AND SPECIAL PROPERTY COVERAGE FORMS including any attached endorsement that may provide specialized coverage on computers.

The following exclusion is added to Paragraph B., Exclusions in the Businessowners Standard and Special Property Coverage Forms:

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

a. The failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

(a) Computer hardware, including microprocessors or other Electronic Data Processing Equipment as may be described elsewhere in this policy;

(b) Computer application software or other Electronic Media and Records as may be described elsewhere in this policy;

(c) Computer operating systems and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 1.a.(1) of this endorsement;

due to the inability to correctly recognize, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 1.a. of this endorsement.

2. If excluded loss or damage, as described in Paragraph 1.a. of this endorsement results in:

a. A "Specified Cause of Loss" under the Businessowners Special Property Coverage Form; or

b. A Covered Cause of Loss under the Businessowners Standard Property Coverage Form;

we will pay only for the loss or damage caused by such "Specified Cause of Loss" or Covered Cause of Loss.

3. We will not pay for repair, replacement or modification of any items in 1.a.(1) or 1.a.(2) of this endorsement to correct any deficiencies or change any features.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION - YEAR 2000 COMPUTER-RELATED AND  
OTHER ELECTRONIC PROBLEMS (PRODUCTS -  
COMPLETED OPERATIONS HAZARD)**

This endorsement modifies insurance provided under the following:

**BUSINESS OWNERS LIABILITY COVERAGE FORM**

The following exclusion is added to Paragraph B., Exclusions in the Businessowners Liability Coverage Form:

1. This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" included in the "products-completed operations hazard" definition and arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction, or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

(a) Computer hardware, including microprocessors or other Electronic Data Processing Equipment as may be described elsewhere in the policy;

(b) Computer application software or other Electronic Media and Records as may be described elsewhere in the policy;

(c) Computer operating systems and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 1.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 1.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PENNSYLVANIA CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

BOILER AND MACHINERY COVERAGE PART  
BUSINESS OWNERS POLICY  
COMMERCIAL AUTOMOBILE COVERAGE PART  
COMMERCIAL CRIME COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART  
FARM COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. The Cancellation Common Policy Condition is replaced by the following:

### CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by writing or giving notice of cancellation.
2. **Cancellation Of Policies In Effect For Less Than 60 Days**

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least 30 days before the effective date of cancellation.

3. **Cancellation Of Policies In Effect For 60 Days Or More**

If this policy has been in effect for 60 days or more or if this policy is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. You have made a material misrepresentation which affects the insurability of the risk. Notice of cancellation will be mailed or delivered at least 15 days before the effective date of cancellation.
- b. You have failed to pay a premium when due, whether the premium is payable

directly to us or our agents or indirectly under a premium finance plan or extension of credit. Notice of cancellation will be mailed at least 15 days before the effective date of cancellation.

- c. A condition, factor or loss experience material to insurability has changed substantially or a substantial condition, factor or loss experience material to insurability has become known during the policy period. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- d. Loss of reinsurance or a substantial decrease in reinsurance has occurred, which loss or decrease, at the time of cancellation, shall be certified to the Insurance Commissioner as directly affecting in-force policies. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.
- e. Material failure to comply with policy terms, conditions or contractual duties. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

f. Other reasons that the Insurance Commissioner may approve. Notice of cancellation will be mailed or delivered at least 60 days before the effective date of cancellation.

This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of facts material to the acceptance of the risk or to the hazard assumed by us.

4. We will mail or deliver our notice to the first Named Insured's last mailing address known to us. Notice of cancellation will state the specific reasons for cancellation.
5. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
6. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata and will be returned within 10 business days after the effective date of cancellation. If the first Named Insured cancels, the refund may be less than pro rata and will be returned within 30 days after the effective date of cancellation. The cancellation will be effective even if we have not made or offered a refund.

7. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

B. The following are added and supersede any provisions to the contrary:

**1. Nonrenewal**

If we decide not to renew this policy, we will mail or deliver written notice of nonrenewal, stating the specific reasons for nonrenewal, to the first Named Insured at least 60 days before the expiration date of the policy.

**2. Increase Of Premium**

If we increase your renewal premium, we will mail or deliver to the first Named Insured written notice of our intent to increase the premium at least 30 days before the effective date of the premium increase.

Any notice of nonrenewal or renewal premium increase will be mailed or delivered to the first Named Insured's last known address. If notice is mailed, it will be by registered or first class mail. Proof of mailing will be sufficient proof of notice.

## PENNSYLVANIA NOTICE

An Insurance Company, its agents, employees, or service contractors acting on its behalf, may provide services to reduce the likelihood of injury, death or loss. These services may include any of the following or related services incident to the application for, issuance, renewal or continuation of, a policy of insurance:

1. Surveys;
2. Consultation or advice; or
3. Inspections.

The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, is not liable for damages from injury, death or loss occurring as a result of any act or omission by any person in the furnishing of or the failure to furnish these services.

The Act does not apply:

1. If the injury, death or loss occurred during the actual performance of the services and was caused by the negligence of the Insurance Company, its agents, employees or service contractors;
2. To consultation services required to be performed under a written service contract not related to a policy of insurance; or
3. If any acts or omissions of the Insurance Company, its agents, employees or service contractors are judicially determined to constitute a crime, actual malice, or gross negligence.

### Instruction to Policy Writers

Attach the Pennsylvania Notice to all new and renewal certificates insuring risks located in Pennsylvania.

**VERIFICATION**

The undersigned, BERNARD J. LYONS, JR., being a Claims Specialist for PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Plaintiff herein, and being authorized to make this Verification for and on its behalf, having read the foregoing **COMPLAINT FOR DECLARATORY JUDGMENT**, verifies that the statements of fact set forth therein are based on information furnished to counsel, which information has been gathered by counsel in the course of this lawsuit. The language of the pleading is that of counsel and not of signer. Signer verifies that he has read the foregoing, and that it is true and correct to the best of the signer's knowledge, information and belief. To the extent that the contents of the foregoing documents are that of counsel, verifier has relied upon counsel in making this verification. This verification is made subject to the penalties of 18 PA C.S.A. § 4904, relating to unsworn falsification to authorities.

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY

DATED: Sept 7, 2004

By

  
BERNARD J. LYONS, JR.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,  
Plaintiff

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

: CIVIL ACTION  
:  
: DECLARATORY JUDGMENT  
:  
:  
:  
: No. 05 - 1543 C.D.  
:  
: Type of Pleading: PRELIMINARY  
: OBJECTIONS TO COMPLAINT  
: FOR DECLARATORY JUDGMENT  
:  
: Filed on Behalf of: Defendants, RAY  
: MEDRED, ROBERTA BUEHLER, and  
: MEDRED REALTY ASSOCIATES  
:  
: Counsel of Record for these Parties:  
:  
: TONI M. CHERRY, ESQ.  
: Supreme Court No.: 30205  
:  
: GLEASON, CHERRY AND  
: CHERRY, L.L.P.  
: Attorneys at Law  
: P. O. Box 505  
: One North Franklin Street  
: DuBois, PA 15801  
:  
: (814) 371-5800

FILED *ScC*  
*10/4/2005* *Atty*  
*OCT 13 2005* *T. Cherry*  
William A. Shaw *JK*  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Plaintiff	:	CIVIL ACTION
vs.	:	
RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, MARCELINE OBERLY, PILLAR TO POST INC. and ERIE INSURANCE GROUP, CHARLES J. GRAHAM, JENNIFER L. GRAHAM, DAN CANTON, i/d/b/a PILLAR TO POST, d/b/a DAN CANTON HOME INSPECTIONS,	:	No. 05 - 1543 C.D.
Defendants	:	

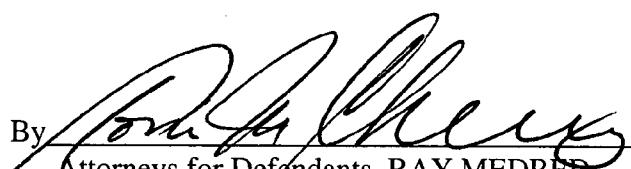
**NOTICE TO PLEAD**

To The Within Plaintiff:

YOU ARE HEREBY NOTIFIED TO PLEAD  
TO THE WITHIN PRELIMINARY  
OBJECTIONS WITHIN TWENTY (20)  
DAYS FROM THE DATE OF SERVICE  
HEREOF.

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
John P. Gleason  
Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY, Plaintiff	:	CIVIL ACTION
vs.	:	
RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, MARCELINE OBERLY, PILLAR TO POST INC. and ERIE INSURANCE GROUP, CHARLES J. GRAHAM, JENNIFER L. GRAHAM, DAN CANTON, i/d/b/a PILLAR TO POST, d/b/a DAN CANTON HOME INSPECTIONS,	:	No. 05 - 1543 C.D.
Defendants	:	

**DEFENDANTS' PRELIMINARY OBJECTIONS**  
**TO PLAINTIFF'S COMPLAINT**  
**FOR DECLARATORY JUDGMENT**

Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY ASSOCIATES, by their undersigned attorneys, GLEASON, CHERRY AND CHERRY, L.L.P., preliminarily object to Plaintiff's Complaint as follows:

**I. Preliminary Objection Raising Question of Lack of Subject  
Matter Jurisdiction Pursuant to Pa. R.C.P. 1028(a)(1)**

1. The action set forth in the Complaint seeks to have the Court of Common Pleas of Jefferson County, Pennsylvania, determine the duties that Plaintiff Insurance Company owes to Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY

ASSOCIATES, in defense of an action brought in the United States District Court for the Western District.

2. The jurisdiction over the subject matter of this action is vested in the Federal Court while the action is pending in that Court.

3. This Court has no jurisdiction over the subject matter of this action under the Declaratory Judgments Act found at 42 Pa. C.S.A. §7531, *et seq.*

WHEREFORE, Defendants request that the Plaintiff's Complaint be dismissed.

**II. Preliminary Objection Raising Question of Lack of Personal Jurisdiction**

4. The cause of action asserted herein arose in Clearfield County, Pennsylvania.

5. Defendant, ROBERTA BUEHLER, resides in the State of Louisiana.

6. Defendant, RAY MEDRED, resides in Clearfield County and his business, MEDRED REALTY ASSOCIATES, is located in Clearfield County.

7. Defendant, ROBERTA BUEHLER, has not had the minimum contacts sufficient for *in personam* jurisdiction under the Pennsylvania Long Arms Statute, 42 Pa. Const. Stat. §5322.

8. This Court does not have personal jurisdiction over Defendant, ROBERTA BUEHLER.

WHEREFORE, Defendant, ROBERTA BUEHLER, requests that Plaintiff's Complaint be dismissed.

### **III. Preliminary Objection to Service of Complaint for Declaratory Judgment**

9. That no return of service evidencing that RAY MEDRED, ROBERTA BUEHLER or MEDRED REALTY ASSOCIATES have been served in this action is filed of record.

10. That the Complaint was never served upon any of the foregoing three Defendants or upon anyone authorized to accept service on behalf of these Defendants.

11. Service of the Complaint was improper under Pa. R.C.P. 402.

WHEREFORE, Defendants respectfully request that Plaintiff's Complaint be stricken.

### **IV. Preliminary Objection Raising Pendency of Prior Action**

12. The instant civil action for declaratory judgment was commenced by Plaintiff on November 12, 2004.

13. Previously on April 2, 2004, a Complaint was filed in the United States District Court for the Western District of Pennsylvania to No. 04 - 515, a copy of which is attached to Plaintiff's Complaint for Declaratory Judgment.

14. That any action on the instant Complaint is dependent upon the outcome of the matter filed in the Federal Court.

15. That until a decision is actually rendered in Federal Court, it cannot be determined if there is coverage under the policy that forms the basis for the instant Complaint.

16. That a decision on the instant Complaint will not act to resolve the pending matter in Federal Court and thus Your Honorable Court cannot grant relief as it would be contrary to the enumerated purposes of the Declaratory Judgments Act, 42 Pa. C.S.A. §7531, *et seq.*

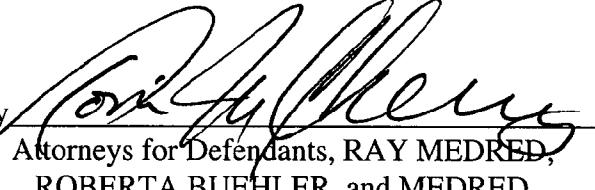
WHEREFORE, Defendant respectfully requests that the Court sustain Defendants'

Preliminary Objection and dismiss this action as barred by the pending action in Federal Court.

Respectfully submitted,

GLEASON, CHERRY AND CHERRY, L.L.P.

By

  
Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

## VERIFICATION

I, RAY MEDRED, one of the Defendants above-named, verify that I am authorized to make this Verification on behalf of Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY ASSOCIATES, and I verify that the information provided in the foregoing Preliminary Objections is true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa. C.S.A. §4904, relating to unsworn falsification to authorities.



Ray Medred

DATED: October 12, 2005

FILED

OCT 13 2005

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,  
Plaintiff

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

: CIVIL ACTION

: No. 05 - 1543 C.D.

FILED  
OCT 21 2005  
11:37 AM  
NO CC

William A. Shaw  
Prothonotary/Clerk of Courts

**CERTIFICATE OF SERVICE**

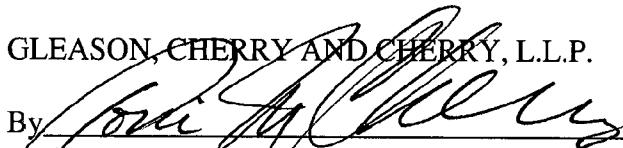
I hereby certify that on this 21st day of October, 2005, a true and correct copy of the Preliminary Objections to Plaintiff's Complaint for Declaratory Judgment filed on behalf of Defendants, RAY MEDRED, ROBERTA BUEHLER, and MEDRED REALTY ASSOCIATES, was served upon the following persons by mailing the same to them by United States First Class Mail, Postage Prepaid, by depositing the same in the United States Post Office at DuBois, Pennsylvania, addressed as follows:

MILES A. KIRSHNER, ESQ.  
DENNIS J. GEIS, JR., ESQ.  
Margolis Edelstein  
Attorneys at Law  
310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219

TARA MACZUZAK, ESQ.  
Dibella, Geer, McAllister & Best  
Attorneys at Law  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

THOMAS MORE MARRONE, ESQ.  
Attorney at Law  
25<sup>th</sup> Floor  
1845 Walnut Street  
Philadelphia, PA 19103

JEFFREY S. DUBOIS, ESQ.  
Attorney at Law  
190 West Park Avenue, Suite #5  
DuBois, PA 15801

GLEASON, CHERRY AND CHERRY, L.L.P.  
By   
Attorneys for Defendants, RAY MEDRED,  
ROBERTA BUEHLER, and MEDRED  
REALTY ASSOCIATES

Dated: October 21, 2005

**FILED**

**OCT 21 2005**

William A. Shaw  
Prothonotary/Clerk of Courts

CA

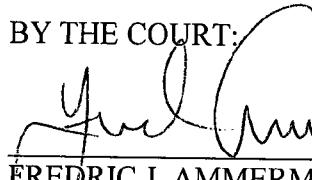
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PENNSYLVANIA NATIONAL :  
MUTUAL CASUALTY INSURANCE :  
COMPANY :  
vs. : No. 05-1543-CD  
RAY MEDRED, ROBERTA :  
BUEHLER, MEDRED REALTY :  
ASSOCIATES, MARCELINE :  
OBERLY, PILLAR TO POST, INC. :  
and ERIE INSURANCE GROUP, :  
CHARLES J. GRAHAM, JENNIFER L. :  
GRAHAM, DAN CANTON, i/d/b/a :  
PILLAR TO POST, d/b/a DAN :  
CANTON HOME INSPECTIONS :

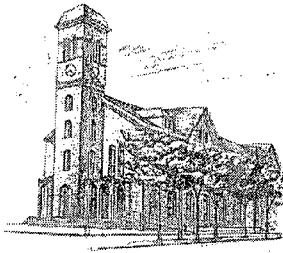
O R D E R

AND NOW, this 21<sup>st</sup> day of October, 2005, upon consideration of Defendants' Preliminary Objections to Complaint for Declaratory Judgment filed by Attorney Toni M. Cherry in the above matter, it is the Order of the Court that argument has been scheduled for the 14<sup>th</sup> day of December, 2005, at 10:30 A.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED *sc*  
03:44 PM Atty  
OCT 21 2005 *J. Cherry*  
William A. Shaw  
Prothonotary/Clerk of Courts



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

**RESPONSE TO PRELIMINARY  
OBJECTIONS**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

FILED *no cc*  
m 11:07 8/1  
OCT 26 2005  
JS

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

DECLARATORY JUDGMENT

Plaintiff,

No. 05-1543 C.D.

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

**RESPONSE TO PRELIMINARY OBJECTIONS**

AND NOW, comes the Plaintiff, Pennsylvania National Mutual Casualty Insurance Company, by its attorneys Margolis Edelstein, Miles A. Kirshner, Esquire, and Dennis J. Geis, Jr., Esquire, and files the within Response to Defendants' Preliminary Objections:

**Preliminary Objections Raising Question of Lack of Subject Matter Jurisdiction**

1. Denied as stated. The Complaint for Declaratory Judgment speaks for itself. By way of further answer, Plaintiff Penn National Mutual Casualty Insurance Company (hereinafter "Penn National") seeks a declaration that its insurance policy, issued to Medred Realty Associates, provides no coverage to Medred Realty Associates, Ray Medred and Roberta Buehler, for claims against these defendants made by Marceline Oberly in an underlying action filed in the United States District Court for the Western District of Pennsylvania, for violations of the Real Estate Sellers Disclosure

Law, the Pennsylvania Consumer Protection Law, or for claims based upon allegations of fraud and intentional misrepresentation, or for claims of punitive damages.

2. Denied. It is denied that the United States District Court has exclusive jurisdiction over the subject matter of this action, i.e. the coverage action. To the contrary, the federal court case involves the liability of the Medred Defendants, not the issue of whether Penn National owes coverage under its policies to the Medred Defendants. The issue of such coverage will not be litigated in the underlying action.

3. Denied. The Declaratory Judgments Act, 42 Pa.C.S. §7531 *et seq.* vests jurisdiction in the Court of Common Pleas over complaints arising thereunder. Furthermore, a declaratory judgment action is particularly appropriate in construing contracts of insurance to determine whether an insurer is obligated to defend or indemnify one claiming under the policy.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objections raising Question of lack of Personal Jurisdiction**

4. It is admitted that the cause of action at issue in the underlying action arose in Clearfield County.

5. It is admitted that Defendant Roberta Buehler currently resides in the state of Louisiana. By way of further Answer, at the time of the incidents alleged in the underlying complaint, Roberta Buehler was a resident of the Commonwealth of Pennsylvania.

6. Admitted.

7. Denied. At the time of the incidents alleged in the underlying complaint, Roberta Buehler was a resident of the Commonwealth of Pennsylvania and is alleged to have been doing business in Pennsylvania. By way of further answer, Roberta Buehler was alleged to have been the

listing agent for the property at issue in the underlying action, along with Ray Medred and Medred Realty. By way of further answer, Roberta Buehler was a licensed real estate salesperson in the Commonwealth of Pennsylvania. A copy of the License Verification for Real Estate License RS207374L, issued to Roberta Buehler is attached hereto as Exhibit A.

8. Denied. This court has jurisdiction over Roberta Buehler as this defendant was a resident of the Commonwealth of Pennsylvania at the time of the incidents alleged in the underlying complaint, was a licensed real estate salesperson in Pennsylvania, and is claiming coverage under a Penn National policy issued in Pennsylvania.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objections to Service of Complaint**

9. Denied. Plaintiff's counsel filed an Affidavit of Service stating that Defendant Roberta Buehler was served in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service on defendants located outside the Commonwealth. A copy of this Affidavit of Service is attached hereto as Exhibit B. Sheriff's Returns indicating service on Defendants Ray Medred and Medred Realty Associates are attached hereto as Exhibit C.

10. Denied. Defendant Robert Buehler was served on May 9, 2005 in the manner prescribed by the Pennsylvania Rules of Civil Procedure for service on defendants located outside the Commonwealth. A copy of Plaintiff's counsel's Affidavit of Service, including the certified mail receipt signed by Roberta Buehler, is attached hereto as Exhibit B.

As Defendants Ray Medred and Medred Realty were located in Clearfield County, the Jefferson County Sheriff deputized the Clearfield County Sheriff who personally served Ray Medred individually and on behalf of Medred Realty with copies of the Reinstated Complaint for

Declaratory Judgment on April 5, 2005. The Sheriff return received by the Jefferson County Sheriff, including the returns prepared by the Clearfield County Sheriff, are attached hereto as Exhibit C.

11. Denied. Service of all Defendants was proper and in accordance with the Pennsylvania Rules of Civil Procedure.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

**Preliminary Objections Raising Pendency of Prior Action**

12. Admitted.

13. It is admitted a Complaint was filed in the United States District Court for the Western District of Pennsylvania on April 2, 2004. It is denied this complaint was filed by Plaintiff Penn National or that Penn National was a party to the federal court action filed on April 2, 2004. Penn National has since sought to intervene in the federal court action for the limited purpose of propounding special interrogatories to the jury in connection with the instant Declaratory Judgment action.

14. Denied. The issue before the court in this Declaratory Judgment action is separate from the matters at issue in the underlying case. The parties to the instant case and the underlying case are different. The causes of action, the rights, and relief sought in the underlying federal court action is different from that at issue in the instant case. The issue of insurance coverage is not an issue to be determined in the underlying case.

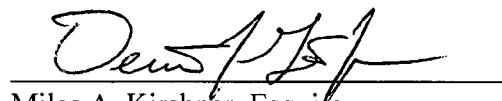
15. Denied. Penn National is entitled to a Declaration as to its obligations to those claiming coverage in the underlying case.

16. Denied. A declaratory judgment action is particularly appropriate in construing contracts of insurance to determine whether an insurer is obligated to defend or indemnify one claiming under the policy in an underlying lawsuit.

WHEREFORE, Plaintiff respectfully requests this Honorable Court overrule Defendants' Preliminary Objections.

Respectfully submitted,

MARGOLIS EDELSTEIN



Miles A. Kirshner, Esquire  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

*Pennsylvania Department of  
State Bureau of Professional and  
Occupational Affairs*



*License Verification*

**Person Information**

**Name:** ROBERTA J BUEHLER  
**Address(city, state zipcode):** BROCKWAY PA 15824

**Employer Information**

**Name** Address(city, state zipcode):  
Inactive Harrisburg PA 17105

**License Information**

**Type:** Real Estate Salesperson-  
Standard      **Secondary Type:** N/A      **Number:** RS207374L

**Profession:** Real Estate Commission      **Status:** Inactive      **Obtained By:** Application

**Issue Date:** 1/27/1995      **Expires:** 5/31/2004      **Last Renewed:** 5/23/2002

**Standing:** This license is not in good standing based on the license status 'Inactive'.

**Disciplinary action history:** No disciplinary actions were found for this license.

[Return to Licensee Search](#) | [Back to Results](#)

**EXHIBIT**

**A**

tables

IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLEK,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILJAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

**AFFIDAVIT OF SERVICE  
BY CERTIFIED MAIL**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

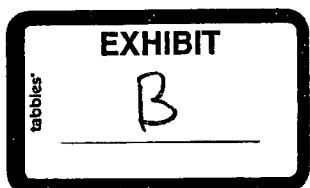
MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

JURY TRIAL DEMANDED



IN THE COURT OF COMMON PLEAS OF JEFFERSON COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

CIVIL ACTION

DECLARATORY JUDGMENT

No. 814 - 2004 CD

Defendants

AFFIDAVIT OF SERVICE BY CERTIFIED MAIL

I, DENNIS J. GEIS, JR., ESQUIRE, Counsel for Plaintiff Pennsylvania National Mutual Casualty Insurance Company, do certify that I have caused to be served by Certified Mail - Return Receipt Requested, Plaintiff's Complaint for Declaratory Judgment in the above-captioned action upon the following Defendant:

Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

and the same was received by said Defendant on the 9th day of May, 2005 as evidenced by the attached Certified Mail Receipt Card, No. 7000 1670 0003 7999 4657, the original of which is attached hereto and marked as Exhibit "A".

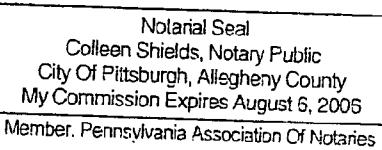
Respectfully submitted,

MARGOLIS EDELSTEIN



Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

SWORN TO and subscribed before me  
this 17th day of May, 2005.

  
Colleen Shields  
Notary Public

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

**1. Article Addressed to:**

Ms. Roberta Buehler  
119 James Street  
Pierre Part, LA 70339

21500.2-00109/MAK

**2. Article Number (Copy from service label)**  
7000 1670 0003 7999 4657**COMPLETE THIS SECTION ON DELIVERY**

A. Received by (Please Print Clearly) B. Date of Delivery

Roberta Buehler 5-9-05

**C. Signature**

Agent  Addressee

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

**3. Service Type**

Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

**4. Restricted Delivery? (Extra Fee)**  Yes

PS Form 3811, July 1999

Domestic Return Receipt

102595-00-M-0952

**EXHIBIT**

tabbed

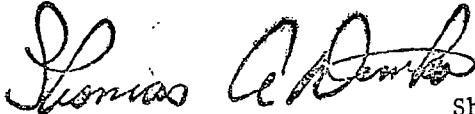


No. 814 C.D. 2004

Now, March 28, 2005, after due and diligent search, could not find the within named RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, and DAN CANTON, Defendants, in my bailwick; viz, County of Jefferson, State of Pennsylvania. Therefore, I deputized the Sheriff of Clearfield County to serve the Amended Praeclipe to Re-Instate Complaint for Declaratory Judgment and Complaint for Declaratory Judgment, whose Return of Service is attached hereto and hereby made a part of this Return.

Advance Costs Received:	\$125.00
My Costs:	86.00
Clearfield Co. Costs	Paid
Pd. Directly by Atty:	100.00
Total Costs:	186.00
REFUNDED:	\$ 39.00

So Answers,

  
Thomas A. Danner  
Sheriff

JEFFERSON COUNTY, PENNSYLVANIA

EXHIBIT

C

tabies

IN THE COURT OF COMMON PLEAS OF ~~CLEARFIELD~~ COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 3 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

**SHERIFF RETURN**

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON MEDRED REALTY ASSOCIATES DEFENDANT AT c/o  
RR 8 BOX 22, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, OWNER A  
TRUE AND ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY  
JUDGT. AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

IN THE COURT OF COMMON PLEAS OF ~~CLEARFIELD~~ COUNTY, PENNSYLVANIA

DOCKET # 100361  
NO: 814-2004-CD  
SERVICE # 1 OF 4  
AMENDED

PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT.

PLAINTIFF: PENNSYLVANIA NATIONAL MUTUAL CASUALTY INSURANCE COMPANY

vs.

DEFENDANT: RAY MEDRED, ROBERTA BUEHLER, MEDRED REALTY ASSOCIATES, DAN CANTON i/d/b/a  
PILLAR TO POST d/b/a DAN CANTON HOME INSPECTIONS al

SHERIFF RETURN

---

NOW, April 05, 2005 AT 3:20 PM SERVED THE WITHIN AMENDED  
PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. ON RAY MEDRED DEFENDANT AT c/o RR 8 BOX 22,  
DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO RAY MEDRED, DEFENDANT A TRUE AND  
ATTESTED COPY OF THE ORIGINAL AMENDED PRAECIPE/REIN;COMPLAINT/DECLARATORY JUDGT. AND  
MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: COUDRIET /

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing Response to Preliminary Objections was sent to the following parties/counsel of record, by First-class mail, postage pre-paid, this 24<sup>th</sup> day of October, 2005:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, L.L.P.  
P.O. Box 505  
DuBois, PA 15801-0505

Tara Maczuzak, Esquire  
DiBELLA & GEER  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

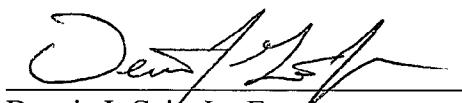
Thomas M. Marrone, Esquire  
FELDMAN SHEPHERD & WOHLGELERNTER  
1845 Walnut Street, 25<sup>th</sup> Floor  
Philadelphia, PA 19103

Jeffrey S. DuBois, Esquire  
HANAK GUIDO & TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Paul G. Mayer, Jr., Esquire  
LAW OFFICE OF JERRY S. EISENBERG  
301 Grant Street  
1225 One Oxford Centre  
Pittsburgh, PA 15219

MARGOLIS EDELSTEIN

By:

  
\_\_\_\_\_  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

DECLARATORY JUDGMENT

Plaintiff,

No. No. 05-1543 C.D.

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

**ORDER OF COURT**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2005, upon  
consideration of the Preliminary Objections filed by Defendants Ray Medred, Robert A. Buehler and  
Medred Realty Associates, it is hereby Ordered that said Preliminary Objections are OVERRULED.  
Defendants Ray Medred, Robert A. Buehler and Medred Realty Associates shall file an Answer to  
the Complaint for Declaratory Judgment within twenty (20) days of the date of this Order.

BY THE COURT:

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

CA  
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

**PRAECIPE FOR ARGUMENT/  
BRIEFING SCHEDULE**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

FILED NOCC  
m 11/07/2005  
OCT 26 2005 (6)

William A. Shaw  
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

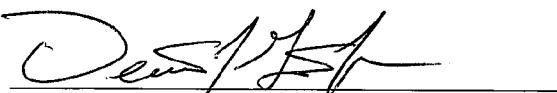
Defendants

**PRAECIPE FOR ARGUMENT/BRIEFING SCHEDULE**

**TO: PROTHONOTARY**

Pursuant to Clearfield County Local Rule 211, kindly direct the Court Administrator to establish a schedule for briefing and/or argument on Defendants' Preliminary Objections.

MARGOLIS EDELSTEIN

  
\_\_\_\_\_  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

**DATED: October 25, 2005**

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing PRAECIPE FOR ARGUMENT/BRIEFING SCHEDULE was sent to the following parties/counsel of record, by First-class mail, postage pre-paid, this 24<sup>th</sup> day of October, 2005:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, L.I.P.  
P.O. Box 505  
DuBois, PA 15801-0505

Tara Maczuzak, Esquire  
DiBELLA & GEER  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

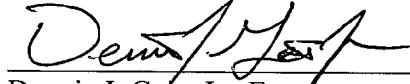
Thomas M. Marrone, Esquire  
FELDMAN SHEPHERD & WOHLGELERNTER  
1845 Walnut Street, 25<sup>th</sup> Floor  
Philadelphia, PA 19103

Jeffrey S. DuBois, Esquire  
HANAK GUIDO & TALADAY  
498 Jeffers Street  
P.O. Box 487  
DuBois, PA 15801

Paul G. Mayer, Jr., Esquire  
LAW OFFICE OF JERRY S. EISENBERG  
301 Grant Street  
1225 One Oxford Centre  
Pittsburgh, PA 15219

MARGOLIS EDELSTEIN

By:

  
\_\_\_\_\_  
Dennis J. Geis, Jr., Esquire  
Attorneys for Plaintiff

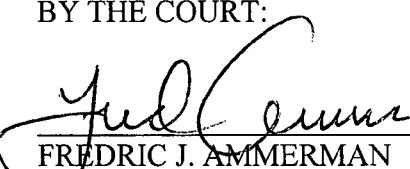
IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,  
PENNSYLVANIA  
CIVIL DIVISION

PENNSYLVANIA NATIONAL :  
MUTUAL CASUALTY INSURANCE :  
COMPANY :  
vs. : No. 05-1543-CD  
RAY MEDRED, ROBERTA :  
BUEHLER, MEDRED REALTY :  
ASSOCIATES, MARCELINE :  
OBERLY, PILLAR TO POST, INC., :  
and ERIE INSURANCE GROUP, :  
CHARLES J. GRAHAM, JENNIFER L. :  
GRAHAM, DAN CANTON, i/d/b/a :  
PILLAR TO POST, d/b/a DAN :  
CANTON HOME INSPECTIONS :

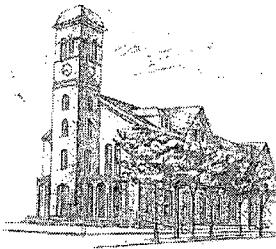
**O R D E R**

AND NOW, this 28 day of October, 2005, upon consideration of Attorney Geis' Preliminary Objections filed in the above matter, it is the Order of the Court that argument has been scheduled for the 14<sup>th</sup> day of December, 2005, at 10:30 A.M, in Courtroom No. 1, Clearfield County Courthouse, Clearfield, PA.

BY THE COURT:

  
FREDRIC J. AMMERMAN  
President Judge

FILED <sup>ICC</sup>  
OCT 14 2005 Atty Geis  
OCT 31 2005 T. Cherry  
William A. Shaw Marrone  
Prothonotary/Clerk of Courts Mayer  
LW Macruzak  
J. DuBois



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

       You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

       Other

       Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

FILED

NOV 15 2005

0/4100

William A. Shaw

Prothonotary/Clerk of Courts

1 CENT TO BURE

**MOTION TO RESCHEDULE  
ARGUMENT AND TO SET  
SETTLEMENT/STATUS CONFERENCE**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

**MOTION TO RESCHEDULE ARGUMENT AND TO SET  
SETTLEMENT/STATUS CONFERENCE**

AND NOW comes Plaintiff, Pennsylvania National Mutual Casualty Insurance Company, by its Attorneys MILES A. KIRSHNER, ESQUIRE and MARGOLIS EDELSTEIN, and files the within Motion to Reschedule Argument of Defendant's Preliminary Objections and to schedule a Settlement/Status Conference:

1. This is a civil action in which Plaintiff, Penn National, seeks declaratory judgment with respect to its rights and obligations regarding defense of the Medred Realty defendants in a certain underlying action, presently pending in the United States District Court for the Middle District of Pennsylvania.

2. The Medred Realty defendants have filed Preliminary Objections. This Court has entered an Order scheduling argument on said Objections for December 14, 2005 at 10:30 a.m.

3. The Plaintiff believes that the issues in this case are such that an early settlement/

status conference between the Court, counsel for Penn National and counsel for the Medred Realty defendants may be instrumental in defining the issues in dispute and in moving this case towards prompt disposition.

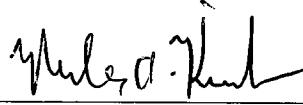
4. The undersigned counsel for Penn National has learned that the Court does not have the time to conduct a Settlement/Status Conference on the date of the presently scheduled Argument. Accordingly, by the instant Motion, Plaintiff respectfully requests that the Court re-schedule Argument on Defendant's Preliminary Objections at a time when it is also convenient to hold a Settlement/Status Conference.

WHEREFORE, Plaintiff, Pennsylvania National Mutual Casualty Insurance Company respectfully requests that This Court enter an Order re-scheduling Argument on Defendant's Preliminary Objections, and scheduling a Settlement/Status Conference in this matter.

Respectfully submitted,

MARGOLIS EDELSTEIN

By:

  
\_\_\_\_\_  
Miles A. Kirshner, Esquire  
Attorneys for Plaintiff

**CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a true and correct copy of the foregoing MOTION TO RESCHEDULE ARGUMENT AND TO SET SETTLEMENT/STATUS CONFERENCE was sent to the following parties/counsel of record, by First-class mail, postage pre-paid, this 11 day of November, 2005:

Toni M. Cherry, Esquire  
GLEASON, CHERRY & CHERRY, L.I.P.  
P.O. Box 505  
DuBois, PA 15801-0505

Tara Maczuzak, Esquire  
DiBELLA & GEER  
312 Boulevard of the Allies, 3<sup>rd</sup> Floor  
Pittsburgh, PA 15222

Thomas M. Marrone, Esquire  
FELDMAN SHEPHERD & WOHLGELERNTER  
1845 Walnut Street, 25<sup>th</sup> Floor  
Philadelphia, PA 19103

Jeffrey S. DuBois, Esquire  
Suite 5190  
W. Park Avenue  
DuBois, PA 15801

Paul G. Mayer, Jr., Esquire  
LAW OFFICE OF JERRY S. EISENBERG  
301 Grant Street  
1225 One Oxford Centre  
Pittsburgh, PA 15219

MARGOLIS EDELSTEIN

By:

  
Miles A. Kirshner, Esquire

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

ORDER OF COURT

AND NOW, this 14<sup>th</sup> day of November, 2005, upon  
consideration of the Motion to Re-Schedule Argument and to Set Settlement/Status Conference, said  
Motion is hereby GRANTED. The Argument which was scheduled on December 14, 2005 at 10:30  
a.m. is continued to December 22, 2005 at 9:30 a.m. o'clock. At that time the  
Court will take argument with respect to Defendant's Preliminary Objections, and will convene a  
Settlement/Status Conference.

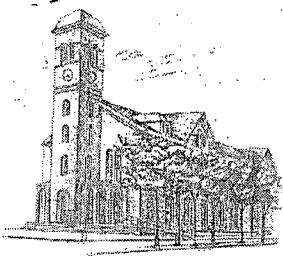
FILED  


NOV 15 2005

William A. Shaw  
Prothonotary/Clerk of Courts

BY THE COURT:

  
FREDRIC AMMERMAN, P.J.



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

Date: September 19, 2005

Over the past several weeks, it has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS  
OF CLEARFIELD COUNTY, PENNSYLVANIA  
CIVIL DIVISION

PENNSYLVANIA NATIONAL MUTUAL :  
CASUALTY INSURANCE COMPANY

-VS-

No. 05-1543-CD

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST, INC., and ERIE  
INSURANCE GROUP, CHARLES J.  
GRAHAM, JENNIFER L. GRAHAM,  
DAN CANTON i/d/b/a PILLAR TO  
POST, d/b/a DAN CANTON HOME  
INSPECTIONS

FILED 1CC Atty's  
D. Geis  
T. Cherry  
DEC 23 2005  
T. Marrone  
William A. Shaw  
Prothonotary/Clerk of Courts  
P. Mayer  
T. Maczuzak  
J. Dubois

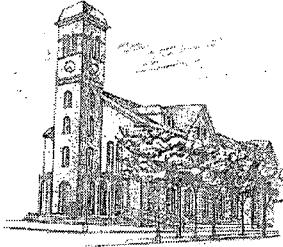
O R D E R

NOW, this 22nd day of December, 2005, following  
argument on the Preliminary Objections filed on behalf of  
Defendants Ray Medred, Roberta Buehler and Medred Realty  
Associates, it is the ORDER of this Court as follows:

1. The said Defendants have withdrawn the  
Preliminary Objection set forth in Count III;
2. The parties shall have no more than sixty  
(60) days from this date in which to submit appropriate  
brief to the Court as to the remaining issues.

BY THE COURT,

  
\_\_\_\_\_  
President Judge



## Clearfield County Office of the Prothonotary and Clerk of Courts

**William A. Shaw**  
Prothonotary/Clerk of Courts

**David S. Ammerman**  
Solicitor

**Jacki Kendrick**  
Deputy Prothonotary

**Bonnie Hudson**  
Administrative Assistant

To: All Concerned Parties

From: William A. Shaw, Prothonotary

It has come to my attention that there is some confusion on court orders over the issue of service. To attempt to clear up this question, from this date forward until further notice, this or a similar memo will be attached to each order, indicating responsibility for service on each order or rule. If you have any questions, please contact me at (814) 765-2641, ext. 1331. Thank you.

Sincerely,

William A. Shaw  
Prothonotary

DATE: 12/23/05

You are responsible for serving all appropriate parties.

The Prothonotary's office has provided service to the following parties:

Plaintiff(s)/Attorney(s)

Defendant(s)/Attorney(s)

Other

Special Instructions:

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

Plaintiff,

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants.

CIVIL ACTION

DECLARATORY JUDGMENT

No. 05 - 1543 C.D.

**PRAECIPE TO SETTLE AND  
DISCONTINUE**

Filed on behalf of Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

Counsel of record for this party:

MILES A. KIRSHNER, ESQUIRE  
PA I.D. # 46426

DENNIS J. GEIS, JR., ESQUIRE  
PA I.D. # 83734

MARGOLIS EDELSTEIN  
PA Firm I.D. # 244

310 Grant Street  
1500 Grant Building  
Pittsburgh, PA 15219  
PH: [412] 281 - 4256

FILED  
M/10/2008  
FEB 16 2008  
No CC  
1 Cert of disc  
to Wm. A. Shaw  
Kirshner  
cm

William A. Shaw  
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

PENNSYLVANIA NATIONAL MUTUAL  
CASUALTY INSURANCE COMPANY,

CIVIL ACTION

DECLARATORY JUDGMENT

Plaintiff,

No. 05 - 1543 C.D.

vs.

RAY MEDRED, ROBERTA BUEHLER,  
MEDRED REALTY ASSOCIATES,  
MARCELINE OBERLY, PILLAR TO  
POST INC. and ERIE INSURANCE GROUP,  
CHARLES J. GRAHAM, JENNIFER L.  
GRAHAM, DAN CANTON, i/d/b/a PILLAR  
TO POST, d/b/a DAN CANTON HOME  
INSPECTIONS,

Defendants

**PRAECIPE TO SETTLE AND DISCONTINUE**

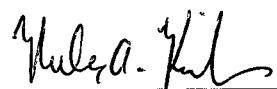
**TO: PROTHONOTARY**

YOU ARE HEREBY DIRECTED to settle, discontinue and end the above-captioned proceeding against all Defendants to this action.

DATED: February 14, 2006

MARGOLIS EDELSTEIN

By:

  
Miles A. Kirshner, Esquire

Attorneys for Plaintiff,  
Pennsylvania National Mutual Casualty  
Insurance Company

**CERTIFICATE REQUESTED**

# MARGOLIS EDELSTEIN

ATTORNEYS AT LAW  
www.margolisedelstein.com

**PITTSBURGH OFFICE:**  
310 GRANT STREET  
THE GRANT BUILDING, SUITE 1500  
PITTSBURGH, PA 15219  
412-281-4266  
FAX 412-642-2380

MILES A. KIRSHNER

+ WV Bar Also  
**DIRECT DIAL**  
(412) 355-4962  
mkirshner@margolisedelstein.com

February 14, 2006

**PHILADELPHIA OFFICE:\***  
THE CURTIS CENTER, 4TH FLOOR  
601 WALNUT STREET  
INDEPENDENCE SQUARE WEST  
PHILADELPHIA, PA 19106-3304  
215-922-1100  
FAX 215-922-1772

**HARRISBURG OFFICE:\***  
3510 TRINDE ROAD  
CAMP HILL, PA 17011  
717-975-8114  
FAX 717-975-8124

**SCRANTON OFFICE:**  
THE OPPENHEIM BUILDING  
409 LACKAWANNA AVENUE  
SUITE 3C  
SCRANTON, PA 18503  
570-342-4231  
FAX 570-342-4841

**SOUTH NEW JERSEY OFFICE:\***  
SENTRY OFFICE PLAZA  
216 HADDON AVENUE, 2ND FLOOR  
P.O. Box 92222  
WESTMONT, NJ 08108  
856-858-7200  
FAX 856-858-1017

**NORTH NEW JERSEY OFFICE:**  
CONNELL CORPORATE CENTER  
THREE CONNELL DRIVE  
SUITE 6200  
BERKELEY HEIGHTS, NJ 07922  
908-790-1401  
FAX 908-790-1486

**DELAWARE OFFICE:**  
1509 GILPIN AVENUE  
WILMINGTON, DE 19806  
302-777-4680  
FAX 302-777-4682

Office of the Prothonotary  
CLEARFIELD COUNTY COURTHOUSE  
P.O. Box 549  
Clearfield, PA 16830

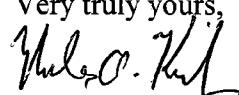
**RE: Pennsylvania National Mutual Casualty Insurance Company v.  
Ray Medred, et al.  
No. 05 - 1543 C.D.  
Our File # 21500.2-00109/MAK**

Gentlemen:

Enclosed please find my Praecep to Settle and Discontinue the action as captioned above. We understand there is no fee for this service.

Please return one date-stamped cover sheet, along with a Certificate showing the matter to be settled and discontinued, to my attention in the self-addressed envelope attached.

Thanks for your attention to this matter.

Very truly yours,  
  
Miles A. Kirshner

MAK/mau

Enclosures

cc: Toni M. Cherry, Esquire  
Bernard J. Lyons, Jr. (claim # 04336689)

IN THE COURT OF COMMON PLEAS OF  
CLEARFIELD COUNTY, PENNSYLVANIA

CIVIL DIVISION

**COPY**

**Pennsylvania National Mutual Casualty Insurance Co**

**Vs.**

**No. 2005-01543-CD**

**Ray Medred**

**Roberta Buehler**

**Medred Realty Associates**

**Marceline Oberly**

**Pillar To Post, Inc.**

**Erie Insurance Group**

**Charles J. Graham**

**Jennifer L. Graham**

**Dan Canton**

**Dan Canton Home Inspections**

**CERTIFICATE OF DISCONTINUATION**

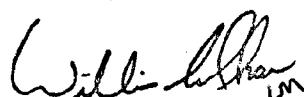
Commonwealth of PA  
County of Clearfield

I, William A. Shaw, Prothonotary of the Court of Common Pleas in and for the County and Commonwealth aforesaid do hereby certify that the above case was on February 16, 2006, marked:

Setted, discontinued and ended

Record costs in the sum of \$70.00 have been paid in full by Margolis Edelstein.

IN WITNESS WHEREOF, I have hereunto affixed my hand and seal of this Court at Clearfield, Clearfield County, Pennsylvania this 17th day of February A.D. 2006.



\_\_\_\_\_  
William A. Shaw, Prothonotary