

07-1701-CD
Mercer Ins. Co. vs Mark Sullivan et al

FILED

OCT 19 2007

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

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THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Defendants.

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHA, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. IF YOU CANNOT AFFORD TO HIRE A LAWYER, this office may be able to provide you with information about agencies that may offer legal service to eligible persons at a reduced fee or no fee.

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiff, THE MERCER INSURANCE COMPANY, by and through its counsel at the law firm of DiBella, Geer, McAllister & Best, P.C., and hereby files the instant Complaint for Declaratory Judgment pursuant to 42 Pa.C.S.A. § 7531, *et seq*, the following of which is a statement thereof:

PARTIES

1. The Plaintiff, THE MERCER INSURANCE COMPANY (hereinafter referred to as "Mercer Insurance"), is an insurance company with a place of business located at 100 Mercer Drive, P.O. Box 480, Lock Haven, Pennsylvania, 17745.

2. The Defendant, MARK T. SULLIVAN, t/d/b/a MARK SULLIVAN COMPANY (hereinafter referred to as "SULLIVAN"), is an adult individual with a business address of P.O. Box 1112, DuBois, Clearfield County, Pennsylvania, 15801.

3. The Defendant, CLARENCE CATALDO, t/d/b/a CATALDO COLLISION CENTER, INC. (hereinafter referred to as "Cataldo"), is an adult individual with a business address of 615 Division Street, DuBois, Clearfield County, Pennsylvania.

JURISDICTION AND VENUE

4. This Honorable Court has subject matter jurisdiction pursuant to the Declaratory Judgment Act, 42 Pa.C.S.A. § 7531, *et seq*.

5. Venue is proper before this Honorable Court since the instant controversy involves an insurance policy issued to the Defendant Sullivan in Clearfield County, involves a contract that was entered into between Defendant Cataldo and Defendant Sullivan, and then allegedly breached, in Clearfield County, and involves subsequent

litigation filed by Defendant Cataldo against Defendant Sullivan in the Court of Common Pleas of Clearfield County.

FACTUAL BACKGROUND AND UNDERLYING CIVIL ACTION

6. On or around May 29, 2007, Defendant Cataldo filed an Amended Complaint in Civil Action against Defendant Sullivan in the Court of Common Pleas of Clearfield County, at No. 2006-664. *A true and correct copy of the Amended Complaint is attached hereto as Exhibit "A".*

7. Defendant Cataldo's Amended Complaint is based upon contract entered into between Cataldo and Sullivan on or around August 6, 2004, in which Sullivan agreed to construct a new building on Cataldo's business premises, located at 615 Division Street, in exchange for payments equaling \$598,000.00. See ¶ 3 of *Amended Complaint, attached hereto as Exhibit "A"*. Cataldo's Amended Complaint further alleges that Sullivan was responsible for all engineering work necessary for the project. See ¶¶ 4-6 of *Amended Complaint, attached hereto as Exhibit "A"*.

8. The Amended Complaint sets forth two causes of action: breach of contract (Count I), and fraudulent misrepresentation (Count II). In the breach of contract action, Cataldo alleges Sullivan stopped work on the building "before it was serviceable and did not complete their contractual requirements" as defined by the construction contract. In addition, it is alleged that Sullivan "deviated from the drawing's specifications" without Cataldo's approval. *Complaint, ¶¶ 9-10*. Because of Sullivan's alleged breach of contract, Cataldo incurred damages "to correct and complete [Sullivan's] deficient and unfinished work". Subparagraphs (1) through (76) of

Paragraph 11 itemizes the alleged "deficient and unfinished work". The deficiencies include installation of incorrect materials; improper installation of materials and fixtures; failure to install some materials; improper construction methods; and physical damage to parts of the building because of improper construction. Lastly, the breach of contract count alleges that the Plaintiff lost income because completion of the building was delayed for 34 weeks as a result of Sullivan's breach of contract.

9. Count II sets forth Cataldo's claim for fraudulent misrepresentation. It alleges that Sullivan or his "agents" made statements to the Plaintiff and "relevant officials" that the building site was approved for development in accordance with the specifications of the project. However, it is alleged that the requisite approvals and permits had not been obtained by Sullivan at the time of the alleged statements. Complaint, ¶¶ 14-15. Relying on these representations and statements by Sullivan, Cataldo "began the site work necessary for the building project", and "unknowingly filled wetland areas located within the footprint of the building." As a result, Cataldo incurred wetland mitigation costs in excess of \$24,000.00. In addition, the building project was delayed an additional 14 weeks, resulting in an additional loss of income of \$35,000.00.

10. Importantly, the Amended Complaint does not set forth any causes of action for negligence; in fact, the complaint does not allege negligence, or even include the words "negligent" or "negligence" in any of its allegations. It also does not allege that Sullivan caused any bodily injury or damage to property other than the building under construction.

INSURANCE POLICY

11. At all times relevant to the underlying liability action, Mercer Insurance and Sullivan were parties to an insurance contract which had been issued by Mercer Insurance, with a policy number of SCP0001630. This insurance contract provided, *inter alia*, Commercial General Liability coverage, subject to the express terms, conditions and exclusions therein. The liability coverage included "Products/Completed Operations" coverages. The named insureds are Mark T. Sullivan and Mark T. Sullivan Company. *A true and correct copy of the relevant insurance policy and declarations page is attached hereto as Exhibit "B".*

12. Pursuant to the "Special Contractor's Policy", Form MSC0100998, under Part II A—Main Liability Coverage, Mercer Insurance will pay, up to the applicable limit of liability, sums that the insureds become legally liable to pay as damages because of "bodily injury" or "property damage" insured in the policy. To be covered, the bodily injury or property damage must occur during the policy term and must further be caused by an "occurrence". See "Coverage E—Liability to Others", in Form MCC0100998, p. 18, as part of the policy attached hereto as Exhibit "B".

13. The policy in question defines "occurrence" as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Occurrence

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. Based upon the facts alleged in Cataldo's Amended Complaint, the actions of Sullivan in breaching the contract all arose from incomplete, improper and/or defective construction and thus does not constitute an accident. Since Sullivan's incomplete, improper and/or defective construction were not accidents, they do not constitute an "occurrence" as that term is defined in the policy. See ¶¶ 11(1) through 11(76) of Amended Complaint, attached hereto as Exhibit "A".

15. Furthermore, the facts alleged in Count II of Cataldo's Amended Complaint, alleging Fraudulent Misrepresentation, arise from the intentional and fraudulent misrepresentations of Sullivan and/or of his agents, and thus said statements and actions by or on behalf of Sullivan do not constitute an accident. Since Sullivan's intentional and fraudulent misrepresentations were not accidents, they do not constitute an "occurrence" as that term is defined in the policy. See ¶¶ 14 through 20 of Amended Complaint, attached hereto as Exhibit "A".

16. Because the breach of contract damages as well as the fraudulent misrepresentation damages alleged by Cataldo do not arise from an "occurrence," there is no obligation on the part of Mercer Insurance to defend or indemnify Sullivan under the terms of the policy in question.

17. The policy in question defines "property damage" as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Property Damage

Property damage means the following caused by a covered occurrence:

- Direct Physical injury to tangible property, including loss of use of such property (the loss of use is deemed to occur at the time of such direct physical injury).
- Loss of use of tangible property that is not physically injured: all such loss of use is deemed to occur at the time of the *occurrence* causing the loss.

18. To be considered “property damage”, the injury or damage in question must arise from an “occurrence”. Because both the alleged breach of contract as well as the alleged fraudulent misrepresentations are not considered “occurrences”, as is more fully discussed in Paragraphs 13 through 16, above, any resulting damages do not qualify as “property damage” as that term is defined in the policy.

19. Further, even if the damage in question is determined by this Court to have resulted from an “occurrence”, all of the damages alleged in Cataldo’s Amended Complaint result from improper and incomplete construction, and the cost of correcting such deficiencies, and not “direct physical injury to tangible property”.

20. Because the damages alleged by Cataldo do not qualify as “property damage”, there is no obligation on the part of Mercer Insurance to defend or indemnify Sullivan under the terms of the policy in question.

21. Even if the damages claimed by Cataldo arose from an “occurrence” and resulted in “property damage”, several exclusions apply to preclude coverage.

22. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....

3. **BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS**

-
- B. We do not insure any *property damage* to *your products* or *your work* caused, to any extent, by *your products* or *your work* or any part such of. This Exclusion does not apply to *your work* if:
- The work has not, at the time of damage, been abandoned or completed; or
 - The damaged work, or work out of which the damage arises, was performed on *your* behalf by a subcontractor.

23. The allegations in Cataldo's Amended Complaint that allege damage to the building itself, due to improper construction, are clearly excluded by the above-cited exclusion, as any damage was caused by the work of Sullivan. See ¶¶ 11(28), (29), (51), (55) and (66) of Cataldo's Amended Complaint, attached hereto as Exhibit "A".

24. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....

3. **BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS**

-
- C. With respect to *impaired property* or property that has not been physically damaged, we do not insure *property damage* arising out of any of the following:
1. An inadequacy, defect, deficiency, or dangerous condition in *your products* or *your work*.
 2. A delay or failure by you or others acting on *your* behalf to perform an agreement or contract in accordance with its terms.

This Exclusion does not apply to loss of use of other property arising out of abrupt (sudden in time—not gradual or ongoing) accidental physical damage to *your products or your work* after such is put to its intended use.

25. The allegations in Cataldo's Amended Complaint allege damages arising from inadequacy, defect and deficiency in Sullivan's work, as well as damages that are alleged to have resulted from delay in performing and failure to perform the contract with Cataldo. These damages are specifically and unambiguously excluded from coverage by the above-cited exclusion.

26. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....
3. BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS

....
E. We do not insure property damage to any of the following:

1. That part of real property on which work is being performed by either *you*, or any contractor or subcontractor working (directly or indirectly) on *your* behalf, if the *property damage* arises out of such work.
2. That part of any property that must be repaired, replaced, or restored because *your work* was faulty or incorrectly performed: this does not apply to *property damage* included in the *products/completed operations hazard*.

27. The damages alleged in Cataldo's Amended Complaint that involve repair, replacement or restoration of components or parts of the building in question because

Sullivan's work was faulty or incorrectly performed are specifically and unambiguously excluded from coverage by the above-cited exclusion.

28. Further, the Products/Completed Operations Hazard coverage, mentioned in Exclusion 3.E.2., above, does not apply to the case *sub judice*. That term is defined as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Products / Completed Operations Hazard

Products / Completed Operations Hazard includes all *bodily injury and property damage* occurring away from *your premises* arising out of *your products* or *your work*, other than that arising out of any of the following.

1. Products that are in *your* physical possession.
2. Work that has not been completed or abandoned. *Your work* is deemed completed at the earliest one of the following times:
 - When all the work called for in *your* contract is completed.
 - When all the work called for in *your* contract at the job location is completed if *your* contract called for work at more than one location.
 - When that part of the work at a job location is put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that needs final correction, maintenance, repair, replacement, or service—but is otherwise complete—is deemed completed.

29. The allegations contained in Cataldo's Amended Complaint clearly state that Sullivan "stopped work on the building before it was serviceable and did not

complete their contractual requirements...". See ¶¶ 9 of *Cataldo's Amended Complaint*, attached hereto as Exhibit "A". Thus, as Sullivan's work was not completed, the *Products / Completed Operations Hazard* does not apply.

30. Furthermore, because the damages as alleged in Cataldo's Amended Complaint do not involve "property damage", as defined by the policy and as is more fully described in Paragraphs 17-20, above, the *Products / Completed Operations Hazard* does not apply.

31. The allegations contained in Cataldo's Amended Complaint clearly do not arise from an "occurrence", nor do they constitute "property damage", as those terms are clearly defined in the policy. Furthermore, several exclusions, outlined above, preclude coverage for the acts and omissions of Sullivan, as alleged in Cataldo's Amended Complaint.

WHEREFORE, Mercer Insurance Company respectfully requests that this Honorable Court grant the following declaratory relief, and enter an order of court that declares:

- a. Mercer Insurance has no legal and/or contractual obligation to defend or indemnify MARK T. SULLIVAN, t/d/b/a MARK SULLIVAN COMPANY for any liability in the litigation filed against him or his companies by CLARENCE CATALDO, t/d/b/a CATALDO COLLISION CENTER, INC., in the Court of Common Pleas of Clearfield County, Pennsylvania, and docketed at No. 2006-664.

- b. This Honorable Court is requested to grant such other orders and relief as it may deem proper and appropriate to effectuate the relief sought.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

By: Donald Best / by McY
Donald L. Best, Jr., Esquire
PA Bar I.D. No. 39221

By: Matthew C. Lenahan
Matthew C. Lenahan
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Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY

Defendants

CIVIL ACTION - AT LAW

No. 06-664

Type of pleading:

AMENDED COMPLAINT

Filed on behalf of:
PLAINTIFF

Counsel of record for
this party:

S. Casey Bowers, Esq.
Hanak, Guido and Taladay
P. O. Box 487
DuBois, PA 15801

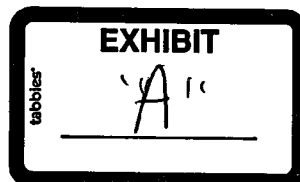
(814) 371-7768

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

MAY 29 2007

Attest.

W. L. B.
Prothonotary/
Clerk of Courts



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY
Defendants

NOTICE

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

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

MIDPENN LEGAL SERVICES
211 1/2 East Locust Street
Clearfield, PA 16830
800-326-9177

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY

Defendant

AMENDED COMPLAINT

COUNT I
BREACH OF CONTRACT

AND NOW, comes Plaintiff, Clarence Cataldo t/d/b/a Cataldo Collision, by and through his attorneys Hanak, Guido and Taladay, and hereby brings this Amended Complaint averring as follows:

1. Plaintiff is Clarence Cataldo, t/d/b/a Cataldo Collision ("Cataldo") with a business address of 615 Division Street, DuBois, Clearfield County, Pennsylvania 15801.

2. Defendant is Mark Sullivan, t/d/b/a Sullivan Company ("Sullivan") with a business address of P.O. Box 1113 DuBois, Clearfield County, Pennsylvania 15801.

3. On or about August 6, 2004, the parties entered into a written agreement for the construction of a new building on Cataldo's

premises located at 615 Division Street, DuBois, Clearfield County, Pennsylvania. A true and correct copy of said agreement is attached hereto and marked as Exhibit "A".

4. As per the subject contract, Sullivan was responsible for all engineering work necessary for the building project.

5. Sullivan retained Hughes Engineering ("Hughes"), a consulting engineering company with a business address of 606 Krebs Avenue, Clearfield, Pennsylvania 16830, to perform the required engineering work.

6. The building was to be built in accordance with drawings and specifications supplied by Hughes.

7. Cataldo fulfilled all the conditions necessary for Sullivan's performance under the contract.

8. Cataldo authorized one change order throughout the course of the entire project.

9. Sullivan stopped work on the building before it was serviceable and did not complete their contractual requirements as defined by the attached agreement, the drawings and "Change Order One".

10. Further, Sullivan deviated from the drawing's specifications without obtaining Cataldo's approval.

11. As a result of Defendant's breach of the subject contract, Plaintiff has incurred the following losses to correct and complete Defendant's deficient and unfinished work:

<u>Description</u>	<u>Estimated Cost</u>
(1) 48" x 48" front window 001 was the wrong type of glass.	\$10,068.00 (includes Items 5 & 6)
(2) 3-hour fire-rated, 30" x 30" steel framed window 002 was not installed between Room 108 and the shop area 117.	\$5,110.00
(3) 36" x 36", painted, steel framed, one-way glazing window 003 was not installed between Room 108 and waiting room area 107, but it was installed without one-way glazing and installed in a field fabricated wooden frame.	\$1,473.00
(4) Windows 004, four (4) locations as supplied by Glass Unlimited were not installed with safety glass as required by Drawing A303. Shims have not been cut off and the windows' gaps are not sealed at all the locations.	\$4,210.00
(5) The main, double 36" x 80" Kawneer 350, Class 1 entrance door 001 to waiting Room 107 was not installed as specified on initial construction Drawing A303.	(cost estimate included in item (1))
(6) The two (2) entrance, 36" x 80" Kawneer 350, Class 1 entrance Door 002 with 48" x 48" side glazing to each rental space was not installed as specified on the initial construction Drawing A303.	(cost estimate included in item (1))

(7) The 36" x 80" x 1.75" Mohawk, 7-ply wood core, red oak, veneer internal Doors 003 were installed without hardware. \$900.00

(8) The 36" x 80" x 1.75" solid core, oak-veneer, internal Doors 004 to the small mechanical rooms and offices were not installed. \$2,700.00

(9) The three 36" x 80" shop access, 3-hour fire-rated, Warner and Hershey Doors 006 were not sealed against air transfer. \$225.00

(10) The three 36" x 80" shop access, 3-hour fire-rated, and listed Warnock & Hershey Doors 006 were not installed with door closers. \$855.00

(11) Door between the estimating bay and lunch room was not installed. Further, the correct type of door was not specified on the drawings. \$450.00

(12) Door 008 is a 3/4-hour door. Per CEC's interpretation, it should be a 2-hour door. \$450.00

(13) Door 009 opener in the Parts Area (Alignment Bay), was the wrong type. A center pull conventional torsion spring opener interferes vehicles being lifted for service. The opener needs to be a jackshaft side wall-mount type opener. \$1,750.00

(14) Defendant's engineer failed to specify a waterproof jackshaft automatic door opener for Door 012, which is necessary for the moist environment in the estimating bay. \$2,500.00

(15) Wrong laminate was installed on countertop in Room 107. \$250.00

(16) The 1-hour firewall separating Rooms 104, 105, and 106 from Rental Space 101, and Rooms 111, 112, and 113 from Rental Space 116 were not constructed to full height to the underside of the roof. \$3,237.85

(17) Drive-In estimate bay is not 3-hour rated in violation of applicable building codes. \$1,291.75

(18) Original Contract Drawing A101 shows the restroom walls to be wall Type [C]. Drawing A303 requires wall Type [C] to have acoustical insulation. Defendant failed to install acoustical insulation. \$2,728.44

(19) Defendant failed to install acoustical insulation in the walls between Plaintiff's office and the two (2) rental units. \$2,059.20

(20) Walls "A" and "J" were constructed with wooden studs. Per drawing, said walls were to be constructed with metal studs. \$5,000.00

(21) Wall "A" was not constructed with a 1" air space between the wood studs and block wall. \$2,000.00

(22) Wall types "A" and "J" cores are not filled with insulation. \$3,947.45

(23) The storage area, noted as "Mech. Room" on the drawings was shown to have a drywall finished 1-hour rated enclosure. This room, shown on \$15,000.00

Drawing A301, with the 1-hour fire rating walls was not installed. Further, electric outlets should have been placed in said room at 6' increments per the NEC/NFPA-70.

(24) Normal access to the Mechanical Room was not installed.

\$1,798.34

~~(25) The separation wall from~~
Gridline B3 to B1 was not constructed (in Parts Area 120).

~~\$16,549.57~~

(26) Hot and cold water line penetrations through the 3-hour firewall were not sealed (4 locations).

\$140.00

(27) Inside 119 mechanical room, the wall and ceiling joints were not properly sealed. Electrical conduit and vent gas penetrations were not sealed.

\$2,843.00

(28) There were dents in two (2) inner panels along the shop area walls.

\$311.00

(29) Defendant poured the concrete floor of the Drive-In Estimates Bay, Room 109, in weather conditions such that cause the concrete floor to crack.

\$468.88

(30) Rental Space 116 slab was placed without vapor barrier.

\$150.00
(material only)

(31) Trench drains in the Shop Area and Parts Area do not line up properly with inlets.

\$7,500.00

(32) Perimeter curbing was not installed at office doors.

\$300.00

(33) Isolation and expansion joints were not installed around the interior circular columns.

\$1,443.75

(34) A cold joint in the concrete area was incorrectly constructed along gridline between the paint booth area and the shop area. \$250.00

(35) Concrete slabs placed without structural reinforcement and without proper soil compaction. \$635.00

(36) Water heater was installed an excessive distance away from Rooms 104, 110, 111, and 112. \$2,554.20

(37) Refrigerant lines were not charged sufficiently between the condenser and the evaporator of the center office area HVAC unit. \$350.00

(38) Water meters and shutoff valves for the entire facility are installed in the mechanical room in Rental Space 101. \$302.12

(39) Cold and hot water piping to and from the mechanical room were not insulated. \$1,200.00

(40) Gas piping and/or electric power was not installed to stove location as identified on Drawing A101. \$256.19

(41) Electrical panels in Office 101 and 116 were not placed in mechanical rooms. \$5,200.00

(42) Emergency lighting was not installed over Door 002. \$250.00

(43) Outlet for time clock not installed. \$140.00

(44) Mirrors in restrooms 110 and 112 do not tilt to meet ADA requirements \$535.82

(45) No soap dispensers installed in Room 110 and 112 \$158.58

~~(46) Under sink piping in Restroom 110 and 112 did not meet ADA standards. \$75.00~~

(47) Exterior doors on metal building were installed without door sweeps. \$167.20

(48) Gas line support brackets over doors along Gridline A are incorrect and inadequate. Branch line for tee for the paint booth was installed facing downward above the overhead door instead of upward. \$300.00

(49) Door 101 was installed as a 13' 6" high x 14' 2" wide door. Drawing (page 7 of 19) calls for a 14' x 14' door. \$6,126.18

(50) Six (6) metal protective covers should be fabricated and installed over all hot water supply and return in-floor manifolds to prevent damage. \$720.00

(51) Concrete block wall beside Door 011 has a vertical stress crack. This crack is a result of lack of a bearing slide plate under the lintel. This construction exists in six other places. \$3,045.00

(52) Conduit for face of building was installed; wiring for the sign was not pulled. \$132.00

(53) Only two of the four downspouts shown on the drawing were installed. \$300.00

(54) Two roof scuppers per the drawings need to be installed on the roof to divert the rapid descent of the water into the gutter. \$2,000.00

(55) The Drivit exterior insulation finish system finish material on the front face of the building was spalling in many areas. \$2,500.00

(56) The arches at either end of the front elevation were not constructed per Drawing S102. \$3,000.00

(57) The column inset detail was not corbelled as shown on the drawing "Front Elevation" (Drawing A301) \$3,000.00

(58) The roof trusses were not constructed as shown on Drawing A201. The pitch of the roof was lowered from 5 on 12 to 4.5 on 12. \$9,200.00

(59) 40' long sidewalk joint to building joint was not filled with backer and sealant. \$82.28

(60) Expansion joint material at the end of each sidewalk not removed. \$40.00

(61) Four outside service doors were not equipped with cold water hose bib, GFCI electric outlet, and compressed air tap. \$1,125.00

(62) Defendant relocated catch basin into sidewalk path and then failed to install sidewalk. \$15,848.00

(63) Two rows of snow cleats were not installed on the metal building roof, creating a hazard during snow events. \$10,776.00

(64) The air conditioning lines penetrating into the building were not sealed. \$105.00

(65) Interior and exterior masonry joints were not filled with backer rod and sealant. \$7,272.75

(66) In the attic space in the facility, the sheathing displays mold. \$75.00

(67) Cable runs for phone, television, and computers were not installed. \$7,309.00

(68) The facility locks were not keyed alike and a master key was not provided to the owner. \$250.00

(69) Cement, EFIS, and tape residue not cleaned from face of concrete blocks. \$180.00

(70) General cleaning of the entire facility interior and exterior was not performed. \$480.00

(71) Vinyl siding was installed directly over gypsum board with no provisions for vapor or moisture barrier. \$6,500.00

(72) No concrete test cylinders were completed to verify concrete strengths of the project. \$600.00

(73) Ceiling fans were not installed in shop area. \$3,700.00

(74) Exhaust curbs were not installed. \$1,823.00

(75) The as-built drawings have many errors, typos, and are not considered "as-builts". Drawings need to be upgraded and brought up to true as-built drawings.

\$720.00

(76) Power in the attic ventilators not installed.

\$800.00

Total

\$197,793.55

12. As a result of the Defendant's breach, completion of the building was delayed thirty-four (34) weeks. As a result, Plaintiff incurred \$85,000 in lost income.

WHEREFORE, Plaintiff, Clarence Cataldo, demands judgment in his favor against Defendant in an amount in excess of \$25,000.00 together with interest, costs of suit and any further relief this Court deems appropriate.

COUNT II
FRAUDULENT MISREPRESENTATION

13. Plaintiff incorporates all prior paragraphs herein.

14. Sullivan and his agents made statements to Cataldo and relevant officials that the building site was approved for development as per the project specifications.

15. At the time he made the statement, Sullivan knew or should have known that the requisite approvals and permits had not been obtained.

16. Sullivan made these statements knowing that Cataldo would rely on them.

17. Relying on Sullivan's fraudulent misrepresentations, Cataldo began the site work necessary for the building project.

18. In the course of performing the required site work, Cataldo unknowingly filled wetland areas located within the footprint of the building.

19. As a result of Cataldo's reliance on Sullivan's fraudulent misrepresentations, Cataldo incurred wetland mitigation costs in excess of \$24,622.62.

20. As a result of his reliance on Sullivan's fraudulent misrepresentations, Cataldo's building project was delayed an additional fourteen (14) weeks. The Plaintiff thereby incurred an additional income loss of \$35,000.

WHEREFORE, Plaintiff, Clarence Cataldo, demands judgment in his favor and against Sullivan in an amount in excess of \$25,000.00 together with interest, costs of suit and any further relief this Court deems appropriate.

Respectfully submitted,



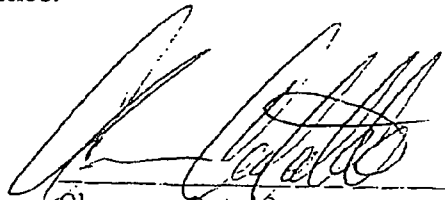
S. Casey Bowers
Attorney for Plaintiff

VERIFICATION

I, CLARENCE CATALDO, do hereby verify that I have read the foregoing Amended Complaint and that the statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to authorities, which provides that if I make knowingly false averments I may be subject to criminal penalties.

Date: 5-29-2007


Clarence Cataldo

SULLIVAN COMPANY

P. O. BOX 1112 DuBOIS, PENNSYLVANIA 15801
PHONE (814) 371-3144 FAX (814) 375-3144

August 06, 2004

Proposal To: Cataldo Collision Center
10040 Tyler Road
Penfield, PA 15849
(814) 637-5600
Attention: Carney Cataldo

Job Site: Cataldo Collision South
615 Division Street
DuBois, PA 15801
(814) 372-8600

Project Title: Body Shop & Offices

We are pleased to offer the following proposal for your new state of the art collision repair center. We have, with your input and direction, designed a 14,200 square foot facility that includes a 10,000 square foot shop area and a 4,200 square foot office and retail area.

It is our understanding that this facility is to be constructed at the above referenced address. The owner will be responsible for the purchase of said property and will provide the contractor with a copy of the recorded deed for the purpose of securing all necessary permits. It is further understood that the owner will be responsible for the hauling, grading and compaction of all necessary fill dirt and asphalt paving.

The following proposal will include all:

Labor	Materials	Construction Equipment
Tax	Permit fees	Structural Engineering
Tap fees	Design	

to construct a collision repair center as outlined in attached plans and drawings. Although many of the drawings show furnishings, it is important to note that these items are shown only to aid in the design of the building and to help the customer visualize the necessary space required for each. Items not attached to the structure are not included in the proposal and are listed as follows:

Desks	Tables	Chairs
Lockers	Stoves / Ovens	Refrigerators
Fencing	Signage	Office Equipment



Your estimated completion date is five months from the date we receive first payment.
This is an estimated completion date and can be affected by elements beyond our control.
Weather, material shortages and change orders will all have an affect on the actual
completion date.

Total Amount of Proposal

\$598,000.00

Proposal Accepted By: _____ Date: _____

Carney Cataldo
Cataldo Collision Center

PAYMENT SCHEDULE

First Payment

-due with acceptance of proposal

\$29,900.00

Second Payment

-due with completion of excavation for

-footers -storm water drainage and basins

-sanitary drain line -water line

-electric lines -communication lines

\$29,900.00

Third Payment

-due with completion of front office masonry

\$59,800.00

Fourth Payment

-due with completion of rear shop masonry and concrete piers

\$59,800.00

Fifth Payment

-required steel deposit at time of order

\$59,800.00

Sixth Payment

-due with completion of concrete floors

\$59,800.00

Seventh Payment

-due with completion of rear shop building erection and doors

\$59,800.00

Eighth Payment

-due with completion of front office framing and exterior doors

\$59,800.00

Ninth Payment

-due with completion of mechanicals

-electrical -plumbing

-HVAC

\$59,800.00

Final Payment

-due with completion of interior office finish

-doors -base moldings and trims

-wall coverings -floor coverings

-ceilings -cabinetry

\$119,600.00

Total Amount of Payments

\$598,000.00

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.


MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY
Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2007 a true and
correct copy of the foregoing Amended Complaint was forwarded via US
first class mail, postage prepaid, addressed as follows:

Benjamin S. Blakley, Esquire
Blakley & Jones
90 Beaver Drive, Box 6
DuBois, PA 15801

Stuart L. Hall, Esquire
Miller and Hall
138 E. Water Street
Lock Haven, PA 17745


S. Casey Bowers
Attorney for Plaintiff

Company Use Only
Date Issued: 12-13-2004
Rate: SJ
Underwriter: SJ
Bill Type: D/E - PH
Company Copy

SPECIAL CONTRACTORS DECLARATIONS

MERCER INSURANCE COMPANY

Policy No. SCP0001630

100 Mercer Drive
Lock Haven, PA 17745

Policy Term : 02-24-2005 02-24-2006
From To

Renewal of: SCP0001630

Named Insured (You) & Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

MERRITT I. EDNER AGENCY 4165
314 WEST LONG AVENUE
PO BOX 603
DUBOIS, PA 15801
(814)371-7250

Your Business/Operations Description: CARPENTRY

You are a ☐ Corporation ☒ Individual ☐ Partnership ☐ Joint Venture ☐ Other

Schedule of Premises - Parts I & II (Location Controlled, Occupied, Owned or Rented by You)

Loc. No.	Build No.	Location	County	Construction	Occupancy
1	1	91 MC CRACKEN RUN RD, DUBOIS, PA	CLEARFIELD	A	Storage

Limits (See Part II D 2) - Part II (N/A means no coverage.)

\$ 1,000,000	Each Occurrence
\$ 3,000,000	General Aggregate/Total Limits - All Other Than Products/Completed Operations
\$ 3,000,000	Aggregate/Total Limits - Products/Completed Operations
\$ 5,000	Medical Payments - Per Person
\$ 100,000	Fire Legal Liability Supplemental Coverage
\$ 1,000,000	Personal Injury/Advertising Injury Supplemental Coverage

Total Premiums

\$ 242	Total Premium Part I
\$ 2,166	Total Premium Part II
\$ 750	Total Premium - Inland Marine
\$ 3,158	Total Premium

Endorsements and Forms Made Part of this Policy (Ed. Date) :

MCM 810 (09-00) MCL 187 (08-97) MCM 400<PN> (03-98) MSC 010 (09-98) MMC 012 (01-99) MCM 418 (01-05)
NP-MCM Terrorism (01-05) MCL 183 (01-02) MCL 178 (08-00) MCL 205 (04-98) MCL 601 (04-98) MML 701 (03-98)
IMC 001 (11-98) MCL 320 (09-89) MCN184(05/04)

Mortgagee(s) & Mailing Address

See Attached Extension

Subject to all Provisions here and in Return of Premium Payment.
We agree to provide this insurance for the Indicated Policy Term.

By

Countersignature

Authorized Representative

Rein: \$0

Percent : 0.00 %

THIS POLICY CONTAINS AGGREGATE LIMITS: SEE PART II D FOR DETAILS

EXHIBIT

tabbles

"b"

J.Y. DEC 17 2004

Issued 12-13-2004 sj/SJ

COMMERCIAL PROPERTY SCHEDULE OF COVERAGE

PART I

SCP0001630 Policy No.
02-24-2005 Policy Inception

MERCER INSURANCE COMPANY

Named Insured : MARK T SULLIVAN

Loc. No.	Build. No.	Limits of Liability	Coverage	Cause of Loss Options	Coinsurance Factor	Deductible	Windstorm Deductible
1	1	50,000	Bus Pers Prop	Basic	None	1,000	N/A
1	1	20,000	Business Income	Basic	None	N/A	N/A

Issued 12-13-2004 sj/SJ

COMMERCIAL LIABILITY SCHEDULE OF COVERAGE

PART II

SCP0001630 Policy No.
02-24-2005 Policy Inception

MERCER INSURANCE COMPANY

Named Insured : MARK T SULLIVAN

Classification	Code	Premium Basis	Rate	Advance Premium
Location # 1 1 Class Code 1				
Carpentry No Roofing	2981	Payroll 60,000	3.276	\$1,966

THIS POLICY CONTAINS AGGREGATE LIMITS: SEE PART II D FOR DETAILS

SUPPLEMENTAL DECLARATIONS - MMC 012 01 99

The following special limits and rating factors apply to the designated coverages, in accordance with the provisions of the Special Contractors Coverage Form MSC 010.

Insured Name: MARK T SULLIVAN

Effective Date: 02-24-2005

Policy No.SCP0001630

Location 1 Building 1

(A)
POLICY
LIMIT / FACTOR

(B)
REVISED POLICY
LIMIT / FACTOR

PART I B SUPPLEMENTAL COVERAGES

1. Accounts Receivable	\$25,000	
2. Annual Inflation Increase Factor	-	
Coverage A.	—	
Coverage B.	—	
3. <u>Building Extension</u>		
A. Glass		
Limit	\$1,000	
Per Item Limit	\$100	
B. Outdoor Signs		
1. Not Attached to Buildings	\$1,000	
2. Attached to Buildings	\$1,000	
4. Building Code / Law Coverage	0.10	—
5. Debris Removal		
B. Factor (Covered Loss Times):	0.25	—
C. Additional Limit	\$5,000	
7. Fire Expense Coverage		
A. Fire Department Service Charge	\$1,000	—
B. Fire Extinguisher Recharge Expense	\$1,000	—
8. <u>Newly Acquired Property</u>		
1. Coverage A		
Coverage A Limit Times:	0.25	—
Maximum Limit per Building	\$250,000	—
2. Coverage B		
Coverage B Limit Times:	0.10	—
Maximum Limit per Location	\$100,000	—
3. Coverage D		
Coverage D Limit Times:	0.10	—
Maximum Limit per Location	\$100,000	—
9. Off Premises Property	\$15,000	<Limit - All Locations
Limit Per Item	\$250	

Location 1	Building 1
(A)	(B)
POLICY	REVISED POLICY
LIMIT / FACTOR	LIMIT / FACTOR

**PART I B
SUPPLEMENTAL COVERAGES**

10. Outdoor Property	
Limit	\$25,000
Per Item Limit	\$250
11. <u>Personal Property</u>	
A. Personal Effects	\$3,000
B. Property of Others	\$25,000
C. Valuable Papers / Records	\$3,000
12. Pollution Clean Up	\$10,000

**PART I F
WATER DAMAGE - SEWER / DRAIN BACKUP**

11. When MCP 507 applies	\$5,000
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PART I - OPTIONAL COVERAGES

1. Employee Dishonesty (MCP 171)	Limit All Locations
2. Forgery (MCP 172)	Limit All Locations
3. Money and Securities (MCP 173)	
A. On Premises	
B. Off Premises	

PART II - OPTIONAL COVERAGES

1. Broadened Property Damage (MML 702)	
2. Employee Benefits Liability (MCL 425)	-
A. Per Claim Limit	
B. Aggregate Limit	
C. Retroactive Date:	

NOTES:

- With the exception of Supplemental Coverage 12, the limits and factored amounts of insurance are aggregate limits per occurrence. With regard to Item 12 the limits are aggregate limits per policy year for all covered occurrences.
- Column (A) shows Basic Policy Limits / Factors : "-" means coverage not applicable.
- Column (B) shows the revised Limits / Factors, which replace those shown in Column (A): "-" means no change permitted.

Company Use Only

Date Issued: 12-13-2004

Rate: SJ

Underwriter: SJ

MERCER INSURANCE COMPANY

A Non-Assessable Mutual Company

100 Mercer Drive, Lock Haven, PA 17745

Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Policy Number: SCP0001630

Policy Effective Date: 02-24-2005

Policy Expiration Date: 02-24-2006

ADDITIONAL INTERESTS

Loc. No. : 1
Interest : MCL 320
Coverage : General Liability
Name &
Address : NATIONAL FUEL GAS
ATTN JIM DUNGEY
1216 SOUTH BRADY STREET
DUBOIS, PA 15801

Loc. No. : 1
Interest : A/I MCL 320
Coverage : General Liability
Name &
Address : NETWORK SERVICE MANAGEMENT INC
100 MORSE STREET
NORWOOD, MA 02062

Loc. No. :
Interest :
Coverage :
Name &
Address :

Loc. No. :
Interest :
Coverage :
Name &
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Interest :
Coverage :
Name &
Address :

Company Use Only
2-24-2005

IMC 001 11 98

MERCER INSURANCE COMPANY
COMMERCIAL INLAND MARINE COVERAGE PART
DECLARATIONS

Policy No. SCP0001630

1. NAMED INSURED and MAILING ADDRESS (No., Street, Town or City, Country, State, Zip Code)

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

2. POLICY PERIOD : From 2-24-2005 to 2-24-2006 12:01 A.M. Standard Time at your address shown above.

IN RETURN FOR THE 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

BUSINESS DESCRIPTION

CARPENTRY

3. PREMIUM

Premium Shown is payable:
\$750 at inception

Premium
for this
Policy

\$750

4. FORMS AND ENDORSEMENTS

MIM 012 (10-97) MIM 111 (10-97) MMI 100 (10-99) MIM 102 (08-01)
MIM 112 (12-96) MIM 120 (01-98) MIM 121 (01-98) MIM 010 (12-96)
MIM 143 (01-05) NP-MIM Terrorism (01-05)

INSTALLATION FLOATER

SUPPLEMENTAL DECLARATIONS - MIM 012 10 97

MIM 012 is used with the Inland Marine Common Provisions Form (MIM 010) and the Installation Floater Coverage Form (MIM 111) when providing installation floater coverage. The required information may be shown below or elsewhere in this policy.

Policy # SCP0001630

Premium

SCHEDULE

Locations:

Any location within the continental United States, Alaska or Hawaii which the insured has been hired to perform work as a contractor.

Covered Property

Insured's business personal property that will become a part of a building or structure including machinery, equipment, fixtures, materials or supplies, or is used in construction including forms, scaffolds or other temporary structures.

Limit of Liability
1000

Deductible
250

SUPPLEMENTAL COVERAGES

1. Debris Removal

Factor (Covered Loss Times)
Additional Limit

(A)
POLICY
LIMIT / FACTOR

(B)
REVISED POLICY
LIMIT / FACTOR

.25
\$ 5,000

2. Pollution Clean-Up Cost (1)

Pollution Clean-Up Deductible

\$10,000
\$

3. Property in Storage

\$

500

4. Property in Transit

\$

500

OPTIONAL COVERAGES

1. Earthquake / Volcanic Activity

—

\$0

2. Flood / Flooding

—

\$0

DEDUCTIBLE

The policy deductible applies for all losses unless a separate deductible is listed below for certain perils:

1. Policy deductible

\$

2. Earthquake / Volcanic Activity

\$

3. Flood / Flooding

\$

4. Other:

\$

NOTES: Column A shows Basic Policy Factors. " — " means not applicable.

Column B show the Revised Limits / Factors, which replace those shown in Column A.

All limits are aggregate limits per occurrence, unless otherwise indicated.

(1) Limit is aggregate limit per policy year for all covered occurrences.

COMPUTER COVERAGE

This endorsement, together with the Inland Marine Common Provisions Form (MIM010) provides coverage for computers and related equipment. The required information may be shown here or elsewhere in this policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

Policy Number: SCP0001630

Effective: 2-24-2005

Deductible: 250

Unscheduled Limit: \$ 5000

Covered Unscheduled Property:

- We cover all data processing equipment, including component parts, owned or leased by *you* that are customarily kept by *you* and used in *your* business.
- We cover *your media & data* including the cost to reconstruct such data.
- We cover reasonable extra expenses in excess of *your* usual operating expense to the extent such are necessary to continue *your* business operations, to the extent required due to a covered loss here.

Scheduled Property:

Description of Covered Property

Limit of Liability

\$

If extra expense coverage is provided here, we cover reasonable extra expense in excess of *your* usual operating expense to the extent such are necessary to continue *your* business operations, to the extent required due to a covered loss here.

Additional Exclusions - Losses Not Insured

- Loss to media or data that cannot be replaced with other of like kind and quality.
- Loss to property or media held for lease or sale to others.
- Loss caused by an original defect or error in programming.
- Loss to media or data which results as a consequence of the failure to perform routine (at least on a monthly basis) complete backups of such media or data with such backups being kept off of the described premises.
- Loss due to flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or their spray: all whether arising out of or caused by rain, snow, wind or other condition of the weather, or an otherwise covered cause of loss. If loss resulting from fire, explosion, or theft (to the extent insured here) ensues, we insure such resulting loss.
- Loss due to water under the ground surface that exerts pressure on or flows, seeps or leaks through: basements, doors, windows, or other openings; driveways, floors; foundations; paved surfaces; sidewalks or walls.
- Loss due to water that backs up through sewers or drains.

MISCELLANEOUS PROPERTY FLOATER

This endorsement, together with the Inland Marine Common Provisions Form (MIM 010) provides coverage on miscellaneous property. The required information may be shown below or elsewhere in this policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions of this policy are unchanged.

Policy # SCP0001630

Effective: 2-24-2005

Premium: \$750

SCHEDULE

	Description of Covered Property	Limit of Liability	Deductible
1	CATERPILLAR EXCAVATOR CAT MODEL 307 S#9ZL1700	\$30,000	\$1,000

ADDITIONAL COVERAGE MODIFICATIONS:

MANDATORY ENDORSEMENT — PENNSYLVANIA

This endorsement provides a Special Notice, amends the policy in conformance with Pennsylvania Law and modifies other policy provisions.

Except as provided below, all other provisions in this policy are unchanged.

SPECIAL PENNSYLVANIA NOTICE

A. 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, and issuance, renewal or continuation of, a policy of insurance:

- Surveys;
- Consultation or advice; or
- Inspections.

B. The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, are 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 Exemptions of this Act do not apply to the following:

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.
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.

ADDITIONAL CONDITIONS

The COMMON CONDITION — CANCELLATION / TERMINATION is supplemented as follows:

B. Our Right to Cancel / Terminate**1. Policies in Effect Less Than 60 Days.**

We may cancel this policy by mailing or delivering to the first named insured written notice of cancellation not less than 30 days prior to the effective date of cancellation.

2. Policies in Effect 60 Days or More.

If this policy has been in effect for 60 days or more or is a renewal of a policy with us, we may cancel only for one or more of the following reasons by mailing or delivering to the first named insured written notice of cancellation:

- (a)** *You have made a material misrepresentation which affects the insurability of the risk.*

(b) *You fail 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.*

(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.*

(d) *Loss of reinsurance or a substantial decrease in reinsurance has occurred. Such loss or decrease must be certified to the Insurance Commissioner as directly affecting in-force policies at such time of cancellation.*

(e) *You materially fail to comply with policy terms, conditions or contractual duties.*

(f) *You materially fail to comply with safety standards or loss control recommendations after receiving written notice from us of deficiencies with respect to safety standards or loss control recommendations and after being given a reasonable opportunity to cure such deficiencies.*

(g) *Any other reason approved by the Insurance Commissioner.*

(h) *This policy may also be cancelled by us effective from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by us.*

Notice of cancellation / termination must be mailed or delivered by us:

- Not less than 15 days prior to the cancellation effective date as to (a) and (b);
- Not less than 60 days prior to the cancellation effective date as to (c), (d), (e), (f), and (g).

We mail or deliver our notice to the first named insured's last mailing address known to us. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

Our notice must state:

- (a)** *The specific reasons for cancellation; and*
- (b)** *The effective date of cancellation: the policy period will end on this date.*



3. Return of Premium

We send the *first named insured* any premium refund due resulting from cancellation. The refund is pro rata and must be returned within 10 business days after the effective date of cancellation. However, our cancellation is effective even if *we* have not made or offered a refund at such time.

4. Termination (Nonrenewal)

If *we* elect not to renew this policy, *we* mail or deliver written notice of nonrenewal to the *first named insured* not less than 60 days prior to the expiration date of this policy.

Any notice of nonrenewal or renewal premium increase must be mailed or delivered to the *first named insured's* last mailing address known to *us*. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

5. Increased Renewal Premium

If *we* increase *your* renewal premium, *we* must mail or deliver notice of increased premium to the *first named insured*, not less than 30 days prior to the increase.

6. Notice to Mortgagees

If *we* cancel or elect not to renew this policy, *we* will mail or deliver notice of such to the mortgagees named in this policy not less than:

- 10 days prior to the effective date of cancellation if *we* cancel for nonpayment of premium.
- 30 days prior to the effective date of cancellation if *we* cancel for any other reason.
- 10 days prior to the expiration date of this policy if *we* elect not to renew.

7. Automatic Termination

This policy terminates automatically on the expiration date of the expiring policy term if the *first named insured* fails to pay when due any renewal premium, or installment payment, for this policy.

COVERAGE MODIFICATIONS — PROPERTY

If Part I is included in this policy, the following provisions apply:

A. The COMMON CONDITION — ASSIGNMENT OF YOUR INTEREST is amended as follows:

If *you* die, Part I of this policy will remain in effect until the covered property is sold, but no later than:

1. 180 days after *your* death, regardless of the expiration date of the policy term; or
2. The expiration of the policy term.

Coverage during the period following *your* death is subject to all provisions of this policy including payment of all premiums for the policy term or any extension of such.

B. The COMMON CONDITION — ACTION OR SUIT AGAINST US is supplemented as follows:

No action may be brought against *us* until all conditions in this policy are complied with, and unless brought within one year from the date of loss.

No right exists under this policy for *you* or others to make *us* party to an action against any *insured*.

C. Paragraph 2 of the Our Options in Settling Losses Section of the HOW LOSSES ARE SETTLED Condition is replaced by the following:

2. *We* may repair or replace all or any part of the property as provided for in this policy, or take all or any part of such property at a mutually agreed, or appraised value. *We* may give notice of *our* intent to do so at any time up to 15 working days after *our* acceptance of *our* liability for the loss (i.e., proof of loss).

COVERAGE MODIFICATIONS — LIABILITY

If Part II is included in this policy, the following provisions apply:

- A. If *you* or *your* employees are certified by a federal or state agency to use herbicides or pesticides, Paragraph A of the Pollution / Environmental Damage Exclusion does not apply with respect to the use of such herbicides or pesticides.
- B. If this policy covers a *residential dwelling* under Part II, the following provisions apply:

PART II C — LIABILITY NOT INSURED

1. *We* will not insure *bodily injury* or *property damage* arising out of any consequences of the failure of any *insured* to disclose the presence of any *lead-based paint* or *lead-based paint hazard* at the time of the sale or lease of a *residential dwelling*.
2. *We* will not defend any action which arises out of such failure.

As used in this endorsement, the following definitions apply:

Lead-based Paint

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based Paint Hazard

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Residential Dwelling

Residential dwelling means:

1. A single-family dwelling, including attached structures such as porches and stoops, or
2. A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

C. If endorsement MCL 425 (Employee Benefits Liability Coverage) is included in this policy, Paragraph 1 of the EXTENDED REPORTING PERIOD Condition of MCL 425 is replaced by the following:

1. This condition applies only if:
 - (a) This Coverage Form is cancelled or not renewed for any reason;

(b) *We* renew or replace this Coverage Form with other insurance that:

- Provides claims-made coverage; and
- Has a Retroactive Date later than the one shown in this endorsement's schedule; or

(c) *We* replace this endorsement with other insurance that applies on other than a claims-made basis.

LEAD/ LEAD CONTAMINATION AND ASBESTOS EXCLUSIONS • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of lead or asbestos as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSIONS – LEAD / LEAD CONTAMINATION AND ASBESTOS

Part II C is extended to include the following:

- A. *We do not cover bodily injury, property damage, or medical payments resulting from or caused by lead or lead contamination arising out of any occurrence at your premises:*
 - 1. As to *bodily injury* and medical payments this includes such caused by or through:
 - absorbing lead;
 - chewing on, eating or otherwise ingesting lead; or
 - inhaling lead.
 - 2. As to *property damage* this includes such caused by or through any sort of lead contamination or existence of lead in:
 - air, ground, or water; or
 - any part of the premises including, but not limited to, building materials and paint.
- B. *We do not cover bodily injury, property damage, or medical payments resulting from or caused by the actual, alleged, or threatened exposure to asbestos, or the presence of asbestos in any place.*
- C. *We do not insure any cost, expense, liability or loss arising out of any of the following:*
 - Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to *asbestos*, lead or lead contamination.
 - Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to *asbestos*, lead or lead contamination.

Asbestos as used in these exclusions means the mineral in any form, including but not limited to fibers or dust.



NOTICE TO POLICYHOLDERS

Your policy will now include exclusions for Year 2000 computer failures. Losses and claims resulting from failure of computer systems to properly read dates beginning with January 1, 2000 or any date shown as a 4 digit date are not covered.

You should read your policy and any related endorsements (including this endorsement MCM 400) and review your Declarations page for complete information on the coverages you are provided.

Contact your agent if you have any questions.

MCM 400 (PN) 03 98

YEAR 2000 EXCLUSIONS

This endorsement extends the policy to exclude any loss arising out of any Year 2000 failure.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

COVERAGE MODIFICATION — PROPERTY

If Part I is included in this policy, the following exclusion is added to Part I — LOSSES NOT INSURED:

We do not provide insurance for any loss or damage arising out of or resulting from:

1. Any data processing equipment, system or component, or any media, software program, or electronic device, whether owned by *you* or others:
 - Failing at any time to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - Misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.
2. Any work performed on any data processing equipment, systems or component, or any media, software program, electronic device, or electronically stored data to:
 - Allow such to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year;
 - Correctly interpret any date or time beginning with January 1, 2000; or
 - Prevent such from misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.

But if loss by a covered *specified cause of loss* ensues, we insure such resulting loss.

COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to Part II — LIABILITY NOT INSURED:

*We do not insure any costs, damages, expense, liability or loss incurred by *you* or others arising out of:*

1. The rendering or failure to render any sort of advice, product, or service as a data processing solution to the Year 2000 date change.
2. Any act, error or omission that results in any data processing equipment, system or component, or any media, software program, electronic device or electronically stored data:
 - Failing at any time to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - Misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.
3. Any act, error or omission of or in any data processing equipment, system or component, or any media, software program, electronic device, or electronically stored data that causes damage to any entity because of:
 - The failure of such to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - The misinterpretation of any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.



SPECIAL CONTRACTORS POLICY — MSC 010 09 98

YOUR POLICY INCLUDES:

- The Declarations / Supplemental Declarations, Including Information About —
 - *You* and *Your* Business / Operations
 - The Locations, Property Items and Business Operations Covered
 - The Applicable Coverages
 - The Applicable Limits of Liability and Deductibles
 - The Applicable Special Limits and Factors
 - Who *We* are and *Your* Insurance Representative
- This Special Contractors Form — MSC 010
- Additional Endorsements, if Applicable

THIS INSURANCE FORM INCLUDES:

PART I	ITEM	PAGE
	• Part I A — Main Property Coverages Descriptions: <ul style="list-style-type: none">• Coverage A — Buildings• Coverage B — Business Personal Property• Coverage C — Personal Property of Others• Coverage D — Loss of Use from a <i>Direct Covered Loss</i>	2
	• Part I B — Supplemental Coverages	4
	• Part I C — Losses Insured - Cause of Loss Options	8
	• Part I D — Property Exclusions / Limitations	10
	• Part I E — Property Loss Limitations	11
	• Part I F — Losses Not Insured	11
	• Part I G — Special Part I Conditions, Including — <ul style="list-style-type: none">• Duties When Loss Occurs• How Losses Are Settled• Other Special Conditions	13
PART II	• Part II A — Main Liability Coverages Descriptions <ul style="list-style-type: none">• Coverage E — Liability to Others• Coverage F — Medical Payments to Others	18
	• Part II B — Supplemental Coverages	19
	• Part II C — Liability Not Insured	22
	• Part II D — Special Liability Conditions, Including — <ul style="list-style-type: none">• Duties of <i>Insureds</i>• Limits of Liability	24
PARTS I AND II	• Common Glossary	26
	• Common Exclusions	28
	• Common Conditions, Including — <ul style="list-style-type: none">• Action or Suit Against <i>Us</i>• Cancellation / Termination• Concealment / Misrepresentation / Fraud• Coverage Territory• Examination / Changes• Other Insurance• Other Conditions	30

DEFINITIONS AND WORD MEANINGS

Words shown in *italics* are defined in the Glossaries.

The word “provisions” refers to all or part of the text of this insurance contract — including agreements, conditions, exclusions, limits, limitations, and all other terms.

The meaning of other words or phrases not specifically defined in this policy are to be found in their relevant conventional definition based on consideration of the context in which they are used in this policy.



PART I A • MAIN PROPERTY COVERAGES

INSURING AGREEMENT

A. *We* provide insurance under this policy for those of the following coverages for which a specific limit of liability and related premium charge is shown in the Declarations. The term "Declarations" also includes a Supplemental Declarations or any other similar forms. If a series of Declarations or Change Endorsements are issued, then this term means the current Declarations or Change Endorsement.

The term "described" used below (for example, described buildings) means described in the Declarations.

B. Unless otherwise specifically provided in this policy, this insurance applies only to *covered loss* that takes place during the current policy term on the applicable described premises (the location / premises described in the Declarations).

C. With respect to personal property covered by this policy (including any covered within the definition of or by Extension of Coverage A), coverage is extended to *covered loss* that also takes place outdoors (meaning not in a building) on, or within 100 feet of, the described premises.

D. Insuring Agreement Qualification

The following Coverages as described below are subject to certain Exclusions and Limitations, including Common Exclusions and Parts I D, E, and F.

COVERAGE A • BUILDINGS / STRUCTURES

We cover described buildings (the general term buildings also includes other sorts of structures). Coverage A also includes the following property to the extent that such is part of, or incidental to the use of, described buildings:

1. Additions under construction.*
2. Alterations or repairs.
3. Building equipment, fixtures, materials, and supplies, intended for use in alteration, construction, or repair of described buildings.*
4. Completed additions.
5. Equipment, fixtures, and machinery permanently installed as part of described buildings.
6. Outdoor fixtures. For example, flagpoles, ground lights, light standards.

* Such property is covered by this policy only on an excess basis, if covered by other insurance.

COVERAGE B • BUSINESS PERSONAL PROPERTY

We cover the following property located in or on described buildings:

1. Personal property (including equipment, fixtures, and machines not subject to Coverage A) owned by *you* and used in *your* described business / operations.
2. Personal property of others — but only to the extent of the value of the labor, materials, and supplies provided by *you* in connection with such property.
3. Tenants' improvements and betterments. This means *your* remaining use interest in additions, alterations, fixtures, and installations, not legally removable by *you*, that are both: made part of a building that *you* occupy (but do not own) and acquired or made at *your* expense.

This coverage applies only if the cost of such property is not included in *your* rent and repair or replacement is at *your* expense.

COVERAGE C • PERSONAL PROPERTY OF OTHERS

We cover personal property of others, located in or on described buildings, in *your* care, control, or custody in connection with *your* described business / operations.

Our payment under this coverage is solely for the account of the owner of such property. Such beneficiary must comply with all relevant loss settlement and other conditions.

COVERAGE D • LOSS OF USE RESULTING FROM DIRECT COVERED LOSS

A. *We* cover *your* loss of Business Income and Extra Expense, as described below, that is the direct result of a *direct covered loss* that results in either:

1. The necessary interruption of *your* described business / operations; or,
2. The described premises being made incapable of being occupied.

We also cover such loss if access to the described premises is prohibited by order of any civil authority. This order must result from fortuitous direct physical loss to property at a premises other than the described premises (provided such other premises / property is not occupied or owned by *you*) caused by an applicable cause of loss covered by this policy.

B. Coverage Description

1. Business Income

We cover *your* following loss of Business Income, as described, to the extent that such would otherwise be earned or incurred by *your* business / operations had the *direct covered loss* not occurred.

a. **Net Income** — *Your* loss of net income (net profit or loss before income taxes) plus continuing necessary normal operating expenses to the extent that such would exist had the *direct covered loss* not occurred.

b. **Rental Income** — *Your* loss of rents from tenant occupancies (that *you* rent or customarily hold for rental to others under written leases) plus continuing expenses that are the obligation of tenants, under such leases, but which become *your* obligation because of the *direct covered loss*.

Business Income does not extend to any expenses that do not continue, or need not continue, during the applicable coverage period.

2. Extra Expense

We cover any sort of necessary reasonable expenses that *you* incur in order:

a. To continue, to the extent feasible, *your* normal business / operations at the same capability and quality of service as would otherwise exist had the *direct covered loss* not occurred — whether continued at the described premises or elsewhere (a replacement or temporary location); or,

b. To minimize the period of interruption if *you* cannot continue *your* normal business / operations at the same capability and quality of service as would otherwise exist had the *direct covered loss* not occurred.

Extra expense means those increased expenses, incurred as described above, that *you* would not otherwise incur in *your* normal business / operations had the *direct covered loss* not occurred — including the expenses to relocate at or equip and operate a replacement or temporary location.

3. Special Costs or Expenses

We also cover any sort of special costs or increased expenses that *you* incur specifically to minimize or reduce covered loss: but not for an amount more than such costs or expenses reduce the amount *we* would be otherwise obligated to pay had *you* not incurred such costs or expenses.

4. Cancellation of Contract

If the subject interruption or unoccupancy directly causes the cancellation, lapse, or suspension of a written agreement, contract, or lease, *we* also cover

your loss of Business Income and / or Extra Expense directly arising out of such, provided that *you* can demonstrate that *you* otherwise would have been able to satisfy and meet all the requirements of the agreement, contract, or lease had the *direct covered loss* not occurred.

This does not apply to any loss of Business Income and / or Extra Expense that may continue beyond the applicable coverage period.

C. Coverage Period(s)

1. Basic Period of Indemnity

Our obligation begins on the date of the *direct covered loss* and ends on the date that a. or b. below ends, whichever is the shorter period:

a. The period required with diligence and ongoing effort to restore *your* covered business / operations to substantially the same capability and quality of service that existed immediately prior to the *direct covered loss*; or,

b. The period required with diligence and ongoing effort to repair, replace, or restore the damaged property for the same purpose and occupancy.

But, if *you* occupy a premises owned by others and do not have control of its repair or restoration then: *we* provide coverage (if required) beyond this period for the additional time required to effect such repair, replacement, or restoration or 90 days, whichever one is the shorter period.

2. Civil Authority — Special Period of Indemnity

Our obligation for *covered loss* caused by order of any civil authority begins on the date of the order prohibiting access and runs for 14 consecutive days or the end of the period that access is denied, whichever one is the shorter period.

3. Electronic Media — Special Period of Indemnity

We cover *your* loss of Business Income, up to a period not exceeding 60 consecutive days (subject to Paragraph C.1. above), if *direct covered loss* to electronic media causes or contributes to such loss: any additional loss beyond such period caused by the failure to replace or restore electronic media is not covered by *us*.

Electronic media are: (a) any sort of electronic data processing, recording, or storage media, including the data stored on such media; (b) programming records used for electronic data processing or electronically controlled equipment.

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4. Extended Period of Indemnity

To assist *you* in *your* recovery after the end of the basic period, *we* extend coverage (if required) for up to an additional 30 consecutive days beyond the basic period described in Paragraph C. 1. (Pg. 3).

5. Policy Term

The described periods are not limited by expiration of the policy term.

6. Special / Extended Periods of Indemnity and Coverage D Limit

The described extended / special periods do not increase the applicable limit.

D. Special Conditions

1. *Your* business / operations, as referred to in this policy, means those activities and the associated expenses and income that are normal to *your* described business / operations at the described premises.

2. *You* are required to resume, in whole or in part, *your* normal business / operations as soon as possible and to the maximum extent feasible.

E. Special Exclusions / Limitations

We do not cover expense or loss caused by or resulting from the following:

1. **Cancellation** — The cancellation or suspension of any agreement, contract, lease, or license, other than as provided for in B. 4. (Pg. 3).
2. **Interference** — Delay caused by strikers (or others) with rebuilding, repairing, or replacing property or resuming *your* business / operations at the described premises, whether such delay arises at the described premises or elsewhere.
3. **Antennas** — Loss to antennas (including their lead-in wiring, masts, and towers).

PART I B • SUPPLEMENTAL COVERAGES

SUPPLEMENTAL COVERAGES — ADDITIONAL CONDITIONS

We provide the following Supplemental Coverages as extensions of the main coverages (but only when, and then to the extent that, such main coverages apply under this policy) subject to the following:

- These Supplemental Coverages do not modify or waive any provisions of this policy except to the extent specifically described: such are subject to all underlying provisions applicable in this policy, except to the extent specifically modified in Part I B.
- When so stated, the special limits specified in this policy (see Supplemental Declarations or other similar attachments) for such Supplemental Coverages are additional amounts of insurance — but these special limits are not increased or added together because *we* provide multiple coverages or cover multiple locations in one or more policies.

1. ACCOUNTS RECEIVABLE COVERAGE — ADDITIONAL INSURANCE

- A. *We* cover, up to the applicable limit shown in the Supplemental Declarations, loss arising out of *your* inability to collect on accounts receivable because of *covered loss* to records of such accounts. This covers all sums due *you* from customers which are uncollectible because of such loss. This also includes *your* increased collection expenses as well as other reasonable necessary expenses incurred by *you* to replace or restore these records.

Parts I E and I F (other than 7. and 12.A.) and the Part I deductible do not apply.

Coverage does not apply to loss:

- Due to accounting, billing, or bookkeeping error or omission; or,
- Where proof is dependent upon an audit, or inventory computation. But such audit can be used in support of a claim which *you* prove through other sources.

B. This Supplemental Coverage applies only in connection with Coverage B.

2. AUTOMATIC INCREASE COVERAGE — ADDITIONAL INSURANCE

- A. **Automatic Increase** — The current limit of liability shown for Coverage A or Coverage B is increased on an annual pro rata basis by the applicable factor shown in the Supplemental Declarations. **If no factor is shown in the Supplemental Declarations, then no automatic increase is applicable.**
- B. These increases do not apply to any Supplemental Coverages and are not applicable in determining the basis limit for the Supplemental Coverages.

3. BUILDING EXTENSION COVERAGES

A. Glass Extension (Expanded Coverage Only)

We cover, up to the applicable limits shown in the Supplemental Declarations, loss to glass (other than signs) that is part of a building. The "per item" limit applies separately to each pane, panel, plate (or multiple plate) and similar discrete item or unit.

If the loss is caused by any of the *specified causes of loss* (other than vandalism), or the building is constructed of glass curtain walls, the special limits do not apply.

B. Outdoor Signs Extension — Additional Insurance

Coverage A is extended to cover, up to the applicable limits shown in the Supplemental Declarations:

1. Outdoor signs not attached to buildings.
2. Outdoor signs attached to buildings.

We cover such signs for direct physical loss. Parts I E and I F (other than 7 and 12.A.) and the Part I deductible do not apply (but, a specific "signs" deductible may apply).

C. Personal Property Extension

Coverage A is extended to cover the following property when both owned by *you*, and used primarily to maintain or service covered buildings / described premises: air conditioners; cooking, dishwashing, laundering, refrigeration, and ventilating appliances; fire extinguishers; floor coverings; lawn care and snow removal equipment — including riding mowers and similar items, but not other types of vehicles; outdoor fixtures / furniture.

4. BUILDING CODE / LAW COVERAGE — ADDITIONAL INSURANCE

A. Coverage A is extended to cover the following losses or expenses that ensue as a direct consequence of *covered loss* at the described premises. We cover such for an amount determined by applying the applicable factor specified in the Supplemental Declarations to the Coverage A limit for the subject property: the product is the specified limit for this Supplemental Coverage (Items 1, 2, and 3 combined). The loss or expenses covered are:

1. The loss caused by enforcement of any building, land use, or zoning code / law in force the date of the *covered loss*, 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 building, land use or zoning requirements at the described premises.
2. The increased expense *you* incur to construct, rebuild, or repair the property caused by enforcement of building, land use, or zoning

code / law in force the date of the *covered loss*: the property must be intended for the same use / occupancy as the current property unless otherwise prohibited by such code / law.

3. The expense *you* incur to demolish undamaged parts of property and clear the site of such parts caused by enforcement of building, land use, or zoning code / law in force the date of the *covered loss*.

B. We are not liable for payment under this Supplemental Coverage:

1. Until the property is repaired or replaced by *you* or by *us* (at the same premises or elsewhere if permitted or required by this policy); and, Unless the repair or replacement is made as soon as possible after the loss, but no later than the period described in Condition 2. C. 1. (Pg. 15).
2. For any loss or expense arising out of the enforcement of any code, directive, law, ordinance, or regulation requiring any *insured* or others to clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat any *pollutants*, asbestos, or lead contamination.

C. Our maximum liability under this Supplemental Coverage (Items A. 1, 2 and 3 combined) subject to (1), the specified limit and (2), the applicable limits and limitations on *our* liability described in Condition 2. A. (Pg. 14), is the sum of the following:

1. The cost to demolish the property and clear the site. And,
2. The cost to reconstruct / replace the property on the described premises.

D. This Supplemental Coverage does not apply to buildings or structures insured on an *actual cash value* basis.

5. DEBRIS REMOVAL COVERAGE — COVERAGES A, B, C

A. We cover, subject to the limits specified in B and C below, the necessary reasonable expenses incurred to remove the debris of a *covered loss*.

B. We pay such debris removal expense that *you* incur — but only up to an amount not exceeding that equal to the product of the amount otherwise payable by *us* for the *covered loss* times the special factor specified in the Supplemental Declarations. This amount is not additional insurance and does not increase *our* maximum limit of liability on the loss.

C. We also pay such debris removal expense, up to the applicable limit shown in the Supplemental Declarations, if either:

- The debris removal expense incurred exceeds the amount available for debris removal expense calculated above; or,

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- The sum of the debris removal expense incurred and the amount otherwise payable by *us* for the *covered loss* exceeds *our* maximum limit of liability on the loss.

We pay up to the shortfall or the special limit, whichever is the lesser amount. This amount (Extension C) is additional insurance.

D. This Supplemental Coverage does not apply to any of the following expenses:

- To remove the debris of trees.
- To extract *pollutants* from land or water.*
- To remove, replace, or restore land or water that is polluted or is a *pollutant*.*
- To remove volcanic ash, dust, or particulate matter that does not cause loss.

* This also excludes the expense to safely dispose of such as required by any code, directive, law, ordinance, or regulation.

E. This Supplemental Coverage applies only to such covered expenses reported to *us* in writing within 180 days from the date of the *covered loss*.

6. EMERGENCY REMOVAL

We cover fortuitous direct physical loss to covered property when removed from the described premises because of imminent danger of loss by a covered cause of loss.

This Supplemental Coverage applies for 30 consecutive days from the first day of removal.

7. FIRE EXPENSE COVERAGES — ADDITIONAL INSURANCE

A. Fire Department Service Charges

We cover, up to the applicable limit shown in the Supplemental Declarations, *your* written contractual obligation to pay service charges when a fire department is called to protect or save property from imminent loss by an applicable covered cause of loss. The Part I deductible does not apply.

This Supplemental Coverage does not cover service charges:

- Incurred prior to assumption of *your* contractual obligation;
- Arising in connection with a false alarm.

B. Fire Extinguisher Recharge Expense

We cover, up to the applicable limit shown in the Supplemental Declarations, the cost to recharge fire extinguishers / related equipment discharged in pursuit of extinguishing a fire at the described premises. The Part I deductible does not apply.

8. NEWLY ACQUIRED PROPERTY COVERAGES — ADDITIONAL INSURANCE

A. *We* cover property newly acquired or constructed by *you*, as well as Loss of Use (if covered by this policy)

resulting from fortuitous direct physical loss to such property, as follows.

1. Coverage A — *We* cover, up to the applicable limits shown in the Supplemental Declarations, the following:

a. New buildings while being built on described premises.

We also cover temporary structures erected to assist in construction of new buildings or of additions / alterations to described buildings while such construction is taking place: but such are covered by this policy only on an excess basis if covered by any other insurance.

b. Buildings at a location newly acquired by *you* if such buildings are intended for use either similar to that of described buildings or as a warehouse.

2. Coverage B — *We* cover, up to the applicable limits shown in the Supplemental Declarations, business personal property owned by *you* at a location newly acquired by *you*, other than exhibitions and fairs. However, when *you* are moving covered property from a described premises under this policy to a newly described premises, then the applicable Coverage B limit applies pro rata (based on total values) at each such premises for 10 days after moving begins, and then such pro rata coverage ceases.

3. Coverage D — *We* cover the subject loss arising out of *direct covered loss* to the following property (Note — 3.a., is not additional insurance):

a. Alterations or New Buildings at Described Premises

- Alterations or additions to described buildings.
- New buildings, whether under construction or completed.
- Building materials or supplies and equipment or machinery which are used in alteration or construction at described premises or incidental to *your* occupancy of the new building.

If the subject *direct covered loss* delays the start of *your* covered business / operations at the described premises, then this Extension begins on the projected start up date (had the *direct covered loss* not occurred).

This Extension is subject to the Coverage D limit.

b. Newly Acquired Locations

Property owned by *you* at any location that *you* newly acquire, other than exhibitions or fairs: *we* cover such up to the applicable

limits shown in the Supplemental Declarations.

4. **Special Limits** — The special limits referred to above are developed by multiplying the subject coverage limit (Coverage A, B, or D) by the applicable factor shown in the Supplemental Declarations: the product is the amount available for *covered loss* to new buildings (Coverage A) or *covered loss* at new locations (Coverages B and D) — all subject to the specified maximum limit per building or per location.

B. Coverage Period

This Supplemental Coverage applies for up to a period of 60 consecutive days from the beginning date of the subject acquisition or construction: but, in no case, beyond the end of the policy term or the date on which *you* report the values to *us*, whichever date is earlier. This coverage period does not apply to Extension A.3.a. above.

C. Additional Premium

Additional premium is applicable for the values *you* report to *us* based on the date of acquisition or the date that *you* first begin construction.

9. OFF PREMISES COVERAGE — ADDITIONAL INSURANCE

We cover, up to the applicable limits shown in the Supplemental Declarations, loss to covered business personal property (including portable tools) while in transit or at a job site or while temporarily at locations that *you* do not lease, operate, or own. This does not apply to property while within 100 feet of a described premises.

This Coverage is subject to all transit loss and is not subject to: the Exclusions with regard to Earthquake and Flood; Part I F other than Exclusions 7. and 12.A.

10. OUTDOOR PROPERTY COVERAGE — ADDITIONAL INSURANCE

We cover, up to the applicable limit shown in the Supplemental Declarations, *your* outdoor: antennas (including lead-in wiring, masts, and towers); fences; decorative plants, shrubs and trees (including any debris removal expense): loss to any one plant, shrub, or tree is also subject to the special limit per item shown in the Supplemental Declarations.

Such property is covered for fortuitous direct physical loss caused by fire (hostile fire), aircraft, explosion, lightning, or riot or civil commotion.

11. PERSONAL PROPERTY COVERAGES

A. Personal Effects — Additional Insurance

Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, personal effects owned by *you*, or *your* directors,

employees, officers, partners, or volunteer workers, while on the described premises.

B. Personal Property of Others

1. Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, personal property of others in *your* care, control, or custody in connection with *your* covered business / operations (but see Extension 2. below as to leased property). *Our* payment under this coverage is solely for the account of the owner of such property, and such beneficiary must comply with all relevant loss settlement and other conditions.

This Extension is in addition to Coverage B. 2. on Pg. 2. This Extension is additional insurance.

2. Coverage B is extended to cover leased property in *your* care, custody, or control for which *you* are contractually obligated to provide property insurance. This Extension: (a) applies for the causes of loss for which *you* are contractually responsible to the extent such causes of loss are covered by this policy; (b) is not subject to Extension 1. above or Coverage B. 2. on Pg. 2.

C. Valuable Papers and Records — Additional Insurance

1. Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, *your* expenses, including the cost of research, incurred to replace or restore the information contained in *your* *valuable papers and records* (including electronic or magnetic media) for which duplicates do not exist because of *covered loss* to such property.

Parts I E and I F (other than 7. and 12.A.) and the Part I deductible do not apply.

2. The full Coverage B limit applies to the cost of replacement of *valuable papers and records* in blank form.

D. Vehicles

Coverage B is extended to cover the following property owned by *you*:

- Canoes and rowboats while ashore at the described premises,
- Vehicles not licensed for use on public roads principally operated at the described premises specifically to service the described premises or *your* described business / operations at the described premises.

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12. POLLUTION CLEANUP COST COVERAGE — COVERAGES A, B, C — ADDITIONAL INSURANCE

- A. *We* cover, up to the applicable limit shown in the Supplemental Declarations, the necessary reasonable expenses that *you* incur to extract *pollutants* from land or water at the described premises: but only if the discharge, dispersal, emission, escape, migration, release or seepage of *pollutants* is a consequence of a *covered loss*.

The special limit shown for this Supplemental Coverage is *our* total liability for all such expense for each annual (12 month) term of the policy — regardless of the number of occurrences or total expenses incurred.

This Supplemental Coverage applies only to such expenses reported to *us* in writing within 180 days from the date of the subject *covered loss*.

- B. This Supplemental Coverage does not apply to the extraction of any sort of nuclear or radioactive materials — whether such is natural or human made.
- C. If a specific deductible is shown for this Supplemental Coverage, such deductible applies in lieu of any other deductible otherwise shown as applicable in this policy.

13. STEAM EQUIPMENT OR OTHER FIRED VESSEL EXPLOSION COVERAGE

- A. *We* cover loss by explosion of fuel or gas within the furnace of a fired vessel of flues or passages through which the gases of combustion pass — including such explosion loss to steam boilers, engines, pipes or turbines.
- B. *We* cover loss by explosion to hot water boilers or other equipment for heating water.

14. WATER DAMAGE / RELATED DAMAGE REPAIR EXPENSE COVERAGE

We cover the following additional expenses incurred in connection with an otherwise covered sprinkler leakage

loss or water damage loss (including freezing), as described (Pg. 9), when the building containing the appliance, equipment, or system is covered property under this policy:

- A. The expense to repair damage to the building that occurs because of necessary reasonable efforts to get at and repair damage to the appliance, equipment, or system from which the “water” escapes.
- B. The concurrently incurred expense to repair or replace that particular defective / damaged part (joint, piece of pipe, valve, or similar specific item) of the appliance, equipment, or system from which the “water” escapes.

This Supplemental Coverage does not apply:

- To the expense to repair or replace the subject appliances, equipment, or systems, other than the particular defective / damaged part as provided for in B above.
- If others are responsible by contract or law for payment of such expenses.

15. WEATHER RELATED COVERAGE — EXPANDED COVERAGE OPTION

We cover the following loss to the interior of a covered building or covered personal property within a building by hail, ice, rain, sleet, or snow:

- Loss arising out of the thawing of hail, ice, sleet, or snow on the building.
- Loss by any such elements to the interior of the building although the exterior walls or roof are not first damaged by a covered cause of loss allowing these elements to enter into the interior: but, if MCP 515 is listed in the Declarations, this Extension is deleted.
- Loss by such elements to personal property within a building.

This Supplemental Coverage applies only to property subject to Expanded Coverage.

PART I C • LOSSES INSURED

GENERAL CAUSE OF LOSS CONDITIONS — COVERAGES A, B, C

- A. Subject to all applicable provisions in this policy, property covered by this policy is insured for that coverage option (see descriptions below) which is designated in the Declarations as applicable to the specific item. Accordingly, the same sort of property — buildings, for example — can be insured for differing causes of loss based upon the option selected to apply to the specific item.
- B. The various described causes of loss cover fortuitous direct physical loss not otherwise excluded or limited. Loss — *covered loss* — means: **fortuitous direct**

physical damage to or destruction of covered property by a covered cause of loss, (including, if covered, the taking of the subject covered property by theft and damage arising in the course of such theft). Covered cause of loss means a cause of loss contemplated by the following coverage options to the extent that such are described as applicable to the subject covered property.

Direct physical loss does not include or mean any sort of consequent loss, loss of use, or loss of utility. But such loss may otherwise be specifically provided for in this policy: for example, see Coverage D.

C. CAUSE OF LOSS COVERAGE OPTIONS

The following are subject to all applicable Exclusions and Limitations described in this policy.

FIRE COVERAGE

Fire Coverage includes the following:

- **Fire** (hostile fire)
- **Explosion**
- **Lightning**

BASIC COVERAGE

Basic Coverage includes the following:

- **Fire** (hostile fire)
- **Aircraft***
- **Explosion**
- **Lightning**
- **Riot or Civil Commotion***
- **Sinkhole Collapse***
- **Smoke***
- **Vandalism***
- **Vehicles***
- **Volcanic Eruption***
- **Windstorm / Hail**

* See descriptive definitions below.

EXPANDED COVERAGE

Expanded Coverage includes Basic Coverage, plus other fortuitous direct physical loss to or theft of covered property not otherwise excluded or limited in this policy. The losses and costs excluded under the descriptions of the causes of loss Falling Objects and Sinkhole Collapse below also apply to Expanded Coverage.

DESCRIPTION OF LISTED CAUSES OF LOSS

The following definitions apply to and limit the scope of the listed causes of loss:

- **Aircraft:** This means direct physical contact of aircraft with covered property. Aircraft includes objects that fall from aircraft, spacecraft, or self-propelled missiles.
- **Collapse:** This means abrupt collapsing of buildings or structural parts of buildings.
- **Falling Objects:** This means damage to other property caused by the falling object.
This does not include:
 - loss to personal property outdoors (not in buildings);
 - loss to the interior of a building, or any property within a building, unless the falling object first penetrates the roof or exterior walls of the building.

- **Glass Breakage:** This means damage to other property caused by breakage of glass that is part of buildings.
- **Riot or Civil Commotion:** This includes, but is not limited to:
 - acts of striking employees while occupying the described premises;
 - looting occurring at the time and place of riot or civil commotion.
- **Sinkhole Collapse:** This means abrupt collapsing or sinking of land causing loss to covered property: such collapsing or sinking must be into an underground empty space created by the action of water on limestone or similar rock.
This does not include: the cost of filling sinkholes; collapsing or sinking into man-made cavities.
- **Smoke:** This means smoke causing abrupt accidental direct physical loss.
- **Sprinkler Leakage:** This means accidental discharge or leakage from an *automatic sprinkler system* and the collapsing of a tank that is part of such system.
- **Vandalism:** This means wilful malicious damage to property, and includes such damage done to a building by burglars while breaking into or out of such building.
This does not include: breakage of building glass; loss by theft.
- **Vehicles:** This means direct physical contact of a vehicle, or an object thrown up by a vehicle, with covered property.
This does not include: loss caused by vehicles *you* own or which are operated in the course of *your* business / operations.
- **Volcanic Eruption:** This means only:
 - airborne blast or shock waves; and
 - ash, dust, or particulate matter other than that which can be swept or washed away without leaving physical damage, and lava flow;

caused by eruption of a volcano: but see Common Exclusion 1. (Pg. 28).

All volcanic eruptions that take place within a continuous 168 hour period are considered a single occurrence and constitute a single loss.

- **Water Damage:** This means abrupt accidental discharge of water as a direct result of the breaking or cracking of any part of an appliance, equipment, or system containing water: but see Sprinkler Leakage for an *automatic sprinkler system*. Water includes steam and the discharge of other liquids or materials.

NOTE: The term "abrupt" refers to an event instantaneous in time — not gradual, ongoing, or repeated over time.

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SPECIFIED CAUSES OF LOSS

Where the term *specified causes of loss* is used, the term means the following: fire • aircraft • collapse • explosion • falling objects • lightning • riot or civil commotion • sinkhole collapse • smoke • sprinkler leakage • vandalism • vehicles • volcanic eruption • water damage • weight of ice, sleet, or snow • windstorm / hail.

However, these apply only to the extent that the subject property is otherwise insured for such causes of loss.

COVERED LOSS

A. Coverages A, B, C • *Covered loss* is described in Condition B (Pg. 8).

B. Coverage D • Relevant to the context in which it is used:

- *Direct covered loss* means: fortuitous direct physical loss as described in Condition B (Pg. 8) which occurs at described premises occupied by *you* (occupancy is not a condition for Rental Income loss), which directly results in the subject covered Business Income loss / Extra Expense;
- *Covered loss* means: the subject covered Business Income loss / Extra Expense which results as a direct consequence of such described *direct covered loss*.

PART I D • PROPERTY EXCLUSIONS / LIMITATIONS

We do not cover the following property or loss except to the extent otherwise specifically provided for in this policy.

1. ALL PROPERTY COVERAGES

- A. Building Glass: but see Supplemental Coverage 3. A.
- B. Crops of any sort, whether growing, harvested, or in any way held.
- C. Land, including land on which covered property is located. Water.
- D. Property not described in this policy.
- E. Property that is more specifically described and insured under another coverage form in this policy or by any other insurance: but as to Coverage A, this insurance applies as excess.
- F. Outdoor property, as follows (but see Supplemental Coverage 10):
 - Antennas, including their lead-in wiring, masts, and towers.
 - Fences.
 - Lawns.
 - Plants, shrubs, or trees.
- G. Signs (outdoor signs): but see Supplemental Coverage 3. B.
- H. Vehicles, as follows: aircraft, motorized land vehicles, self-propelled machines, or watercraft — including their accessories, equipment, motor, parts, tires, or trailers. This also includes: devices designed to be powered through their electrical systems, radar detectors, recorded discs and tapes in such vehicles for use in the vehicle. But see Supplemental Coverage 11. D.

2. COVERAGE A

- A. Cost of backfilling or filling, excavations, or grading.
- B. Docks, piers, pilings, or wharves.
- C. Foundations of buildings, boilers, or machinery that are below the lowest basement floor or, if no basement, below ground level.
- D. Paved surfaces of any sort, including — but not limited to — bridges, driveways, parking lots, patios, roads, or walks.
- E. Retaining walls that are not part of described buildings.
- F. Underground drains, flues, or pipes.

3. COVERAGES B AND C

- A. Creatures of any sort.
- B. Furs and jewelry.
- C. *Money and Securities*. Gold, silver, and other precious alloys or metals.
- D. Property while airborne or waterborne.
- E. *Valuable papers and records* as well as the cost to replace, research, or restore the information on *valuable papers and records*: but see Supplemental Coverage 11. C.

PART I E • PROPERTY LOSS LIMITATIONS

We do not provide insurance under Part I for any sort of damage or loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss otherwise covered contributes to such concurrently or in any sequence.

1. COLLAPSING OF SPECIFIED PROPERTY

Loss caused by collapsing — other than that caused by the collapse of a building or a structural part of a building — to: antennas, including their lead-in wires, masts, or towers • awnings • beach or diving platforms and related equipment or structures • docks, piers, or wharves • downspouts and gutters • fences • outdoor swimming pools • paved surfaces of any sort (including, but not limited to, bridges, driveways, parking lots, patios, pavements, roads, walks) • retaining walls • yard fixtures.

This does not apply to collapsing which ensues as a direct result of fortuitous direct physical loss by other covered cause of loss applicable to such property.

2. DISAPPEARANCE OF PROPERTY

Loss, otherwise covered by this policy, in connection with covered property that is missing where there exists no physical evidence to show what happened to the property. Loss discovered or inferred upon taking inventory.

3. FRAGILE ITEMS

Breakage of any sort of fragile items (including, but not limited to, chinaware, glassware, marble, porcelains, or statuary). This does not apply to: loss caused by a *specified cause of loss*; building glass; containers of

property held for sale by *you*: lenses of photographic or scientific instruments.

4. HOT WATER / STEAM EQUIPMENT

A. **Hot Water Boilers** — Loss to hot water boilers or other water heating equipment by any condition or event inside such boilers or equipment.

B. **Steam Equipment** — Loss to steam boilers, engines, pipes, or turbines by any condition or event inside such equipment.

But see Supplemental Coverage 13.

5. UNAUTHORIZED / VOLUNTARY TRANSFER OF PROPERTY

A. **Unauthorized Transfer** — Loss in connection with property that is given or transferred to any persons or transferred to any place (not the described premises) on the basis of false / unauthorized instructions — however such are given or transmitted.

B. **Voluntary Transfer** — Loss in connection with property that *you* (or others to whom *you* have entrusted the property) voluntarily give or transfer to anyone on the basis of being induced to do so by false pretense or fraudulent device, scheme, or trick.

PART I F • LOSSES NOT INSURED

We do not provide insurance under Part I for any sort of loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss otherwise covered contributes to such concurrently or in any sequence.

1. DELAY OR LOSS OF MARKET / LOSS OF USE EXCLUSIONS

Delay or loss of market or sale. Loss of occupancy. Because property cannot be occupied or used. Consequent loss. But see Coverage D for certain described coverage.

2. DISHONESTY EXCLUSION

Criminal or dishonest acts by *you*, by any of *your* employees, officers, partners, representatives, trustees, volunteer workers, or by any other person to whom *you* entrust property.

This applies whether any such persons act alone or in collusion with others or such acts take place within or outside of working hours.

This Exclusion does not pertain to acts of physical damage by *your* employees.

3. ELECTRICAL DAMAGE EXCLUSION

Loss, however caused, by artificially generated electrical currents to electrical or electronic appliances, devices or wiring.

If loss resulting from fire ensues, *we* insure such resulting loss.

4. EXPLOSION OF STEAM EQUIPMENT EXCLUSION

Explosion of steam boilers, engines, pipes, or turbines which are leased to *you*, owned by *you*, or operated under *your* control: but see Supplemental Coverage 13.

If loss resulting from fire or combustion explosion ensues, *we* insure such resulting loss.

5. FLOOD / FLOODING EXCLUSION

Flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or their spray: all, whether arising out of or caused by rain, snow, wind or other condition of the weather, or an otherwise covered cause of loss.

If loss resulting from fire, explosion, or theft (to the extent insured by this policy) ensues, *we* insure such resulting loss.

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6. FREEZING OF APPLIANCES OR OTHER EQUIPMENT EXCLUSION

Leakage or overflow of any liquids or any other materials from air conditioning, heating, plumbing, or other appliances or equipment (other than fire protection systems), or damage to such appliances or equipment, caused by freezing.

If ongoing care is exercised to maintain heat in the building, or such appliances or equipment are drained and kept dry, this exclusion is waived to the extent that such loss is otherwise insured by this policy.

7. INTENTIONAL LOSS EXCLUSION

Acts committed by, or at the direction of, any *insured* with the intent to cause a loss.

8. LAW OR ORDINANCE / GOVERNMENTAL DIRECTIVE EXCLUSION

Enforcement of any code, law, ordinance, or regulation, including those pertaining to construction, repair, or use of property or demolition of property (including debris removal). Any governmental directive. But see Supplemental Coverage 4.

9. POWER, HEATING, OR COOLING FAILURE EXCLUSION

Power, heating, or cooling failure or loss of utility services that takes place off the described premises. If loss by a covered cause of loss ensues, we insure such resulting loss.

10. THEFT FROM AN UNATTENDED VEHICLE

Theft from an unattended vehicle. However, we will cover theft by forced entry (there must be visible evidence of forced entry) into a securely locked body or compartment of a vehicle.

11. WATER DAMAGE EXCLUSION

A. Water under the ground surface that exerts pressure on or flows, seeps or leaks through: basements; doors, windows, or other openings; driveways; floors; foundations; paved surfaces; sidewalks; walls. See also mudflow or mudslide under 12.D. below.

B. Water that backs up through sewers or drains, or overflows from a sump.

If MCP 507 is listed in the Declarations, then Exclusion 11.B. is amended in that we do cover such damage up to the applicable limit shown in the Supplemental Declarations.

If loss resulting from fire, explosion, or sprinkler leakage (to the extent insured in this policy) ensues, we insure such resulting loss.

12. WEAR, TEAR, AND OTHER SPECIFIED LOSS / CAUSE OF LOSS EXCLUSIONS

A. Wear and tear • bacterium or other natural growth • birds, domestic animals, insects, rodents, or vermin • contamination or pollution including, but not limited to: (1) the discharge, dispersal, emission, escape, migration, release, or seepage of *pollutants*, (2) the costs associated with enforcement of any governmental directive, law or ordinance which requires *you* or any others to clean up, contain, detoxify, monitor, neutralize, remove, test for, or in any way respond to *pollutants*, asbestos or lead contamination or assess the effects of *pollutants*, asbestos or lead contamination: but see Supplemental Coverage 12 for certain coverage • corrosion • decay or deterioration • deficiency, error, or omission in design, materials, plans, or workmanship • disease • dry or wet rot • fungus • inherent vice (a customary characteristic of the property) • latent defect (an original condition or fault leading to loss) • mechanical breakdown • mildew • mold • rust • spores.

B. Buckling, bulging, contracting, cracking, expansion, settling, shrinkage, or sinking.

C. Continuous or repeated leakage or seepage from any part of an appliance or system which contains water or other liquids resulting from a condition which *you* fail to repair.

D. Earth / ground / land movement on or below the surface of the earth including, but not limited to: earth / ground / land collapsing (other than sinkhole collapse), pressure, rising, shifting, sinking, sliding, or subsidence; landslide; mine subsidence; mudflow or mudslide. See also Common Exclusion 1. (Pg. 28) as to catastrophic earth movement.

E. Marring or scratching: but these apply solely to personal property.

F. Smog, smoke, or vapor from agricultural or industrial activities.

If loss by a covered *specified cause of loss* ensues we insure such resulting loss, other than collapsing concurrent with or ensuing as a result of loss subject to Exclusions B and D above.

13. WEATHER / RELATED EXCLUSIONS

A. Loss to personal property caused by changes or extremes of temperature or dampness or dryness of the atmosphere.

B. Freezing, hail, ice, rain, sleet, or snow: these only apply to personal property while outdoors at the time of loss, but as to Windstorm / Hail in connection with Basic Coverage the following are also excluded: cold or frost; ice (other than hail), sleet, or snow whether or not wind driven.

C. Loss by dust, hail, ice, rain, sand, sleet, or snow, whether or not wind driven, to: (a) the interior of a building; or (b) property within a building: but see Supplemental Coverage 15. But, if the building first sustains loss by any covered cause of loss to the exterior roof or walls, which then allows these elements to enter the building, *we* insure the resulting loss by such elements.

D. Loss by weight of hail, ice, sleet, or snow to downspouts or gutters.

E. Any other weather conditions: but this only applies if weather conditions contribute with a cause, condition, or event, otherwise excluded in this policy, to produce the loss.

If loss otherwise covered by this policy ensues, *we* insure such resulting loss.

PART I G • SPECIAL PART I CONDITIONS

1. DUTIES WHEN LOSS / DANGER OF LOSS OCCURS

You, other insureds, and other coverage beneficiaries must do all of the following things:

A. **Report the Loss** — Give immediate written notice to *us* of any loss. Also, immediately notify the police in case of theft, vandalism, or other violation of law. As soon as possible, give *us* a description of how, when, and where the loss occurred.

B. **Protect Property** — Protect property if in imminent danger from a covered cause of loss or, if loss has occurred, from further loss. For example, by taking exposed property indoors, by covering openings or windows, or by making temporary repairs. *We* cover the reasonable necessary expenses that *you* incur for such immediate temporary repairs or safeguards.

However, it is *your* ongoing obligation, at your expense, to — as soon as feasible after *you*, *your* employees, or those *you* authorize to act on *your* behalf become aware of any condition under *your* control which could lead to loss while this policy is in force — undertake all reasonable construction, maintenance, or repair necessary to protect property from such *covered loss*. Listing of all such conditions is not feasible, but examples include: if a roof is leaking, to repair such; if a flooring support is collapsing / deteriorating, to repair such; if new supports or retaining walls become required, to construct such.

Any additional or subsequent loss resulting from *your* neglect of these duties is not covered by this policy, and *you* must either rely on other insurance or absorb such loss *yourself*.

C. Cooperation on the Loss

As often as *we* may reasonably request / require:

1. Immediately exhibit all that remains of the damaged and undamaged property, and allow *us* to take samples of such property for examination and inspection.
2. Produce for examination and copying: the inventory described in D below, all relevant accounting procedures, affidavits, books of account, bills, contracts, deeds, documents, evidence, financial records, invoices, liens,

leases, receipts, records, tax returns, vouchers, or other sources of information, or facsimiles acceptable to *us*.

3. Submit to examination and provide statements under oath and sign and swear to such. If more than one person is examined, *we* reserve the right to make such examination of each person out of the presence of the others. *We* also reserve the right to video record any examinations.

4. Otherwise cooperate with *us* in the investigation / settlement of the claim.

D. Inventory

At *our* request, prepare and sign an inventory of all damaged and undamaged property, showing in detail: age; description; quantity; *actual cash value* and, if so covered, replacement cost; source; amount of loss claimed. To the extent possible, set the damaged property aside and put such in best possible order for *our* examination.

E. Statement of Loss / Proof of Loss

Submit to *us* a statement about the loss that includes all information reasonably required by *us* (including, but not limited to, that described in C.2. and D., above) to determine: coverage; *our* liability for the loss and the amount and scope of loss; specifications of any damaged buildings. The statement is also to include detailed repair estimates.

And if required: submit to *us* within 60 days after *our* request a signed, sworn proof of loss. This is to include the information described above and any other information reasonably required by *us*, including all knowledge available to *you*, and others about:

- The time and cause of loss.
- *Your* interest and that of all others in the property involved (including a description of all encumbrances on such property).
- All other insurance policies which may apply to the loss.
- Any changes in occupancy, title, or use of the property during the policy term.

Failure to comply with these (or other Conditions) can alter or void *our* obligations under this policy. >

2. HOW LOSSES ARE SETTLED

A. Limit of Liability per Loss Occurrence — Coverages A, B, C.

Our limit of liability is that amount that is the least one of all the following:

1. The replacement value or, if MCP 523 is listed in the Declarations as applicable to specified property, the *actual cash value* of the damaged portions of subject property at the time of loss. But, in no event, exceeding the lesser of a. or b. below:
 - a. The lesser cost reasonably required, with diligence and ongoing effort, to:
 - Repair or restore the damaged property with like materials of comparable quality used for the same purpose / same occupancy, bringing such to the same general condition as existed immediately prior to the loss; or,
 - Replace the damaged property, at the same described premises, with like property of comparable quality used for the same purpose / same occupancy.
 - b. The necessary reasonable expense paid to repair, replace, or restore the damaged property.
2. Any factors, limits, special limits, or other recovery limitations described or specified in this policy as applicable to the subject loss and property, whether shown in the Declarations, any endorsements, or elsewhere in this policy. The inclusion of any sort of recovery limitations or special limits or the inclusion of more than one item within any provision in this policy do not increase or otherwise modify any of the general limits shown in this policy — unless specifically stated to be additional insurance.
3. The insurable interest of the *insured* (or other named interests) at the time of loss.

And, in all cases subject to the following special conditions:

4. **Glass** — Loss to glass is settled on the basis of the cost of replacement with safety glazing material when such replacement is required by law or ordinance.
5. **Money** (If covered by this policy) — At face value: if foreign money, at its exchange rate (in dollars) on the date that the loss is reported to *us* by *you*.
6. **Securities** (If covered by this policy) — At their value at the close of business on the date that the loss is reported to *us* by *you*.

7. Tenant's Improvements and Betterments

- a. If *you* make repairs as soon as feasible, loss is settled as described above.
- b. If *you* do not make repairs as soon as feasible, *our* obligation is limited to a proportion of *your* original cost for the improvements, determined as follows:
 - Divide the number of days from the date of loss to the expiration date of the lease by the number of days from the date of installation (of the improvement) to the expiration date of the lease, then
 - Multiply the original cost by the figure resulting from this division.

Note: If *your* lease contains a renewal option, *we* use the expiration date of the renewal option in lieu of the expiration date of the current lease.

8. **Valuable Papers and Records** — Loss to *valuable papers and records* (other than prepackaged software programs) not subject to Supplemental Coverage 11.C. is settled on the basis of the cost of blank materials for reproducing such records plus the cost of labor to copy such records when duplicates of such exist.

B. Limit of Liability per Loss Occurrence — Coverage D

Our maximum liability is determined based on consideration of all of the following:

1. Business Income

- a. The net income / rental income of the business / operations before the date the *direct covered loss* occurred.
- b. The likely net income / rental income of the business / operations had the *direct covered loss* not occurred.
- c. The operating expenses, including payroll expenses, necessary to resume *your* normal business / operations at the same capability and quality of service as existed immediately prior to the date the *direct covered loss* occurred.
- d. Any other relevant sources of information, including all information described under Condition 1 — "Duties" (Pg. 13).
- e. Any liability *we* otherwise have, as determined above, is reduced to the extent that *you* can resume *your* normal business / operations, in whole or in part, including by using any property (including damaged property) at the described premises or elsewhere.

2. Extra Expense

- a. All expenses that exceed the normal operating expenses that *you* would otherwise incur in *your* business / operations during the coverage period of indemnity had the *direct covered loss* not occurred.
- b. All necessary expenses that reduce the Business Income Loss that would otherwise be incurred.
- c. Any liability *we* otherwise have for Extra Expense, as determined in 2.a. above, is reduced by the following:
 - The remaining salvage value of any property bought for temporary use during the coverage period of indemnity once *your* business / operations are resumed.
 - Any Extra Expense that is paid for by other insurance that is not subject to the same provisions that apply in this policy.
 - To the extent that *you* can resume normal business / operations.

3. General Condition

Conditions 1 and 2 apply to each described premises at which *direct covered loss* occurs, and *our* maximum liability for such loss does not exceed the limits of other recovery limitations otherwise shown in this policy applicable to the subject *covered loss*.

C. Bases of Loss Settlement — Coverages A, B, C.

1. Replacement Basis

The expense of replacement applies as the basis for loss settlement unless otherwise provided in this policy. But, this applies only if replacement is made at the described premises: *We* may waive this requirement in writing if building laws prohibit replacement at the described premises (then see Supplemental Coverage 4), or for other reasons acceptable to *us*.

The following property is always covered on an *actual cash value* basis:

- Manuscripts.
- Property of others.
- Works of art, antiques, or rare articles, including — but not limited to — bronzes, bric-a-brac, etchings, marble, pictures, porcelains.
- Tools. If MCP 525 is listed in the Declarations, loss to tools is settled on the replacement basis.

We are not liable for payment on a replacement basis until *you* complete repair, replacement, or restoration of the subject property.

You may submit a claim on an *actual cash value* basis and then, no later than 180 days following settlement on *your* claim in whole or in part on an *actual cash value* basis (or *our* offer of such if *you* decline settlement), make further claim in writing on repair, replacement, or restoration that *you* have completed at the time *you* make such claim.

2. Actual Cash Value Basis Option

If MCP 523 is listed in the Declarations, loss settlement is on an *actual cash value* basis at the time of loss.

D. Appraisal

1. If *you* and *we* do not agree on the amount of the loss or values or on the amount of Business Income or operating expenses, either one can require that the items in dispute be set by appraisal. Within 30 days of receipt of a written demand for appraisal, each is to select a competent impartial appraiser. Each party is to then notify the other of the appraiser selected.
2. The two appraisers are to select a competent impartial umpire. If the appraisers are unable to agree upon an umpire within fifteen days, *you* or *we* may petition a judge of a Court of Record to select an umpire.
3. The appraisers are to reach a mutual agreement on the items in dispute. If the appraisers fail to agree within a reasonable time, they are to submit their differences to the umpire. Written agreement signed by any two of these three persons constitutes settlement on the items in dispute.
4. Each appraiser is paid by the party selecting the appraiser. All other expenses of the appraisal are paid equally by *you* and *us*.
5. If *we* agree to appraisal, *we* specifically retain *our* right to deny the claim.

E. Deductible — Coverages A, B, C

We are liable for *covered loss* in any occurrence only when the loss is in excess of the deductible amount shown in the Declarations, and then only on the amount of loss less the deductible amount.

F. Loss to a Portion of a Pair or Set of Articles — Coverages B / C

1. Loss to some portion of a pair or set of articles or to property consisting of two or more parts (when complete) is not considered a total loss unless: because of such loss, the remainder is of no use and repair or replacement is not feasible.
2. In case *we* agree to pay for total loss, *you* are required to give *us* the remainder of such property, at *our* request, prior to such payment.

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G. Our Liability and Satisfaction of Your Loss

If the maximum liability payable by *us* on *covered loss*, as determined in this policy, does not fully satisfy *your* loss, then *you* must either seek insurance that may be provided by others for the difference or otherwise absorb the unsatisfied portion of the loss *yourself*.

H. Our Options in Settling Losses — Coverages A, B, C

1. *We* may pay for the loss in *money*.
2. *We* may repair or replace all or any part of the property as provided for in this policy, or take all or any part of such property at a mutually agreed, or appraised, value. *We* may give notice of *our* intent to do so at any time up to 30 days after *our* acceptance of *our* liability for the loss (i.e., proof of loss).
3. *We* may settle the claim with *you*, any loss payee named in this policy, or others legally entitled to receive payment. If the claim applies to property of others, *we* have the right to adjust the loss with the owners of the property: satisfaction of their claim is also satisfaction of *your* claim as to such property.

If legal action is taken in a claim against *you*, *we* have the right to conduct and control a defense at *our* expense (but without increasing *our* liability under this policy).

I. Recovery of Covered Property

In the event *we* make a payment for loss and a subsequent recovery is made of any of the property, *you* may choose to keep the property *you* have recovered or receive the property that *we* have recovered. If *you* choose this option, *our* liability is reduced accordingly: payment is adjusted for the amount which *you* received for the loss to such property, and *you* must compensate *us* for the amount *we* previously paid.

If *you* do not choose this option, the recovered property becomes *our* property: if *you* have such property, *you* are required to give *us* those items *we* request.

J. When Loss Becomes Payable / Payment to Others

Loss becomes payable 30 days after completion and acceptance by *us* of a written agreement between the parties, or after an award is filed with *us* as provided in this policy. *Our* payment does not reduce the amount of insurance provided under this policy.

With respect to any mortgagee or secured party named in this policy; governmental entity; or others with contractual, legal, or statutory rights in loss payable under this policy: *we* may make payment jointly to all interested parties at *our* option. But *we*

need not pay any loss assignee, unless they receive a full assignment of the loss from *you*.

If an insurance trustee is named in this policy, *we* may negotiate the loss and make payment solely to such trustee — to the extent that the trustee represents those with an interest under this policy.

3. OTHER SPECIAL PART I CONDITIONS

A. Abandonment of Property

Abandonment of any property to *us* is prohibited.

B. Increase in Hazard / Related Conditions

1. **Increased Hazards** — This insurance is suspended while the hazards *we* initially undertook to insure are increased by means within *your* control or control of those *you* designate to act for *you*: loss, otherwise covered, is not insured during such suspension of this insurance. Lawful building alteration, construction, maintenance or repair, unless changing the use of premises, is not an increase in hazard.

An increase in hazard at one described premises does not affect this insurance at another described premises when no increase in hazard exists at such other described premises.

Increase in hazard includes changes which affect one or more of the following: use of the premises; the rates for this insurance; the acceptability of the hazard / risk to *us*, including breach of conditions which were the basis of *our* acceptance of such; the underwriting conditions and changes in physical conditions required by *us* for such hazard / risk; ongoing continuous effectiveness and use of any protective safeguards required by *us* for which *we* have given premium consideration; circumstances which would affect the scope of coverage, covered causes of loss, or amounts of insurance otherwise acceptable to *us* for such hazard / risk.

2. **Vacancy** — This insurance is suspended when a covered building becomes vacant beyond a period of 60 consecutive days. Vacant means not containing the contents customary to occupancy of the building. A building in the course of lawful alteration, construction, or repair is not considered vacant.

3. **Unoccupancy** — This insurance is suspended when a covered building becomes unoccupied beyond a period of 60 consecutive days.

This Condition does not apply to unoccupancy during that part of the year when it is *your* normal previous custom to close because of seasonal use.

C. Mortgagee Agreement

Mortgagees named in this policy are covered for loss to the extent of their interest and in order of precedence of the mortgages. This Condition applies to those mortgagees (this term includes trustees) named here who comply with the following Conditions.

Provided that the mortgagee will:

- Without delay, notify *us* of any change in ownership or occupancy, foreclosure proceeding, or increased hazard known to the mortgagee.
- Pay, on *our* demand, any required premium because the *insured* fails to do so.
- Furnish proof of loss within 60 days after *our* request if the *insured* fails to do so.
- Give *us* the mortgagee's rights of recovery against anyone liable for the loss. This does not impair the mortgagee's right to recover the full amount of the claim.
- Permit *us*, after a loss, to satisfy the mortgage requirements and receive a full assignment of the mortgage and all collateral securities to the debt.

We agree to provide this insurance to protect the mortgagee's interest in covered property even if *we* deny *your* claim.

See elsewhere in this policy in the state mandatory endorsement for Conditions relating to Cancellation by *us*.

D. No Benefit to Bailee

This insurance does not apply to the benefit of any others having custody of covered property. Any assignment to such persons or organizations has no standing under this policy.

E. Special Factors, Limits, or Limitations

This Part includes references in certain provisions to factors, limits or special limits, and other limitations described or specified in this policy: these are shown in the Declarations and Supplemental Declarations (or other similar attachments) to this contract.

PART II A • MAIN LIABILITY COVERAGE

COVERAGE E — LIABILITY TO OTHERS

- A. We pay for the benefit of *insureds*, up to the applicable limit(s) of liability (See Part II D) shown in the Declarations, those sums that *insureds* become legally liable to pay as damages because of *bodily injury* or *property damage* insured in this policy.

Such *bodily injury* or *property damage* must:

- Occur during the policy term, and
- Be caused by an *occurrence* that takes place within the applicable coverage territory: See General Conditions.

Damages because of *bodily injury* insured in this policy include claims by others for care, death (at any time), or loss of services resulting from such *bodily injury*.

Products / Completed Operations Hazard • If a specific aggregate limit of liability (See Part II D) for *products / completed hazard* is shown in the Declarations, then Coverage E, as described, extends to *bodily injury* and *property damage* included in the *products / completed operations hazard*.

- B. We have no obligation to pay any damages not covered by this policy or in excess of our limits of liability (See Part II D) for any covered damages.

COVERAGE F — MEDICAL PAYMENTS TO OTHERS

- A. We pay, up to the applicable limit of liability (See Part II D) shown in the Declarations, the reasonable necessary medical expenses, incurred by others, arising out of an accident which are both incurred and reported to us by you or the coverage beneficiary within three years from the date of such accident. The accident must: take place within the applicable coverage territory and policy term (See Common Conditions), and occur:

- On *your premises*.
- Away from *your premises*, but, if so, then only if the accident either:
 - Arises out of a condition at *your premises*, or
 - Arises out of the business / operations insured by this policy.

Fault or legal liability is not a condition for such payment (and our payment is not an admission of liability by any *insured*); however, we pay medical expenses only for *bodily injury* not otherwise excluded or uninsured under this policy.

- B. Medical expenses means expenses for: ambulance, dental, funeral, hospital, medical, professional nursing, surgical or x-ray services; prosthetic devices, drugs and surgical supplies.

If no “per person” limit is shown, then Coverage F does not apply under this policy.

APPLICATION OF THIS INSURANCE (PART II)

- A. This insurance applies to liability arising out of *your* contracting business / operations, designated in the Declarations or elsewhere in this policy including incidental related activities and the use of *your premises* for such, to the extent covered by this policy.

- B. Subject to Common Condition 7. (Pg. 31), such insurance also applies to the following:

1. Any additions or changes to *your* business / operations to the extent related to contracting operations or *your premises*, as described in paragraph A above, which occur during the current policy term;
2. Any business entity that you newly acquire or form during the current policy term, to the extent related to contracting operations, subject to the additional conditions described in the definition of *insureds*.

All provisions applicable to *your* business / operations and *your premises* designated in this policy apply to such additions, changes, and new entities, unless otherwise modified.

We have no obligation to provide any insurance or service, or pay any expense or any sum, other than those specifically described as applicable and insured in this policy.

PART II B • SUPPLEMENTAL COVERAGES

The following coverages do not extend or modify any provisions in this policy, including *our* Limits of Liability or any applicable Exclusions, except to the extent specifically described.

1. DEFENSE COVERAGE

With counsel of *our* choice, we defend suits (civil proceedings) against *insureds* seeking damages covered by this insurance. *We* have no duty to investigate any claim, defend or provide for a defense for any *insured*:

- In connection with either suits seeking damages not covered by this policy or allegations within a suit which are not covered by this policy; or
- When the applicable limit of liability is used up in payment of judgments or settlements.

We may investigate and settle any claim or suit as *we* deem such to be reasonable.

Suit includes alternative dispute resolution proceedings to which an *insured* either must submit or may choose to submit (but only if done with *our* prior written consent).

We assume the following costs and expenses in a suit defended by *us*:

- A. All costs incurred by *us*.
- B. The interest which accrues after entry of a judgment, but only until that time when *we* pay, offer to pay, or deposit in court that part of the judgment within *our* limit of liability.
- C. The prejudgment interest awarded against any *insured* on that part of the judgment *we* pay. But, if *we* offer to pay *our* applicable limit of liability under this policy, *we* will not pay any prejudgment interest which is based on the period of time that follows *our* offer.
- D. Costs taxed against the *insured*.
- E. Costs of appeal bonds or bonds to release attachments, for that amount of the bond within *our* applicable limit of liability. *We* need not furnish or secure such bonds.
- F. The reasonable expenses incurred by the *insured* at *our* request, as well as earnings (up to \$100 per day) lost because of absence from work at *our* request.

2. CONTRACTUAL COVERAGE

- A. Coverage E is extended to include *your* liability to pay damages to others (third parties) because of *bodily injury* or *property damage* — to the extent otherwise insured by this policy — arising out of *your* expressed assumption of the liability of another (*your* indemnitee) under the following oral or written contracts:

Item 1

- Agreements to indemnify a municipality as required by law or ordinance. This does not

include agreements made in connection with work for a municipality; but the assumption of tort liability of another for such work is included under Item 2.

- Easements. This does not include easements involving work on, or within 50 feet of, a railroad, nor is the assumption of tort liability for such included under Item 2.
- Leases of premises (but not as to fire damage) or elevator maintenance agreements.
- Sidetrack agreements.

Item 2

That part of other contracts (not as described in Item 1) in which *you* have expressly assumed the tort liability (liability imposed by law in the absence of contract) of another.

- B. Exclusion 2, in Part II C, does not apply to covered contracts under Item 2 with respect to maintenance, ownership, or use of aircraft or watercraft.
- C. This Supplemental Coverage applies only to contracts made in connection with *your* business / operations or *your premises* covered by this policy and, then, solely to *bodily injury* or *property damage* which occurs subsequent to execution of the covered contract.

If MCL 501 is listed in the Declarations, then coverage applies solely to those written contracts that *you* furnish to *us* within 60 days of their execution.

If MCL 502 is listed in the Declarations, then Item 2 (tort liability) is deleted.

If MCL 510 is listed in the Declarations, then coverage applies solely to written contracts.

3. FIRST AID EXPENSE COVERAGE

We pay necessary reasonable medical expenses incurred for first aid to others at the time of an accident, other than in connection with *bodily injury* otherwise excluded by this policy.

4. INCIDENTAL ALCOHOLIC BEVERAGE COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of the furnishing, giving, serving or use of alcoholic beverages, when *you* furnish, give or serve alcoholic beverages without charge and a license is not required for such activity.

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5. INCIDENTAL AUTOMOBILE COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of the following:

- A. The parking of *automobiles* (not borrowed or owned by, or rented to, any *insured*) at *your premises*.
- B. The operation of the following devices permanently attached to an *automobile*:
 - Air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.
 - Cherry pickers and similar devices used to raise / lower workers.

6. INCIDENTAL FIRE LEGAL LIABILITY COVERAGE

Coverage E is extended to include, up to the applicable limit of liability (See Part II D) shown in the Declarations for Fire Legal Liability Coverage, *property damage* arising out of fire at a nonowned premises rented to, or occupied by, *you*. If a separate specific limit is not shown in the Declarations for Fire Legal Liability, then this Supplemental Coverage does not apply under this policy. (The specified limit is *our* maximum liability in any one *occurrence* in connection with this Supplemental Coverage).

If MCL 521 is listed in the Declarations, then this extension also applies to *property damage* arising out of any other fortuitous direct physical loss at a nonowned premises rented to, or occupied by, *you*.

7. INCIDENTAL MEDICAL / PROFESSIONAL LIABILITY COVERAGE

Coverage E is extended to include *bodily injury* arising out of *your* providing for the benefit of others, without charge, any incidental medical or nursing services, or drugs or related supplies. This does not apply to any *insured*, or any *insured's* indemnitee, whose business / profession involves the rendering of such services or drugs or supplies.

8. INCIDENTAL MOBILE EQUIPMENT COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of *loading or unloading*, maintenance, ownership, or use of mobile equipment. Mobile equipment means solely land vehicles (including any equipment or machinery permanently attached to, or forming an integral part of, the vehicle) as follows:

- A. Vehicles used solely at *your premises*.
- B. Vehicles designed for primary use off public roads such as bulldozers, farm machinery, forklifts, and similar commercial types.
- C. Vehicles used primarily to provide mobility to the following:
 1. Concrete mixers (other than mix-in-transit type).*
 2. Diggers, drills, loaders, power cranes, or shovels.*

3. Road construction and resurfacing equipment, such as graders, rollers, or scrapers.*

D. Vehicles that are not self-propelled used primarily to provide mobility to:

1. Air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.*
2. Cherry pickers and similar devices used to lower / raise workers.*

E. Vehicles that travel on crawler treads.

F. Vehicles not otherwise used as described above that are maintained by *you* primarily for uses other than the transportation of cargo or persons: but this Supplemental Coverage does not extend to self-propelled vehicles as described below or equipped with any of the following permanently attached devices:

1. Designed primarily for road maintenance (other than road construction or resurfacing), snow removal, or street cleaning.
2. Equipped with air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.
3. Equipped with cherry pickers and similar devices mounted on automobile or truck chassis and used to raise / lower workers.

All such vehicles are *automobiles* for purposes of this insurance. But see Supplemental Coverage 5 for coverage of the operation of the described devices.

* But only if permanently attached to, or forming an integral part of, the vehicle.

9. INCIDENTAL WATERCRAFT COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of any of the following:

- Watercraft while ashore at *your premises* (other than premises *you* have abandoned, sold, or transferred to others).
- Watercraft not owned by, or loaned or rented to, any *insured*, if the *occurrence* arises out of *your* direct act. Direct act does not include or mean supervision of others or entrustment to others of watercraft.
- Watercraft not owned by *you*, if less than 26 feet in length and not used to carry persons or property for a charge.

10. PERSONAL INJURY / ADVERTISING INJURY COVERAGES

A. Liability to Others

We pay for the benefit of *insureds*, up to the limit of liability (See Part II D) shown in the Declarations, those sums that *insureds* become legally liable to pay as damages because of: 1. *Advertising Injury*, or 2. *Personal Injury*, as described and covered in this policy, arising out of a covered offense.

A covered offense must take place within the policy term and within the applicable coverage territory. See Common Condition 6. (Pg. 30).

This Supplemental Coverage applies only to the following:

- *Advertising injury* arising out of an offense committed in the course of advertising goods, products, or services of *your* business / operations covered by this policy.
- *Personal injury* arising out of an offense committed in the conduct of *your* business / operations covered by this policy, but not advertising, broadcasting, publishing, or telecasting done either by *you* or on *your* behalf.

If a specific separate limit of liability for *Personal Injury* / *Advertising Injury* is not shown in the Declarations, then this Supplemental Coverage does not apply under this policy.

B. Defense in Connection with *Personal Injury* / *Advertising Injury*

Defense is provided in connection with these coverages in accordance with the defense provisions described under Supplemental Coverage 1. (Pg. 19).

C. Liability Not Insured (Additional Exclusions)

We do not provide insurance for any sort of damages or liability directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following:

***Advertising Injury* / *Personal Injury* Exclusions.**

We do not insure any of the following:

1. Injury arising out of oral or written publication of material, done by or at the direction of any *insured* with knowledge that such is false.
2. Injury arising out of oral or written publication of material whose first publication took place prior to the beginning of this policy or such coverage under this policy.
3. Injury arising out of rendering / failure to render professional advice or service.
4. Injury for which the *insured* has assumed liability in an implied, oral, or written agreement or contract. This does not apply to liability for damages, otherwise insured in this policy, that the *insured* has in the absence of contract.

5. Injury to *you* or *your* members or partners (if *you* are a joint venture or partnership).

***Advertising Injury* — Additional Exclusions.**

We do not insure any of the following:

6. Injury arising out of breach of contract, other than misappropriation of advertising ideas under an implied contract.
7. Injury arising out of the failure of goods, products, or services to conform with advertised quality or performance.
8. Injury arising out of the wrong description of the price of goods, products, or services.
9. Injury arising out of an offense committed by an *insured* whose business is advertising, broadcasting, publishing, or telecasting.

D. Glossary

Advertising injury means solely the following:

1. Infringement of copyright, slogan, or title.
2. Misappropriation of advertising ideas or style of doing business.
3. Oral or written publication of material that: slanders or libels a person or organization, disparages a person's or organization's goods, products, or services.
4. Oral or written publication of material that violates a person's right of privacy.

Personal injury means solely the following:

1. False arrest, detention, or imprisonment.
2. Malicious prosecution.
3. Oral or written publication of material that: slanders or libels a person or organization; disparages a person's or organization's goods, products, or services.
4. Oral or written publication of material that violates a person's right of privacy.
5. Wrongful entry into, eviction of a person from, or invasion of the right of private occupancy of, a dwelling, room, or other private premises that the person occupies: but only if done by, or on behalf of, the landlord, lessor, or owner of such premises.

***Advertising Injury* / *Personal Injury* do not include bodily injury or property damage. Accordingly, Part II C — other than Exclusion 5. — does not apply: however, *Advertising Injury* / *Personal Injury* do not include or extend coverage under this policy in any way to any costs, damages, liability, or loss expressly excluded under Coverage E.**

PART II C • LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an occurrence otherwise covered contributes to such concurrently or any sequence — except to the extent otherwise specifically described and provided for in this policy.

1. ALCOHOLIC BEVERAGE EXCLUSION

We do not insure bodily injury or property damage, arising out of: contributing to any person's intoxication; furnishing alcoholic beverages to persons under the legal drinking age or under the influence of alcohol; violating any law, ordinance, or regulation relating to the distribution, gift, sale, or use of alcoholic beverages: but see Supplemental Coverage 4.

2. AUTOMOBILES / AIRCRAFT / WATERCRAFT EXCLUSIONS

We do not insure bodily injury or property damage arising out of the loading or unloading, loaning, maintenance, operation, renting, use, or entrustment to others (whether supervised or not) of any air craft, automobile, or watercraft operated or owned by, or loaned or rented to, any insured. This also applies to such bodily injury or property damage arising out of: any device, equipment, machinery, parts, trailers or semi trailers attached to any aircraft, automobile, or watercraft.

But see Supplemental Coverages 2. (Item 2.), 5. and 9.

3. BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS

A. *We do not insure bodily injury or property damage included in the products / completed operations hazard — unless shown as covered by this policy with a specific aggregate limit for products / completed operations coverage shown in the Declarations.*

Note: *The products / completed operations hazard (whether covered by this policy or not) does not include bodily injury or property damage arising out of:*

- *Materials which are abandoned or unused, tools, or uninstalled equipment; or*
- *Transporting property, unless the occurrence results from a condition in or on a vehicle created by loading or unloading of the vehicle.*

B. *We do not insure any property damage to your products or your work caused, to any extent, by your products or your work or any part of such.*

This Exclusion does not apply to your work if:

- *The work has not, at the time of damage, been abandoned or completed; or*
- *The damaged work, or work out of which the damage arises, was performed on your behalf by a subcontractor.*

C. *With respect to impaired property or property that has not been physically damaged, we do not insure property damage arising out of any of the following:*

1. *An inadequacy, defect, deficiency, or dangerous condition in your products or your work.*

2. *A delay or failure by you or others acting on your behalf to perform an agreement or contract in accordance with its terms.*

This Exclusion does not apply to loss of use of other property arising out of abrupt (sudden in time — not gradual or ongoing) accidental physical damage to your products or your work after such is put to its intended use.

D. *We do not insure any costs, expenses, liability or loss, incurred by you or others, arising out of recall of your products, your work, or impaired property when such must be taken from the market or from others because it is known to be, or is thought to be, dangerous, defective, deficient, or inadequate.*

Recall includes adjustment, disposal, inspection, loss of use, recall, removal, repair, replacement, or withdrawal of your products, your work, or impaired property.

E. *We do not insure property damage to any of the following:*

1. *That part of real property on which work is being performed by either you, or any contractor or subcontractor working (directly or indirectly) on your behalf, if the property damage arises out of such work.*

2. *That part of any property that must be repaired, replaced, or restored because your work was faulty or incorrectly performed: this does not apply to property damage included in the products / completed operations hazard.*

This Exclusion does not apply to liability assumed under a written sidetrack agreement.

F. Glossary

Impaired property means tangible property (other than your products or your work) that cannot be used, or is less useful, because one or both of the following apply:

- *It incorporates your products or your work that is known to be, or is thought to be, dangerous, defective, deficient, or inadequate — and it can be restored by adjustment, removal, repair, or replacement of your products or your work.*
- *You have failed to fulfill the terms of an agreement or contract and it can be restored by your fulfilling the terms of the agreement or contract.*

4. CONTRACTUAL LIABILITY EXCLUSION

We do not insure *bodily injury* or *property damage* for which the *insured* is liable to pay damages because of the assumption of liability for such in an implied, oral, or written agreement or contract. But see Supplemental Coverage 2.

To the extent that Supplemental Coverage 2. otherwise applies, we do not insure under such coverage: any liability to indemnify another for fire damage to a premises loaned or rented to *you*; any *bodily injury* or *property damage* which first occurs prior to execution of the agreement or contract.

This Exclusion does not apply to liability for damages, otherwise insured in this policy, that the *insured* has in the absence of contract.

5. EMPLOYEE, EMPLOYMENT, AND RELATED INJURY EXCLUSIONS

- A. We do not insure any obligations of any *insureds* under a disability benefit, unemployment compensation, workers' compensation, or similar law.
- B. We do not insure *bodily injury* to any of *your* employees arising out of and in the course of:
 - 1. Employment by *you*; or
 - 2. Performing duties related to the conduct of *your* business/operations.
- C. We do not insure *bodily injury* or *personal injury* arising out of the following:
 - 1. Coercion, defamation, demotion, discipline, discrimination, evaluation, harassment, humiliation, reassignment, or other employment-related acts, omissions, policies, or practices.
 - 2. Refusal to employ.
 - 3. Termination of employment,
- D. We do not insure *bodily injury* or *personal injury*:
 - 1. Sustained by the brother, child, parent, sister, or spouse of *your* employees arising out of any injury described in B and C above.
 - 2. With respect to any employee (including any executive employee) as an *insured* in this policy, in connection with *bodily injury* or *personal injury* to *you*, *your* members or partners (if *you* are a joint venture or partnership) or a fellow employee, caused by the employee while in the course of employment by *you*.
- E. We do not insure any obligation to share damages with, or repay, others who must pay damages because of any *bodily injury* described in B, C, and D.
- F. We do not insure *bodily injury* to a fellow employee of any person operating mobile equipment registered in *your* name under any motor vehicle law.

Exclusions B through E apply whether the claim or suit is brought by *your* employees or by any others or whether *you* are liable as an employer or in any other capacity.

However, Exclusion B does not apply to liability assumed under a contract covered under Supplemental Coverage 2.

6. ENDANGERMENT OR HARM EXCLUSION

We do not insure *bodily injury* or *property damage*, whether or not expected or intended by any *insured*, which is a consequence of an *insured's* willfully harmful act or knowing endangerment.

7. MOBILE EQUIPMENT EXCLUSION

We do not insure *bodily injury* or *property damage* arising out of any of the following:

- A. Mobile equipment not specifically covered under Supplemental Coverage 8; transportation of mobile equipment by an *automobile* borrowed, operated, or owned by, or rented to, any *insured* — even if such mobile equipment is otherwise covered by this policy.
- B. Mobile equipment while being used in a prearranged demolition, racing, or speed contest or stunting activity, including preparation or practice for such — even if such mobile equipment is otherwise covered by this policy.

Mobile equipment means those vehicles described as such in Supplemental Coverage 8.

Note: See also Exclusion 9. D.

8. POLLUTION / ENVIRONMENTAL DAMAGE EXCLUSION

- A. We do not insure *bodily injury* or *property damage* arising out of the actual, alleged, or threatened discharge, dispersal, emission, escape, flowing, leakage, migration, release, or seepage of *pollutants* or other similar forms of environmental damage, regardless of where or how such may take place.

Paragraph A of this Exclusion does not apply to *bodily injury* or *property damage* caused by:

The fumes, heat, smoke, or soot that are products of combustion arising out of a fire *at your premises*, other than such that are the products of burning *pollutants*.

However, if the fire is a controlled act, the following additional conditions apply:

All materials burned (and the burning process) must give rise solely to ordinary combustion particulate and products, such as those usual to a building (materials) fire; the fire must not involve any business, industrial, manufacturing, or processing activities.

- B. We do not insure in this policy any cost, expense, liability, or loss arising out of any of the following:
 - Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, treat, or in any way assess the effects of or respond to *pollutants*; or

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- Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to *pollutants*.

9. PREMISES / OTHER PROPERTY ADDITIONAL EXCLUSIONS

We do not insure property damage to any of the following premises or property:

- To personal property in the care, control, or custody of any *insured* or any property borrowed by *you*: this does not apply to liability assumed under a written sidetrack agreement.
- To premises *you* have abandoned, sold, or transferred to others, if the damage arises out of any part of such premises.
This does not apply to premises that are your work and have been neither occupied by you nor rented or held for rental by you to others.
- To property occupied or owned by, or rented to, *you*: but see Supplemental Coverage 6.
- To property — occupied or owned by, rented to, or in the charge of (1) *you*, or (2) others who are responsible for persons who are *insureds* here with respect to operation of *your* mobile equipment — which is damaged by mobile equipment registered by *you* under any motor vehicle law.
- With respect to an employee, to property borrowed, occupied, owned, or rented by: such employee, any of *your* other employees, or any of *your* members or partners (if *you* are a joint venture or partnership).

10. PROFESSIONAL ACTIVITIES EXCLUSION

We do not insure bodily injury or property damage arising out of the rendering or failure to render any sort of professional advice, product, or service whether such are those of any insured or insured's indemnitee or any employees of an insured or insured's indemnitee.

But see Supplemental Coverage 7. for certain coverage.

THE FOLLOWING ARE ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE F

11. PRODUCTS / COMPLETED OPERATIONS HAZARDS EXCLUSION

We do not insure medical expenses in connection with bodily injury included in the products / completed operations hazard.

12. SPECIFIED PERSONS EXCLUSIONS

We do not insure medical expense in connection with bodily injury to any of the following persons:

- Any *insured*.
- Any person to whom benefits are payable, or must be provided, under a disability benefit, workers' compensation, or similar law, for injury sustained by such person.
- Any person hired to do work for, or on behalf of, any *insured* or a tenant of any *insured*.
- Tenants or other persons on *your premises* if the injury occurs on that part of *your premises* such person normally occupies.

13. SPORTS ACTIVITIES EXCLUSION

We do not insure medical expenses in connection with bodily injury to any person taking part in athletic activities.

14. YOUR MEDICAL SERVICES / GENERAL MEDICAL EXCLUSIONS

- We do not insure medical expenses in connection with medical services that are provided by you, your employees, or others under contract to you to provide medical services, including first aid (Supplemental Coverage 3.) to others at the time of an accident.*
- We do not insure any medical expenses in connection with any bodily injury otherwise excluded in this policy.*

PART II D • SPECIAL LIABILITY CONDITIONS

1. DUTIES OF INSUREDS — WHAT TO DO IN CASE OF CLAIM, INJURY, OCCURRENCE, OR SUIT

You, other insureds, and other coverage beneficiaries must do all of the following things:

- Immediately notify *us* of all relevant circumstances relating to a claim or any incident which may result in a claim, with all necessary information. For example: who *you* are; the time, place, and circumstances of the injury or *occurrence*; the names and addresses of injured persons and witnesses.

- Immediately send *us* all bills, documents, notices, papers, or summonses related to any claim or suit brought against any *insured* or to any medical expense claims.

- Cooperate with *us* in matters relevant to the claim or suit. Assist *us* in: conducting suits, including by attending hearings and trials and giving evidence; enforcing the *insured's* rights of contribution or indemnity against others; investigating *occurrences*; making settlements; obtaining records (or other information) or the attendance of witnesses.

D. Refrain from voluntarily making payments, assuming obligations, or incurring defense, investigative, or any other expenses — unless with *our* specific written authorization to do so (otherwise such undertakings will be at the *insured's* own expense and *we* will not pay for them). This does not apply to first aid expense coverage.

E. With regard to Coverage F, coverage beneficiaries must, as *we* reasonably require: provide written proof of claim (under oath, if required); submit, at *our* expense, to physical examinations by physicians of *our* choice; authorize *us* to obtain medical records.

Failure to comply with these (or other conditions) can alter or void *our* obligations under this policy.

2. LIMITS OF LIABILITY

Our maximum total liability payable for the sum of all damages, injury, liability and loss covered by this policy is limited as follows — regardless of the number of *insureds*, or claims made or suits brought by one or more persons or organizations. *Our* obligation to make payments ceases when the applicable limit is used up in payment of judgment or settlements.

A. **General Coverage Limits** — The following limits apply for all damages or medical expenses in any one *occurrence*, accident, or injury, as indicated:

1. Occurrence Limits — Coverage E and F

Our maximum limit of liability payable under Coverages E and F in any one *occurrence* is the *occurrence* limit shown in the Declarations: but see sublimits applicable to Supplemental Coverage 6.

2. Accident Limit / Per Person Limit — Coverage F

Our maximum limit of liability payable under Coverage F for any one person in any one accident is the “per person” limit shown in the Declarations.

3. Personal Injury / Advertising Injury Limit

Our maximum limit of liability payable under *Personal Injury / Advertising Injury* Coverage for all such injuries sustained by any one person or organization is the limit shown in the Declarations.

B. Aggregate / Total Limit — General Coverages

The following limits apply for all damages or medical expenses for all occurrences, accidents, or injuries that may occur in the period(s) described in C.

1. Aggregate / Total Limit — General Coverages

Our maximum total limit of liability payable for:

- Coverage E,
- Coverage F, and
- *Personal Injury / Advertising Injury*,

is the general aggregate / total limit shown in the Declarations.

This general aggregate / total limit does not apply to *products / completed operations*, which is subject to a separate specific aggregate / total limit.

If a specific aggregate / total limit is not shown in the Declarations, then a general aggregate / total limit does not apply to the subject coverages.

2. Aggregate / Total Limit — Products / Completed Operations Hazard

Our aggregate / total maximum limit of liability payable under Coverage E for all damages included in the *products / completed operations hazard* is the limit shown in the Declarations for *products / completed operations*.

C. Application of Limits

1. The limits described above apply separately to each consecutive 12 month period, beginning with the policy term shown in the Declarations.
2. If the policy is originally issued for more than 12 consecutive months with a terminal period less than 12 months, the limits apply separately to: each consecutive 12 month period; the terminal period. For example; if 27 months: 12 months, 12 months; 3 months. However, if extended after issuance, the terminal period is included in the last 12 month period. For example, 12 months and 15 months.

D. Deductible

1. If a deductible amount is shown in the Declarations then such deductible applies on a “per claimant” basis to all damages for *property damage* sustained by any one person or organization in any one *occurrence*.
2. *Our* obligation to pay damages only applies to the amount of damages in excess of any deductible amount. *Our* maximum limit of liability payable in any one *occurrence* is reduced by the amount of such deductible. However, the deductible does not reduce any aggregate / total limit.
3. *We* may pay any part or all of the deductible amount to settle any claim or suit. *We* will notify the *first named insured* of such and the *first named insured* is obligated to promptly reimburse *us* for that part of the deductible amount *we* paid.

3. OTHER CONDITIONS

A. Except for the limits of liability and any duties / rights assigned to the *first named insured*, this insurance applies separately: to each *insured* against whom claim is made or suit is brought, to each *named insured* as if the only *named insured*.

B. Bankruptcy

Bankruptcy of the *insured* does not relieve *us* of *our* obligations under this policy.

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COMMON GLOSSARY — PARTS I AND II

Certain words and phrases used in this policy are defined for the purposes of this insurance contract. These are described below.

PARTS I and II

The following apply to both Parts I and II:

Pollutants

Pollutants are any gaseous, liquid, solid, or thermal contaminant or irritant, including acids, alkalis, chemicals, fumes, smoke, soot, vapors, and waste (including materials to be reclaimed, reconditioned, or recycled),

You/Your

You and *your* refer to the *insureds* named in the Declarations: *first named insured* is the *insured* named first in the Declarations. *You* also includes any business / organization that *you* newly acquire or form to the extent covered in this policy.

We/Us/Our

We, *us*, and *our* refer to the Insurance Company named in this policy.

PART I

The following apply to Part I:

Actual Cash Value

Consideration may be given by *us* in *our* determination of *actual cash value* to: age; condition; cost to repair, replace, or restore the property, subject to deduction for depreciation; deterioration; economic value; market value; obsolescence (both structural and functional), original cost; use; utility; or other circumstances that may reasonably affect value.

Automatic Sprinkler System

Automatic sprinkler system means —

- A. Any automatic fire protection or extinguishing system, including any of the following connected parts:
 - Ducts, fittings, pipes, or valves,
 - Pumps and private fire protection mains.
 - Sprinklers and other discharge nozzles.
 - Tanks, including their component parts and supports.
- B. When supplied by an automatic fire protection or extinguishing system:
 - Hydrants, outlets, or stand pipes.
 - Non-automatic fire protection or extinguishing systems,

Insured

Insured means the person or entity designated as *insured* in the Declarations or otherwise named as an *insured* in this policy.

Money / Securities

Money means — bank notes, bearer bonds, bullion, coins, currency, lottery tickets, money orders, registered checks, and travelers checks held for sale to the public.

Securities means — negotiable and non-negotiable contracts or instruments that represent obligations to pay money or pay other property and that are collectible at the time of loss: examples of such include — but are not limited to — accounts, bills, deeds, evidence of debt, notes; revenue and other stamps, tickets (not *money*), or tokens now in use.

Valuable Papers and Records

Valuable papers and records includes — abstracts, books of account, card index systems, drawings, manuscripts, microfilm; microfiche, as well as cell, disk, drum, film, tape, or other data processing, recording, or storage media.

PART II

The following apply to Part II:

Automobile

Automobile means any land motor vehicle or trailer (including semitrailers) designed for travel on public roads, including any equipment or machinery attached to such vehicle or trailer. *Automobile* does not include vehicles covered here as mobile equipment.

Bodily Injury

Bodily injury means bodily harm, sickness or disease sustained by any person including death at any time resulting from such, caused by a covered *occurrence*.

Insured

Insured means the following, as designated in the Declarations, to the extent set forth below:

- **Individual** — If *you* are an individual: *you* and *your* spouse with respect to conduct of the business / operations of which *you* are the sole proprietor.
- **Partnership or Joint Venture** — If *you* are a partnership or joint venture: the partnership or joint venture and any partners or members, and their spouses, with respect to the conduct of such partnership or joint venture.
- **Other Organization** — If *you* are an organization other than a partnership or joint venture: the organization and any executive officers or directors while acting within the scope of their duties as such; stockholders with respect to their liability as such.
- *Your* employees (other than executive officers) while acting within the scope of their duties as such.

If MCL 506 is listed in the Declarations, this extension to employees is deleted.

- Persons while driving mobile equipment registered in *your* name along a public highway with *your* permission: this includes others who are responsible for such persons — but only if no other insurance is available to such others and, then, only for such activity.
- Persons (other than *your* employees) or organizations acting as real estate manager for *you*.
- A business entity (not a partnership or joint venture) that *you* newly acquire or form, if owned with majority interest by *you*: but only up to 120 days after *you* first acquire or form such or the end of the policy term, whichever ends first. Such entity is not an *insured* here if there is other similar insurance available to it or for any accidents, *occurrences* or offenses prior to the time of such acquisition or formation.

If MCL 507 is listed in the Declarations, this extension to new entities is deleted.

This insurance does not apply to any partnership or joint venture — of which the *insured* is a partner or member — if not named in this policy, including those responsible for such.

Loading / Unloading

Loading or unloading means the handling or movement of property as follows:

- Beginning while being moved from the place where it is accepted for movement into or onto an aircraft, *automobile*, or watercraft:
- While in or on an aircraft, *automobile* or watercraft,
- While being moved from an aircraft, *automobile*, or watercraft to the place where it is finally delivered.

Loading or unloading does not include movement of property by any mechanical device which is not attached to the aircraft, *automobile*, or watercraft other than a hand truck.

Occurrence

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Products / Completed Operations Hazard

Products / Completed Operations Hazard includes all *bodily injury* and *property damage* occurring away from *your premises* arising out of *your products* or *your work*, other than that arising out of any of the following:

1. Products that are in *your* physical possession.
2. Work that has not been completed or abandoned. *Your work* is deemed completed at the earliest one of the following times:
 - When all the work called for in *your* contract is completed.

- When all the work called for in *your* contract at the job location is completed if *your* contract calls for work at more than one location.
- When that part of the work at a job location is put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that needs final correction, maintenance, repair, replacement, or service — but is otherwise complete — is deemed completed.

Property Damage

Property damage means the following, caused by a covered *occurrence*:

- Direct physical injury to tangible property, including loss of use of such property (the loss of use is deemed to occur at the time of such direct physical injury).
- Loss of use of tangible property that is not physically injured: all such loss of use is deemed to occur at the time of the *occurrence* causing the loss.

Your Premises

Your premises means: premises occupied or owned by, or rented to, *you*; and — whether or not such premises are designated in the Declarations or elsewhere in this policy — premises *you* have abandoned, sold, or transferred to others.

Your Products

Your products means the following:

- Goods or products disposed of, distributed, handled, sold, or manufactured by: *you*; others trading under *your* name; persons or organizations whose business or assets *you* have acquired.
- Containers (other than vehicles), equipment, materials, or parts furnished in connection with such goods or products.

Your products also includes the following: warranties or representations made at any time with respect to the durability, fitness, performance, quality or use of any of *your products*; providing or failing to provide instructions or warnings.

Your products does not include: real property; vending machines or other property either rented to others or placed for the use of others, but not sold.

Your Work

Your work means the following:

- Operations or work performed by *you* or on *your* behalf.
- Equipment, materials, or parts furnished in connection with such work or operations.

Your work also includes the following: warranties or representations made at any time with respect to the durability, fitness, performance, quality or use of any of *your work*; providing or failing to provide instructions or warnings.

COMMON EXCLUSIONS • PARTS I AND II

The following includes similar type Exclusions applicable to Parts I and II. These Common Exclusions apply in addition to those shown under the separate Coverage Parts.

We provide no insurance for any sort of damages, expenses, liability, or loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss or *occurrence* otherwise covered contributes to such concurrently or in any sequence.

PART I

The following apply to Part I:

1. EARTH MOVEMENT / EARTHQUAKE / VOLCANIC ACTIVITY

Earthquake; volcanic activity (including volcanic effusion, eruption or explosion) other than that specifically described as included in volcanic eruption (see Pg. 9); or other catastrophic earth movement. But if loss resulting from fire or explosion, or theft (to the extent otherwise insured under this policy) ensues, *we* insure such resulting loss.

2. GOVERNMENTAL / LEGAL / WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.
- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire — provided the fire originates from a cause of loss covered by this policy.

3. NUCLEAR / RADIOACTIVE LOSS

- Any nuclear event, occurrence, or operation, including nuclear explosion, nuclear reaction, nuclear radiation, or radioactive contamination.

These are not fire, explosion, smoke or any other covered cause of loss. However, if these result in fire *we* insure such resulting direct fire loss, but not any other direct physical loss which may ensue.

- The explosive, radioactive, toxic or other injurious properties of nuclear or radioactive materials — whether such materials are natural or manufactured.

PART II

The following apply to Part II:

1. EARTHQUAKE

Earthquake.

2. GOVERNMENTAL / LEGAL / WAR

- Any act or condition of war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such.
- Knowing violation of penal law or ordinance committed by, or with the consent of, any *insured*. Statutory fines or liability. Exemplary or punitive damages. Illegal trade.
- Confiscation, loss, or seizure under customs drug enforcement or quarantine legislation or regulations.

3. NUCLEAR ENERGY

We do not insure *bodily injury* or *property damage* as follows:

A. With respect to which any *insured* in this policy is also insured under any nuclear energy liability policy (or would have been an insured under such but for its termination upon exhaustion of its limits).

B. Resulting from the *hazardous properties* of *nuclear material*, with respect to which:

- Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amendments, or
- The *insured* is (or would be if this policy did not exist) entitled to indemnity from the United States of America or its agencies under any agreement entered into by the United States of America or its agencies.

C. Resulting from the *hazardous properties* of *nuclear material*, if:

- The *nuclear material* is at, or is discharged or dispersed from, any *nuclear facility* owned or operated by or on behalf of any *insured*, or
- The *nuclear material* is contained in *spent fuel* or *waste* at any time disposed of, handled, possessed, processed, stored, transported, or used by or on behalf of any *insured*.

- D. The furnishing by any *insured* of equipment, materials, parts, or services in connection with the construction, maintenance, operation, planning, or use of any *nuclear facility*: but if such facility is located within the United States of America, its possessions or territories, or Canada, this applies only to *property damage* to such facility and property located at such facility.

E. **Glossary**

The following special definitions apply to this Exclusion:

1. *Hazardous Properties* include explosive, radioactive, or toxic properties.
2. *Nuclear Facility* means any of the following:
 - Any *nuclear reactor*;
 - Any equipment or device designed or used for: separating the isotopes of uranium or plutonium; processing or utilizing *spent fuel*; handling, processing or packaging *waste*;
 - Any device or equipment used for alloying, fabricating, or processing 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 device or equipment is located consists of, or contains more than, 25 grams of plutonium or uranium-233, or any combination of such materials, or more than 250 grams of uranium-235.
 - Any basin, excavation, place, premises, or structure prepared for, or used for, the storage or disposal of *waste*; or
 - The site on which any of the foregoing property is located, all operations conducted on such site, and all premises used for such operations.
3. *Nuclear Material* means *source, special nuclear, or by-product material*.
4. *Nuclear Reactor* means any apparatus designed or used: to sustain nuclear fission in a self-supporting chain reaction; to contain a critical mass of fissionable material.
5. *Property Damage* also includes all forms of radioactive contamination of property.
6. *Source Material, Special Nuclear Material, and By-product Material* have the meanings given them in the Atomic Energy Act of 1954, or any amendments.
7. *Spent Fuel* means any fuel component or element, whether solid or liquid, which has been either used in, or exposed to radiation in, a nuclear reactor.
8. *Waste* means any material, resulting from the operation of a *nuclear facility* as defined in the first two items of *nuclear facility*, containing *by-product material* other than the tailings or wastes produced by the extraction or concentration of thorium or uranium from any ore processed primarily for its source material content.

COMMON CONDITIONS — PARTS I AND II

The following are Conditions that apply to both Parts I and II. These Common Conditions apply in addition to those shown under the separate Coverage Parts.

1. ACTION OR SUIT AGAINST US

PART I

The conditions for bringing an action or suit against *us* are described elsewhere in this policy in the state mandatory endorsement.

PART II

No action may be brought against *us* until all conditions in this policy are complied with, and until the amount of the *insured's* obligation (payable under this policy) has been determined by judgment in trial or by agreement made with *our* written consent.

No right exists under this policy for *you* or others to make *us* party to an action against any *insured*.

2. ASSIGNMENT OF YOUR INTEREST

No assignment of an interest under this policy is binding on *us* without *our* written consent. However, if *you* are an individual and die, this insurance applies to the following who become *insureds* here in the described capacity:

- *Your* legal representative, while acting within the scope of the representative's duties.
- Those with custody of *your* property prior to appointment of a legal representative.

3. CANCELLATION / TERMINATION

A. General

You may cancel this policy by: surrendering the policy to *us* or *our* agent or by mailing *us* or *our* agent notice stating a subsequent cancellation date for the policy. Such request made by the *first named insured* applies for all *insureds* / interests named in this policy. All cancellations are pro rata, but a minimum earned premium may apply. Any return premium is payable to the *first named insured* — within 30 days after the cancellation date.

If *you* secure insurance with another insurer to replace *our* policy and do not pay the premium, or installment payment, for this policy when due: this policy terminates at the time such other insurance becomes effective. If *you* sell the described business or premises to others, coverage under this policy terminates at the time title is transferred to others with respect to such business or premises — unless *you* retain an insurable interest.

B. Our Right to Cancel or Terminate

Our rights to cancel or terminate this insurance are described elsewhere in this policy in the state mandatory endorsement.

4. CONCEALMENT / MISREPRESENTATION / FRAUD

This policy is void if, either before or after a loss or *occurrence* or claim, any *insured* misrepresents or knowingly conceals any material fact or circumstance, commits fraud, or swears falsely relating to any aspect of this insurance (including the information *we* relied upon in issuing this contract). However, if *we* specifically choose not to declare this policy void, *we* do not provide insurance under this policy to, or for the benefit of, any such *insureds*.

5. CONFORMITY WITH STATUTE

It is agreed by *us* that the provisions of this policy are amended to conform to all applicable statutory requirements.

6. COVERAGE TERRITORY

PART I

We cover damage or loss only within the fifty states of the United States of America (including its possessions and territories), Puerto Rico and Canada.

PART II

Coverage here applies only within the following territories:

- A. The United States of America (including its possessions or territories), Puerto Rico and Canada.
- B. International waters or air space, if the *bodily injury* or *property damage* occurs while in the course of transit to or from the territory described in A.
- C. Anywhere in the world with respect to damages because of *bodily injury* or *property damage* arising out of either:
 - Activities of a person whose home is in the territory described in A, but is away for a brief time in the course of *your* business / operations covered by this policy, or
 - Goods or products made or sold by *you* in the territory described in A.

However, all coverage under this policy applies only to suits which are brought or agreements made with *our* written consent within the territory described in A.

7. EXAMINATION / CHANGES

We may, at *our* option, inspect *your* property and operations at any time, make surveys, and make recommendations. However, *our* reports or recommendations or those of any inspection bureau or rating bureau do not constitute a determination or representation that *your* premises or operations are in compliance with any law or regulation, healthful, or safe.

We may inspect and audit *your* books and records at any time (including up to 3 years after termination of this insurance contract) to the extent such pertains to the subject of this insurance or payment of premium. The *first named insured* is required to keep all records necessary for such and send complete accurate copies to *us* at *our* request.

We may make premium adjustments: because of inspection and audit; because of the use of premises not described in this policy or any other rateable additions or changes; because of newly acquired or formed business entities.

But, as to Part II, *we* are not obligated to continue insurance on additions or changes, new entities, or premises described above. Nor, in any event, are such covered on renewal (of the expiring policy term) unless *you* report such to *us* and such are described in the renewal Declarations: this condition does not apply to additions or changes (other than new entities) effected within 60 days prior to the renewal date of the expiring policy term.

8. INSURANCE UNDER MORE THAN ONE COVERAGE

In the event that more than one coverage under this policy covers the same loss *we* are liable only for the amount of *our* obligation, up to *our* limit of liability, not exceeding the amount of loss.

9. LIBERALIZATION

This policy is automatically extended to include provisions approved during the policy period or within 45 days prior to its inception, which would broaden coverage under this policy, if such are not subject to additional premium or concurrent with coverage restrictions.

10. OTHER INSURANCE

PART I

A. This insurance is excess insurance over other insurance *you* may have applicable to the loss (whether *you* can collect on it or not) that is not subject to the same provisions contained in this policy.

B. When this insurance is excess over other insurance: *We* pay only our share of the remaining loss that exceeds the sum of both:

- The total amount payable by all such insurance, as described, in the absence of this insurance, plus
- The total of any deductibles or self-insured amounts under all such insurance.

Furthermore, any remaining loss is then shared by *us* with any other insurance remaining on the loss in accordance with the provisions described in Paragraph C below.

C. With regard to other insurance subject to the same provisions contained in this policy or where *we* otherwise are a primary insurer (among others), *we* pay in one of the following ways:

- If all such other insurers provide for contributions by equal shares: *we* and all other insurers contribute equal amounts until the amount of obligation is paid or the insurer's applicable limit of liability is used up, whichever comes first.
- If any other insurer does not provide for equal shares: *we* pay no greater proportion of the total amount of loss than *our* obligation on the applicable limit of liability of this policy bears to the total amount of insurance of all insurers covering the loss.

However, if *you* have any other insurance applicable to property covered by this policy — but not covering a cause of loss covered under this policy, then: any loss payable under this policy in connection with such cause of loss is apportioned and payable by *us* in the same way as if such other insurance covered the loss.

PART II

A. This insurance is excess insurance over insurance provided on any basis:

1. That is property insurance (including fire, allied lines, inland marine) for *your work* or a premises loaned or rented to, or occupied by *you*.
2. That is liability insurance (including an umbrella / excess liability policy) for aircraft, automobiles, watercraft, or pollution, to the extent otherwise covered in this policy.
3. That is primary liability insurance available to *you* when *you* have been added or named as an additional insured on such other insurance for damages arising out of the business / operations or premises described in that other policy.

Otherwise, this insurance is primary insurance.

B. When this insurance is excess over other insurance:

1. *We* have no obligation to defend or provide a defense — but, *we* may defend:
 - If no other insurer defends: *we* are then entitled to the *insured's* rights against all other insurers; or
 - If, at *our* option, *we* choose to join the defense provided by other insurers or provide a separate defense.

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2. We pay only *our* share of the remaining loss that exceeds the sum of both:

- The total amount payable by all such insurance, as described, in the absence of this insurance, plus
- The total of any deductibles or self-insured amounts under all such insurance.

Furthermore, any remaining loss is then shared by *us* with any other insurance remaining on the loss in accordance with the provisions described in Paragraph C, below (other than an umbrella / excess liability policy which applies in excess of the limits of this policy).

- C. With regard to other insurance subject to the same provisions contained in this policy or where *we* are a primary insurer (among others) *we* pay in one of the following ways:

1. If all such other insurers provide for contributions by equal shares: *we* and all other insurers contribute equal amounts until the total amount of obligation is paid (or each insurer exhausts its applicable limit of liability).
2. If any other insurer does not provide for equal shares: *we* pay no greater proportion of the total amount of the *insured's* obligation than the applicable limit of liability of this policy bears to the total amount of insurance of all insurers covering the loss.

11. PREMIUMS

The *first named insured* is responsible for the payment of all premiums, and will be the sole payee of any premiums *we* return. Premium adjustments, including audit premium adjustments, are due and payable on *our* notice of such to the *first named insured*.

12. RECOVERY FROM OTHERS

If any *insured* (or others) to whom, or for whom, *we* make payment has any rights of recovery on the loss from another, those rights are transferred to *us* to the extent of *our* payment under this policy. *Insureds* (or such others) must do whatever *we* require to secure these rights. *You* may waive such rights in writing prior to a covered loss. *You* may also waive such rights after a loss, but only if the waiver is given to either:

- Another *insured* under this policy; or
- A business either controlled or owned by *you* or that controls or runs *your* business.

But *we* have no obligation to pay under this policy on the loss if these rights are otherwise waived.

13. TIME OF INCEPTION

PART I

The time of inception and expiration is 12:01 A.M. Standard Time at the described premises. Unless otherwise specifically provided for in this policy, this insurance applies only to *covered loss* that takes place during the policy term.

PART II

The time of inception and expiration is 12:01 A.M. Standard Time at the mailing address shown in the Declarations.

14. WAIVER OR CHANGE OF PROVISIONS

Only the *first named insured* may request changes in this policy. The terms of this policy may not be waived or changed except in writing, signed by *our* agent and attached to this policy. The exercise of *our* rights under this policy is not an act of waiver. This policy contains all related agreements between *you* and *us*.

NON-CERTIFIED ACTS OF TERRORISM EXCLUSIONS • PARTS I AND II

This endorsement extends the policy to exclude certain loss arising out of terrorism.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

A. The following provisions (Section A) apply and will continue in effect after December 31, 2005 provided the Terrorism Risk Insurance Program as established by the Federal Terrorism Risk Insurance Act of 2002 is renewed, extended or continued by the federal government.

1. COVERAGE MODIFICATION — PROPERTY

- A. If Part I is included in this policy, the following exclusion is added to the PART I COMMON / GENERAL EXCLUSIONS:

NON-CERTIFIED ACTS OF TERRORISM EXCLUSION

1. *We do not provide insurance for any loss or damage directly or indirectly arising out of or resulting from a non-certified act of terrorism, including any action taken in hindering or defending against an actual or expected non-certified act of terrorism.*

Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

If loss resulting from fire (to the extent insured by this policy) ensues, *we* insure such resulting loss. However, this exception for fire applies only to direct physical loss by fire to covered property. Therefore, this exception does not apply to any sort of consequential loss, loss of use, or loss of utility, including losses under Business Income and /or Extra Expense coverages.

2. Regardless of the amount of damage and losses, this *Non-certified Acts of Terrorism* Exclusion applies to any *non-certified act of terrorism*:

- a. That involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
- b. That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- c. In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *non-certified act of terrorism* was to release such materials.

In incidents of *non-certified acts of terrorism* other than those described in paragraphs 2.a, 2.b, and 2.c above, the *Non-certified Acts of Terrorism* Exclusion will not apply unless the *insured damage* to all types of property (in the United States, its territories and possessions, the District of Columbia, Puerto Rico and Canada), sustained by all persons and entities affected by the *non-certified act of terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds a total of \$25,000,000. Multiple *non-certified acts of terrorism*

which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one *non-certified act of terrorism*.

The preceding paragraph describes the threshold used to measure the magnitude of a *non-certified act of terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether the *Non-certified Acts of Terrorism* Exclusion will apply to that incident. When the *Non-certified Acts of Terrorism* Exclusion applies to a *non-certified act of terrorism*, there is no coverage under this insurance.

In the event of any *non-certified act of terrorism* that is not subject to the *Non-certified Acts of Terrorism* Exclusion, coverage does not apply to any element of loss or damage that is otherwise excluded under this insurance.

3. However, with respect to any activity that also comes within the terms of the Governmental/Legal/War Exclusion, that exclusion supersedes this *Non-certified Acts of Terrorism* Exclusion.

In the event of a *non-certified act of terrorism* that involves nuclear reaction or radiation, or radioactive contamination, this *Non-certified Acts of Terrorism* Exclusion supersedes the Nuclear / Radioactive Loss Exclusion.

- B. If Part I is included in this policy, the PART I – GOVERNMENTAL / LEGAL / WAR COMMON / GENERAL EXCLUSION is replaced by the following:

GOVERNMENTAL/LEGAL/WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this exclusion supersedes the Nuclear/Radioactive Loss Exclusion.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.
- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire – provided the fire originates from a cause of loss covered by this policy.



2. COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to the PART II — COMMON / GENERAL EXCLUSIONS:

NON-CERTIFIED ACTS OF TERRORISM EXCLUSION

We do not insure bodily injury, property damage, personal injury or advertising injury arising directly or indirectly out of a non-certified act of terrorism, including any action taken in hindering or defending against an actual or expected non-certified act of terrorism.

However this exclusion only applies if one or more of the following are attributable to a *non-certified act of terrorism*:

1. The total of *insured damage* to all types of property sustained by all persons and entities affected by the *non-certified act of terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds \$25,000,000; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The *non-certified act of terrorism* involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The *non-certified act of terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *non-certified act of terrorism* was to release such materials.

Paragraphs 1 and 2 above describe the thresholds used to measure the magnitude of a *non-certified act of terrorism* and the circumstances in which the threshold will apply for the purpose of determining whether the *Non-certified Acts of Terrorism* Exclusion will apply to that incident. When the *Non-certified Acts of Terrorism* Exclusion applies to a *non-certified act of terrorism*, there is no coverage under this insurance.

In the event of any *non-certified act of terrorism* that is not subject to the *Non-certified Acts of Terrorism* Exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this insurance.

Multiple *non-certified acts of terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one *non-certified act of terrorism*.

3. 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 policy by the Governmental / Legal / War Exclusion, the Nuclear / Radioactive Loss Exclusion or any other exclusion.

4. ADDITIONAL DEFINITIONS

The following definitions apply:

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 that is:

1. A violent act or an act that is dangerous to human life, property or infrastructure and that resulted in damage with an aggregate loss exceeding \$5,000,000:
 - a. Within the United States; or
 - b. At the premises of a United States Mission; or
 - c. To an air carrier (as defined in section 40102 of title 49, United States Code) or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs;
2. 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.

Insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Non-certified act of terrorism means a violent act or an act that is dangerous to human life, property or infrastructure and that is:

1. Committed by an individual or individuals and appears to be a part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion; and
2. Not deemed to be a *certified act of terrorism* under the terms of the Federal Terrorism Risk Insurance Act of 2002 or any subsequent action of Congress pursuant to the Act.

B. The following provisions (Section B) will become applicable and replace Section A commencing on the date when one or more of the following first occurs:

- The Terrorism Risk Insurance Program established by the Federal Terrorism Risk Insurance Act of 2002, has terminated with respect to the type of insurance provided under this policy; or
- A renewal, extension or continuation of the Program has become effective without a requirement to make terrorism coverage available to *you* and with revisions that:
 - Increase *our* statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all *certified terrorism losses we* must pay in a calendar year, before the federal government shares in subsequent payment of *certified terrorism losses*); or
 - Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
 - Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

1. COVERAGE MODIFICATION — PROPERTY

- A.** If Part I is included in this policy, the following exclusion is added to the PART I COMMON / GENERAL EXCLUSIONS:

***TERRO* RISM EXCLUSION**

- 1.** *We* do not provide insurance for any loss or damage directly or indirectly arising out of or resulting from *terrorism*, including any action taken in hindering or defending against an actual or expected incident of *terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

If loss resulting from fire (to the extent insured by this policy) ensues, *we* insure such resulting loss. However, this exception for fire applies only to direct physical loss by fire to covered property. Therefore, this exception does not apply to any sort of consequential loss, loss of use, or loss of utility, including losses under Business Income and / or Extra Expense coverages.

- 2.** Regardless of the amount of damage and losses, this *Terrorism* Exclusion applies to any incident of *terrorism*:
- a.** That is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involve or produces a nuclear reaction or radiation or radioactive contamination; or
 - b.** In which radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
 - c.** That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- d.** In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials.

In incidents of *terrorism* other than those described in Paragraphs 2.a, 2.b, 2.c, and 2.d above, the *Terrorism* Exclusion will not apply unless the *insured damage* to all types of property (in the United States, its territories and possessions, the District of Columbia, Puerto Rico and Canada), sustained by all persons and entities affected by the *terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds a total of \$25,000,000. Multiple incidents of *terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident of *terrorism*.

The preceding paragraph describes the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether the *Terrorism* Exclusion will apply to that incident. When the *Terrorism* Exclusion applies to an incident of *terrorism*, there is no coverage under this insurance.

In the event of any incident of *terrorism* that is not subject to the *Terrorism* Exclusion, coverage does not apply to any element of loss or damage that is otherwise excluded under this insurance.

- 3.** However, with respect to any activity that also comes within the terms of the Governmental/Legal/War Exclusion, that exclusion supersedes this *Terrorism* Exclusion.

In the event of an incident of *terrorism* that involves nuclear reaction or radiation, or radioactive contamination, this *Terrorism* Exclusion supersedes the Nuclear / Radioactive Loss Exclusion.

- B.** If Part I is included in this policy, the PART I – GOVERNMENTAL / LEGAL / WAR COMMON / GENERAL EXCLUSION is replaced by the following:

GOVERNMENTAL/LEGAL/WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this exclusion supersedes the Nuclear/Radioactive Loss Exclusion.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.

- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire – provided the fire originates from a cause of loss covered by this policy.

2. COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to the PART II – COMMON/ GENERAL EXCLUSIONS:

TERRORISM EXCLUSION

We do not insure bodily injury, property damage, personal injury or advertising injury arising directly or indirectly out of terrorism, including any action taken in hindering or defending against an actual or expected incident of terrorism.

However this exclusion only applies if one or more of the following are attributable to an incident of *terrorism*:

- A. The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction or radiation or radioactive contamination; or
- B. Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- C. The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- D. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- E. The total of *insured damage* to all types of property sustained by all persons and entities affected by the *terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds \$25,000,000; or
- F. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 1. Physical injury that involves a substantial risk of death; or
 2. Protracted and obvious physical disfigurement; or
 3. Protracted loss of or impairment of the function of a bodily member or organ.

Paragraphs E and F above describe the thresholds used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply for the purpose of determining whether the *Terrorism Exclusion* will apply to that incident. When the *Terrorism Exclusion* applies to an incident of *terrorism*, there is no coverage under this insurance.

In the event of any incident of *terrorism* that is not subject to the *Terrorism Exclusion*, coverage does not apply to any loss or damage that is otherwise excluded under this insurance.

Multiple incidents of *terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident of *terrorism*.

3. ADDITIONAL DEFINITIONS

The following definitions apply under Section B of this endorsement:

Insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Terrorism means activities against persons, organizations or property of any nature:

- A. That involve the following or preparation for the following:
 1. Use or threat of force or violence;
 2. Commission or threat of a dangerous act; or
 3. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- B. When one or both of the following applies:
 1. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 2. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**NOTICE TO POLICYHOLDERS
REVISED TERRORISM ENDORSEMENT**

If your renewal policy lists any of the following endorsements on the renewal Declarations,

MCM 411
MCM 412
MCM 413
MCM 416
MCM 417
MCM 418
MCM 419
MCM 420

the endorsement includes, as Section B, a terrorism exclusion that will become effective on January 1, 2006 if the federal Terrorism Risk Insurance Act of 2002 (TRIA) is not extended by that date. This exclusion will replace the TRIA provisions, designated as Section A, in this endorsement.

No coverage is provided by this notice, nor can it be construed to replace any provision of your policy. You should read your policy and any related endorsements 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.

Contact your agent if you have any questions.

FUNGI / MOLD EXCLUSIONS — LIABILITY • PART II

This endorsement extends the Part II exclusions to any occurrence or injury arising out of fungi or mold as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSION — FUNGI / MOLD

Part II C is extended to include the following:

- A. *We do not cover bodily injury, property damage, advertising injury, personal injury, or medical payments resulting from or caused by the actual, alleged, or threatened absorption of, contact with, existence of, exposure to, inhalation of, ingestion of, or presence of any fungi.*
- B. *We do not insure any cost, expense, liability or loss arising out of any of the following:*
 - 1. Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to *fungi*.
 - 2. Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to *fungi*.

However, these exclusions do not apply to *bodily injury* resulting from the ingestion of foods, goods or products intended for human consumption.

ADDITIONAL DEFINITIONS

The following special definitions apply:

Fungi means any type or form of fungus, mold, mildew, spores, algae, smut, protists, rusts or *rot and decay organisms*, and any similar or related organisms and any mycotoxin, substance, compounds, chemicals, mist or vapor produced by any *fungi* in any form, or any by-products or waste produced by *fungi*, but does not include any *fungi* intended to be edible.

Rot and decay organisms means any living organism that causes decomposition of physical property.



EXTERIOR INSULATION AND FINISH SYSTEM EXCLUSION • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of Exterior Insulation and Finish Systems as described.

**The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.
Except as provided below, all other provisions in this policy are unchanged.**

ADDITIONAL EXCLUSIONS — EXTERIOR INSULATION AND FINISH SYSTEM**A. Part II C is extended to include the following:**

We do not insure bodily injury, property damage, personal injury or advertising injury resulting from or caused by:

1. the construction, correction, design, fabrication, installation, maintenance, manufacture, preparation, remodeling, replacement, repair or service of an exterior insulation finish system (EIFS), synthetic stucco, or any similar product or any part; or
2. the application or use of accessories, caulking, coatings, conditioners, paints, primers or sealants in connection with such a product.

B. Supplemental Coverage 2 in Part II B is extended to include the following:

We do not insure bodily injury or property damage for which the insured is liable to pay damages because of the assumption of liability for injury or damage resulting from or caused by:

1. the construction, correction, design, fabrication, installation, maintenance, manufacture, preparation, remodeling, replacement, repair or service of an exterior insulation finish system (EIFS), synthetic stucco, or any similar product or any part; or
2. the application or use of accessories, caulking, coatings, conditioners, paints, primers or sealants in connection with such a product.



KNOWLEDGE / NOTICE OF AN INJURY OR OCCURRENCE • PART II

This endorsement modifies the notice requirement in the duties of insureds condition.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL CONDITION

Paragraph A of the SPECIAL LIABILITY CONDITIONS — DUTIES OF *INSUREDS* is amended by adding the following:

Your agent's or employee's knowledge of an injury or occurrence does not in itself constitute knowledge by you, unless you receive notice of such from your agent or employee. Failure of any of your agents or employees to notify us of any injury or occurrence that such agent or employee has knowledge of does not invalidate this insurance for you.



AGGREGATE / TOTAL LIMIT — PER PROJECT • PART II

This endorsement amends the Aggregate / Total Limits condition in your policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

Part II D — Special Liability Conditions, item 2.B.1 — Aggregate / Total Limit — General Coverages is amended as described below:

The limits apply to each project, away from *your premises*, where *you* perform *your work*.



ADDITIONAL INSURED • PART II

This endorsement extends the definition of insureds to include the designated person or organization. The required information may be shown below or elsewhere in this policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

Policy #

SCHEDULE

DESIGNATED PERSON OR ORGANIZATION:

PERSONS INSURED EXTENSION

The definition of *insured* in the Glossary is amended to include the following as an additional *insured* under this policy.

Insured includes the designated person or organization but only with respect to liability for *bodily injury, property damage, advertising injury, or personal injury* caused, in whole or in part, by *your* covered acts or omissions or the covered acts or omissions of those acting on *your* behalf, in connection with *your* business / operations or *your* premises.

This insurance is excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise. This includes any liability policy maintained by the additional *insured* where the additional *insured* is a named *insured*. This insurance is excess to any self-insured retention or liability deductible.



NOTICE TO POLICYHOLDERS

Your policy now contains an exclusion that applies to all losses and claims resulting from silica in any form.

No coverage is provided by this notice, nor can it be construed to replace any provision of your policy. You should read your policy and any related endorsements (including this endorsement MCN 184) 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.

Contact your agent if you have any questions.

MCN 184 05 04

SILICA EXCLUSION — LIABILITY • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of silica as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSION — SILICA

Part II C is extended to include the following:

- A. *We do not cover bodily injury, property damage, advertising injury, personal injury, or medical payments resulting from or caused by the actual, alleged, or threatened absorption of, contact with, existence of, exposure to, inhalation of, ingestion of, or presence of silica in any form, including silica particles or dust, or any products or substances containing silica.*
- B. *We do not insure any cost, expense, liability or loss arising out of any of the following:*
 - 1. Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to silica in any form, including silica particles or dust, or any products or substances containing silica.
 - 2. Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to silica in any form, including silica particles or dust, or any products or substances containing silica.



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Company Use Only
Date Issued: 06-19-2006
Rate: nh
Underwriter: SJ
Company Copy

SPECIAL CONTRACTORS POLICY ENDORSEMENT
MERCER INSURANCE COMPANY
100 Mercer Drive, Lock Haven, PA 17745

MCM851 (07-98)

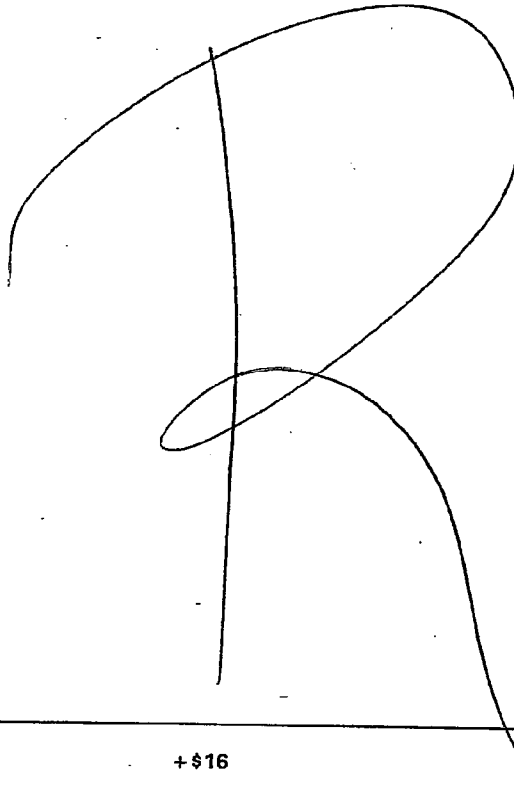
Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Number of This Change Endorsement: 2
Amended Date: 02-24-2005
Policy Number: SCP0001630
Policy Effective Date: 02-24-2005
Policy Expiration Date: 02-24-2006

POLICY CHANGES - DESCRIPTION

DUE TO A RECENT AUDIT, CLASS CODE FOR 2981 PAYROLL IS INCREASED FROM
\$94,043 TO \$94,540



Additional (+) / Return (-) Premium: +\$16
Surcharge:
Revised Annual Premium: \$4,289
Producer/Agency-Code No: 4165
Producer/Agency-Name: MERRITT I. EDNER AGENCY (814)371-7250

By: _____
(Authorized Representative)

JUN 20 2006

Company Use Only
Date Issued: 05-18-2005
Rater: nh
Underwriter: SJ
Company Copy

SPECIAL CONTRACTORS POLICY ENDORSEMENT
MERCER INSURANCE COMPANY
100 Mercer Drive, Lock Haven, PA 17745

MCM851 (07-98)

Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Number of This Change Endorsement: **1**
Amended Date: **02-24-2005**
Policy Number: **SCP0001630**
Policy Effective Date: **02-24-2005**
Policy Expiration Date: **02-24-2006**

POLICY CHANGES - DESCRIPTION

DUE TO A RECENT AUDIT, CLASS CODE FOR 2551 PAYROLL IS INCREASED FROM
\$60,000 TO \$94,043

Additional (+) / Return (-) Premium: **+\$1,115**
Surcharge:
Revised Annual Premium: **\$4,273**
Producer/Agency-Code No: **4165**
Producer/Agency-Name: **MERRITT I. EDNER AGENCY. - (814)371-7250**

By: _____
(Authorized Representative)

31 MAY 18 2005

BLANKET ADDITIONAL *INSURED* – CONTRACTORS

This endorsement extends the definition of *insured* to include any person or organization you have agreed to name as an additional *insured* in a written contract.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

The definition of *insured* in the Glossary is amended to include the following as *insureds* here:

Insured includes any person or organization whom *you* have agreed in a written contract, executed prior to a loss, to name as additional *insured*, but only with respect to liability arising out of *your work* for that additional *insured*.

With respect to the coverage provided by this endorsement, the following additional condition applies:

1. Any coverage provided by this amendment is excess over any valid and collectible insurance unless *you* have agreed in a written contract to have coverage apply on a primary or contributory basis.

With respect to the coverage provided by this endorsement, the following exclusions apply:

1. This insurance does not apply to any person or organization for whom *you* have purchased Owners and Contractors Protective Liability coverage whether from *us* or from any other company.
2. This insurance does not apply to *bodily injury, property damage or personal injury/advertising injury* arising out of the rendering or failure to render any professional services by *you* or for *you*, including:
 - a. The preparing, approving or failure to prepare or approve maps, drawings Opinions, reports, surveys, change orders, designs or specifications; and
 - b. Supervisory, inspection or engineering services.

BLANKET ADDITIONAL *INSURED* – CONTRACTORS

This endorsement extends the definition of *insured* to include any person or organization you have agreed to name as an additional *insured* in a written contract.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

The definition of *insured* in the Glossary is amended to include the following as *insureds* here:

Insured includes any person or organization whom *you* have agreed in a written contract, executed prior to a loss, to name as additional *insured*, but only with respect to liability arising out of *your work* for that additional *insured*.

With respect to the coverage provided by this endorsement, the following additional condition applies:

1. Any coverage provided by this amendment is excess over any valid and collectible insurance unless *you* have agreed in a written contract to have coverage apply on a primary or contributory basis.

With respect to the coverage provided by this endorsement, the following exclusions apply:

1. This insurance does not apply to any person or organization for whom *you* have purchased Owners and Contractors Protective Liability coverage whether from *us* or from any other company.
2. This insurance does not apply to *bodily injury, property damage or personal injury/advertising injury* arising out of the rendering or failure to render any professional services by *you* or for *you*, including:
 - a. The preparing, approving or failure to prepare or approve maps, drawings Opinions, reports, surveys, change orders, designs or specifications; and
 - b. Supervisory, inspection or engineering services.

VERIFICATION

I, STEPHEN A. ACQUINO, on behalf of The Mercer Insurance Company, hereby verify the statements set forth in the foregoing 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.

THE MERCER INSURANCE COMPANY

Date: 10 October 2007

By: Stephen A. Aquino

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103325
NO: 07-1701-CD
SERVICE # 1 OF 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: THE MERCER INSURANCE COMPANY

vs.

DEFENDANT: MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY and CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC.

SHERIFF RETURN

NOW, October 31, 2007 AT 10:26 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY DEFENDANT AT 104A, 90 BEAVER DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BEN BLAKLEY, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

FILED
FEB 08 2008
07:30/2008
William A. Smith
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103325
NO: 07-1701-CD
SERVICE # 2 OF 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: THE MERCER INSURANCE COMPANY

VS.

DEFENDANT: MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY and CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC.

SHERIFF RETURN

NOW, October 23, 2007 AT 10:00 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC. DEFENDANT AT 615 DIVISION ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO CLARENCE CATALDO, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103325
NO: 07-1701-CD
SERVICES 2
COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: THE MERCER INSURANCE COMPANY

VS.

DEFENDANT: MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY and CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC.

SHERIFF RETURN

RETURN COSTS

Description	Paid By	CHECK #	AMOUNT
SURCHARGE	DIBELLA	19910	20.00
SHERIFF HAWKINS	DIBELLA	19910	80.00

Sworn to Before Me This

_____ Day of _____ 2008

So Answers,



Chester A. Hawkins
Sheriff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

**PRAECIPE FOR DEFAULT
JUDGMENT AGAINST MARK T.
SULLIVAN t/d/b/a MARK SULLIVAN
COMPANY**

Defendants.

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

FILED *Atty pd-20.00*
m11:58:01
FEB 28 2008 *Notice to Def.*

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

PRAECIPE FOR DEFAULT JUDGMENT

Please enter a judgment against the defendant, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY, for failure to reply to the Complaint for Declaratory Judgment which was filed on October 19, 2007. Service of the Complaint for Declaratory on Mark T. Sullivan t/d/b/a Sullivan Company was made by the Sheriff of Clearfield County on October 31, 2007. Plaintiff certifies that a ten (10) day notice was forwarded to the defendant by regular mail on February 12, 2008. A true and correct copy of the ten (10) day notice is attached hereto and identified as Exhibit "A". Therefore, please enter judgment in favor of THE MERCER INSURANCE COMPANY declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY, consistent with the relief sought in said complaint.

Respectfully submitted,

DIBELLA, GEER, McALLISTER & BEST, P.C.

By: _____

Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,

No.

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

To: Mark Sullivan t/d/b/a Mark Sullivan Company
P.O. Box 1112
DuBois, PA 15801

Mark Sullivan t/d/b/a Mark Sullivan Company
104A, 90 Beaver Drive
DuBois, PA 15801

Date of Notice: February 12, 2008

IMPORTANT NOTICE

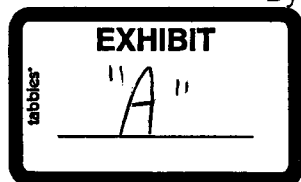
YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

DIBELLA, GEER, McALLISTER & BEST, P.C.

By: 

Matthew C. Lenahan Esquire
Attorney for Plaintiff



COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: ☐ Plaintiff ☒ Defendant ☐ Garnishee ☐ Additional Defendant
Mark T. Sullivan t/d/b/a Mark Sullivan Company

You are hereby notified that the following Order, Decree, or Judgment has been entered
against you on February 28, 2008.

☐ Decree Nisi in Equity

☐ Final Decree in Equity

☒ Judgment of ☐ Confession

☐ Verdict

☐ Court Order

☒ Default

☐ Non-Suit

☐ Non-Pros

☐ Arbitration Award

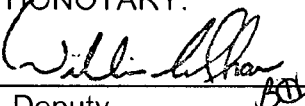
☒ Judgment declaring that THE MERCER INSURANCE COMPANY does not owe a
duty to defend and indemnify its insured, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN
COMPANY, consistent with the relief sought in said complaint.

☐ District Justice Transcript of Judgment in the amount of \$_____, plus costs.

() If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY:

By


Deputy

If you have any questions concerning the above, please contact:

MATTHEW C. LENAHA, ESQUIRE
DiBella, Geer, McAllister & Best, P.C.
312 Blvd. of the Allies, Third Floor
Pittsburgh, PA 15222
(412) 261-2900

FILED

MAY 06 2008

m/ 10:40/10

William A. Shaw

Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

NO COST COPIES

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

**MOTION FOR ENTRY OF ORDER OF
COURT PURSUANT TO DEFAULT
JUDGMENT**

Defendants.

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

MOTION FOR ENTRY OF ORDER OF COURT
PURSUANT TO DEFAULT JUDGMENT

AND NOW, comes the Plaintiff, THE MERCER INSURANCE COMPANY, by and through its counsel at the law firm of DiBella, Geer, McAllister & Best, P.C., and hereby files the instant Motion for Entry of Order of Court Pursuant to Default Judgment, and in support thereof avers the following:

1. Plaintiff, The Mercer Insurance Company (hereinafter referred to as "Mercer Insurance") filed a Complaint for Declaratory Judgment Pursuant to 42 Pa. C.S.A. §7531 et seq., on or around October 19, 2007, in the Court of Common Pleas of Clearfield County at the above-captioned docket number. (A true and correct copy of the Complaint for Declaratory Judgment is attached hereto as Exhibit "A.")

2. This Complaint for Declaratory Judgment was filed against the Defendants, Mark T. Sullivan t/d/b/a Mark Sullivan Company (hereinafter referred to as "Sullivan"), and Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc. (hereinafter referred to as "Cataldo"). The Complaint for Declaratory Judgment arises out of a complaint in civil action which was filed by Defendant Cataldo against Defendant Sullivan in the Court of Common Pleas of Clearfield County, at No. 2006-664 (hereinafter referred to as "underlying litigation").

3. Defendant Cataldo's complaint in the underlying litigation is based upon a contract entered into between Cataldo and Sullivan on or around August 6, 2004, in which Sullivan agreed to construct a new building on Cataldo's business premises, located at 615 Division Street, in exchange for payments equaling almost

\$600,000. According to the complaint in the underlying litigation, Sullivan was responsible for all engineering work necessary to the project.

4. The complaint in the underlying litigation sets forth two causes of action: Breach of Contract and Fraudulent Misrepresentation. There is no count in the complaint for negligence and, in fact, the complaint does not allege negligence or even include the words "negligent" or "negligence".

5. At all times relevant to the underlying litigation, Mercer Insurance and Sullivan were parties to an insurance contract which had been issued by Mercer Insurance, Policy No. SCP0001630. This insurance policy provided, *inter alia*, commercial general liability coverage subject to the express terms, conditions, and exclusions therein.

6. Based upon careful review of the allegations alleged in the complaint in the underlying litigation, Mercer Insurance concluded that any of the actions or omissions of Sullivan and breaching the contract or making fraudulent misrepresentations do not qualify for coverage under the policy in question, and/or were excluded from coverage under the liability policy in question.

7. To that end, Mercer Insurance filed this current Complaint for Declaratory Judgment, seeking an order of court that states that Mercer Insurance has no legal and/or contractual obligation to defend or indemnify Sullivan for any liability that may arise in the underlying litigation filed against him by Cataldo.

8. The Complaint for Declaratory Judgment was filed on or around October 19, 2007, and successfully served upon both Defendants. Specifically, Defendant Cataldo was served with process on October 23, 2007, and Defendant

Sullivan was served with process on October 31, 2007. (A true and correct copy of their sheriff returns indicated successful service are attached hereto as Exhibit "B.")

9. On February 12, 2008, having received no response from either Defendant, Plaintiff mailed 10 day notices of default judgment to both Defendants. A true and correct copy of those 10 day notices of default judgment and accompanying letter are attached hereto as Exhibit "C".

10. On February 26, 2008, counsel for Mercer Insurance spoke with Benjamin Blakely, the attorney who is representing Defendant Sullivan in the underlying litigation. Mr. Blakely indicated that he and his client were in receipt of both the 10 day notice of default judgment as well as the Complaint for Declaratory Judgment, and further indicated that they did not plan on contesting the declaratory judgment in any way, or filing any type of responsive pleading. As such, counsel for Mercer Insurance entered a Praecipe for Default Judgment against Defendant Sullivan. (A true and correct copy of the February 26, 2008 letter to Mr. Blakely, along with the Praecipe for Default Judgment, are attached hereto as Exhibit "D.")

11. Counsel for Mercer Insurance also contacted Matthew Taladay, the attorney who is representing Defendant Cataldo in the underlying litigation, in February of 2008. After a series of conversations and correspondence, on April 15, 2008 and again on April 21, 2008, counsel for Mercer Insurance and Mr. Taladay confirmed that Defendant Cataldo would not be contesting the Complaint for Declaratory Judgment or filing any responsive pleading whatsoever, and that counsel for Mercer Insurance should go ahead and enter a default judgment. A series of letters between counsel for

Mercer Insurance and counsel for Defendant Cataldo and the Praecipe for Default Judgment are attached hereto as Exhibit "E".

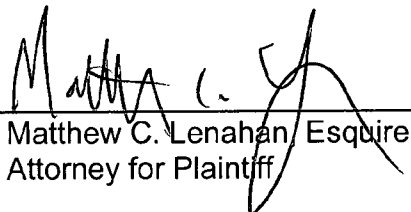
12. Having received default judgments against both Defendants, and having received verbal notification from the attorneys for both Defendants that they had no intention to contest this matter at all, Plaintiff now seeks an order of court, pursuant to these default judgments, granting the specific relief requested in the Complaint for Declaratory Judgment.

13. As a result, Plaintiff respectfully requests that this court enter the attached order of court and order that Mercer Insurance has no legal and/or contractual obligation to defend or indemnify Defendant Sullivan for any liability that may arise as a result of the underlying litigation filed against him by Defendant Cataldo in the Court of Common Pleas of Clearfield County, Pennsylvania, and docketed at No. 2006-664.

WHEREFORE, Plaintiff respectfully requests an order of court granting the specific relief sought in the Declaratory Judgment Complaint.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

By: 
Matthew C. Lenahan Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No.

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

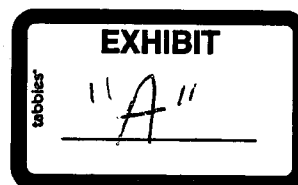
Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHA, ESQUIRE
PA ID NO 92932

DIBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900



NOTICE TO DEFEND

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

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. If you do not have a lawyer, go to or telephone the office set forth below. This office can provide you with information about hiring a lawyer. IF YOU CANNOT AFFORD TO HIRE A LAWYER, this office may be able to provide you with information about agencies that may offer legal service to eligible persons at a reduced fee or no fee.

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

COMPLAINT FOR DECLARATORY JUDGMENT

AND NOW, comes the Plaintiff, THE MERCER INSURANCE COMPANY, by and through its counsel at the law firm of DiBella, Geer, McAllister & Best, P.C., and hereby files the instant Complaint for Declaratory Judgment pursuant to 42 Pa.C.S.A. § 7531, *et seq*, the following of which is a statement thereof:

PARTIES

1. The Plaintiff, THE MERCER INSURANCE COMPANY (hereinafter referred to as "Mercer Insurance"), is an insurance company with a place of business located at 100 Mercer Drive, P.O. Box 480, Lock Haven, Pennsylvania, 17745.

2. The Defendant, MARK T. SULLIVAN, t/d/b/a MARK SULLIVAN COMPANY (hereinafter referred to as "SULLIVAN"), is an adult individual with a business address of P.O. Box 1112, DuBois, Clearfield County, Pennsylvania, 15801.

3. The Defendant, CLARENCE CATALDO, t/d/b/a CATALDO COLLISION CENTER, INC. (hereinafter referred to as "Cataldo"), is an adult individual with a business address of 615 Division Street, DuBois, Clearfield County, Pennsylvania.

JURISDICTION AND VENUE

4. This Honorable Court has subject matter jurisdiction pursuant to the Declaratory Judgment Act, 42 Pa.C.S.A. § 7531, *et seq*.

5. Venue is proper before this Honorable Court since the instant controversy involves an insurance policy issued to the Defendant Sullivan in Clearfield County, involves a contract that was entered into between Defendant Cataldo and Defendant Sullivan, and then allegedly breached, in Clearfield County, and involves subsequent

litigation filed by Defendant Cataldo against Defendant Sullivan in the Court of Common Pleas of Clearfield County.

FACTUAL BACKGROUND AND UNDERLYING CIVIL ACTION

6. On or around May 29, 2007, Defendant Cataldo filed an Amended Complaint in Civil Action against Defendant Sullivan in the Court of Common Pleas of Clearfield County, at No. 2006-664. *A true and correct copy of the Amended Complaint is attached hereto as Exhibit "A".*

7. Defendant Cataldo's Amended Complaint is based upon contract entered into between Cataldo and Sullivan on or around August 6, 2004, in which Sullivan agreed to construct a new building on Cataldo's business premises, located at 615 Division Street, in exchange for payments equaling \$598,000.00. See ¶ 3 of *Amended Complaint, attached hereto as Exhibit "A"*. Cataldo's Amended Complaint further alleges that Sullivan was responsible for all engineering work necessary for the project. See ¶¶ 4-6 of *Amended Complaint, attached hereto as Exhibit "A"*.

8. The Amended Complaint sets forth two causes of action: breach of contract (Count I), and fraudulent misrepresentation (Count II). In the breach of contract action, Cataldo alleges Sullivan stopped work on the building "before it was serviceable and did not complete their contractual requirements" as defined by the construction contract. In addition, it is alleged that Sullivan "deviated from the drawing's specifications" without Cataldo's approval. *Complaint, ¶¶ 9-10*. Because of Sullivan's alleged breach of contract, Cataldo incurred damages "to correct and complete [Sullivan's] deficient and unfinished work". Subparagraphs (1) through (76) of

Paragraph 11 itemizes the alleged "deficient and unfinished work". The deficiencies include installation of incorrect materials; improper installation of materials and fixtures; failure to install some materials; improper construction methods; and physical damage to parts of the building because of improper construction. Lastly, the breach of contract count alleges that the Plaintiff lost income because completion of the building was delayed for 34 weeks as a result of Sullivan's breach of contract.

9. Count II sets forth Cataldo's claim for fraudulent misrepresentation. It alleges that Sullivan or his "agents" made statements to the Plaintiff and "relevant officials" that the building site was approved for development in accordance with the specifications of the project. However, it is alleged that the requisite approvals and permits had not been obtained by Sullivan at the time of the alleged statements. Complaint, ¶¶ 14-15. Relying on these representations and statements by Sullivan, Cataldo "began the site work necessary for the building project", and "unknowingly filled wetland areas located within the footprint of the building." As a result, Cataldo incurred wetland mitigation costs in excess of \$24,000.00. In addition, the building project was delayed an additional 14 weeks, resulting in an additional loss of income of \$35,000.00.

10. Importantly, the Amended Complaint does not set forth any causes of action for negligence; in fact, the complaint does not allege negligence, or even include the words "negligent" or "negligence" in any of its allegations. It also does not allege that Sullivan caused any bodily injury or damage to property other than the building under construction.

INSURANCE POLICY

11. At all times relevant to the underlying liability action, Mercer Insurance and Sullivan were parties to an insurance contract which had been issued by Mercer Insurance, with a policy number of SCP0001630. This insurance contract provided, *inter alia*, Commercial General Liability coverage, subject to the express terms, conditions and exclusions therein. The liability coverage included "Products/Completed Operations" coverages. The named insureds are Mark T. Sullivan and Mark T. Sullivan Company. *A true and correct copy of the relevant insurance policy and declarations page is attached hereto as Exhibit "B".*

12. Pursuant to the "Special Contractor's Policy", Form MSC0100998, under Part II A—Main Liability Coverage, Mercer Insurance will pay, up to the applicable limit of liability, sums that the insureds become legally liable to pay as damages because of "bodily injury" or "property damage" insured in the policy. To be covered, the bodily injury or property damage must occur during the policy term and must further be caused by an "occurrence". See "Coverage E—Liability to Others", in Form MCC0100998, p. 18, as part of the policy attached hereto as Exhibit "B".

13. The policy in question defines "occurrence" as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Occurrence

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. Based upon the facts alleged in Cataldo's Amended Complaint, the actions of Sullivan in breaching the contract all arose from incomplete, improper and/or defective construction and thus does not constitute an accident. Since Sullivan's incomplete, improper and/or defective construction were not accidents, they do not constitute an "occurrence" as that term is defined in the policy. See ¶¶ 11(1) through 11(76) of Amended Complaint, attached hereto as Exhibit "A".

15. Furthermore, the facts alleged in Count II of Cataldo's Amended Complaint, alleging Fraudulent Misrepresentation, arise from the intentional and fraudulent misrepresentations of Sullivan and/or of his agents, and thus said statements and actions by or on behalf of Sullivan do not constitute an accident. Since Sullivan's intentional and fraudulent misrepresentations were not accidents, they do not constitute an "occurrence" as that term is defined in the policy. See ¶¶ 14 through 20 of Amended Complaint, attached hereto as Exhibit "A".

16. Because the breach of contract damages as well as the fraudulent misrepresentation damages alleged by Cataldo do not arise from an "occurrence," there is no obligation on the part of Mercer Insurance to defend or indemnify Sullivan under the terms of the policy in question.

17. The policy in question defines "property damage" as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Property Damage

Property damage means the following caused by a covered occurrence:

- Direct Physical injury to tangible property, including loss of use of such property (the loss of use is deemed to occur at the time of such direct physical injury).
- Loss of use of tangible property that is not physically injured: all such loss of use is deemed to occur at the time of the *occurrence* causing the loss.

18. To be considered "property damage", the injury or damage in question must arise from an "occurrence". Because both the alleged breach of contract as well as the alleged fraudulent misrepresentations are not considered "occurrences", as is more fully discussed in Paragraphs 13 through 16, above, any resulting damages do not qualify as "property damage" as that term is defined in the policy.

19. Further, even if the damage in question is determined by this Court to have resulted from an "occurrence", all of the damages alleged in Cataldo's Amended Complaint result from improper and incomplete construction, and the cost of correcting such deficiencies, and not "direct physical injury to tangible property".

20. Because the damages alleged by Cataldo do not qualify as "property damage", there is no obligation on the part of Mercer Insurance to defend or indemnify Sullivan under the terms of the policy in question.

21. Even if the damages claimed by Cataldo arose from an "occurrence" and resulted in "property damage", several exclusions apply to preclude coverage.

22. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....

3. **BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS**

-
- B. We do not insure any *property damage* to your *products* or *your work* caused, to any extent, by *your products* or *your work* or any part such of. This Exclusion does not apply to *your work* if:
- The work has not, at the time of damage, been abandoned or completed; or
 - The damaged work, or work out of which the damage arises, was performed on *your* behalf by a subcontractor.

23. The allegations in Cataldo's Amended Complaint that allege damage to the building itself, due to improper construction, are clearly excluded by the above-cited exclusion, as any damage was caused by the work of Sullivan. See ¶¶ 11(28), (29), (51), (55) and (66) of Cataldo's Amended Complaint, attached hereto as Exhibit "A".

24. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....

3. **BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS**

-
- C. With respect to *impaired property* or property that has not been physically damaged, we do not insure *property damage* arising out of any of the following:
1. An inadequacy, defect, deficiency, or dangerous condition in *your products* or *your work*.
 2. A delay or failure by you or others acting on *your* behalf to perform an agreement or contract in accordance with its terms.

This Exclusion does not apply to loss of use of other property arising out of abrupt (sudden in time—not gradual or ongoing) accidental physical damage to *your products* or *your work* after such is put to its intended use.

25. The allegations in Cataldo's Amended Complaint allege damages arising from inadequacy, defect and deficiency in Sullivan's work, as well as damages that are alleged to have resulted from delay in performing and failure to perform the contract with Cataldo. These damages are specifically and unambiguously excluded from coverage by the above-cited exclusion.

26. The policy in question contains the following exclusion:

PART II C—LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an *occurrence* otherwise covered contributes to such concurrently or in any sequence—except to the extent otherwise specifically described and provided for in this policy.

....
3. BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS

....
E. We do not insure property damage to any of the following:

1. That part of real property on which work is being performed by either *you*, or any contractor or subcontractor working (directly or indirectly) on *your* behalf, if the *property damage* arises out of such work.
2. That part of any property that must be repaired, replaced, or restored because *your work* was faulty or incorrectly performed: this does not apply to *property damage* included in the *products/completed operations hazard*.

27. The damages alleged in Cataldo's Amended Complaint that involve repair, replacement or restoration of components or parts of the building in question because

Sullivan's work was faulty or incorrectly performed are specifically and unambiguously excluded from coverage by the above-cited exclusion.

28. Further, the Products/Completed Operations Hazard coverage, mentioned in Exclusion 3.E.2., above, does not apply to the case *sub judice*. That term is defined as follows:

COMMON GLOSSARY—PARTS I AND II

....

PART II

The following apply to Part II:

....

Products / Completed Operations Hazard

Products / Completed Operations Hazard includes all *bodily injury and property damage* occurring away from *your premises* arising out of *your products* or *your work*, other than that arising out of any of the following.

1. Products that are in *your* physical possession.
2. Work that has not been completed or abandoned. *Your work* is deemed completed at the earliest one of the following times:
 - When all the work called for in *your* contract is completed.
 - When all the work called for in *your* contract at the job location is completed if *your* contract called for work at more than one location.
 - When that part of the work at a job location is put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that needs final correction, maintenance, repair, replacement, or service—but is otherwise complete—is deemed completed.

29. The allegations contained in Cataldo's Amended Complaint clearly state that Sullivan "stopped work on the building before it was serviceable and did not

complete their contractual requirements...". See ¶¶ 9 of *Cataldo's Amended Complaint*, attached hereto as *Exhibit "A"*. Thus, as Sullivan's work was not completed, the *Products / Completed Operations Hazard* does not apply.

30. Furthermore, because the damages as alleged in Cataldo's Amended Complaint do not involve "property damage", as defined by the policy and as is more fully described in Paragraphs 17-20, above, the *Products / Completed Operations Hazard* does not apply.

31. The allegations contained in Cataldo's Amended Complaint clearly do not arise from an "occurrence", nor do they constitute "property damage", as those terms are clearly defined in the policy. Furthermore, several exclusions, outlined above, preclude coverage for the acts and omissions of Sullivan, as alleged in Cataldo's Amended Complaint.

WHEREFORE, Mercer Insurance Company respectfully requests that this Honorable Court grant the following declaratory relief, and enter an order of court that declares:

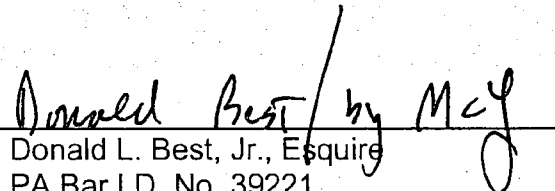
- a. Mercer Insurance has no legal and/or contractual obligation to defend or indemnify MARK T. SULLIVAN, t/d/b/a MARK SULLIVAN COMPANY for any liability in the litigation filed against him or his companies by CLARENCE CATALDO, t/d/b/a CATALDO COLLISION CENTER, INC., in the Court of Common Pleas of Clearfield County, Pennsylvania, and docketed at No. 2006-664.

- b. This Honorable Court is requested to grant such other orders and relief as it may deem proper and appropriate to effectuate the relief sought.

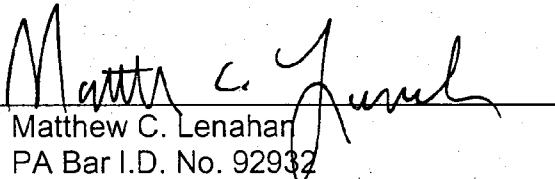
Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

By:


Donald L. Best, Jr., Esquire
PA Bar I.D. No. 39221

By:


Matthew C. Lenahan
PA Bar I.D. No. 92932

312 Boulevard of the Allies
Pittsburgh, PA 15222
Phone: (412) 261-2900
FAX: (412) 261-3222
Email: dbest@dgmblaw.com

Attorneys for Plaintiff

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

Type of pleading:

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY
Defendants

AMENDED COMPLAINT

Filed on behalf of:
PLAINTIFF

Counsel of record for
this party:

S. Casey Bowers, Esq.
Hanak, Guido and Taladay
P. O. Box 487
DuBois, PA 15801

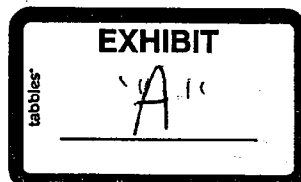
(814) 371-7768

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

MAY 29 2007

Attest.

Casey Bowers
Prothonotary/
Clerk of Courts



IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY

Defendants

NOTICE

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

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

MIDPENN LEGAL SERVICES
211 1/2 East Locust Street
Clearfield, PA 16830
800-326-9177

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY,
PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY

Defendant

AMENDED COMPLAINT

COUNT I
BREACH OF CONTRACT

AND NOW, comes Plaintiff, Clarence Cataldo t/d/b/a Cataldo Collision, by and through his attorneys Hanak, Guido and Taladay, and hereby brings this Amended Complaint averring as follows:

1. Plaintiff is Clarence Cataldo, t/d/b/a Cataldo Collision ("Cataldo") with a business address of 615 Division Street, DuBois, Clearfield County, Pennsylvania 15801.
2. Defendant is Mark Sullivan, t/d/b/a Sullivan Company ("Sullivan") with a business address of P.O. Box 1113 DuBois, Clearfield County, Pennsylvania 15801.
3. On or about August 6, 2004, the parties entered into a written agreement for the construction of a new building on Cataldo's

premises located at 615 Division Street, DuBois, Clearfield County, Pennsylvania. A true and correct copy of said agreement is attached hereto and marked as Exhibit "A".

4. As per the subject contract, Sullivan was responsible for all engineering work necessary for the building project.

5. Sullivan retained Hughes Engineering ("Hughes"), a consulting engineering company with a business address of 606 Krebs Avenue, Clearfield, Pennsylvania 16830, to perform the required engineering work.

6. The building was to be built in accordance with drawings and specifications supplied by Hughes.

7. Cataldo fulfilled all the conditions necessary for Sullivan's performance under the contract.

8. Cataldo authorized one change order throughout the course of the entire project.

9. Sullivan stopped work on the building before it was serviceable and did not complete their contractual requirements as defined by the attached agreement, the drawings and "Change Order One".

10. Further, Sullivan deviated from the drawing's specifications without obtaining Cataldo's approval.

11. As a result of Defendant's breach of the subject contract, Plaintiff has incurred the following losses to correct and complete Defendant's deficient and unfinished work:

<u>Description</u>	<u>Estimated Cost</u>
(1) 48" x 48" front window 001 was the wrong type of glass.	\$10,068.00 (includes Items 5 & 6)
(2) 3-hour fire-rated, 30" x 30" steel framed window 002 was not installed between Room 108 and the shop area 117.	\$5,110.00
(3) 36" x 36", painted, steel framed, one-way glazing window 003 was not installed between Room 108 and waiting room area 107, but it was installed without one-way glazing and installed in a field fabricated wooden frame.	\$1,473.00
(4) Windows 004, four (4) locations as supplied by Glass Unlimited were not installed with safety glass as required by Drawing A303. Shims have not been cut off and the windows' gaps are not sealed at all the locations.	\$4,210.00
(5) The main, double 36" x 80" Kawneer 350, Class 1 entrance door 001 to waiting Room 107 was not installed as specified on initial construction Drawing A303.	(cost estimate included in item (1))
(6) The two (2) entrance, 36" x 80" Kawneer 350, Class 1 entrance Door 002 with 48" x 48" side glazing to each rental space was not installed as specified on the initial construction Drawing A303.	(cost estimate included in item (1))

(7) The 36" x 80" x 1.75" Mohawk, 7-ply wood core, red oak, veneer internal Doors 003 were installed without hardware. \$900.00

(8) The 36" x 80" x 1.75" solid core, oak-veneer, internal Doors 004 to the small mechanical rooms and offices were not installed. \$2,700.00

(9) The three 36" x 80" shop access, 3-hour fire-rated, Warner and Hershey Doors 006 were not sealed against air transfer. \$225.00

(10) The three 36" x 80" shop access, 3-hour fire-rated, and listed Warnock & Hershey Doors 006 were not installed with door closers. \$855.00

(11) Door between the estimating bay and lunch room was not installed. Further, the correct type of door was not specified on the drawings. \$450.00

(12) Door 008 is a 3/4-hour door. Per CEC's interpretation, it should be a 2-hour door. \$450.00

(13) Door 009 opener in the Parts Area (Alignment Bay), was the wrong type. A center pull conventional torsion spring opener interferes vehicles being lifted for service. The opener needs to be a jackshaft side wall-mount type opener. \$1,750.00

(14) Defendant's engineer failed to specify a waterproof jackshaft automatic door opener for Door 012, which is necessary for the moist environment in the estimating bay. \$2,500.00

(15) Wrong laminate was installed on countertop in Room 107. \$250.00

(16) The 1-hour firewall separating Rooms 104, 105, and 106 from Rental Space 101, and Rooms 111, 112, and 113 from Rental Space 116 were not constructed to full height to the underside of the roof. \$3,237.85

(17) Drive-In estimate bay is not 3-hour rated in violation of applicable building codes. \$1,291.75

(18) Original Contract Drawing A101 shows the restroom walls to be wall Type [C]. Drawing A303 requires wall Type [C] to have acoustical insulation. Defendant failed to install acoustical insulation. \$2,728.44

(19) Defendant failed to install acoustical insulation in the walls between Plaintiff's office and the two (2) rental units. \$2,059.20

(20) Walls "A" and "J" were constructed with wooden studs. Per drawing, said walls were to be constructed with metal studs. \$5,000.00

(21) Wall "A" was not constructed with a 1" air space between the wood studs and block wall. \$2,000.00

(22) Wall types "A" and "J" cores are not filled with insulation. \$3,947.45

(23) The storage area, noted as "Mech. Room" on the drawings was shown to have a drywall finished 1-hour rated enclosure. This room, shown on \$15,000.00

Drawing A301, with the 1-hour fire rating walls was not installed. Further, electric outlets should have been placed in said room at 6' increments per the NEC/NFPA-70.

(24) Normal access to the Mechanical Room was not installed.	\$1,798.34
--	------------

(25) The separation wall from Gridline B3 to B1 was not constructed (in Parts Area 120).	\$16,549.57
--	-------------

(26) Hot and cold water line penetrations through the 3-hour firewall were not sealed (4 locations).	\$140.00
--	----------

(27) Inside 119 mechanical room, the wall and ceiling joints were not properly sealed. Electrical conduit and vent gas penetrations were not sealed.	\$2,843.00
--	------------

(28) There were dents in two (2) inner panels along the shop area walls.	\$311.00
--	----------

(29) Defendant poured the concrete floor of the Drive-In Estimates Bay, Room 109, in weather conditions such that cause the concrete floor to crack.	\$468.88
--	----------

(30) Rental Space 116 slab was placed without vapor barrier.	\$150.00 (material only)
--	-----------------------------

(31) Trench drains in the Shop Area and Parts Area do not line up properly with inlets.	\$7,500.00
---	------------

(32) Perimeter curbing was not installed at office doors.	\$300.00
---	----------

(33) Isolation and expansion joints were not installed around the interior circular columns.	\$1,443.75
--	------------

(34) A cold joint in the concrete area was incorrectly constructed along gridline between the paint booth area and the shop area. \$250.00

(35) Concrete slabs placed without structural reinforcement and without proper soil compaction. \$635.00

(36) Water heater was installed an excessive distance away from Rooms 104, 110, 111, and 112. \$2,554.20

(37) Refrigerant lines were not charged sufficiently between the condenser and the evaporator of the center office area HVAC unit. \$350.00

(38) Water meters and shutoff valves for the entire facility are installed in the mechanical room in Rental Space 101. \$302.12

(39) Cold and hot water piping to and from the mechanical room were not insulated. \$1,200.00

(40) Gas piping and/or electric power was not installed to stove location as identified on Drawing A101. \$256.19

(41) Electrical panels in Office 101 and 116 were not placed in mechanical rooms. \$5,200.00

(42) Emergency lighting was not installed over Door 002. \$250.00

(43) Outlet for time clock not installed. \$140.00

(44) Mirrors in restrooms 110 and 112 do not tilt to meet ADA requirements \$535.82

(45) No soap dispensers installed in Room 110 and 112 \$158.58

~~(46) Under sink piping in Restroom 110 and 112 did not meet ADA standards.~~ \$75.00

(47) Exterior doors on metal building were installed without door sweeps. \$167.20

(48) Gas line support brackets over doors along Gridline A are incorrect and inadequate. Branch line for tee for the paint booth was installed facing downward above the overhead door instead of upward. \$300.00

(49) Door 101 was installed as a 13' 6" high x 14' 2" wide door. Drawing (page 7 of 19) calls for a 14' x 14' door. \$6,126.18

(50) Six (6) metal protective covers should be fabricated and installed over all hot water supply and return in-floor manifolds to prevent damage. \$720.00

(51) Concrete block wall beside Door 011 has a vertical stress crack. This crack is a result of lack of a bearing slide plate under the lintel. This construction exists in six other places. \$3,045.00

(52) Conduit for face of building was installed; wiring for the sign was not pulled. \$132.00

(53) Only two of the four downspouts shown on the drawing were installed. \$300.00

(54) Two roof scuppers per the drawings need to be installed on the roof to divert the rapid descent of the water into the gutter. \$2,000.00

(55) The Drivit exterior insulation finish system finish material on the front face of the building was spalling in many areas. \$2,500.00

(56) The arches at either end of the front elevation were not constructed per Drawing S102. \$3,000.00

(57) The column inset detail was not corbelled as shown on the drawing "Front Elevation" (Drawing A301) \$3,000.00

(58) The roof trusses were not constructed as shown on Drawing A201. The pitch of the roof was lowered from 5 on 12 to 4.5 on 12. \$9,200.00

(59) 40' long sidewalk joint to building joint was not filled with backer and sealant. \$82.28

(60) Expansion joint material at the end of each sidewalk not removed. \$40.00

(61) Four outside service doors were not equipped with cold water hose bib, GFCI electric outlet, and compressed air tap. \$1,125.00

(62) Defendant relocated catch basin into sidewalk path and then failed to install sidewalk. \$15,848.00

(63) Two rows of snow cleats were not installed on the metal building roof, creating a hazard during snow events. \$10,776.00

(64) The air conditioning lines
penetrating into the building were not
sealed. \$105.00

(65) Interior and exterior masonry
joints were not filled with backer rod
and sealant. \$7,272.75

(66) In the attic space in the facility,
the sheathing displays mold. \$75.00

(67) Cable runs for phone, television,
and computers were not installed. \$7,309.00

(68) The facility locks were not keyed
alike and a master key was not provided
to the owner. \$250.00

(69) Cement, EFIS, and tape residue
not cleaned from face of concrete
blocks. \$180.00

(70) General cleaning of the entire
facility interior and exterior was not
performed. \$480.00

(71) Vinyl siding was installed
directly over gypsum board with no
provisions for vapor or moisture barrier. \$6,500.00

(72) No concrete test cylinders were
completed to verify concrete strengths of
the project. \$600.00

(73) Ceiling fans were not installed in
shop area. \$3,700.00

(74) Exhaust curbs were not
installed. \$1,823.00

(75) The as-built drawings have many errors, typos, and are not considered "as-builts". Drawings need to be upgraded and brought up to true as-built drawings. \$720.00

(76) Power in the attic ventilators not installed. \$800.00

Total **\$197,793.55**

12. As a result of the Defendant's breach, completion of the building was delayed thirty-four (34) weeks. As a result, Plaintiff incurred \$85,000 in lost income.

WHEREFORE, Plaintiff, Clarence Cataldo, demands judgment in his favor against Defendant in an amount in excess of \$25,000.00 together with interest, costs of suit and any further relief this Court deems appropriate.

COUNT II
FRAUDULENT MISREPRESENTATION

13. Plaintiff incorporates all prior paragraphs herein.

14. Sullivan and his agents made statements to Cataldo and relevant officials that the building site was approved for development as per the project specifications.

15. At the time he made the statement, Sullivan knew or should have known that the requisite approvals and permits had not been obtained.

16. Sullivan made these statements knowing that Cataldo would rely on them.

17. Relying on Sullivan's fraudulent misrepresentations, Cataldo began the site work necessary for the building project.

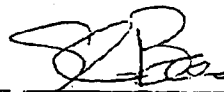
18. In the course of performing the required site work, Cataldo unknowingly filled wetland areas located within the footprint of the building.

19. As a result of Cataldo's reliance on Sullivan's fraudulent misrepresentations, Cataldo incurred wetland mitigation costs in excess of \$24,622.62.

20. As a result of his reliance on Sullivan's fraudulent misrepresentations, Cataldo's building project was delayed an additional fourteen (14) weeks. The Plaintiff thereby incurred an additional income loss of \$35,000.

WHEREFORE, Plaintiff, Clarence Cataldo, demands judgment in his favor and against Sullivan in an amount in excess of \$25,000.00 together with interest, costs of suit and any further relief this Court deems appropriate.

Respectfully submitted,



S. Casey Bowers
Attorney for Plaintiff

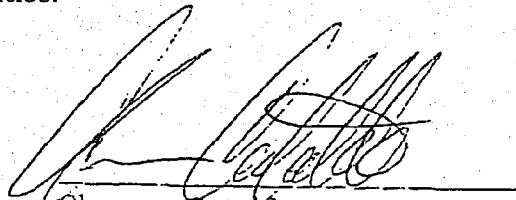
VERIFICATION

I, CLARENCE CATALDO, do hereby verify that I have read the foregoing Amended Complaint and that the statements therein are correct to the best of my personal knowledge or information and belief.

This statement and verification are made subject to the

penalties of 18 Pa.C.S. Section 4904 relating to unsworn fabrication to
authorities, which provides that if I make knowingly false averments I
may be subject to criminal penalties.

Date: 5-29-2007



Clarence Cataldo

SULLIVAN COMPANY

P. O. BOX 1112 DuBOIS, PENNSYLVANIA 15801
PHONE (814) 371-3144 FAX (814) 375-3144

August 06, 2004

Proposal To: Cataldo Collision Center
10040 Tyler Road
Penfield, PA 15849
(814) 637-5600
Attention: Carney Cataldo

Job Site: Cataldo Collision South
615 Division Street
DuBois, PA 15801
(814) 372-8600

Project Title: Body Shop & Offices

We are pleased to offer the following proposal for your new state of the art collision repair center. We have, with your input and direction, designed a 14,200 square foot facility that includes a 10,000 square foot shop area and a 4,200 square foot office and retail area.

It is our understanding that this facility is to be constructed at the above referenced address. The owner will be responsible for the purchase of said property and will provide the contractor with a copy of the recorded deed for the purpose of securing all necessary permits. It is further understood that the owner will be responsible for the hauling, grading and compaction of all necessary fill dirt and asphalt paving.

The following proposal will include all:

Labor

Materials

Construction Equipment

Tax

Permit fees

Structural Engineering

Tap fees

Design

to construct a collision repair center as outlined in attached plans and drawings. Although many of the drawings show furnishings, it is important to note that these items are shown only to aid in the design of the building and to help the customer visualize the necessary space required for each. Items not attached to the structure are not included in the proposal and are listed as follows:

Desks

Tables

Chairs

Lockers

Stoves / Ovens

Refrigerators

Fencing

Signage

Office Equipment



Your estimated completion date is five months from the date we receive first payment. This is an estimated completion date and can be affected by elements beyond our control. Weather, material shortages and change orders will all have an affect on the actual completion date.

Total Amount of Proposal

\$598,000.00

Proposal Accepted By: _____ Date: _____

Carpey, Cataldo
Cataldo Collision Center

PAYMENT SCHEDULE

First Payment		
-due with acceptance of proposal		\$29,900.00
Second Payment		
-due with completion of excavation for		
-footers	-storm water drainage and basins	
-sanitary drain line	-water line	
-electric lines	-communication lines	\$29,900.00
Third Payment		
-due with completion of front office masonry		\$59,800.00
Fourth Payment		
-due with completion of rear shop masonry and concrete piers		\$59,800.00
Fifth Payment		
-required steel deposit at time of order		\$59,800.00
Sixth Payment		
-due with completion of concrete floors		\$59,800.00
Seventh Payment		
-due with completion of rear shop building erection and doors		\$59,800.00
Eighth Payment		
-due with completion of front office framing and exterior doors		\$59,800.00
Ninth Payment		
-due with completion of mechanicals		
-electrical	-plumbing	
-HVAC		\$59,800.00
Final Payment		
-due with completion of interior office finish		
-doors	-base moldings and trims	
-wall coverings	-floor coverings	
-ceilings	-cabinetry	\$119,600.00
Total Amount of Payments		\$598,000.00

IN THE COURT OF COMMON PLEAS
OF CLEARFIELD COUNTY, PENNSYLVANIA

CLARENCE CATALDO t/d/b/a
CATALDO COLLISION CENTER,
INC.,

Plaintiff

CIVIL ACTION - AT LAW

No. 06-664

vs.

MARK SULLIVAN, t/d/b/a
SULLIVAN COMPANY
Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2007 a true and
correct copy of the foregoing Amended Complaint was forwarded via US
first class mail, postage prepaid, addressed as follows:

Benjamin S. Blakley, Esquire
Blakley & Jones
90 Beaver Drive, Box 6
DuBois, PA 15801

Stuart L. Hall, Esquire
Miller and Hall
138 E. Water Street
Lock Haven, PA 17745



S. Casey Bowers
Attorney for Plaintiff

Company Use Only
Date Issued: 12-13-2004
Rate: SJ
Underwriter: SJ
Bill Type: D/S - PH
Company Copy

SPECIAL CONTRACTORS DECLARATIONS

MERCER INSURANCE COMPANY

Policy No. SCP0001630

Renewal of: SCP0001630

100 Mercer Drive
Lock Haven, PA 17745

Policy Term : 02-24-2005 02-24-2006
From To

Named Insured (You) & Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

MERRITT I. EDNER AGENCY 4165
314 WEST LONG AVENUE
PO BOX 603
DUBOIS, PA 15801
(814)371-7250

Your Business/Operations Description: CARPENTRY

You are a ☐ Corporation ☒ Individual ☐ Partnership ☐ Joint Venture ☐ Other

Schedule of Premises - Parts I & II (Location Controlled, Occupied, Owned or Rented by You)

Loc. No.	Build No.	Location	County	Construction	Occupancy
1	1	91 MC CRACKEN RUN RD, DUBOIS, PA	CLEARFIELD	A	Storage

Limits (See Part II D 2) - Part II (N/A means no coverage.)

\$ 1,000,000	Each Occurrence
\$ 3,000,000	General Aggregate/Total Limits - All Other Than Products/Completed Operations
\$ 3,000,000	Aggregate/Total Limits - Products/Completed Operations
\$ 5,000	Medical Payments - Per Person
\$ 100,000	Fire Legal Liability Supplemental Coverage
\$ 1,000,000	Personal Injury/Advertising Injury Supplemental Coverage

Total Premiums

\$ 242	Total Premium Part I
\$ 2,166	Total Premium Part II
\$ 750	Total Premium - Inland Marine
\$ 3,158	Total Premium

Endorsements and Forms Made Part of this Policy (Ed. Date) :

MCM 810 (09-00) MCL 187 (08-97) MCM 400 <PN> (03-98) MSC 010 (09-98) MMC 012 (01-99) MCM 418 (01-05)
NP-MCM Terrorism (01-05) MCL 183 (01-02) MCL 178 (08-00) MCL 205 (04-98) MCL 601 (04-98) MML 701 (03-98)
IMC 001 (11-98) MCL 320 (09-89) MCN184(05/04)

Mortgagee(s) & Mailing Address

See Attached Extension

Subject to all Provisions here and in Return of Premium Payment.
We agree to provide this Insurance for the Indicated Policy Term.

By

Countersignature

Authorized Representative

Rein: \$0

Percent : 0.00 %

THIS POLICY CONTAINS AGGREGATE LIMITS: SEE PART II D FOR DETAILS

EXHIBIT

tabbies

"B"

J.Y. DEC 17 2004

Issued 12-13-2004 sj/SJ

COMMERCIAL PROPERTY SCHEDULE OF COVERAGE

PART I

SCP0001630 Policy No.
02-24-2005 Policy Inception

MERCER INSURANCE COMPANY

Named Insured : MARK T SULLIVAN

Loc. No.	Build. No.	Limits of Liability	Coverage	Cause of Loss Options	Coinsurance Factor	Deductible	Windstorm Deductible
1	1	50,000	Bus Pers Prop	Basic	None	1,000	N/A
1	1	20,000	Business Income	Basic	None	N/A	N/A

Issued 12-13-2004 sj/SJ

COMMERCIAL LIABILITY SCHEDULE OF COVERAGE

PART II

SCP0001630 Policy No.
02-24-2005 Policy Inception

MERCER INSURANCE COMPANY

Named Insured : MARK T SULLIVAN

Classification	Code	Premium Basis	Rate	Advance Premium
Location # 1 Class Code 1				
Carpentry No Roofing	2981	Payroll	60,000	3.275
				\$1,966

THIS POLICY CONTAINS AGGREGATE LIMITS: SEE PART II D FOR DETAILS

SUPPLEMENTAL DECLARATIONS - MMC 012 01 99

The following special limits and rating factors apply to the designated coverages, in accordance with the provisions of the Special Contractors Coverage Form MSC 010.

Insured Name: MARK T SULLIVAN

Effective Date: 02-24-2005

Policy No. SCP0001630

Location 1 Building 1

(A)
POLICY
LIMIT / FACTOR

(B)
REVISED POLICY
LIMIT / FACTOR

PART I B SUPPLEMENTAL COVERAGES

1. Accounts Receivable	\$25,000	
2. Annual Inflation Increase Factor	-	
Coverage A.	—	
Coverage B.	—	
3. <u>Building Extension</u>		
A. Glass		
Limit	\$1,000	
Per Item Limit	\$100	
B. Outdoor Signs		
1. Not Attached to Buildings	\$1,000	
2. Attached to Buildings	\$1,000	
4. Building Code / Law Coverage	0.10	—
5. Debris Removal		
B. Factor (Covered Loss Times):	0.25	—
C. Additional Limit	\$5,000	—
7. Fire Expense Coverage		
A. Fire Department Service Charge	\$1,000	—
B. Fire Extinguisher Recharge Expense	\$1,000	—
8. <u>Newly Acquired Property</u>		
1. Coverage A		
Coverage A Limit Times:	0.25	—
Maximum Limit per Building	\$250,000	—
2. Coverage B		
Coverage B Limit Times:	0.10	—
Maximum Limit per Location	\$100,000	—
3. Coverage D		
Coverage D Limit Times:	0.10	—
Maximum Limit per Location	\$100,000	—
9. Off Premises Property	\$15,000	< Limit - All Locations
Limit Per Item	\$250	

	Location 1	Building 1
	(A)	(B)
	POLICY	REVISED POLICY
	LIMIT / FACTOR	LIMIT / FACTOR

**PART I B
SUPPLEMENTAL COVERAGES**

- | | |
|------------------------------|----------|
| 10. Outdoor Property | |
| Limit | \$25,000 |
| Per Item Limit | \$250 |
| 11. <u>Personal Property</u> | |
| A. Personal Effects | \$3,000 |
| B. Property of Others | \$25,000 |
| C. Valuable Papers / Records | \$3,000 |
| 12. Pollution Clean Up | \$10,000 |

**PART I F
WATER DAMAGE - SEWER / DRAIN BACKUP**

- | | |
|--------------------------|---------|
| 11. When MCP 507 applies | \$5,000 |
|--------------------------|---------|

PART I - OPTIONAL COVERAGES

- | | |
|-----------------------------------|---------------------|
| 1. Employee Dishonesty (MCP 171) | Limit All Locations |
| 2. Forgery (MCP 172) | Limit All Locations |
| 3. Money and Securities (MCP 173) | |
| A. On Premises | |
| B. Off Premises | |

PART II - OPTIONAL COVERAGES

- | | |
|--|---|
| 1. Broadened Property Damage (MML 702) | |
| 2. Employee Benefits Liability (MCL 425) | - |
| A. Per Claim Limit | |
| B. Aggregate Limit | |
| C. Retroactive Date: | |

NOTES:

- With the exception of Supplemental Coverage 12, the limits and factored amounts of insurance are aggregate limits per occurrence. With regard to Item 12 the limits are aggregate limits per policy year for all covered occurrences.
- Column (A) shows Basic Policy Limits / Factors: "-" means coverage not applicable.
- Column (B) shows the revised Limits / Factors, which replace those shown in Column (A): "-" means no change permitted.

Company Use Only

Date Issued: 12-13-2004

Rated: S

Underwriter: SJ

MERCER INSURANCE COMPANY

A Non-Assessable Mutual Company

100 Mercer Drive, Lock Haven, PA 17745

Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Policy Number: SCP0001630
Policy Effective Date: 02-24-2005
Policy Expiration Date: 02-24-2006

ADDITIONAL INTERESTS

Loc. No. : 1
Interest : MCL 320
Coverage : General Liability
Name &
Address : NATIONAL FUEL GAS
ATTN JIM DUNGEY
1216 SOUTH BRADY STREET
DUBOIS, PA 15801

Loc. No. : 1
Interest : A/I MCL 320
Coverage : General Liability
Name &
Address : NETWORK SERVICE MANAGEMENT INC
100 MORSE STREET
NORWOOD, MA 02062

Loc. No. :
Interest :
Coverage :
Name &
Address :

Loc. No. :
Interest :
Coverage :
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Loc. No. :
Interest :
Coverage :
Name &
Address :

Company Use Only
2-24-2005

IMC 001 11 98

MERCER INSURANCE COMPANY
COMMERCIAL INLAND MARINE COVERAGE PART
DECLARATIONS

Policy No. SCP0001630

1. NAMED INSURED and MAILING ADDRESS (No., Street, Town or City, Country, State, Zip Code)
MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

2. POLICY PERIOD : From 2-24-2005 to 2-24-2006 12:01 A.M. Standard Time at your address shown above.

IN RETURN FOR THE 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

BUSINESS DESCRIPTION

CARPENTRY

3. PREMIUM

Premium Shown is payable:
\$750 at inception

Premium
for this
Policy

\$750

4. FORMS AND ENDORSEMENTS

MIM 012 (10-97) MIM 111 (10-97) MMI 100 (10-99) MIM 102 (08-01)
MIM 112 (12-96) MIM 120 (01-98) MIM 121 (01-98) MIM 010 (12-96)
MIM 143 (01-05) NP-MIM Terrorism (01-05)

INSTALLATION FLOATER

SUPPLEMENTAL DECLARATIONS - MIM 012 10 97

MIM 012 is used with the Inland Marine Common Provisions Form (MIM 010) and the Installation Floater Coverage Form (MIM 111) when providing installation floater coverage. The required information may be shown below or elsewhere in this policy.

Policy # SCP0001630

Premium

SCHEDULE

Locations:

Any location within the continental United States, Alaska or Hawaii which the insured has been hired to perform work as a contractor.

Covered Property

Insured's business personal property that will become a part of a building or structure including machinery, equipment, fixtures, materials or supplies, or is used in construction including forms, scaffolds or other temporary structures.

Limit of Liability
1000

Deductible
250

SUPPLEMENTAL COVERAGES

1. Debris Removal
Factor (Covered Loss Times)
Additional Limit

(A)
POLICY
LIMIT / FACTOR

(B)
REVISED POLICY
LIMIT / FACTOR

.25
\$ 5,000

2. Pollution Clean-Up Cost (1)
Pollution Clean-Up Deductible

\$10,000
\$

3. Property in Storage

\$ - 500

4. Property in Transit

\$ 500

OPTIONAL COVERAGES

1. Earthquake / Volcanic Activity

— \$0

2. Flood / Flooding

— \$0

DEDUCTIBLE

The policy deductible applies for all losses unless a separate deductible is listed below for certain perils:-

1. Policy deductible

\$

2. Earthquake / Volcanic Activity

\$

3. Flood / Flooding

\$

4. Other: _____

\$

NOTES: Column A shows Basic Policy Factors. " — " means not applicable.

Column B show the Revised Limits / Factors, which replace those shown in Column A.

All limits are aggregate limits per occurrence, unless otherwise indicated.

(1) Limit is aggregate limit per policy year for all covered occurrences.

COMPUTER COVERAGE

This endorsement, together with the Inland Marine Common Provisions Form (MIMO10) provides coverage for computers and related equipment. The required information may be shown here or elsewhere in this policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

Policy Number: SCP0001630

Effective: 2-24-2005

Deductible: 250

Unscheduled Limit: \$ 5000

Covered Unscheduled Property:

- We cover all data processing equipment, including component parts, owned or leased by you that are customarily kept by you and used in your business.
- We cover your media & data including the cost to reconstruct such data.
- We cover reasonable extra expenses in excess of your usual operating expense to the extent such are necessary to continue your business operations, to the extent required due to a covered loss here.

Scheduled Property:Description of Covered PropertyLimit of Liability

\$

If extra expense coverage is provided here, we cover reasonable extra expense in excess of your usual operating expense to the extent such are necessary to continue your business operations, to the extent required due to a covered loss here.

Additional Exclusions - Losses Not Insured

- Loss to media or data that cannot be replaced with other of like kind and quality.
- Loss to property or media held for lease or sale to others.
- Loss caused by an original defect or error in programming.
- Loss to media or data which results as a consequence of the failure to perform routine (at least on a monthly basis) complete backups of such media or data with such backups being kept off of the described premises.
- Loss due to flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or their spray: all whether arising out of or caused by rain, snow, wind or other condition of the weather, or an otherwise covered cause of loss. If loss resulting from fire, explosion, or theft (to the extent insured here) ensues, we insure such resulting loss.
- Loss due to water under the ground surface that exerts pressure on or flows, seeps or leaks through: basements, doors, windows, or other openings; driveways, floors; foundations; paved surfaces; sidewalks or walls.
- Loss due to water that backs up through sewers or drains.

MISCELLANEOUS PROPERTY FLOATER

This endorsement, together with the Inland Marine Common Provisions Form (MIM 010) provides coverage on miscellaneous property. The required information may be shown below or elsewhere in this policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions of this policy are unchanged.

Policy # SCP0001630

Effective: 2-24-2005

Premium: \$750

SCHEDULE

	Description of Covered Property	Limit of Liability	Deductible
1	CATERPILLAR EXCAVATOR CAT MODEL 307 S#9ZL1700	\$30,000	\$1,000

ADDITIONAL COVERAGE MODIFICATIONS:

MANDATORY ENDORSEMENT — PENNSYLVANIA

This endorsement provides a Special Notice, amends the policy in conformance with Pennsylvania Law and modifies other policy provisions.

Except as provided below, all other provisions in this policy are unchanged.

SPECIAL PENNSYLVANIA NOTICE

A. 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, and issuance, renewal or continuation of, a policy of insurance:

- Surveys;
- Consultation or advice; or
- Inspections.

B. The "Insurance Consultation Services Exemption Act" of Pennsylvania provides that the Insurance Company, its agents, employees or service contractors acting on its behalf, are 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 Exemptions of this Act do not apply to the following:

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.
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.

ADDITIONAL CONDITIONS

The COMMON CONDITION — CANCELLATION / TERMINATION is supplemented as follows:

B. Our Right to Cancel / Terminate**1. Policies in Effect Less Than 60 Days.**

We may cancel this policy by mailing or delivering to the first named insured written notice of cancellation not less than 30 days prior to the effective date of cancellation.

2. Policies in Effect 60 Days or More.

If this policy has been in effect for 60 days or more or is a renewal of a policy with us, we may cancel only for one or more of the following reasons by mailing or delivering to the first named insured written notice of cancellation:

- (a) *You have made a material misrepresentation which affects the insurability of the risk.*

- (b) *You fail 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.*
- (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.*
- (d) *Loss of reinsurance or a substantial decrease in reinsurance has occurred. Such loss or decrease must be certified to the Insurance Commissioner as directly affecting in-force policies at such time of cancellation.*
- (e) *You materially fail to comply with policy terms, conditions or contractual duties.*
- (f) *You materially fail to comply with safety standards or loss control recommendations after receiving written notice from us of deficiencies with respect to safety standards or loss control recommendations and after being given a reasonable opportunity to cure such deficiencies.*
- (g) *Any other reason approved by the Insurance Commissioner.*
- (h) *This policy may also be cancelled by us effective from inception upon discovery that the policy was obtained through fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by us.*

Notice of cancellation / termination must be mailed or delivered by us:

- *Not less than 15 days prior to the cancellation effective date as to (a) and (b);*
- *Not less than 60 days prior to the cancellation effective date as to (c), (d), (e), (f), and (g).*

We mail or deliver our notice to the first named insured's last mailing address known to us. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

Our notice must state:

- (a) *The specific reasons for cancellation; and*
- (b) *The effective date of cancellation: the policy period will end on this date.*



3. Return of Premium

We send the *first named insured* any premium refund due resulting from cancellation. The refund is pro rata and must be returned within 10 business days after the effective date of cancellation. However, our cancellation is effective even if we have not made or offered a refund at such time.

4. Termination (Nonrenewal)

If we elect not to renew this policy, we mail or deliver written notice of nonrenewal to the *first named insured* not less than 60 days prior to the expiration date of this policy.

Any notice of nonrenewal or renewal premium increase must be mailed or delivered to the *first named insured's* last mailing address known to us. If notice is mailed, it will be by registered or first class mail. Proof of mailing or delivery will be sufficient proof of notice.

5. Increased Renewal Premium

If we increase your renewal premium, we must mail or deliver notice of increased premium to the *first named insured*, not less than 30 days prior to the increase.

6. Notice to Mortgagees

If we cancel or elect not to renew this policy, we will mail or deliver notice of such to the mortgagees named in this policy not less than:

- 10 days prior to the effective date of cancellation if we cancel for nonpayment of premium.
- 30 days prior to the effective date of cancellation if we cancel for any other reason.
- 10 days prior to the expiration date of this policy if we elect not to renew.

7. Automatic Termination

This policy terminates automatically on the expiration date of the expiring policy term if the *first named insured* fails to pay when due any renewal premium, or installment payment, for this policy.

COVERAGE MODIFICATIONS — PROPERTY

If Part I is included in this policy, the following provisions apply:

A. The COMMON CONDITION — ASSIGNMENT OF YOUR INTEREST is amended as follows:

If you die, Part I of this policy will remain in effect until the covered property is sold, but no later than:

1. 180 days after your death, regardless of the expiration date of the policy term; or
2. The expiration of the policy term.

Coverage during the period following your death is subject to all provisions of this policy including payment of all premiums for the policy term or any extension of such.

B. The COMMON CONDITION — ACTION OR SUIT AGAINST US is supplemented as follows:

No action may be brought against us until all conditions in this policy are complied with, and unless brought within one year from the date of loss.

No right exists under this policy for you or others to make us party to an action against any insured.

C. Paragraph 2 of the Our Options in Settling Losses Section of the HOW LOSSES ARE SETTLED Condition is replaced by the following:

2. We may repair or replace all or any part of the property as provided for in this policy, or take all or any part of such property at a mutually agreed, or appraised value. We may give notice of our intent to do so at any time up to 15 working days after our acceptance of our liability for the loss (i.e., proof of loss).

COVERAGE MODIFICATIONS — LIABILITY

If Part II is included in this policy, the following provisions apply:

- A. If you or your employees are certified by a federal or state agency to use herbicides or pesticides, Paragraph A of the Pollution / Environmental Damage Exclusion does not apply with respect to the use of such herbicides or pesticides.
- B. If this policy covers a *residential dwelling* under Part II, the following provisions apply:

PART II C — LIABILITY NOT INSURED

1. We will not insure *bodily injury* or *property damage* arising out of any consequences of the failure of any insured to disclose the presence of any *lead-based paint* or *lead-based paint hazard* at the time of the sale or lease of a *residential dwelling*.
2. We will not defend any action which arises out of such failure.

As used in this endorsement, the following definitions apply:

Lead-based Paint

Lead-based paint means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or 0.5 percent by weight.

Lead-based Paint Hazard

Lead-based paint hazard means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Residential Dwelling

Residential dwelling means:

1. A single-family dwelling, including attached structures such as porches and stoops, or
2. A single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, and in which each unit is used or occupied, or intended to be used or occupied, in whole or in part, as the residence of one or more persons.

C. If endorsement MCL 425 (Employee Benefits Liability Coverage) is included in this policy, Paragraph 1 of the EXTENDED REPORTING PERIOD Condition of MCL 425 is replaced by the following:

1. This condition applies only if:
 - (a) This Coverage Form is cancelled or not renewed for any reason;

(b) *We* renew or replace this Coverage Form with other insurance that:

- Provides claims-made coverage; and
- Has a Retroactive Date later than the one shown in this endorsement's schedule; or

(c) *We* replace this endorsement with other insurance that applies on other than a claims-made basis.

LEAD/ LEAD CONTAMINATION AND ASBESTOS EXCLUSIONS • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of lead or asbestos as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSIONS – LEAD / LEAD CONTAMINATION AND ASBESTOS

Part II C is extended to include the following:

- A. *We do not cover **bodily injury, property damage**, or medical payments resulting from or caused by lead or lead contamination arising out of any **occurrence** at **your premises**:*
 - 1. *As to **bodily injury** and medical payments this includes such caused by or through:*
 - absorbing lead;
 - chewing on, eating or otherwise ingesting lead; or
 - inhaling lead.
 - 2. *As to **property damage** this includes such caused by or through any sort of lead contamination or existence of lead in:*
 - air, ground, or water; or
 - any part of the premises including, but not limited to, building materials and paint.
- B. *We do not cover **bodily injury, property damage**, or medical payments resulting from or caused by the actual, alleged, or threatened exposure to **asbestos**, or the presence of **asbestos** in any place.*
- C. *We do not insure any cost, expense, liability or loss arising out of any of the following:*
 - Any demand, directive, order, or request that any **insured** or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to **asbestos**, lead or lead contamination.
 - Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to **asbestos**, lead or lead contamination.

Asbestos as used in these exclusions means the mineral in any form, including but not limited to fibers or dust.



NOTICE TO POLICYHOLDERS

Your policy will now include exclusions for Year 2000 computer failures. Losses and claims resulting from failure of computer systems to properly read dates beginning with January 1, 2000 or any date shown as a 4 digit date are not covered.

You should read your policy and any related endorsements (including this endorsement MCM 400) and review your Declarations page for complete information on the coverages you are provided.

Contact your agent if you have any questions.

MCM 400 (PN) 03 98

YEAR 2000 EXCLUSIONS

This endorsement extends the policy to exclude any loss arising out of any Year 2000 failure.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

COVERAGE MODIFICATION — PROPERTY

If Part I is included in this policy, the following exclusion is added to Part I — LOSSES NOT INSURED:

We do not provide insurance for any loss or damage arising out of or resulting from:

1. Any data processing equipment, system or component, or any media, software program, or electronic device, whether owned by *you* or others:
 - Failing at any time to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - Misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.
2. Any work performed on any data processing equipment, systems or component, or any media, software program, electronic device, or electrically stored data to:
 - Allow such to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year;
 - Correctly interpret any date or time beginning with January 1, 2000; or
 - Prevent such from misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.

But if loss by a covered *specified cause of loss* ensues, *we* insure such resulting loss.

COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to Part II — LIABILITY NOT INSURED:

*We do not insure any costs, damages, expense, liability or loss incurred by *you* or others arising out of:*

1. The rendering or failure to render any sort of advice, product, or service as a data processing solution to the Year 2000 date change.
2. Any act, error or omission that results in any data processing equipment, system or component, or any media, software program, electronic device or electronically stored data:
 - Failing at any time to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - Misinterpreting any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.
3. Any act, error or omission of or in any data processing equipment, system or component, or any media, software program, electronic device, or electronically stored data that causes damage to any entity because of:
 - The failure of such to recognize, store, display, or perform any function with respect to any date or time beginning with January 1, 2000 or any date that includes a 4 digit designation for the year, or
 - The misinterpretation of any date or time beginning with January 1, 2000 as a date or time before January 1, 2000.



SPECIAL CONTRACTORS POLICY — MSC 010 09 98

YOUR POLICY INCLUDES:

- The Declarations / Supplemental Declarations, Including Information About —
 - *You* and *Your* Business / Operations
 - The Locations, Property Items and Business Operations Covered
 - The Applicable Coverages
 - The Applicable Limits of Liability and Deductibles
 - The Applicable Special Limits and Factors
 - Who *We* are and *Your* Insurance Representative
- This Special Contractors Form — MSC 010
- Additional Endorsements, if Applicable

THIS INSURANCE FORM INCLUDES:

PART I	ITEM	PAGE
	• Part I A — Main Property Coverages Descriptions: <ul style="list-style-type: none">• Coverage A — Buildings• Coverage B — Business Personal Property• Coverage C — Personal Property of Others• Coverage D — Loss of Use from a <i>Direct Covered Loss</i>	2
	• Part I B — Supplemental Coverages	4
	• Part I C — Losses Insured - Cause of Loss Options	8
	• Part I D — Property Exclusions / Limitations	10
	• Part I E — Property Loss Limitations	11
	• Part I F — Losses Not Insured	11
	• Part I G — Special Part I Conditions, Including — <ul style="list-style-type: none">• Duties When Loss Occurs• How Losses Are Settled• Other Special Conditions	13
PART II	• Part II A — Main Liability Coverages Descriptions <ul style="list-style-type: none">• Coverage E — Liability to Others• Coverage F — Medical Payments to Others	18
	• Part II B — Supplemental Coverages	19
	• Part II C — Liability Not Insured	22
	• Part II D — Special Liability Conditions, Including — <ul style="list-style-type: none">• Duties of <i>Insureds</i>• Limits of Liability	24
PARTS I AND II	• Common Glossary	26
	• Common Exclusions	28
	• Common Conditions, Including — <ul style="list-style-type: none">• Action or Suit Against <i>Us</i>• Cancellation / Termination• Concealment / Misrepresentation / Fraud• Coverage Territory• Examination / Changes• Other Insurance• Other Conditions	30

DEFINITIONS AND WORD MEANINGS

Words shown in *italics* are defined in the Glossaries.

The word “provisions” refers to all or part of the text of this insurance contract — including agreements, conditions, exclusions, limits, limitations, and all other terms.

The meaning of other words or phrases not specifically defined in this policy are to be found in their relevant conventional definition based on consideration of the context in which they are used in this policy.



PART I A • MAIN PROPERTY COVERAGES

INSURING AGREEMENT

A. We provide insurance under this policy for those of the following coverages for which a specific limit of liability and related premium charge is shown in the Declarations. The term "Declarations" also includes a Supplemental Declarations or any other similar forms. If a series of Declarations or Change Endorsements are issued, then this term means the current Declarations or Change Endorsement.

The term "described" used below (for example, described buildings) means described in the Declarations.

B. Unless otherwise specifically provided in this policy, this insurance applies only to *covered loss* that takes place during the current policy term on the applicable described premises (the location / premises described in the Declarations).

C. With respect to personal property covered by this policy (including any covered within the definition of or by Extension of Coverage A), coverage is extended to *covered loss* that also takes place outdoors (meaning not in a building) on, or within 100 feet of, the described premises.

D. Insuring Agreement Qualification

The following Coverages as described below are subject to certain Exclusions and Limitations, including Common Exclusions and Parts I D, E, and F.

COVERAGE A • BUILDINGS / STRUCTURES

We cover described buildings (the general term buildings also includes other sorts of structures). Coverage A also includes the following property to the extent that such is part of, or incidental to the use of, described buildings:

1. Additions under construction.*
2. Alterations or repairs.
3. Building equipment, fixtures, materials, and supplies, intended for use in alteration, construction, or repair of described buildings.*
4. Completed additions.
5. Equipment, fixtures, and machinery permanently installed as part of described buildings.
6. Outdoor fixtures. For example, flagpoles, ground lights, light standards.

* Such property is covered by this policy only on an excess basis, if covered by other insurance.

COVERAGE B • BUSINESS PERSONAL PROPERTY

We cover the following property located in or on described buildings:

1. Personal property (including equipment, fixtures, and machines not subject to Coverage A) owned by *you* and used in *your* described business / operations.
2. Personal property of others — but only to the extent of the value of the labor, materials, and supplies provided by *you* in connection with such property.
3. Tenants' improvements and betterments. This means *your* remaining use interest in additions, alterations, fixtures, and installations, not legally removable by *you*, that are both: made part of a building that *you* occupy (but do not own) and acquired or made at *your* expense.

This coverage applies only if the cost of such property is not included in *your* rent and repair or replacement is at *your* expense.

COVERAGE C • PERSONAL PROPERTY OF OTHERS

We cover personal property of others, located in or on described buildings, in *your* care, control, or custody in connection with *your* described business / operations.

Our payment under this coverage is solely for the account of the owner of such property. Such beneficiary must comply with all relevant loss settlement and other conditions.

COVERAGE D • LOSS OF USE RESULTING FROM DIRECT COVERED LOSS

A. We cover *your* loss of Business Income and Extra Expense, as described below, that is the direct result of a *direct covered loss* that results in either:

1. The necessary interruption of *your* described business / operations; or,
2. The described premises being made incapable of being occupied.

We also cover such loss if access to the described premises is prohibited by order of any civil authority. This order must result from fortuitous direct physical loss to property at a premises other than the described premises (provided such other premises / property is not occupied or owned by *you*) caused by an applicable cause of loss covered by this policy.

B. Coverage Description

1. Business Income

We cover *your* following loss of Business Income, as described, to the extent that such would otherwise be earned or incurred by *your* business / operations had the *direct covered loss* not occurred.

a. **Net Income** — *Your* loss of net income (net profit or loss before income taxes) plus continuing necessary normal operating expenses to the extent that such would exist had the *direct covered loss* not occurred.

b. **Rental Income** — *Your* loss of rents from tenant occupancies (that *you* rent or customarily hold for rental to others under written leases) plus continuing expenses that are the obligation of tenants, under such leases, but which become *your* obligation because of the *direct covered loss*.

Business Income does not extend to any expenses that do not continue, or need not continue, during the applicable coverage period.

2. Extra Expense

We cover any sort of necessary reasonable expenses that *you* incur in order:

a. To continue, to the extent feasible, *your* normal business / operations at the same capability and quality of service as would otherwise exist had the *direct covered loss* not occurred — whether continued at the described premises or elsewhere (a replacement or temporary location); or,

b. To minimize the period of interruption if *you* cannot continue *your* normal business / operations at the same capability and quality of service as would otherwise exist had the *direct covered loss* not occurred.

Extra expense means those increased expenses, incurred as described above, that *you* would not otherwise incur in *your* normal business / operations had the *direct covered loss* not occurred — including the expenses to relocate at or equip and operate a replacement or temporary location.

3. Special Costs or Expenses

We also cover any sort of special costs or increased expenses that *you* incur specifically to minimize or reduce covered loss: but not for an amount more than such costs or expenses reduce the amount we would be otherwise obligated to pay had *you* not incurred such costs or expenses.

4. Cancellation of Contract

If the subject interruption or unoccupancy directly causes the cancellation, lapse, or suspension of a written agreement, contract, or lease, we also cover

your loss of Business Income and / or Extra Expense directly arising out of such, provided that *you* can demonstrate that *you* otherwise would have been able to satisfy and meet all the requirements of the agreement, contract, or lease had the *direct covered loss* not occurred.

This does not apply to any loss of Business Income and / or Extra Expense that may continue beyond the applicable coverage period.

C. Coverage Period(s)

1. Basic Period of Indemnity

Our obligation begins on the date of the *direct covered loss* and ends on the date that a. or b. below ends, whichever is the shorter period:

a. The period required with diligence and ongoing effort to restore *your* covered business / operations to substantially the same capability and quality of service that existed immediately prior to the *direct covered loss*; or,

b. The period required with diligence and ongoing effort to repair, replace, or restore the damaged property for the same purpose and occupancy.

But, if *you* occupy a premises owned by others and do not have control of its repair or restoration then: we provide coverage (if required) beyond this period for the additional time required to effect such repair, replacement, or restoration or 90 days, whichever one is the shorter period.

2. Civil Authority — Special Period of Indemnity

Our obligation for *covered loss* caused by order of any civil authority begins on the date of the order prohibiting access and runs for 14 consecutive days or the end of the period that access is denied, whichever one is the shorter period.

3. Electronic Media — Special Period of Indemnity

We cover *your* loss of Business Income, up to a period not exceeding 60 consecutive days (subject to Paragraph C.1. above), if *direct covered loss* to electronic media causes or contributes to such loss: any additional loss beyond such period caused by the failure to replace or restore electronic media is not covered by us.

Electronic media are: (a) any sort of electronic data processing, recording, or storage media, including the data stored on such media; (b) programming records used for electronic data processing or electronically controlled equipment.

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4. Extended Period of Indemnity

To assist *you* in *your* recovery after the end of the basic period, *we* extend coverage (if required) for up to an additional 30 consecutive days beyond the basic period described in Paragraph C. 1. (Pg. 3).

5. Policy Term

The described periods are not limited by expiration of the policy term.

6. Special / Extended Periods of Indemnity and Coverage D Limit

The described extended / special periods do not increase the applicable limit.

D. Special Conditions

1. *Your* business / operations, as referred to in this policy, means those activities and the associated expenses and income that are normal to *your* described business / operations at the described premises.

2. *You* are required to resume, in whole or in part, *your* normal business / operations as soon as possible and to the maximum extent feasible.

E. Special Exclusions / Limitations

We do not cover expense or loss caused by or resulting from the following:

1. **Cancellation** — The cancellation or suspension of any agreement, contract, lease, or license, other than as provided for in B. 4. (Pg. 3).
2. **Interference** — Delay caused by strikers (or others) with rebuilding, repairing, or replacing property or resuming *your* business / operations at the described premises, whether such delay arises at the described premises or elsewhere.
3. **Antennas** — Loss to antennas (including their lead-in wiring, masts, and towers).

PART I B • SUPPLEMENTAL COVERAGES

SUPPLEMENTAL COVERAGES — ADDITIONAL CONDITIONS

We provide the following Supplemental Coverages as extensions of the main coverages (but only when, and then to the extent that, such main coverages apply under this policy) subject to the following:

- These Supplemental Coverages do not modify or waive any provisions of this policy except to the extent specifically described: such are subject to all underlying provisions applicable in this policy, except to the extent specifically modified in Part I B.
- When so stated, the special limits specified in this policy (see Supplemental Declarations or other similar attachments) for such Supplemental Coverages are additional amounts of insurance — but these special limits are not increased or added together because *we* provide multiple coverages or cover multiple locations in one or more policies.

1. ACCOUNTS RECEIVABLE COVERAGE — ADDITIONAL INSURANCE

- A. *We* cover, up to the applicable limit shown in the Supplemental Declarations, loss arising out of *your* inability to collect on accounts receivable because of *covered* loss to records of such accounts. This covers all sums due *you* from customers which are uncollectible because of such loss. This also includes *your* increased collection expenses as well as other reasonable necessary expenses incurred by *you* to replace or restore these records.

Parts I E and I F (other than 7. and 12.A.) and the Part I deductible do not apply.

Coverage does not apply to loss:

- Due to accounting, billing, or bookkeeping error or omission; or,
- Where proof is dependent upon an audit, or inventory computation. But such audit can be used in support of a claim which *you* prove through other sources.

B. This Supplemental Coverage applies only in connection with Coverage B.

2. AUTOMATIC INCREASE COVERAGE — ADDITIONAL INSURANCE

- A. **Automatic Increase** — The current limit of liability shown for Coverage A or Coverage B is increased on an annual pro rata basis by the applicable factor shown in the Supplemental Declarations.

If no factor is shown in the Supplemental Declarations, then no automatic increase is applicable.

- B. These increases do not apply to any Supplemental Coverages and are not applicable in determining the basis limit for the Supplemental Coverages.

3. BUILDING EXTENSION COVERAGES

A. Glass Extension (Expanded Coverage Only)

We cover, up to the applicable limits shown in the Supplemental Declarations, loss to glass (other than signs) that is part of a building. The "per item" limit applies separately to each pane, panel, plate (or multiple plate) and similar discrete item or unit.

If the loss is caused by any of the *specified causes of loss* (other than vandalism), or the building is constructed of glass curtain walls, the special limits do not apply.

B. Outdoor Signs Extension — Additional Insurance

Coverage A is extended to cover, up to the applicable limits shown in the Supplemental Declarations:

1. Outdoor signs not attached to buildings.
2. Outdoor signs attached to buildings.

We cover such signs for direct physical loss. Parts I E and I F (other than 7 and 12.A.) and the Part I deductible do not apply (but, a specific "signs" deductible may apply).

C. Personal Property Extension

Coverage A is extended to cover the following property when both owned by *you*, and used primarily to maintain or service covered buildings / described premises: air conditioners; cooking, dishwashing, laundering, refrigeration, and ventilating appliances; fire extinguishers; floor coverings; lawn care and snow removal equipment — including riding mowers and similar items, but not other types of vehicles; outdoor fixtures / furniture.

4. BUILDING CODE / LAW COVERAGE — ADDITIONAL INSURANCE

A. Coverage A is extended to cover the following losses or expenses that ensue as a direct consequence of *covered loss* at the described premises. We cover such for an amount determined by applying the applicable factor specified in the Supplemental Declarations to the Coverage A limit for the subject property: the product is the specified limit for this Supplemental Coverage (Items 1, 2, and 3 combined). The loss or expenses covered are:

1. The loss caused by enforcement of any building, land use, or zoning code / law in force the date of the *covered loss*, 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 building, land use or zoning requirements at the described premises.
2. The increased expense *you* incur to construct, rebuild, or repair the property caused by enforcement of building, land use, or zoning

code / law in force the date of the *covered loss*: the property must be intended for the same use / occupancy as the current property unless otherwise prohibited by such code / law.

3. The expense *you* incur to demolish undamaged parts of property and clear the site of such parts caused by enforcement of building, land use, or zoning code / law in force the date of the *covered loss*.

B. We are not liable for payment under this Supplemental Coverage:

1. Until the property is repaired or replaced by *you* or by *us* (at the same premises or elsewhere if permitted or required by this policy); and, Unless the repair or replacement is made as soon as possible after the loss, but no later than the period described in Condition 2. C. 1. (Pg. 15).
2. For any loss or expense arising out of the enforcement of any code, directive, law, ordinance, or regulation requiring any *insured* or others to clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat any *pollutants*, asbestos, or lead contamination.

C. Our maximum liability under this Supplemental Coverage (Items A. 1, 2 and 3 combined) subject to (1), the specified limit and (2), the applicable limits and limitations on *our* liability described in Condition 2. A. (Pg. 14), is the sum of the following:

1. The cost to demolish the property and clear the site. And,
2. The cost to reconstruct / replace the property on the described premises.

D. This Supplemental Coverage does not apply to buildings or structures insured on an *actual cash value* basis.

5. DEBRIS REMOVAL COVERAGE — COVERAGES A, B, C

A. We cover, subject to the limits specified in B and C below, the necessary reasonable expenses incurred to remove the debris of a *covered loss*.

B. We pay such debris removal expense that *you* incur — but only up to an amount not exceeding that equal to the product of the amount otherwise payable by *us* for the *covered loss* times the special factor specified in the Supplemental Declarations. This amount is not additional insurance and does not increase *our* maximum limit of liability on the loss.

C. We also pay such debris removal expense, up to the applicable limit shown in the Supplemental Declarations, if either:

- The debris removal expense incurred exceeds the amount available for debris removal expense calculated above; or,

- The sum of the debris removal expense incurred and the amount otherwise payable by *us* for the *covered loss* exceeds *our* maximum limit of liability on the loss.

We pay up to the shortfall or the special limit, whichever is the lesser amount. This amount (Extension C) is additional insurance.

D. This Supplemental Coverage does not apply to any of the following expenses:

- To remove the debris of trees.
- To extract *pollutants* from land or water.*
- To remove, replace, or restore land or water that is polluted or is a *pollutant*.*
- To remove volcanic ash, dust, or particulate matter that does not cause loss.

* This also excludes the expense to safely dispose of such as required by any code, directive, law, ordinance, or regulation.

E. This Supplemental Coverage applies only to such covered expenses reported to *us* in writing within 180 days from the date of the *covered loss*.

6. EMERGENCY REMOVAL

We cover fortuitous direct physical loss to covered property when removed from the described premises because of imminent danger of loss by a covered cause of loss.

This Supplemental Coverage applies for 30 consecutive days from the first day of removal.

7. FIRE EXPENSE COVERAGES — ADDITIONAL INSURANCE

A. Fire Department Service Charges

We cover, up to the applicable limit shown in the Supplemental Declarations, *your* written contractual obligation to pay service charges when a fire department is called to protect or save property from imminent loss by an applicable covered cause of loss. The Part I deductible does not apply.

This Supplemental Coverage does not cover service charges:

- Incurred prior to assumption of *your* contractual obligation;
- Arising in connection with a false alarm.

B. Fire Extinguisher Recharge Expense

We cover, up to the applicable limit shown in the Supplemental Declarations, the cost to recharge fire extinguishers / related equipment discharged in pursuit of extinguishing a fire at the described premises. The Part I deductible does not apply.

8. NEWLY ACQUIRED PROPERTY COVERAGES — ADDITIONAL INSURANCE

A. *We* cover property newly acquired or constructed by *you*, as well as Loss of Use (if covered by this policy)

resulting from fortuitous direct physical loss to such property, as follows.

1. **Coverage A** — *We* cover, up to the applicable limits shown in the Supplemental Declarations, the following:

a. New buildings while being built on described premises.

We also cover temporary structures erected to assist in construction of new buildings or of additions / alterations to described buildings while such construction is taking place: but such are covered by this policy only on an excess basis if covered by any other insurance.

b. Buildings at a location newly acquired by *you* if such buildings are intended for use either similar to that of described buildings or as a warehouse.

2. **Coverage B** — *We* cover, up to the applicable limits shown in the Supplemental Declarations, business personal property owned by *you* at a location newly acquired by *you*, other than exhibitions and fairs. However, when *you* are moving covered property from a described premises under this policy to a newly described premises, then the applicable Coverage B limit applies pro rata (based on total values) at each such premises for 10 days after moving begins, and then such pro rata coverage ceases.

3. **Coverage D** — *We* cover the subject loss arising out of *direct covered loss* to the following property (Note — 3.a., is not additional insurance):

a. **Alterations or New Buildings at Described Premises**

- Alterations or additions to described buildings.
- New buildings, whether under construction or completed.
- Building materials or supplies and equipment or machinery which are used in alteration or construction at described premises or incidental to *your* occupancy of the new building.

If the subject *direct covered loss* delays the start of *your* covered business / operations at the described premises, then this Extension begins on the projected start up date (had the *direct covered loss* not occurred).

This Extension is subject to the Coverage D limit.

b. **Newly Acquired Locations**

Property owned by *you* at any location that *you* newly acquire, other than exhibitions or fairs: *we* cover such up to the applicable

limits shown in the Supplemental Declarations.

4. **Special Limits** — The special limits referred to above are developed by multiplying the subject coverage limit (Coverage A, B, or D) by the applicable factor shown in the Supplemental Declarations: the product is the amount available for *covered loss* to new buildings (Coverage A) or *covered loss* at new locations (Coverages B and D) — all subject to the specified maximum limit per building or per location.

B. Coverage Period

This Supplemental Coverage applies for up to a period of 60 consecutive days from the beginning date of the subject acquisition or construction: but, in no case, beyond the end of the policy term or the date on which *you* report the values to *us*, whichever date is earlier. This coverage period does not apply to Extension A.3.a. above.

C. Additional Premium

Additional premium is applicable for the values *you* report to *us* based on the date of acquisition or the date that *you* first begin construction.

9. OFF PREMISES COVERAGE — ADDITIONAL INSURANCE

We cover, up to the applicable limits shown in the Supplemental Declarations, loss to covered business personal property (including portable tools) while in transit or at a job site or while temporarily at locations that *you* do not lease, operate, or own. This does not apply to property while within 100 feet of a described premises.

This Coverage is subject to all transit loss and is not subject to: the Exclusions with regard to Earthquake and Flood; Part I F other than Exclusions 7. and 12.A.

10. OUTDOOR PROPERTY COVERAGE — ADDITIONAL INSURANCE

We cover, up to the applicable limit shown in the Supplemental Declarations, *your* outdoor: antennas (including lead-in wiring, masts, and towers); fences; decorative plants, shrubs and trees (including any debris removal expense): loss to any one plant, shrub, or tree is also subject to the special limit per item shown in the Supplemental Declarations.

Such property is covered for fortuitous direct physical loss caused by fire (hostile fire), aircraft, explosion, lightning, or riot or civil commotion.

11. PERSONAL PROPERTY COVERAGES

A. Personal Effects — Additional Insurance

Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, personal effects owned by *you*, or *your* directors,

employees, officers, partners, or volunteer workers, while on the described premises.

B. Personal Property of Others

1. Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, personal property of others in *your* care, control, or custody in connection with *your* covered business / operations (but see Extension 2. below as to leased property). *Our* payment under this coverage is solely for the account of the owner of such property, and such beneficiary must comply with all relevant loss settlement and other conditions.

This Extension is in addition to Coverage B. 2. on Pg. 2. This Extension is additional insurance.

2. Coverage B is extended to cover leased property in *your* care, custody, or control for which *you* are contractually obligated to provide property insurance. This Extension: (a) applies for the causes of loss for which *you* are contractually responsible to the extent such causes of loss are covered by this policy; (b) is not subject to Extension 1. above or Coverage B. 2. on Pg. 2.

C. Valuable Papers and Records — Additional Insurance

1. Coverage B is extended to cover, up to the applicable limit shown in the Supplemental Declarations, *your* expenses, including the cost of research, incurred to replace or restore the information contained in *your* *valuable papers and records* (including electronic or magnetic media) for which duplicates do not exist because of *covered loss* to such property.

Parts I E and I F (other than 7. and 12.A.) and the Part I deductible do not apply.

2. The full Coverage B limit applies to the cost of replacement of *valuable papers and records* in blank form.

D. Vehicles

Coverage B is extended to cover the following property owned by *you*:

- Canoes and rowboats while ashore at the described premises,
- Vehicles not licensed for use on public roads principally operated at the described premises specifically to service the described premises or *your* described business / operations at the described premises.

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12. POLLUTION CLEANUP COST COVERAGE — COVERAGES A, B, C — ADDITIONAL INSURANCE

- A. We cover, up to the applicable limit shown in the Supplemental Declarations, the necessary reasonable expenses that you incur to extract *pollutants* from land or water at the described premises: but only if the discharge, dispersal, emission, escape, migration, release or seepage of *pollutants* is a consequence of a covered loss.

The special limit shown for this Supplemental Coverage is our total liability for all such expense for each annual (12 month) term of the policy — regardless of the number of occurrences or total expenses incurred.

This Supplemental Coverage applies only to such expenses reported to us in writing within 180 days from the date of the subject covered loss.

- B. This Supplemental Coverage does not apply to the extraction of any sort of nuclear or radioactive materials — whether such is natural or human made.
- C. If a specific deductible is shown for this Supplemental Coverage, such deductible applies in lieu of any other deductible otherwise shown as applicable in this policy.

13. STEAM EQUIPMENT OR OTHER FIRED VESSEL EXPLOSION COVERAGE

- A. We cover loss by explosion of fuel or gas within the furnace of a fired vessel of flues or passages through which the gases of combustion pass — including such explosion loss to steam boilers, engines, pipes or turbines.
- B. We cover loss by explosion to hot water boilers or other equipment for heating water.

14. WATER DAMAGE / RELATED DAMAGE REPAIR EXPENSE COVERAGE

We cover the following additional expenses incurred in connection with an otherwise covered sprinkler leakage

loss or water damage loss (including freezing), as described (Pg. 9), when the building containing the appliance, equipment, or system is covered property under this policy:

- A. The expense to repair damage to the building that occurs because of necessary reasonable efforts to get at and repair damage to the appliance, equipment, or system from which the "water" escapes.
- B. The concurrently incurred expense to repair or replace that particular defective / damaged part (joint, piece of pipe, valve, or similar specific item) of the appliance, equipment, or system from which the "water" escapes.

This Supplemental Coverage does not apply:

- To the expense to repair or replace the subject appliances, equipment, or systems, other than the particular defective / damaged part as provided for in B above.
- If others are responsible by contract or law for payment of such expenses.

15. WEATHER RELATED COVERAGE — EXPANDED COVERAGE OPTION

We cover the following loss to the interior of a covered building or covered personal property within a building by hail, ice, rain, sleet, or snow:

- Loss arising out of the thawing of hail, ice, sleet, or snow on the building.
- Loss by any such elements to the interior of the building although the exterior walls or roof are not first damaged by a covered cause of loss allowing these elements to enter into the interior: but, if MCP 515 is listed in the Declarations, this Extension is deleted.
- Loss by such elements to personal property within a building.

This Supplemental Coverage applies only to property subject to Expanded Coverage.

PART I C • LOSSES INSURED

GENERAL CAUSE OF LOSS CONDITIONS — COVERAGES A, B, C

- A. Subject to all applicable provisions in this policy, property covered by this policy is insured for that coverage option (see descriptions below) which is designated in the Declarations as applicable to the specific item. Accordingly, the same sort of property — buildings, for example — can be insured for differing causes of loss based upon the option selected to apply to the specific item.
- B. The various described causes of loss cover fortuitous direct physical loss not otherwise excluded or limited. Loss — covered loss — means: **fortuitous direct**

physical damage to or destruction of covered property by a covered cause of loss, (including, if covered, the taking of the subject covered property by theft and damage arising in the course of such theft). Covered cause of loss means a cause of loss contemplated by the following coverage options to the extent that such are described as applicable to the subject covered property.

Direct physical loss does not include or mean any sort of consequent loss, loss of use, or loss of utility. But such loss may otherwise be specifically provided for in this policy: for example, see Coverage D.

C. CAUSE OF LOSS COVERAGE OPTIONS

The following are subject to all applicable Exclusions and Limitations described in this policy.

FIRE COVERAGE

Fire Coverage includes the following:

- Fire (hostile fire)
- Explosion
- Lightning

BASIC COVERAGE

Basic Coverage includes the following:

- Fire (hostile fire)
- Aircraft*
- Explosion
- Lightning
- Riot or Civil Commotion*
- Sinkhole Collapse*
- Smoke*
- Vandalism*
- Vehicles*
- Volcanic Eruption*
- Windstorm / Hail

* See descriptive definitions below.

EXPANDED COVERAGE

Expanded Coverage includes Basic Coverage, plus other fortuitous direct physical loss to or theft of covered property not otherwise excluded or limited in this policy. The losses and costs excluded under the descriptions of the causes of loss Falling Objects and Sinkhole Collapse below also apply to Expanded Coverage.

DESCRIPTION OF LISTED CAUSES OF LOSS

The following definitions apply to and limit the scope of the listed causes of loss:

- **Aircraft:** This means direct physical contact of aircraft with covered property. Aircraft includes objects that fall from aircraft, spacecraft, or self-propelled missiles.
- **Collapse:** This means abrupt collapsing of buildings or structural parts of buildings.
- **Falling Objects:** This means damage to other property caused by the falling object.

This does not include:

- loss to personal property outdoors (not in buildings);
- loss to the interior of a building, or any property within a building, unless the falling object first penetrates the roof or exterior walls of the building.

- **Glass Breakage:** This means damage to other property caused by breakage of glass that is part of buildings.
- **Riot or Civil Commotion:** This includes, but is not limited to:
 - acts of striking employees while occupying the described premises;
 - looting occurring at the time and place of riot or civil commotion.
- **Sinkhole Collapse:** This means abrupt collapsing or sinking of land causing loss to covered property: such collapsing or sinking must be into an underground empty space created by the action of water on limestone or similar rock.
This does not include: the cost of filling sinkholes; collapsing or sinking into man-made cavities.
- **Smoke:** This means smoke causing abrupt accidental direct physical loss.
- **Sprinkler Leakage:** This means accidental discharge or leakage from an *automatic sprinkler system* and the collapsing of a tank that is part of such system.
- **Vandalism:** This means wilful malicious damage to property, and includes such damage done to a building by burglars while breaking into or out of such building.
This does not include: breakage of building glass; loss by theft.
- **Vehicles:** This means direct physical contact of a vehicle, or an object thrown up by a vehicle, with covered property.
This does not include: loss caused by vehicles *you* own or which are operated in the course of *your* business / operations.
- **Volcanic Eruption:** This means only:
 - airborne blast or shock waves; and
 - ash, dust, or particulate matter other than that which can be swept or washed away without leaving physical damage, and lava flow;caused by eruption of a volcano: but see Common Exclusion 1. (Pg. 28).
All volcanic eruptions that take place within a continuous 168 hour period are considered a single occurrence and constitute a single loss.
- **Water Damage:** This means abrupt accidental discharge of water as a direct result of the breaking or cracking of any part of an appliance, equipment, or system containing water: but see Sprinkler Leakage for an *automatic sprinkler system*. Water includes steam and the discharge of other liquids or materials.

NOTE: The term "abrupt" refers to an event instantaneous in time — not gradual, ongoing, or repeated over time.

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SPECIFIED CAUSES OF LOSS

Where the term *specified causes of loss* is used, the term means the following: fire • aircraft • collapse • explosion • falling objects • lightning • riot or civil commotion • sinkhole collapse • smoke • sprinkler leakage • vandalism • vehicles • volcanic eruption • water damage • weight of ice, sleet, or snow • windstorm / hail.

However, these apply only to the extent that the subject property is otherwise insured for such causes of loss.

COVERED LOSS

A. Coverages A, B, C • *Covered loss* is described in Condition B (Pg. 8).

B. Coverage D • Relevant to the context in which it is used:

- *Direct covered loss* means: fortuitous direct physical loss as described in Condition B (Pg. 8) which occurs at described premises occupied by *you* (occupancy is not a condition for Rental Income loss), which directly results in the subject covered Business Income loss / Extra Expense;
- *Covered loss* means: the subject covered Business Income loss / Extra Expense which results as a direct consequence of such described *direct covered loss*.

PART I D • PROPERTY EXCLUSIONS / LIMITATIONS

We do not cover the following property or loss except to the extent otherwise specifically provided for in this policy.

1. ALL PROPERTY COVERAGES

- A. Building Glass: but see Supplemental Coverage 3. A.
- B. Crops of any sort, whether growing, harvested, or in any way held.
- C. Land, including land on which covered property is located. Water.
- D. Property not described in this policy.
- E. Property that is more specifically described and insured under another coverage form in this policy or by any other insurance: but as to Coverage A, this insurance applies as excess.
- F. Outdoor property, as follows (but see Supplemental Coverage 10):
 - Antennas, including their lead-in wiring, masts, and towers.
 - Fences.
 - Lawns.
 - Plants, shrubs, or trees.
- G. Signs (outdoor signs): but see Supplemental Coverage 3. B.
- H. Vehicles, as follows: aircraft, motorized land vehicles, self-propelled machines, or watercraft — including their accessories, equipment, motor, parts, tires, or trailers. This also includes: devices designed to be powered through their electrical systems, radar detectors, recorded discs and tapes in such vehicles for use in the vehicle. But see Supplemental Coverage 11. D.

2. COVERAGE A

- A. Cost of backfilling or filling, excavations, or grading.
- B. Docks, piers, pilings, or wharves.
- C. Foundations of buildings, boilers, or machinery that are below the lowest basement floor or, if no basement, below ground level.
- D. Paved surfaces of any sort, including — but not limited to — bridges, driveways, parking lots, patios, roads, or walks.
- E. Retaining walls that are not part of described buildings.
- F. Underground drains, flues, or pipes.

3. COVERAGES B AND C

- A. Creatures of any sort.
- B. Furs and jewelry.
- C. *Money and Securities*. Gold, silver, and other precious alloys or metals.
- D. Property while airborne or waterborne.
- E. *Valuable papers and records* as well as the cost to replace, research, or restore the information on *valuable papers and records*: but see Supplemental Coverage 11. C.

PART I E • PROPERTY LOSS LIMITATIONS

We do not provide insurance under Part I for any sort of damage or loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss otherwise covered contributes to such concurrently or in any sequence.

1. COLLAPSING OF SPECIFIED PROPERTY

Loss caused by collapsing — other than that caused by the collapse of a building or a structural part of a building — to: antennas, including their lead-in wires, masts, or towers • awnings • beach or diving platforms and related equipment or structures • docks, piers, or wharves • downspouts and gutters • fences • outdoor swimming pools • paved surfaces of any sort (including, but not limited to, bridges, driveways, parking lots, patios, pavements, roads, walks) • retaining walls • yard fixtures. This does not apply to collapsing which ensues as a direct result of fortuitous direct physical loss by other covered cause of loss applicable to such property.

2. DISAPPEARANCE OF PROPERTY

Loss, otherwise covered by this policy, in connection with covered property that is missing where there exists no physical evidence to show what happened to the property. Loss discovered or inferred upon taking inventory.

3. FRAGILE ITEMS

Breakage of any sort of fragile items (including, but not limited to, chinaware, glassware, marble, porcelains, or statuary). This does not apply to: loss caused by a *specified cause of loss*; building glass; containers of

property held for sale by *you*: lenses of photographic or scientific instruments.

4. HOT WATER / STEAM EQUIPMENT

A. **Hot Water Boilers** — Loss to hot water boilers or other water heating equipment by any condition or event inside such boilers or equipment.

B. **Steam Equipment** — Loss to steam boilers, engines, pipes, or turbines by any condition or event inside such equipment.

But see Supplemental Coverage 13.

5. UNAUTHORIZED / VOLUNTARY TRANSFER OF PROPERTY

A. **Unauthorized Transfer** — Loss in connection with property that is given or transferred to any persons or transferred to any place (not the described premises) on the basis of false / unauthorized instructions — however such are given or transmitted.

B. **Voluntary Transfer** — Loss in connection with property that *you* (or others to whom *you* have entrusted the property) voluntarily give or transfer to anyone on the basis of being induced to do so by false pretense or fraudulent device, scheme, or trick.

PART I F • LOSSES NOT INSURED

We do not provide insurance under Part I for any sort of loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss otherwise covered contributes to such concurrently or in any sequence.

1. DELAY OR LOSS OF MARKET / LOSS OF USE EXCLUSIONS

Delay or loss of market or sale. Loss of occupancy. Because property cannot be occupied or used. Consequent loss. But see Coverage D for certain described coverage.

2. DISHONESTY EXCLUSION

Criminal or dishonest acts by *you*, by any of *your* employees, officers, partners, representatives, trustees, volunteer workers, or by any other person to whom *you* entrust property.

This applies whether any such persons act alone or in collusion with others or such acts take place within or outside of working hours.

This Exclusion does not pertain to acts of physical damage by *your* employees.

3. ELECTRICAL DAMAGE EXCLUSION

Loss, however caused, by artificially generated electrical currents to electrical or electronic appliances, devices or wiring.

If loss resulting from fire ensues, *we* insure such resulting loss.

4. EXPLOSION OF STEAM EQUIPMENT EXCLUSION

Explosion of steam boilers, engines, pipes, or turbines which are leased to *you*, owned by *you*, or operated under *your* control: but see Supplemental Coverage 13.

If loss resulting from fire or combustion explosion ensues, *we* insure such resulting loss.

5. FLOOD / FLOODING EXCLUSION

Flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or their spray: all, whether arising out of or caused by rain, snow, wind or other condition of the weather, or an otherwise covered cause of loss.

If loss resulting from fire, explosion, or theft (to the extent insured by this policy) ensues, *we* insure such resulting loss.

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6. FREEZING OF APPLIANCES OR OTHER EQUIPMENT EXCLUSION

Leakage or overflow of any liquids or any other materials from air conditioning, heating, plumbing, or other appliances or equipment (other than fire protection systems), or damage to such appliances or equipment, caused by freezing.

If ongoing care is exercised to maintain heat in the building, or such appliances or equipment are drained and kept dry, this exclusion is waived to the extent that such loss is otherwise insured by this policy.

7. INTENTIONAL LOSS EXCLUSION

Acts committed by, or at the direction of, any *insured* with the intent to cause a loss.

8. LAW OR ORDINANCE / GOVERNMENTAL DIRECTIVE EXCLUSION

Enforcement of any code, law, ordinance, or regulation, including those pertaining to construction, repair, or use of property or demolition of property (including debris removal). Any governmental directive. But see Supplemental Coverage 4.

9. POWER, HEATING, OR COOLING FAILURE EXCLUSION

Power, heating, or cooling failure or loss of utility services that takes place off the described premises. If loss by a covered cause of loss ensues, we insure such resulting loss.

10. THEFT FROM AN UNATTENDED VEHICLE

Theft from an unattended vehicle. However, we will cover theft by forced entry (there must be visible evidence of forced entry) into a securely locked body or compartment of a vehicle.

11. WATER DAMAGE EXCLUSION

A. Water under the ground surface that exerts pressure on or flows, seeps or leaks through: basements; doors, windows, or other openings; driveways; floors; foundations; paved surfaces; sidewalks; walls. See also mudflow or mudslide under 12.D. below.

B. Water that backs up through sewers or drains, or overflows from a sump.

If MCP 507 is listed in the Declarations, then Exclusion 11.B. is amended in that we do cover such damage up to the applicable limit shown in the Supplemental Declarations.

If loss resulting from fire, explosion, or sprinkler leakage (to the extent insured in this policy) ensues, we insure such resulting loss.

12. WEAR, TEAR, AND OTHER SPECIFIED LOSS / CAUSE OF LOSS EXCLUSIONS

A. Wear and tear • bacterium or other natural growth • birds, domestic animals, insects, rodents, or vermin • contamination or pollution including, but not limited to: (1) the discharge, dispersal, emission, escape, migration, release, or seepage of *pollutants*, (2) the costs associated with enforcement of any governmental directive, law or ordinance which requires *you* or any others to clean up, contain, detoxify, monitor, neutralize, remove, test for, or in any way respond to *pollutants*, asbestos or lead contamination or assess the effects of *pollutants*, asbestos or lead contamination: but see Supplemental Coverage 12 for certain coverage • corrosion • decay or deterioration • deficiency, error, or omission in design, materials, plans, or workmanship • disease • dry or wet rot • fungus • inherent vice (a customary characteristic of the property) • latent defect (an original condition or fault leading to loss) • mechanical breakdown • mildew • mold • rust • spores.

B. Buckling, bulging, contracting, cracking, expansion, settling, shrinkage, or sinking.

C. Continuous or repeated leakage or seepage from any part of an appliance or system which contains water or other liquids resulting from a condition which *you* fail to repair.

D. Earth / ground / land movement on or below the surface of the earth including, but not limited to: earth / ground / land collapsing (other than sinkhole collapse), pressure, rising, shifting, sinking, sliding, or subsidence; landslide; mine subsidence; mudflow or mudslide. See also Common Exclusion 1. (Pg. 28) as to catastrophic earth movement.

E. Marring or scratching: but these apply solely to personal property.

F. Smog, smoke, or vapor from agricultural or industrial activities.

If loss by a covered *specified cause of loss* ensues we insure such resulting loss, other than collapsing concurrent with or ensuing as a result of loss subject to Exclusions B and D above.

13. WEATHER / RELATED EXCLUSIONS

A. Loss to personal property caused by changes or extremes of temperature or dampness or dryness of the atmosphere.

B. Freezing, hail, ice, rain, sleet, or snow: these only apply to personal property while outdoors at the time of loss, but as to Windstorm / Hail in connection with Basic Coverage the following are also excluded: cold or frost; ice (other than hail), sleet, or snow whether or not wind driven.

C. Loss by dust, hail, ice, rain, sand, sleet, or snow, whether or not wind driven, to: (a) the interior of a building; or (b) property within a building: but see Supplemental Coverage 15. But, if the building first sustains loss by any covered cause of loss to the exterior roof or walls, which then allows these elements to enter the building, *we* insure the resulting loss by such elements.

D. Loss by weight of hail, ice, sleet, or snow to downspouts or gutters.

E. Any other weather conditions: but this only applies if weather conditions contribute with a cause, condition, or event, otherwise excluded in this policy, to produce the loss.

If loss otherwise covered by this policy ensues, *we* insure such resulting loss.

PART I G • SPECIAL PART I CONDITIONS

1. DUTIES WHEN LOSS / DANGER OF LOSS OCCURS

You, other insureds, and other coverage beneficiaries must do all of the following things:

A. **Report the Loss** — Give immediate written notice to *us* of any loss. Also, immediately notify the police in case of theft, vandalism, or other violation of law. As soon as possible, give *us* a description of how, when, and where the loss occurred.

B. **Protect Property** — Protect property if in imminent danger from a covered cause of loss or, if loss has occurred, from further loss. For example, by taking exposed property indoors, by covering openings or windows, or by making temporary repairs. *We* cover the reasonable necessary expenses that *you* incur for such immediate temporary repairs or safeguards.

However, it is *your* ongoing obligation, at your expense, to — as soon as feasible after *you*, *your* employees, or those *you* authorize to act on *your* behalf become aware of any condition under *your* control which could lead to loss while this policy is in force — undertake all reasonable construction, maintenance, or repair necessary to protect property from such *covered loss*. Listing of all such conditions is not feasible, but examples include: if a roof is leaking, to repair such; if a flooring support is collapsing / deteriorating, to repair such; if new supports or retaining walls become required, to construct such.

Any additional or subsequent loss resulting from *your* neglect of these duties is not covered by this policy, and *you* must either rely on other insurance or absorb such loss *yourself*.

C. Cooperation on the Loss

As often as *we* may reasonably request / require:

1. Immediately exhibit all that remains of the damaged and undamaged property, and allow *us* to take samples of such property for examination and inspection.
2. Produce for examination and copying: the inventory described in D below, all relevant accounting procedures, affidavits, books of account, bills, contracts, deeds, documents, evidence, financial records, invoices, liens,

leases, receipts, records, tax returns, vouchers, or other sources of information, or facsimiles acceptable to *us*.

3. Submit to examination and provide statements under oath and sign and swear to such. If more than one person is examined, *we* reserve the right to make such examination of each person out of the presence of the others. *We* also reserve the right to video record any examinations.

4. Otherwise cooperate with *us* in the investigation / settlement of the claim.

D. Inventory

At *our* request, prepare and sign an inventory of all damaged and undamaged property, showing in detail: age; description; quantity; *actual cash value* and, if so covered, replacement cost; source; amount of loss claimed. To the extent possible, set the damaged property aside and put such in best possible order for *our* examination.

E. Statement of Loss / Proof of Loss

Submit to *us* a statement about the loss that includes all information reasonably required by *us* (including, but not limited to, that described in C.2. and D., above) to determine: coverage; *our* liability for the loss and the amount and scope of loss; specifications of any damaged buildings. The statement is also to include detailed repair estimates.

And if required: submit to *us* within 60 days after *our* request a signed, sworn proof of loss. This is to include the information described above and any other information reasonably required by *us*, including all knowledge available to *you*, and others about:

- The time and cause of loss.
- *Your* interest and that of all others in the property involved (including a description of all encumbrances on such property).
- All other insurance policies which may apply to the loss.
- Any changes in occupancy, title, or use of the property during the policy term.

Failure to comply with these (or other Conditions) can alter or void *our* obligations under this policy. >

2. HOW LOSSES ARE SETTLED

A. Limit of Liability per Loss Occurrence — Coverages A, B, C.

Our limit of liability is that amount that is the least one of all the following:

1. The replacement value or, if MCP 523 is listed in the Declarations as applicable to specified property, the *actual cash value* of the damaged portions of subject property at the time of loss. But, in no event, exceeding the lesser of a. or b. below:
 - a. The lesser cost reasonably required, with diligence and ongoing effort, to:
 - Repair or restore the damaged property with like materials of comparable quality used for the same purpose / same occupancy, bringing such to the same general condition as existed immediately prior to the loss; or,
 - Replace the damaged property, at the same described premises, with like property of comparable quality used for the same purpose / same occupancy.
 - b. The necessary reasonable expense paid to repair, replace, or restore the damaged property.
2. Any factors, limits, special limits, or other recovery limitations described or specified in this policy as applicable to the subject loss and property, whether shown in the Declarations, any endorsements, or elsewhere in this policy. The inclusion of any sort of recovery limitations or special limits or the inclusion of more than one item within any provision in this policy do not increase or otherwise modify any of the general limits shown in this policy — unless specifically stated to be additional insurance.
3. The insurable interest of the *insured* (or other named interests) at the time of loss.

And, in all cases subject to the following special conditions:

4. **Glass** — Loss to glass is settled on the basis of the cost of replacement with safety glazing material when such replacement is required by law or ordinance.
5. **Money** (If covered by this policy) — At face value: if foreign money, at its exchange rate (in dollars) on the date that the loss is reported to *us* by *you*.
6. **Securities** (If covered by this policy) — At their value at the close of business on the date that the loss is reported to *us* by *you*.

7. Tenant's Improvements and Betterments

- a. If *you* make repairs as soon as feasible, loss is settled as described above.
- b. If *you* do not make repairs as soon as feasible, *our* obligation is limited to a proportion of *your* original cost for the improvements, determined as follows:
 - Divide the number of days from the date of loss to the expiration date of the lease by the number of days from the date of installation (of the improvement) to the expiration date of the lease, then
 - Multiply the original cost by the figure resulting from this division.

Note: If *your* lease contains a renewal option, *we* use the expiration date of the renewal option in lieu of the expiration date of the current lease.

8. **Valuable Papers and Records** — Loss to *valuable papers and records* (other than prepackaged software programs) not subject to Supplemental Coverage 11.C. is settled on the basis of the cost of blank materials for reproducing such records plus the cost of labor to copy such records when duplicates of such exist.

B. Limit of Liability per Loss Occurrence — Coverage D

Our maximum liability is determined based on consideration of all of the following:

1. Business Income

- a. The net income / rental income of the business / operations before the date the *direct covered loss* occurred.
- b. The likely net income / rental income of the business / operations had the *direct covered loss* not occurred.
- c. The operating expenses, including payroll expenses, necessary to resume *your* normal business / operations at the same capability and quality of service as existed immediately prior to the date the *direct covered loss* occurred.
- d. Any other relevant sources of information, including all information described under Condition 1 — "Duties" (Pg. 13).
- e. Any liability *we* otherwise have, as determined above, is reduced to the extent that *you* can resume *your* normal business / operations, in whole or in part, including by using any property (including damaged property) at the described premises or elsewhere.

2. Extra Expense

- a. All expenses that exceed the normal operating expenses that *you* would otherwise incur in *your* business / operations during the coverage period of indemnity had the *direct covered loss* not occurred.
- b. All necessary expenses that reduce the Business Income Loss that would otherwise be incurred.
- c. Any liability *we* otherwise have for Extra Expense, as determined in 2.a. above, is reduced by the following:
 - The remaining salvage value of any property bought for temporary use during the coverage period of indemnity once *your* business / operations are resumed.
 - Any Extra Expense that is paid for by other insurance that is not subject to the same provisions that apply in this policy.
 - To the extent that *you* can resume normal business / operations.

3. General Condition

Conditions 1 and 2 apply to each described premises at which *direct covered loss* occurs, and *our* maximum liability for such loss does not exceed the limits of other recovery limitations otherwise shown in this policy applicable to the subject *covered loss*.

C. Bases of Loss Settlement — Coverages A, B, C.

1. Replacement Basis

The expense of replacement applies as the basis for loss settlement unless otherwise provided in this policy. But, this applies only if replacement is made at the described premises: *We* may waive this requirement in writing if building laws prohibit replacement at the described premises (then see Supplemental Coverage 4), or for other reasons acceptable to *us*.

The following property is always covered on an *actual cash value* basis:

- Manuscripts.
- Property of others.
- Works of art, antiques, or rare articles, including — but not limited to — bronzes, bric-a-brac, etchings, marble, pictures, porcelains.
- Tools. If MCP 525 is listed in the Declarations, loss to tools is settled on the replacement basis.

We are not liable for payment on a replacement basis until *you* complete repair, replacement, or restoration of the subject property.

You may submit a claim on an *actual cash value* basis and then, no later than 180 days following settlement on *your* claim in whole or in part on an *actual cash value* basis (or *our* offer of such if *you* decline settlement), make further claim in writing on repair, replacement, or restoration that *you* have completed at the time *you* make such claim.

2. Actual Cash Value Basis Option

If MCP 523 is listed in the Declarations, loss settlement is on an *actual cash value* basis at the time of loss.

D. Appraisal

1. If *you* and *we* do not agree on the amount of the loss or values or on the amount of Business Income or operating expenses, either one can require that the items in dispute be set by appraisal. Within 30 days of receipt of a written demand for appraisal, each is to select a competent impartial appraiser. Each party is to then notify the other of the appraiser selected.
2. The two appraisers are to select a competent impartial umpire. If the appraisers are unable to agree upon an umpire within fifteen days, *you* or *we* may petition a judge of a Court of Record to select an umpire.
3. The appraisers are to reach a mutual agreement on the items in dispute. If the appraisers fail to agree within a reasonable time, they are to submit their differences to the umpire. Written agreement signed by any two of these three persons constitutes settlement on the items in dispute.
4. Each appraiser is paid by the party selecting the appraiser. All other expenses of the appraisal are paid equally by *you* and *us*.
5. If *we* agree to appraisal, *we* specifically retain *our* right to deny the claim.

E. Deductible — Coverages A, B, C

We are liable for *covered loss* in any occurrence only when the loss is in excess of the deductible amount shown in the Declarations, and then only on the amount of loss less the deductible amount.

F. Loss to a Portion of a Pair or Set of Articles — Coverages B / C

1. Loss to some portion of a pair or set of articles or to property consisting of two or more parts (when complete) is not considered a total loss unless: because of such loss, the remainder is of no use and repair or replacement is not feasible.
2. In case *we* agree to pay for total loss, *you* are required to give *us* the remainder of such property, at *our* request, prior to such payment.

G. Our Liability and Satisfaction of Your Loss

If the maximum liability payable by *us* on *covered loss*, as determined in this policy, does not fully satisfy *your* loss, then *you* must either seek insurance that may be provided by others for the difference or otherwise absorb the unsatisfied portion of the loss *yourself*.

H. Our Options in Settling Losses — Coverages A, B, C

1. *We* may pay for the loss in *money*.
2. *We* may repair or replace all or any part of the property as provided for in this policy, or take all or any part of such property at a mutually agreed, or appraised, value. *We* may give notice of *our* intent to do so at any time up to 30 days after *our* acceptance of *our* liability for the loss (i.e., proof of loss).
3. *We* may settle the claim with *you*, any loss payee named in this policy, or others legally entitled to receive payment. If the claim applies to property of others, *we* have the right to adjust the loss with the owners of the property: satisfaction of their claim is also satisfaction of *your* claim as to such property.

If legal action is taken in a claim against *you*, *we* have the right to conduct and control a defense at *our* expense (but without increasing *our* liability under this policy).

I. Recovery of Covered Property

In the event *we* make a payment for loss and a subsequent recovery is made of any of the property, *you* may choose to keep the property *you* have recovered or receive the property that *we* have recovered. If *you* choose this option, *our* liability is reduced accordingly: payment is adjusted for the amount which *you* received for the loss to such property, and *you* must compensate *us* for the amount *we* previously paid.

If *you* do not choose this option, the recovered property becomes *our* property: if *you* have such property, *you* are required to give *us* those items *we* request.

J. When Loss Becomes Payable / Payment to Others

Loss becomes payable 30 days after completion and acceptance by *us* of a written agreement between the parties, or after an award is filed with *us* as provided in this policy. *Our* payment does not reduce the amount of insurance provided under this policy.

With respect to any mortgagee or secured party named in this policy; governmental entity; or others with contractual, legal, or statutory rights in loss payable under this policy: *we* may make payment jointly to all interested parties at *our* option. But *we*

need not pay any loss assignee, unless they receive a full assignment of the loss from *you*.

If an insurance trustee is named in this policy, *we* may negotiate the loss and make payment solely to such trustee — to the extent that the trustee represents those with an interest under this policy.

3. OTHER SPECIAL PART I CONDITIONS

A. Abandonment of Property

Abandonment of any property to *us* is prohibited.

B. Increase in Hazard / Related Conditions

1. **Increased Hazards** — This insurance is suspended while the hazards *we* initially undertook to insure are increased by means within *your* control or control of those *you* designate to act for *you*: loss, otherwise covered, is not insured during such suspension of this insurance. Lawful building alteration, construction, maintenance or repair, unless changing the use of premises, is not an increase in hazard.

An increase in hazard at one described premises does not affect this insurance at another described premises when no increase in hazard exists at such other described premises.

Increase in hazard includes changes which affect one or more of the following: use of the premises; the rates for this insurance; the acceptability of the hazard / risk to *us*, including breach of conditions which were the basis of *our* acceptance of such; the underwriting conditions and changes in physical conditions required by *us* for such hazard / risk; ongoing continuous effectiveness and use of any protective safeguards required by *us* for which *we* have given premium consideration; circumstances which would affect the scope of coverage, covered causes of loss, or amounts of insurance otherwise acceptable to *us* for such hazard / risk.

2. **Vacancy** — This insurance is suspended when a covered building becomes vacant beyond a period of 60 consecutive days. Vacant means not containing the contents customary to occupancy of the building. A building in the course of lawful alteration, construction, or repair is not considered vacant.

3. **Unoccupancy** — This insurance is suspended when a covered building becomes unoccupied beyond a period of 60 consecutive days.

This Condition does not apply to unoccupancy during that part of the year when it is *your* normal previous custom to close because of seasonal use.

C. Mortgagee Agreement

Mortgagees named in this policy are covered for loss to the extent of their interest and in order of precedence of the mortgages. This Condition applies to those mortgagees (this term includes trustees) named here who comply with the following Conditions.

Provided that the mortgagee will:

- Without delay, notify *us* of any change in ownership or occupancy, foreclosure proceeding, or increased hazard known to the mortgagee.
- Pay, on *our* demand, any required premium because the *insured* fails to do so.
- Furnish proof of loss within 60 days after *our* request if the *insured* fails to do so.
- Give *us* the mortgagee's rights of recovery against anyone liable for the loss. This does not impair the mortgagee's right to recover the full amount of the claim.
- Permit *us*, after a loss, to satisfy the mortgage requirements and receive a full assignment of the mortgage and all collateral securities to the debt.

We agree to provide this insurance to protect the mortgagee's interest in covered property even if *we* deny *your* claim.

See elsewhere in this policy in the state mandatory endorsement for Conditions relating to Cancellation by *us*.

D. No Benefit to Bailee

This insurance does not apply to the benefit of any others having custody of covered property. Any assignment to such persons or organizations has no standing under this policy.

E. Special Factors, Limits, or Limitations

This Part includes references in certain provisions to factors, limits or special limits, and other limitations described or specified in this policy: these are shown in the Declarations and Supplemental Declarations (or other similar attachments) to this contract.

PART II A • MAIN LIABILITY COVERAGE

COVERAGE E — LIABILITY TO OTHERS

- A. We pay for the benefit of *insureds*, up to the applicable limit(s) of liability (See Part II D) shown in the Declarations, those sums that *insureds* become legally liable to pay as damages because of *bodily injury* or *property damage* insured in this policy.

Such *bodily injury* or *property damage* must:

- Occur during the policy term, and
- Be caused by an *occurrence* that takes place within the applicable coverage territory: See General Conditions.

Damages because of *bodily injury* insured in this policy include claims by others for care, death (at any time), or loss of services resulting from such *bodily injury*.

Products / Completed Operations Hazard • If a specific aggregate limit of liability (See Part II D) for *products / completed hazard* is shown in the Declarations, then Coverage E, as described, extends to *bodily injury* and *property damage* included in the *products / completed operations hazard*.

- B. We have no obligation to pay any damages not covered by this policy or in excess of our limits of liability (See Part II D) for any covered damages.

COVERAGE F — MEDICAL PAYMENTS TO OTHERS

- A. We pay, up to the applicable limit of liability (See Part II D) shown in the Declarations, the reasonable necessary medical expenses, incurred by others, arising out of an accident which are both incurred and reported to us by you or the coverage beneficiary within three years from the date of such accident. The accident must: take place within the applicable coverage territory and policy term (See Common Conditions), and occur:

- On *your premises*.
- Away from *your premises*, but, if so, then only if the accident either:
 - Arises out of a condition at *your premises*, or
 - Arises out of the business / operations insured by this policy.

Fault or legal liability is not a condition for such payment (and our payment is not an admission of liability by any *insured*); however, we pay medical expenses only for *bodily injury* not otherwise excluded or uninsured under this policy.

- B. Medical expenses means expenses for: ambulance, dental, funeral, hospital, medical, professional nursing, surgical or x-ray services; prosthetic devices, drugs and surgical supplies.

If no "per person" limit is shown, then Coverage F does not apply under this policy.

APPLICATION OF THIS INSURANCE (PART II)

- A. This insurance applies to liability arising out of *your* contracting business / operations, designated in the Declarations or elsewhere in this policy including incidental related activities and the use of *your premises* for such, to the extent covered by this policy.

- B. Subject to Common Condition 7. (Pg. 31), such insurance also applies to the following:

1. Any additions or changes to *your* business / operations to the extent related to contracting operations or *your premises*, as described in paragraph A above, which occur during the current policy term;
2. Any business entity that *you* newly acquire or form during the current policy term, to the extent related to contracting operations, subject to the additional conditions described in the definition of *insureds*.

All provisions applicable to *your* business / operations and *your premises* designated in this policy apply to such additions, changes, and new entities, unless otherwise modified.

We have no obligation to provide any insurance or service, or pay any expense or any sum, other than those specifically described as applicable and insured in this policy.

PART II B • SUPPLEMENTAL COVERAGES

The following coverages do not extend or modify any provisions in this policy, including *our* Limits of Liability or any applicable Exclusions, except to the extent specifically described.

1. DEFENSE COVERAGE

With counsel of *our* choice, *we* defend suits (civil proceedings) against *insureds* seeking damages covered by this insurance. *We* have no duty to investigate any claim, defend or provide for a defense for any *insured*:

- In connection with either suits seeking damages not covered by this policy or allegations within a suit which are not covered by this policy; or
- When the applicable limit of liability is used up in payment of judgments or settlements.

We may investigate and settle any claim or suit as *we* deem such to be reasonable.

Suit includes alternative dispute resolution proceedings to which an *insured* either must submit or may choose to submit (but only if done with *our* prior written consent).

We assume the following costs and expenses in a suit defended by *us*:

- A. All costs incurred by *us*.
- B. The interest which accrues after entry of a judgment, but only until that time when *we* pay, offer to pay, or deposit in court that part of the judgment within *our* limit of liability.
- C. The prejudgment interest awarded against any *insured* on that part of the judgment *we* pay. But, if *we* offer to pay *our* applicable limit of liability under this policy, *we* will not pay any prejudgment interest which is based on the period of time that follows *our* offer.
- D. Costs taxed against the *insured*.
- E. Costs of appeal bonds or bonds to release attachments, for that amount of the bond within *our* applicable limit of liability. *We* need not furnish or secure such bonds.
- F. The reasonable expenses incurred by the *insured* at *our* request, as well as earnings (up to \$100 per day) lost because of absence from work at *our* request.

2. CONTRACTUAL COVERAGE

- A. Coverage E is extended to include *your* liability to pay damages to others (third parties) because of *bodily injury* or *property damage* — to the extent otherwise insured by this policy — arising out of *your* expressed assumption of the liability of another (*your* indemnitee) under the following oral or written contracts:

Item 1

- Agreements to indemnify a municipality as required by law or ordinance. This does not

include agreements made in connection with work for a municipality; but the assumption of tort liability of another for such work is included under Item 2.

- Easements. This does not include easements involving work on, or within 50 feet of, a railroad, nor is the assumption of tort liability for such included under Item 2.
- Leases of premises (but not as to fire damage) or elevator maintenance agreements.
- Sidetrack agreements.

Item 2

That part of other contracts (not as described in Item 1) in which *you* have expressly assumed the tort liability (liability imposed by law in the absence of contract) of another.

- B. Exclusion 2, in Part II C, does not apply to covered contracts under Item 2 with respect to maintenance, ownership, or use of aircraft or watercraft.
- C. This Supplemental Coverage applies only to contracts made in connection with *your* business / operations or *your* premises covered by this policy and, then, solely to *bodily injury* or *property damage* which occurs subsequent to execution of the covered contract.

If MCL 501 is listed in the Declarations, then coverage applies solely to those written contracts that *you* furnish to *us* within 60 days of their execution.

If MCL 502 is listed in the Declarations, then Item 2 (tort liability) is deleted.

If MCL 510 is listed in the Declarations, then coverage applies solely to written contracts.

3. FIRST AID EXPENSE COVERAGE

We pay necessary reasonable medical expenses incurred for first aid to others at the time of an accident, other than in connection with *bodily injury* otherwise excluded by this policy.

4. INCIDENTAL ALCOHOLIC BEVERAGE COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of the furnishing, giving, serving or use of alcoholic beverages, when *you* furnish, give or serve alcoholic beverages without charge and a license is not required for such activity.

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5. INCIDENTAL AUTOMOBILE COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of the following:

- A. The parking of *automobiles* (not borrowed or owned by, or rented to, any *insured*) at *your premises*.
- B. The operation of the following devices permanently attached to an *automobile*:
 - Air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.
 - Cherry pickers and similar devices used to raise / lower workers.

6. INCIDENTAL FIRE LEGAL LIABILITY COVERAGE

Coverage E is extended to include, up to the applicable limit of liability (See Part II D) shown in the Declarations for Fire Legal Liability Coverage, *property damage* arising out of fire at a nonowned premises rented to, or occupied by, *you*. If a separate specific limit is not shown in the Declarations for Fire Legal Liability, then this Supplemental Coverage does not apply under this policy. (The specified limit is *our* maximum liability in any one *occurrence* in connection with this Supplemental Coverage).

If MCL 521 is listed in the Declarations, then this extension also applies to *property damage* arising out of any other fortuitous direct physical loss at a nonowned premises rented to, or occupied by, *you*.

7. INCIDENTAL MEDICAL / PROFESSIONAL LIABILITY COVERAGE

Coverage E is extended to include *bodily injury* arising out of *your* providing for the benefit of others, without charge, any incidental medical or nursing services, or drugs or related supplies. This does not apply to any *insured*, or any *insured's* indemnitee, whose business / profession involves the rendering of such services or drugs or supplies.

8. INCIDENTAL MOBILE EQUIPMENT COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of *loading or unloading*, maintenance, ownership, or use of mobile equipment. Mobile equipment means solely land vehicles (including any equipment or machinery permanently attached to, or forming an integral part of, the vehicle) as follows:

- A. Vehicles used solely at *your premises*.
- B. Vehicles designed for primary use off public roads such as bulldozers, farm machinery, forklifts, and similar commercial types.
- C. Vehicles used primarily to provide mobility to the following:
 - 1. Concrete mixers (other than mix-in-transit type).*
 - 2. Diggers, drills, loaders, power cranes, or shovels.*

- 3. Road construction and resurfacing equipment, such as graders, rollers, or scrapers.*

D. Vehicles that are not self-propelled used primarily to provide mobility to:

- 1. Air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.*
- 2. Cherry pickers and similar devices used to lower / raise workers.*

E. Vehicles that travel on crawler treads.

F. Vehicles not otherwise used as described above that are maintained by *you* primarily for uses other than the transportation of cargo or persons; but this Supplemental Coverage does not extend to self-propelled vehicles as described below or equipped with any of the following permanently attached devices:

- 1. Designed primarily for road maintenance (other than road construction or resurfacing), snow removal, or street cleaning.
- 2. Equipped with air compressors, generators, or pumps; building cleaning, geophysical exploration, lighting, spraying, welding, or well servicing equipment.
- 3. Equipped with cherry pickers and similar devices mounted on automobile or truck chassis and used to raise / lower workers.

All such vehicles are *automobiles* for purposes of this insurance. But see Supplemental Coverage 5 for coverage of the operation of the described devices.

- * But only if permanently attached to, or forming an integral part of, the vehicle.

9. INCIDENTAL WATERCRAFT COVERAGE

Coverage E is extended to include *bodily injury* and *property damage* arising out of any of the following:

- Watercraft while ashore at *your premises* (other than premises *you* have abandoned, sold, or transferred to others).
- Watercraft not owned by, or loaned or rented to, any *insured*, if the *occurrence* arises out of *your* direct act. Direct act does not include or mean supervision of others or entrustment to others of watercraft.
- Watercraft not owned by *you*, if less than 26 feet in length and not used to carry persons or property for a charge.

10. PERSONAL INJURY / ADVERTISING INJURY COVERAGES

A. Liability to Others

We pay for the benefit of *insureds*, up to the limit of liability (See Part II D) shown in the Declarations, those sums that *insureds* become legally liable to pay as damages because of: 1. *Advertising Injury*, or 2. *Personal Injury*, as described and covered in this policy, arising out of a covered offense.

A covered offense must take place within the policy term and within the applicable coverage territory. See Common Condition 6. (Pg. 30).

This Supplemental Coverage applies only to the following:

- *Advertising injury* arising out of an offense committed in the course of advertising goods, products, or services of *your* business / operations covered by this policy.
- *Personal injury* arising out of an offense committed in the conduct of *your* business / operations covered by this policy, but not advertising, broadcasting, publishing, or telecasting done either by *you* or on *your* behalf.

If a specific separate limit of liability for *Personal Injury / Advertising Injury* is not shown in the Declarations, then this Supplemental Coverage does not apply under this policy.

B. Defense in Connection with *Personal Injury / Advertising Injury*

Defense is provided in connection with these coverages in accordance with the defense provisions described under Supplemental Coverage 1. (Pg. 19).

C. Liability Not Insured (Additional Exclusions)

We do not provide insurance for any sort of damages or liability directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following:

Advertising Injury / Personal Injury Exclusions.

We do not insure any of the following:

1. Injury arising out of oral or written publication of material, done by or at the direction of any *insured* with knowledge that such is false.
2. Injury arising out of oral or written publication of material whose first publication took place prior to the beginning of this policy or such coverage under this policy.
3. Injury arising out of rendering / failure to render professional advice or service.
4. Injury for which the *insured* has assumed liability in an implied, oral, or written agreement or contract. This does not apply to liability for damages, otherwise insured in this policy, that the *insured* has in the absence of contract.

5. Injury to *you* or *your* members or partners (if *you* are a joint venture or partnership).

Advertising Injury — Additional Exclusions.

We do not insure any of the following:

6. Injury arising out of breach of contract, other than misappropriation of advertising ideas under an implied contract.
7. Injury arising out of the failure of goods, products, or services to conform with advertised quality or performance.
8. Injury arising out of the wrong description of the price of goods, products, or services.
9. Injury arising out of an offense committed by an *insured* whose business is advertising, broadcasting, publishing, or telecasting.

D. Glossary

Advertising injury means solely the following:

1. Infringement of copyright, slogan, or title.
2. Misappropriation of advertising ideas or style of doing business.
3. Oral or written publication of material that: slanders or libels a person or organization, disparages a person's or organization's goods, products, or services.
4. Oral or written publication of material that violates a person's right of privacy.

Personal injury means solely the following:

1. False arrest, detention, or imprisonment.
2. Malicious prosecution.
3. Oral or written publication of material that: slanders or libels a person or organization; disparages a person's or organization's goods, products, or services.
4. Oral or written publication of material that violates a person's right of privacy.
5. Wrongful entry into, eviction of a person from, or invasion of the right of private occupancy of, a dwelling, room, or other private premises that the person occupies: but only if done by, or on behalf of, the landlord, lessor, or owner of such premises.

***Advertising Injury / Personal Injury* do not include *bodily injury* or *property damage*. Accordingly, Part II C — other than Exclusion 5. — does not apply: however, *Advertising Injury / Personal Injury* do not include or extend coverage under this policy in any way to any costs, damages, liability, or loss expressly excluded under Coverage E.**

PART II C • LIABILITY NOT INSURED

We do not provide insurance for any sort of costs, damages, expenses, or liability, directly or indirectly, wholly or partially, aggravated by, caused by, or resulting from any of the following, even if an occurrence otherwise covered contributes to such concurrently or any sequence — except to the extent otherwise specifically described and provided for in this policy.

1. ALCOHOLIC BEVERAGE EXCLUSION

We do not insure *bodily injury* or *property damage*, arising out of: contributing to any person's intoxication; furnishing alcoholic beverages to persons under the legal drinking age or under the influence of alcohol; violating any law, ordinance, or regulation relating to the distribution, gift, sale, or use of alcoholic beverages: but see Supplemental Coverage 4.

2. AUTOMOBILES / AIRCRAFT / WATERCRAFT EXCLUSIONS

We do not insure *bodily injury* or *property damage* arising out of the *loading or unloading*, loaning, maintenance, operation, renting, use, or entrustment to others (whether supervised or not) of any air craft, *automobile*, or watercraft operated or owned by, or loaned or rented to, any insured. This also applies to such *bodily injury* or *property damage* arising out of: any device, equipment, machinery, parts, trailers or semi trailers attached to any aircraft, *automobile*, or watercraft.

But see Supplemental Coverages 2. (Item 2.), 5. and 9.

3. BUSINESS ACTIVITIES / BUSINESS RISK EXCLUSIONS

A. We do not insure *bodily injury* or *property damage* included in the *products / completed operations hazard* — unless shown as covered by this policy with a specific aggregate limit for *products / completed operations* coverage shown in the Declarations.

Note: The *products / completed operations hazard* (whether covered by this policy or not) does not include *bodily injury* or *property damage* arising out of:

- Materials which are abandoned or unused, tools, or uninstalled equipment; or
- Transporting property, unless the occurrence results from a condition in or on a vehicle created by *loading or unloading* of the vehicle.

B. We do not insure any *property damage* to your *products* or *your work* caused, to any extent, by your *products* or *your work* or any part of such.

This Exclusion does not apply to *your work* if:

- The work has not, at the time of damage, been abandoned or completed; or
- The damaged work, or work out of which the damage arises, was performed on *your* behalf by a subcontractor.

C. With respect to *impaired property* or property that has not been physically damaged, we do not insure *property damage* arising out of any of the following:

1. An inadequacy, defect, deficiency, or dangerous condition in *your products* or *your work*.

2. A delay or failure by *you* or others acting on *your* behalf to perform an agreement or contract in accordance with its terms.

This Exclusion does not apply to loss of use of other property arising out of abrupt (sudden in time — not gradual or ongoing) accidental physical damage to *your products* or *your work* after such is put to its intended use.

D. We do not insure any costs, expenses, liability or loss, incurred by *you* or others, arising out of recall of *your products*, *your work*, or *impaired property* when such must be taken from the market or from others because it is known to be, or is thought to be, dangerous, defective, deficient, or inadequate.

Recall includes adjustment, disposal, inspection, loss of use, recall, removal, repair, replacement, or withdrawal of *your products*, *your work*, or *impaired property*.

E. We do not insure *property damage* to any of the following:

1. That part of real property on which work is being performed by either *you*, or any contractor or subcontractor working (directly or indirectly) on *your* behalf, if the *property damage* arises out of such work.
2. That part of any property that must be repaired, replaced, or restored because *your work* was faulty or incorrectly performed: this does not apply to *property damage* included in the *products / completed operations hazard*.

This Exclusion does not apply to liability assumed under a written sidetrack agreement.

F. Glossary

Impaired property means tangible property (other than *your products* or *your work*) that cannot be used, or is less useful, because one or both of the following apply:

- It incorporates *your products* or *your work* that is known to be, or is thought to be, dangerous, defective, deficient, or inadequate — and it can be restored by adjustment, removal, repair, or replacement of *your products* or *your work*.
- *You* have failed to fulfill the terms of an agreement or contract and it can be restored by *your* fulfilling the terms of the agreement or contract.

4. CONTRACTUAL LIABILITY EXCLUSION

We do not insure *bodily injury* or *property damage* for which the *insured* is liable to pay damages because of the assumption of liability for such in an implied, oral, or written agreement or contract. But see Supplemental Coverage 2.

To the extent that Supplemental Coverage 2. otherwise applies, we do not insure under such coverage: any liability to indemnify another for fire damage to a premises loaned or rented to *you*; any *bodily injury* or *property damage* which first occurs prior to execution of the agreement or contract.

This Exclusion does not apply to liability for damages, otherwise insured in this policy, that the *insured* has in the absence of contract.

5. EMPLOYEE, EMPLOYMENT, AND RELATED INJURY EXCLUSIONS

A. We do not insure any obligations of any *insureds* under a disability benefit, unemployment compensation, workers' compensation, or similar law.

B. We do not insure *bodily injury* to any of *your* employees arising out of and in the course of:

1. Employment by *you*; or
2. Performing duties related to the conduct of *your* business/operations.

C. We do not insure *bodily injury* or *personal injury* arising out of the following:

1. Coercion, defamation, demotion, discipline, discrimination, evaluation, harassment, humiliation, reassignment, or other employment-related acts, omissions, policies, or practices.
2. Refusal to employ.
3. Termination of employment,

D. We do not insure *bodily injury* or *personal injury*:

1. Sustained by the brother, child, parent, sister, or spouse of *your* employees arising out of any injury described in B and C above.
2. With respect to any employee (including any executive employee) as an *insured* in this policy, in connection with *bodily injury* or *personal injury* to *you*, *your* members or partners (if *you* are a joint venture or partnership) or a fellow employee, caused by the employee while in the course of employment by *you*.

E. We do not insure any obligation to share damages with, or repay, others who must pay damages because of any *bodily injury* described in B, C, and D.

F. We do not insure *bodily injury* to a fellow employee of any person operating mobile equipment registered in *your* name under any motor vehicle law.

Exclusions B through E apply whether the claim or suit is brought by *your* employees or by any others or whether *you* are liable as an employer or in any other capacity.

However, Exclusion B does not apply to liability assumed under a contract covered under Supplemental Coverage 2.

6. ENDANGERMENT OR HARM EXCLUSION

We do not insure *bodily injury* or *property damage*, whether or not expected or intended by any *insured*, which is a consequence of an *insured's* willfully harmful act or knowing endangerment.

7. MOBILE EQUIPMENT EXCLUSION

We do not insure *bodily injury* or *property damage* arising out of any of the following:

- A. Mobile equipment not specifically covered under Supplemental Coverage 8; transportation of mobile equipment by an *automobile* borrowed, operated, or owned by, or rented to, any *insured* — even if such mobile equipment is otherwise covered by this policy.
- B. Mobile equipment while being used in a prearranged demolition, racing, or speed contest or stunting activity, including preparation or practice for such — even if such mobile equipment is otherwise covered by this policy.

Mobile equipment means those vehicles described as such in Supplemental Coverage 8.

Note: See also Exclusion 9. D.

8. POLLUTION / ENVIRONMENTAL DAMAGE EXCLUSION

A. We do not insure *bodily injury* or *property damage* arising out of the actual, alleged, or threatened discharge, dispersal, emission, escape, flowing, leakage, migration, release, or seepage of *pollutants* or other similar forms of environmental damage, regardless of where or how such may take place.

Paragraph A of this Exclusion does not apply to *bodily injury* or *property damage* caused by:

The fumes, heat, smoke, or soot that are products of combustion arising out of a fire at *your premises*, other than such that are the products of burning *pollutants*.

However, if the fire is a controlled act, the following additional conditions apply:

All materials burned (and the burning process) must give rise solely to ordinary combustion particulate and products, such as those usual to a building (materials) fire; the fire must not involve any business, industrial, manufacturing, or processing activities.

B. We do not insure in this policy any cost, expense, liability, or loss arising out of any of the following:

- Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, treat, or in any way assess the effects of or respond to *pollutants*; or

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- Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to *pollutants*.

9. PREMISES / OTHER PROPERTY ADDITIONAL EXCLUSIONS

We do not insure property damage to any of the following premises or property:

- To personal property in the care, control, or custody of any *insured* or any property borrowed by *you*: this does not apply to liability assumed under a written sidetrack agreement.
- To premises *you* have abandoned, sold, or transferred to others, if the damage arises out of any part of such premises.
This does not apply to premises that are *your work* and have been neither occupied by *you* nor rented or held for rental by *you* to others.
- To property occupied or owned by, or rented to, *you*: but see Supplemental Coverage 6.
- To property — occupied or owned by, rented to, or in the charge of (1) *you*, or (2) others who are responsible for persons who are *insureds* here with respect to operation of *your* mobile equipment — which is damaged by mobile equipment registered by *you* under any motor vehicle law.
- With respect to an employee, to property borrowed, occupied, owned, or rented by: such employee, any of *your* other employees, or any of *your* members or partners (if *you* are a joint venture or partnership).

10. PROFESSIONAL ACTIVITIES EXCLUSION

We do not insure bodily injury or property damage arising out of the rendering or failure to render any sort of professional advice, product, or service whether such are those of any insured or insured's indemnitee or any employees of an insured or insured's indemnitee.

But see Supplemental Coverage 7. for certain coverage.

THE FOLLOWING ARE ADDITIONAL EXCLUSIONS APPLICABLE TO COVERAGE F

11. PRODUCTS / COMPLETED OPERATIONS HAZARDS EXCLUSION

We do not insure medical expenses in connection with bodily injury included in the products / completed operations hazard.

12. SPECIFIED PERSONS EXCLUSIONS

We do not insure medical expense in connection with bodily injury to any of the following persons:

- Any *insured*.
- Any person to whom benefits are payable, or must be provided, under a disability benefit, workers' compensation, or similar law, for injury sustained by such person.
- Any person hired to do work for, or on behalf of, any *insured* or a tenant of any *insured*.
- Tenants or other persons on *your premises* if the injury occurs on that part of *your premises* such person normally occupies.

13. SPORTS ACTIVITIES EXCLUSION

We do not insure medical expenses in connection with bodily injury to any person taking part in athletic activities.

14. YOUR MEDICAL SERVICES / GENERAL MEDICAL EXCLUSIONS

- We do not insure medical expenses in connection with medical services that are provided by you, your employees, or others under contract to you to provide medical services, including first aid (Supplemental Coverage 3.) to others at the time of an accident.*
- We do not insure any medical expenses in connection with any bodily injury otherwise excluded in this policy.*

PART II D • SPECIAL LIABILITY CONDITIONS

1. DUTIES OF INSURED — WHAT TO DO IN CASE OF CLAIM, INJURY, OCCURRENCE, OR SUIT

You, other insureds, and other coverage beneficiaries must do all of the following things:

- Immediately notify *us* of all relevant circumstances relating to a claim or any incident which may result in a claim, with all necessary information. For example: who *you* are; the time, place, and circumstances of the injury or occurrence; the names and addresses of injured persons and witnesses.

- Immediately send *us* all bills, documents, notices, papers, or summonses related to any claim or suit brought against any *insured* or to any medical expense claims.

- Cooperate with *us* in matters relevant to the claim or suit. Assist *us* in: conducting suits, including by attending hearings and trials and giving evidence; enforcing the *insured's* rights of contribution or indemnity against others; investigating occurrences; making settlements; obtaining records (or other information) or the attendance of witnesses.

D. Refrain from voluntarily making payments, assuming obligations, or incurring defense, investigative, or any other expenses — unless with *our* specific written authorization to do so (otherwise such undertakings will be at the *insured's* own expense and *we* will not pay for them). This does not apply to first aid expense coverage.

E. With regard to Coverage F, coverage beneficiaries must, as *we* reasonably require: provide written proof of claim (under oath, if required); submit, at *our* expense, to physical examinations by physicians of *our* choice; authorize *us* to obtain medical records.

Failure to comply with these (or other conditions) can alter or void *our* obligations under this policy.

2. LIMITS OF LIABILITY

Our maximum total liability payable for the sum of all damages, injury, liability and loss covered by this policy is limited as follows — regardless of the number of *insureds*, or claims made or suits brought by one or more persons or organizations. *Our* obligation to make payments ceases when the applicable limit is used up in payment of judgment or settlements.

A. **General Coverage Limits** — The following limits apply for all damages or medical expenses in any one *occurrence*, accident, or injury, as indicated:

1. **Occurrence Limits — Coverage E and F**

Our maximum limit of liability payable under Coverages E and F in any one *occurrence* is the *occurrence* limit shown in the Declarations; but see sublimits applicable to Supplemental Coverage 6.

2. **Accident Limit / Per Person Limit — Coverage F**

Our maximum limit of liability payable under Coverage F for any one person in any one accident is the “per person” limit shown in the Declarations.

3. **Personal Injury / Advertising Injury Limit**

Our maximum limit of liability payable under *Personal Injury / Advertising Injury* Coverage for all such injuries sustained by any one person or organization is the limit shown in the Declarations.

B. **Aggregate / Total Limit — General Coverages**

The following limits apply for all damages or medical expenses for all occurrences, accidents, or injuries that may occur in the period(s) described in C.

1. **Aggregate / Total Limit — General Coverages**

Our maximum total limit of liability payable for:

- Coverage E,
 - Coverage F, and
 - *Personal Injury / Advertising Injury*,
- is the general aggregate / total limit shown in the Declarations.

This general aggregate / total limit does not apply to *products / completed operations*, which is subject to a separate specific aggregate / total limit.

If a specific aggregate / total limit is not shown in the Declarations, then a general aggregate / total limit does not apply to the subject coverages.

2. **Aggregate / Total Limit — Products / Completed Operations Hazard**

Our aggregate / total maximum limit of liability payable under Coverage E for all damages included in the *products / completed operations hazard* is the limit shown in the Declarations for *products / completed operations*.

C. **Application of Limits**

1. The limits described above apply separately to each consecutive 12 month period, beginning with the policy term shown in the Declarations.
2. If the policy is originally issued for more than 12 consecutive months with a terminal period less than 12 months, the limits apply separately to: each consecutive 12 month period; the terminal period. For example; if 27 months: 12 months, 12 months; 3 months. However, if extended after issuance, the terminal period is included in the last 12 month period. For example, 12 months and 15 months.

D. **Deductible**

1. If a deductible amount is shown in the Declarations then such deductible applies on a “per claimant” basis to all damages for *property damage* sustained by any one person or organization in any one *occurrence*.
2. *Our* obligation to pay damages only applies to the amount of damages in excess of any deductible amount. *Our* maximum limit of liability payable in any one *occurrence* is reduced by the amount of such deductible. However, the deductible does not reduce any aggregate / total limit.
3. *We* may pay any part or all of the deductible amount to settle any claim or suit. *We* will notify the *first named insured* of such and the *first named insured* is obligated to promptly reimburse *us* for that part of the deductible amount *we* paid.

3. **OTHER CONDITIONS**

A. Except for the limits of liability and any duties / rights assigned to the *first named insured*, this insurance applies separately: to each *insured* against whom claim is made or suit is brought, to each *named insured* as if the only *named insured*.

B. **Bankruptcy**

Bankruptcy of the *insured* does not relieve *us* of *our* obligations under this policy.

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COMMON GLOSSARY — PARTS I AND II

Certain words and phrases used in this policy are defined for the purposes of this insurance contract. These are described below.

PARTS I and II

The following apply to both Parts I and II:

Pollutants

Pollutants are any gaseous, liquid, solid, or thermal contaminant or irritant, including acids, alkalis, chemicals, fumes, smoke, soot, vapors, and waste (including materials to be reclaimed, reconditioned, or recycled).

You/Your

You and *your* refer to the *insureds* named in the Declarations: *first named insured* is the *insured* named first in the Declarations. *You* also includes any business / organization that *you* newly acquire or form to the extent covered in this policy.

We/Us/Our

We, *us*, and *our* refer to the Insurance Company named in this policy.

PART I

The following apply to Part I:

Actual Cash Value

Consideration may be given by *us* in *our* determination of *actual cash value* to: age; condition; cost to repair, replace, or restore the property, subject to deduction for depreciation; deterioration; economic value; market value; obsolescence (both structural and functional), original cost; use; utility; or other circumstances that may reasonably affect value.

Automatic Sprinkler System

Automatic sprinkler system means —

A. Any automatic fire protection or extinguishing system, including any of the following connected parts:

- Ducts, fittings, pipes, or valves,
- Pumps and private fire protection mains.
- Sprinklers and other discharge nozzles.
- Tanks, including their component parts and supports.

B. When supplied by an automatic fire protection or extinguishing system:

- Hydrants, outlets, or stand pipes.
- Non-automatic fire protection or extinguishing systems,

Insured

Insured means the person or entity designated as *insured* in the Declarations or otherwise named as an *insured* in this policy.

Money / Securities

Money means — bank notes, bearer bonds, bullion, coins, currency, lottery tickets, money orders, registered checks, and travelers checks held for sale to the public.

Securities means — negotiable and non-negotiable contracts or instruments that represent obligations to pay money or pay other property and that are collectible at the time of loss: examples of such include — but are not limited to — accounts, bills, deeds, evidence of debt, notes; revenue and other stamps, tickets (not *money*), or tokens now in use.

Valuable Papers and Records

Valuable papers and records includes — abstracts, books of account, card index systems, drawings, manuscripts, microfilm; microfiche, as well as cell, disk, drum, film, tape, or other data processing, recording, or storage media.

PART II

The following apply to Part II:

Automobile

Automobile means any land motor vehicle or trailer (including semitrailers) designed for travel on public roads, including any equipment or machinery attached to such vehicle or trailer. *Automobile* does not include vehicles covered here as mobile equipment.

Bodily Injury

Bodily injury means bodily harm, sickness or disease sustained by any person including death at any time resulting from such, caused by a covered *occurrence*.

Insured

Insured means the following, as designated in the Declarations, to the extent set forth below:

- **Individual** — If *you* are an individual: *you* and *your* spouse with respect to conduct of the business / operations of which *you* are the sole proprietor.
- **Partnership or Joint Venture** — If *you* are a partnership or joint venture: the partnership or joint venture and any partners or members, and their spouses, with respect to the conduct of such partnership or joint venture.
- **Other Organization** — If *you* are an organization other than a partnership or joint venture: the organization and any executive officers or directors while acting within the scope of their duties as such; stockholders with respect to their liability as such.
- *Your* employees (other than executive officers) while acting within the scope of their duties as such.

If MCL 506 is listed in the Declarations, this extension to employees is deleted.

- Persons while driving mobile equipment registered in *your* name along a public highway with *your* permission: this includes others who are responsible for such persons — but only if no other insurance is available to such others and, then, only for such activity.
- Persons (other than *your* employees) or organizations acting as real estate manager for *you*.
- A business entity (not a partnership or joint venture) that *you* newly acquire or form, if owned with majority interest by *you*: but only up to 120 days after *you* first acquire or form such or the end of the policy term, whichever ends first. Such entity is not an *insured* here if there is other similar insurance available to it or for any accidents, *occurrences* or offenses prior to the time of such acquisition or formation.

If MCL 507 is listed in the Declarations, this extension to new entities is deleted.

This insurance does not apply to any partnership or joint venture — of which the *insured* is a partner or member — if not named in this policy, including those responsible for such.

Loading / Unloading

Loading or unloading means the handling or movement of property as follows:

- Beginning while being moved from the place where it is accepted for movement into or onto an aircraft, automobile, or watercraft:
- While in or on an aircraft, automobile or watercraft,
- While being moved from an aircraft, automobile, or watercraft to the place where it is finally delivered.

Loading or unloading does not include movement of property by any mechanical device which is not attached to the aircraft, automobile, or watercraft other than a hand truck.

Occurrence

Occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Products / Completed Operations Hazard

Products / Completed Operations Hazard includes all bodily injury and property damage occurring away from *your premises* arising out of *your products* or *your work*, other than that arising out of any of the following:

1. Products that are in *your* physical possession.
2. Work that has not been completed or abandoned. *Your work* is deemed completed at the earliest one of the following times:
 - When all the work called for in *your* contract is completed.

- When all the work called for in *your* contract at the job location is completed if *your* contract calls for work at more than one location.
- When that part of the work at a job location is put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that needs final correction, maintenance, repair, replacement, or service — but is otherwise complete — is deemed completed.

Property Damage

Property damage means the following, caused by a covered *occurrence*:

- Direct physical injury to tangible property, including loss of use of such property (the loss of use is deemed to occur at the time of such direct physical injury).
- Loss of use of tangible property that is not physically injured: all such loss of use is deemed to occur at the time of the *occurrence* causing the loss.

Your Premises

Your premises means: premises occupied or owned by, or rented to, *you*; and — whether or not such premises are designated in the Declarations or elsewhere in this policy — premises *you* have abandoned, sold, or transferred to others.

Your Products

Your products means the following:

- Goods or products disposed of, distributed, handled, sold, or manufactured by: *you*; others trading under *your* name; persons or organizations whose business or assets *you* have acquired.
- Containers (other than vehicles), equipment, materials, or parts furnished in connection with such goods or products.

Your products also includes the following: warranties or representations made at any time with respect to the durability, fitness, performance, quality or use of any of *your products*; providing or failing to provide instructions or warnings.

Your products does not include: real property; vending machines or other property either rented to others or placed for the use of others, but not sold.

Your Work

Your work means the following:

- Operations or work performed by *you* or on *your* behalf.
- Equipment, materials, or parts furnished in connection with such work or operations.

Your work also includes the following: warranties or representations made at any time with respect to the durability, fitness, performance, quality or use of any of *your work*; providing or failing to provide instructions or warnings.

COMMON EXCLUSIONS • PARTS I AND II

The following includes similar type Exclusions applicable to Parts I and II. These Common Exclusions apply in addition to those shown under the separate Coverage Parts.

We provide no insurance for any sort of damages, expenses, liability, or loss directly or indirectly, wholly or partially, aggravated by, consisting of, or resulting from the following — even if loss or occurrence otherwise covered contributes to such concurrently or in any sequence.

PART I

The following apply to Part I:

1. EARTH MOVEMENT / EARTHQUAKE / VOLCANIC ACTIVITY

Earthquake; volcanic activity (including volcanic effusion, eruption or explosion) other than that specifically described as included in volcanic eruption (see Pg. 9); or other catastrophic earth movement. But if loss resulting from fire or explosion, or theft (to the extent otherwise insured under this policy) ensues, we insure such resulting loss.

2. GOVERNMENTAL / LEGAL / WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.
- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire — provided the fire originates from a cause of loss covered by this policy.

3. NUCLEAR / RADIOACTIVE LOSS

- Any nuclear event, occurrence, or operation, including nuclear explosion, nuclear reaction, nuclear radiation, or radioactive contamination.

These are not fire, explosion, smoke or any other covered cause of loss. However, if these result in fire we insure such resulting direct fire loss, but not any other direct physical loss which may ensue.

- The explosive, radioactive, toxic or other injurious properties of nuclear or radioactive materials — whether such materials are natural or manufactured.

PART II

The following apply to Part II:

1. EARTHQUAKE

Earthquake.

2. GOVERNMENTAL / LEGAL / WAR

- Any act or condition of war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such.
- Knowing violation of penal law or ordinance committed by, or with the consent of, any *insured*. Statutory fines or liability. Exemplary or punitive damages. Illegal trade.
- Confiscation, loss, or seizure under customs drug enforcement or quarantine legislation or regulations.

3. NUCLEAR ENERGY

We do not insure bodily injury or property damage as follows:

- A. With respect to which any *insured* in this policy is also insured under any nuclear energy liability policy (or would have been an insured under such but for its termination upon exhaustion of its limits).
- B. Resulting from the *hazardous properties of nuclear material*, with respect to which:
 - Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any amendments, or
 - The *insured* is (or would be if this policy did not exist) entitled to indemnity from the United States of America or its agencies under any agreement entered into by the United States of America or its agencies.
- C. Resulting from the *hazardous properties of nuclear material*, if:
 - The *nuclear material* is at, or is discharged or dispersed from, any *nuclear facility* owned or operated by or on behalf of any *insured*, or
 - The *nuclear material* is contained in *spent fuel* or *waste* at any time disposed of, handled, possessed, processed, stored, transported, or used by or on behalf of any *insured*.

D. The furnishing by any *insured* of equipment, materials, parts, or services in connection with the construction, maintenance, operation, planning, or use of any *nuclear facility*: but if such facility is located within the United States of America, its possessions or territories, or Canada, this applies only to *property damage* to such facility and property located at such facility.

E. Glossary

The following special definitions apply to this Exclusion:

1. *Hazardous Properties* include explosive, radioactive, or toxic properties.
2. *Nuclear Facility* means any of the following:
 - Any *nuclear reactor*;
 - Any equipment or device designed or used for: separating the isotopes of uranium or plutonium; processing or utilizing *spent fuel*; handling, processing or packaging *waste*;
 - Any device or equipment used for alloying, fabricating, or processing 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 device or equipment is located consists of, or contains more than, 25 grams of plutonium or uranium-233, or any combination of such materials, or more than 250 grams of uranium-235.
 - Any basin, excavation, place, premises, or structure prepared for, or used for, the storage or disposal of *waste*; or
 - The site on which any of the foregoing property is located, all operations conducted on such site, and all premises used for such operations.

3. *Nuclear Material* means *source, special nuclear, or by-product material*.
4. *Nuclear Reactor* means any apparatus designed or used: to sustain nuclear fission in a self-supporting chain reaction; to contain a critical mass of fissionable material.
5. *Property Damage* also includes all forms of radioactive contamination of property.
6. *Source Material, Special Nuclear Material, and By-product Material* have the meanings given them in the Atomic Energy Act of 1954, or any amendments.
7. *Spent Fuel* means any fuel component or element, whether solid or liquid, which has been either used in, or exposed to radiation in, a nuclear reactor.
8. *Waste* means any material, resulting from the operation of a *nuclear facility* as defined in the first two items of *nuclear facility*, containing *by-product material* other than the tailings or wastes produced by the extraction or concentration of thorium or uranium from any ore processed primarily for its source material content.

COMMON CONDITIONS — PARTS I AND II

The following are Conditions that apply to both Parts I and II. These Common Conditions apply in addition to those shown under the separate Coverage Parts.

1. ACTION OR SUIT AGAINST *US* PART I

The conditions for bringing an action or suit against *us* are described elsewhere in this policy in the state mandatory endorsement.

PART II

No action may be brought against *us* until all conditions in this policy are complied with, and until the amount of the *insured's* obligation (payable under this policy) has been determined by judgment in trial or by agreement made with *our* written consent.

No right exists under this policy for *you* or others to make *us* party to an action against any *insured*.

2. ASSIGNMENT OF *YOUR* INTEREST

No assignment of an interest under this policy is binding on *us* without *our* written consent. However, if *you* are an individual and die, this insurance applies to the following who become *insureds* here in the described capacity:

- *Your* legal representative, while acting within the scope of the representative's duties.
- Those with custody of *your* property prior to appointment of a legal representative.

3. CANCELLATION / TERMINATION

A. General

You may cancel this policy by: surrendering the policy to *us* or *our* agent or by mailing *us* or *our* agent notice stating a subsequent cancellation date for the policy. Such request made by the *first named insured* applies for all *insureds* / interests named in this policy. All cancellations are pro rata, but a minimum earned premium may apply. Any return premium is payable to the *first named insured* — within 30 days after the cancellation date.

If *you* secure insurance with another insurer to replace *our* policy and do not pay the premium, or installment payment, for this policy when due: this policy terminates at the time such other insurance becomes effective. If *you* sell the described business or premises to others, coverage under this policy terminates at the time title is transferred to others with respect to such business or premises — unless *you* retain an insurable interest.

B. *Our* Right to Cancel or Terminate

Our rights to cancel or terminate this insurance are described elsewhere in this policy in the state mandatory endorsement.

4. CONCEALMENT / MISREPRESENTATION / FRAUD

This policy is void if, either before or after a loss or *occurrence* or claim, any *insured* misrepresents or knowingly conceals any material fact or circumstance, commits fraud, or swears falsely relating to any aspect of this insurance (including the information *we* relied upon in issuing this contract). However, if *we* specifically choose not to declare this policy void, *we* do not provide insurance under this policy to, or for the benefit of, any such *insureds*.

5. CONFORMITY WITH STATUTE

It is agreed by *us* that the provisions of this policy are amended to conform to all applicable statutory requirements.

6. COVERAGE TERRITORY

PART I

We cover damage or loss only within the fifty states of the United States of America (including its possessions and territories), Puerto Rico and Canada.

PART II

Coverage here applies only within the following territories:

- A. The United States of America (including its possessions or territories), Puerto Rico and Canada.
- B. International waters or air space, if the *bodily injury* or *property damage* occurs while in the course of transit to or from the territory described in A.
- C. Anywhere in the world with respect to damages because of *bodily injury* or *property damage* arising out of either:
 - Activities of a person whose home is in the territory described in A, but is away for a brief time in the course of *your* business / operations covered by this policy, or
 - Goods or products made or sold by *you* in the territory described in A.

However, all coverage under this policy applies only to suits which are brought or agreements made with *our* written consent within the territory described in A.

7. EXAMINATION / CHANGES

We may, at *our* option, inspect *your* property and operations at any time, make surveys, and make recommendations. However, *our* reports or recommendations or those of any inspection bureau or rating bureau do not constitute a determination or representation that *your premises* or operations are in compliance with any law or regulation, healthful, or safe.

We may inspect and audit *your* books and records at any time (including up to 3 years after termination of this insurance contract) to the extent such pertains to the subject of this insurance or payment of premium. The *first named insured* is required to keep all records necessary for such and send complete accurate copies to *us* at *our* request.

We may make premium adjustments: because of inspection and audit; because of the use of premises not described in this policy or any other rateable additions or changes; because of newly acquired or formed business entities.

But, as to Part II, we are not obligated to continue insurance on additions or changes, new entities, or premises described above. Nor, in any event, are such covered on renewal (of the expiring policy term) unless *you* report such to *us* and such are described in the renewal Declarations: this condition does not apply to additions or changes (other than new entities) effected within 60 days prior to the renewal date of the expiring policy term.

8. INSURANCE UNDER MORE THAN ONE COVERAGE

In the event that more than one coverage under this policy covers the same loss we are liable only for the amount of *our* obligation, up to *our* limit of liability, not exceeding the amount of loss.

9. LIBERALIZATION

This policy is automatically extended to include provisions approved during the policy period or within 45 days prior to its inception, which would broaden coverage under this policy, if such are not subject to additional premium or concurrent with coverage restrictions.

10. OTHER INSURANCE

PART I

A. This insurance is excess insurance over other insurance *you* may have applicable to the loss (whether *you* can collect on it or not) that is not subject to the same provisions contained in this policy.

B. When this insurance is excess over other insurance: We pay only our share of the remaining loss that exceeds the sum of both:

- The total amount payable by all such insurance, as described, in the absence of this insurance, plus
- The total of any deductibles or self-insured amounts under all such insurance.

Furthermore, any remaining loss is then shared by *us* with any other insurance remaining on the loss in accordance with the provisions described in Paragraph C below.

C. With regard to other insurance subject to the same provisions contained in this policy or where we otherwise are a primary insurer (among others) we pay in one of the following ways:

- If all such other insurers provide for contributions by equal shares: we and all other insurers contribute equal amounts until the amount of obligation is paid or the insurer's applicable limit of liability is used up, whichever comes first.
- If any other insurer does not provide for equal shares: we pay no greater proportion of the total amount of loss than *our* obligation on the applicable limit of liability of this policy bears to the total amount of insurance of all insurers covering the loss.

However, if *you* have any other insurance applicable to property covered by this policy — but not covering a cause of loss covered under this policy, then: any loss payable under this policy in connection with such cause of loss is apportioned and payable by *us* in the same way as if such other insurance covered the loss.

PART II

A. This insurance is excess insurance over insurance provided on any basis:

1. That is property insurance (including fire, allied lines, inland marine) for *your work* or a premises loaned or rented to, or occupied by *you*.
2. That is liability insurance (including an umbrella / excess liability policy) for aircraft, automobiles, watercraft, or pollution, to the extent otherwise covered in this policy.
3. That is primary liability insurance available to *you* when *you* have been added or named as an additional insured on such other insurance for damages arising out of the business / operations or premises described in that other policy.

Otherwise, this insurance is primary insurance.

B. When this insurance is excess over other insurance:

1. We have no obligation to defend or provide a defense — but, we may defend:
 - If no other insurer defends: we are then entitled to the *insured's* rights against all other insurers; or
 - If, at *our* option, we choose to join the defense provided by other insurers or provide a separate defense.

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2. We pay only *our* share of the remaining loss that exceeds the sum of both:

- The total amount payable by all such insurance, as described, in the absence of this insurance, plus
- The total of any deductibles or self-insured amounts under all such insurance.

Furthermore, any remaining loss is then shared by *us* with any other insurance remaining on the loss in accordance with the provisions described in Paragraph C, below (other than an umbrella / excess liability policy which applies in excess of the limits of this policy).

- C. With regard to other insurance subject to the same provisions contained in this policy or where *we* are a primary insurer (among others) *we* pay in one of the following ways:

1. If all such other insurers provide for contributions by equal shares: *we* and all other insurers contribute equal amounts until the total amount of obligation is paid (or each insurer exhausts its applicable limit of liability).
2. If any other insurer does not provide for equal shares: *we* pay no greater proportion of the total amount of the *insured's* obligation than the applicable limit of liability of this policy bears to the total amount of insurance of all insurers covering the loss.

11. PREMIUMS

The *first named insured* is responsible for the payment of all premiums, and will be the sole payee of any premiums *we* return. Premium adjustments, including audit premium adjustments, are due and payable on *our* notice of such to the *first named insured*.

12. RECOVERY FROM OTHERS

If any *insured* (or others) to whom, or for whom, *we* make payment has any rights of recovery on the loss from another, those rights are transferred to *us* to the extent of *our* payment under this policy. *Insureds* (or such others) must do whatever *we* require to secure these rights. *You* may waive such rights in writing prior to a covered loss. *You* may also waive such rights after a loss, but only if the waiver is given to either:

- Another *insured* under this policy; or
- A business either controlled or owned by *you* or that controls or runs *your* business.

But *we* have no obligation to pay under this policy on the loss if these rights are otherwise waived.

13. TIME OF INCEPTION

PART I

The time of inception and expiration is 12:01 A.M. Standard Time at the described premises. Unless otherwise specifically provided for in this policy, this insurance applies only to *covered loss* that takes place during the policy term.

PART II

The time of inception and expiration is 12:01 A.M. Standard Time at the mailing address shown in the Declarations.

14. WAIVER OR CHANGE OF PROVISIONS

Only the *first named insured* may request changes in this policy. The terms of this policy may not be waived or changed except in writing, signed by *our* agent and attached to this policy. The exercise of *our* rights under this policy is not an act of waiver. This policy contains all related agreements between *you* and *us*.

NON-CERTIFIED ACTS OF TERRORISM EXCLUSIONS • PARTS I AND II

This endorsement extends the policy to exclude certain loss arising out of terrorism.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

A. The following provisions (Section A) apply and will continue in effect after December 31, 2005 provided the Terrorism Risk Insurance Program as established by the Federal Terrorism Risk Insurance Act of 2002 is renewed, extended or continued by the federal government.

1. COVERAGE MODIFICATION — PROPERTY

- A. If Part I is included in this policy, the following exclusion is added to the PART I COMMON / GENERAL EXCLUSIONS:

NON-CERTIFIED ACTS OF TERRORISM EXCLUSION

1. We do not provide insurance for any loss or damage directly or indirectly arising out of or resulting from a *non-certified act of terrorism*, including any action taken in hindering or defending against an actual or expected *non-certified act of terrorism*.

Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

If loss resulting from fire (to the extent insured by this policy) ensues, we insure such resulting loss. However, this exception for fire applies only to direct physical loss by fire to covered property. Therefore, this exception does not apply to any sort of consequential loss, loss of use, or loss of utility, including losses under Business Income and/or Extra Expense coverages.

2. Regardless of the amount of damage and losses, this *Non-certified Acts of Terrorism* Exclusion applies to any *non-certified act of terrorism*:

- a. That involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
- b. That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- c. In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *non-certified act of terrorism* was to release such materials.

In incidents of *non-certified acts of terrorism* other than those described in paragraphs 2.a, 2.b, and 2.c above, the *Non-certified Acts of Terrorism* Exclusion will not apply unless the *insured damage* to all types of property (in the United States, its territories and possessions, the District of Columbia, Puerto Rico and Canada), sustained by all persons and entities affected by the *non-certified act of terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds a total of \$25,000,000. Multiple *non-certified acts of terrorism*

which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one *non-certified act of terrorism*.

The preceding paragraph describes the threshold used to measure the magnitude of a *non-certified act of terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether the *Non-certified Acts of Terrorism* Exclusion will apply to that incident. When the *Non-certified Acts of Terrorism* Exclusion applies to a *non-certified act of terrorism*, there is no coverage under this insurance.

In the event of any *non-certified act of terrorism* that is not subject to the *Non-certified Acts of Terrorism* Exclusion, coverage does not apply to any element of loss or damage that is otherwise excluded under this insurance.

3. However, with respect to any activity that also comes within the terms of the Governmental/Legal/War Exclusion, that exclusion supersedes this *Non-certified Acts of Terrorism* Exclusion.

In the event of a *non-certified act of terrorism* that involves nuclear reaction or radiation, or radioactive contamination, this *Non-certified Acts of Terrorism* Exclusion supersedes the Nuclear / Radioactive Loss Exclusion.

- B. If Part I is included in this policy, the PART I – GOVERNMENTAL / LEGAL / WAR COMMON / GENERAL EXCLUSION is replaced by the following:

GOVERNMENTAL/LEGAL/WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this exclusion supersedes the Nuclear/Radioactive Loss Exclusion.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.
- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire – provided the fire originates from a cause of loss covered by this policy.



2. COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to the PART II — COMMON / GENERAL EXCLUSIONS:

NON-CERTIFIED ACTS OF TERRORISM EXCLUSION

We do not insure *bodily injury, property damage, personal injury or advertising injury* arising directly or indirectly out of a *non-certified act of terrorism*, including any action taken in hindering or defending against an actual or expected *non-certified act of terrorism*.

However this exclusion only applies if one or more of the following are attributable to a *non-certified act of terrorism*:

1. The total of *insured damage* to all types of property sustained by all persons and entities affected by the *non-certified act of terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds \$25,000,000; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - a. Physical injury that involves a substantial risk of death; or
 - b. Protracted and obvious physical disfigurement; or
 - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The *non-certified act of terrorism* involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or
4. The *non-certified act of terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *non-certified act of terrorism* was to release such materials.

Paragraphs 1 and 2 above describe the thresholds used to measure the magnitude of a *non-certified act of terrorism* and the circumstances in which the threshold will apply for the purpose of determining whether the *Non-certified Acts of Terrorism* Exclusion will apply to that incident. When the *Non-certified Acts of Terrorism* Exclusion applies to a *non-certified act of terrorism*, there is no coverage under this insurance.

In the event of any *non-certified act of terrorism* that is not subject to the *Non-certified Acts of Terrorism* Exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this insurance.

Multiple *non-certified acts of terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one *non-certified act of terrorism*.

3. 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 policy by the Governmental / Legal / War Exclusion, the Nuclear / Radioactive Loss Exclusion or any other exclusion.

4. ADDITIONAL DEFINITIONS

The following definitions apply:

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 that is:

1. A violent act or an act that is dangerous to human life, property or infrastructure and that resulted in damage with an aggregate loss exceeding \$5,000,000:
 - a. Within the United States;
 - b. At the premises of a United States Mission; or
 - c. To an air carrier (as defined in section 40102 of title 49, United States Code) or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs;
2. 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.

Insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Non-certified act of terrorism means a violent act or an act that is dangerous to human life, property or infrastructure and that is:

1. Committed by an individual or individuals and appears to be a part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion; and
2. Not deemed to be a *certified act of terrorism* under the terms of the Federal Terrorism Risk Insurance Act of 2002 or any subsequent action of Congress pursuant to the Act.

B. The following provisions (Section B) will become applicable and replace Section A commencing on the date when one or more of the following first occurs:

- The Terrorism Risk Insurance Program established by the Federal Terrorism Risk Insurance Act of 2002, has terminated with respect to the type of insurance provided under this policy; or
- A renewal, extension or continuation of the Program has become effective without a requirement to make terrorism coverage available to *you* and with revisions that:
 - Increase *our* statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all *certified terrorism losses we* must pay in a calendar year, before the federal government shares in subsequent payment of *certified terrorism losses*); or
 - Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
 - Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

1. COVERAGE MODIFICATION — PROPERTY

A. If Part I is included in this policy, the following exclusion is added to the PART I COMMON / GENERAL EXCLUSIONS:

TERRORISM EXCLUSION

1. *We* do not provide insurance for any loss or damage directly or indirectly arising out of or resulting from *terrorism*, including any action taken in hindering or defending against an actual or expected incident of *terrorism*. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

If loss resulting from fire (to the extent insured by this policy) ensues, *we* insure such resulting loss. However, this exception for fire applies only to direct physical loss by fire to covered property. Therefore, this exception does not apply to any sort of consequential loss, loss of use, or loss of utility, including losses under Business Income and / or Extra Expense coverages.

2. Regardless of the amount of damage and losses, this *Terrorism* Exclusion applies to any incident of *terrorism*:
 - a. That is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involve or produces a nuclear reaction or radiation or radioactive contamination; or
 - b. In which radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
 - c. That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- d. In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials.

In incidents of *terrorism* other than those described in Paragraphs 2.a, 2.b, 2.c, and 2.d above, the *Terrorism* Exclusion will not apply unless the *insured damage* to all types of property (in the United States, its territories and possessions, the District of Columbia, Puerto Rico and Canada), sustained by all persons and entities affected by the *terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds a total of \$25,000,000. Multiple incidents of *terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident of *terrorism*.

The preceding paragraph describes the threshold used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply, for the purpose of determining whether the *Terrorism* Exclusion will apply to that incident. When the *Terrorism* Exclusion applies to an incident of *terrorism*, there is no coverage under this insurance.

In the event of any incident of *terrorism* that is not subject to the *Terrorism* Exclusion, coverage does not apply to any element of loss or damage that is otherwise excluded under this insurance.

3. However, with respect to any activity that also comes within the terms of the Governmental/Legal/War Exclusion, that exclusion supersedes this *Terrorism* Exclusion.

In the event of an incident of *terrorism* that involves nuclear reaction or radiation, or radioactive contamination, this *Terrorism* Exclusion supersedes the Nuclear / Radioactive Loss Exclusion.

B. If Part I is included in this policy, the PART I – GOVERNMENTAL / LEGAL / WAR COMMON / GENERAL EXCLUSION is replaced by the following:
GOVERNMENTAL/LEGAL/WAR

- Any act or condition of: war (declared or not), civil war, invasion, insurrection, rebellion, revolution, or seizure of power, including acts done to defend against any such. With respect to any action that comes within the terms of this exclusion and involves nuclear reaction or radiation, or radioactive contamination, this exclusion supersedes the Nuclear/Radioactive Loss Exclusion.
- Knowing violation of penal law or ordinance committed by, or with the consent of, an *insured*. Statutory fines or liability. Exemplary or punitive damages.
- Confiscation, loss, or seizure under customs, drug enforcement, or quarantine legislation or regulations. Loss to property that is contraband or in the course of illegal transportation or trade.

- Damage or destruction of property ordered by civil authority, other than immediate acts of destruction ordered by authorized civil authorities for the purpose of preventing the spread of fire – provided the fire originates from a cause of loss covered by this policy.

2. COVERAGE MODIFICATION — LIABILITY

If Part II is included in this policy, the following exclusion is added to the PART II — COMMON/ GENERAL EXCLUSIONS:

TERRORISM EXCLUSION

We do not insure bodily injury, property damage, personal injury or advertising injury arising directly or indirectly out of terrorism, including any action taken in hindering or defending against an actual or expected incident of terrorism.

However this exclusion only applies if one or more of the following are attributable to an incident of *terrorism*:

- The *terrorism* is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction or radiation or radioactive contamination; or
- Radioactive material is released, and it appears that one purpose of the *terrorism* was to release such material; or
- The *terrorism* is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the *terrorism* was to release such materials; or
- The total of *insured damage* to all types of property sustained by all persons and entities affected by the *terrorism* (and including loss of Business Income and Extra Expense sustained by owners or occupants of such damaged property), exceeds \$25,000,000; or
- Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
 - Physical injury that involves a substantial risk of death; or
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.

Paragraphs E and F above describe the thresholds used to measure the magnitude of an incident of *terrorism* and the circumstances in which the threshold will apply for the purpose of determining whether the *Terrorism* Exclusion will apply to that incident. When the *Terrorism* Exclusion applies to an incident of *terrorism*, there is no coverage under this insurance.

In the event of any incident of *terrorism* that is not subject to the *Terrorism* Exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this insurance.

Multiple incidents of *terrorism* which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident of *terrorism*.

3. ADDITIONAL DEFINITIONS

The following definitions apply under Section B of this endorsement:

Insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions.

Terrorism means activities against persons, organizations or property of any nature:

- That involve the following or preparation for the following:
 - Use or threat of force or violence;
 - Commission or threat of a dangerous act; or
 - Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
- When one or both of the following applies:
 - The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
 - It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

**NOTICE TO POLICYHOLDERS
REVISED TERRORISM ENDORSEMENT**

If your renewal policy lists any of the following endorsements on the renewal Declarations,

MCM 411
MCM 412
MCM 413
MCM 416
MCM 417
MCM 418
MCM 419
MCM 420

the endorsement includes, as Section B, a terrorism exclusion that will become effective on January 1, 2006 if the federal Terrorism Risk Insurance Act of 2002 (TRIA) is not extended by that date. This exclusion will replace the TRIA provisions, designated as Section A, in this endorsement.

No coverage is provided by this notice, nor can it be construed to replace any provision of your policy. You should read your policy and any related endorsements 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.

Contact your agent if you have any questions.

FUNGI / MOLD EXCLUSIONS — LIABILITY • PART II

This endorsement extends the Part II exclusions to any occurrence or injury arising out of fungi or mold as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSION — FUNGI / MOLD

Part II C is extended to include the following:

- A. We do not cover *bodily injury, property damage, advertising injury, personal injury*, or medical payments resulting from or caused by the actual, alleged, or threatened absorption of, contact with, existence of, exposure to, inhalation of, ingestion of, or presence of any *fungi*.
- B. We do not insure any cost, expense, liability or loss arising out of any of the following:
 1. Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to *fungi*.
 2. Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to *fungi*.

However, these exclusions do not apply to *bodily injury* resulting from the ingestion of foods, goods or products intended for human consumption.

ADDITIONAL DEFINITIONS

The following special definitions apply:

Fungi means any type or form of fungus, mold, mildew, spores, algae, smut, protists, rusts or *rot and decay organisms*, and any similar or related organisms and any mycotoxin, substance, compounds, chemicals, mist or vapor produced by any *fungi* in any form, or any by-products or waste produced by *fungi*, but does not include any *fungi* intended to be edible.

Rot and decay organisms means any living organism that causes decomposition of physical property.



EXTERIOR INSULATION AND FINISH SYSTEM EXCLUSION • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of Exterior Insulation and Finish Systems as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSIONS — EXTERIOR INSULATION AND FINISH SYSTEM**A. Part II C is extended to include the following:**

We do not insure bodily injury, property damage, personal injury or advertising injury resulting from or caused by:

1. the construction, correction, design, fabrication, installation, maintenance, manufacture, preparation, remodeling, replacement, repair or service of an exterior insulation finish system (EIFS), synthetic stucco, or any similar product or any part; or
2. the application or use of accessories, caulking, coatings, conditioners, paints, primers or sealants in connection with such a product.

B. Supplemental Coverage 2 in Part II B is extended to include the following:

We do not insure bodily injury or property damage for which the insured is liable to pay damages because of the assumption of liability for injury or damage resulting from or caused by:

1. the construction, correction, design, fabrication, installation, maintenance, manufacture, preparation, remodeling, replacement, repair or service of an exterior insulation finish system (EIFS), synthetic stucco, or any similar product or any part; or
2. the application or use of accessories, caulking, coatings, conditioners, paints, primers or sealants in connection with such a product.



KNOWLEDGE / NOTICE OF AN INJURY OR OCCURRENCE • PART II

This endorsement modifies the notice requirement in the duties of insureds condition.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL CONDITION

Paragraph A of the SPECIAL LIABILITY CONDITIONS — DUTIES OF *INSUREDS* is amended by adding the following:

Your agent's or employee's knowledge of an injury or occurrence does not in itself constitute knowledge by you, unless you receive notice of such from your agent or employee. Failure of any of your agents or employees to notify us of any injury or occurrence that such agent or employee has knowledge of does not invalidate this insurance for you.



AGGREGATE / TOTAL LIMIT — PER PROJECT • PART II

This endorsement amends the Aggregate / Total Limits condition in your policy.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

Part II D — Special Liability Conditions, item 2.B.1 — Aggregate / Total Limit — General Coverages is amended as described below:

The limits apply to each project, away from *your premises*, where you perform your work.



ADDITIONAL INSURED • PART II

This endorsement extends the definition of insureds to include the designated person or organization. The required information may be shown below or elsewhere in this policy.

**The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.
Except as provided below, all other provisions in this policy are unchanged.**

Policy #

SCHEDULE

DESIGNATED PERSON OR ORGANIZATION:

PERSONS INSURED EXTENSION

The definition of *insured* in the Glossary is amended to include the following as an additional insured under this policy.

Insured includes the designated person or organization but only with respect to liability for *bodily injury, property damage, advertising injury, or personal injury* caused, in whole or in part, by *your* covered acts or omissions or the covered acts or omissions of those acting on *your* behalf, in connection with *your* business / operations or *your* premises.

This insurance is excess over any other valid and collectible insurance whether such other insurance is stated to be primary, contributing, excess, contingent or otherwise. This includes any liability policy maintained by the additional *insured* where the additional *insured* is a named *insured*. This insurance is excess to any self-insured retention or liability deductible.



NOTICE TO POLICYHOLDERS

Your policy now contains an exclusion that applies to all losses and claims resulting from silica in any form.

No coverage is provided by this notice, nor can it be construed to replace any provision of your policy. You should read your policy and any related endorsements (including this endorsement MCN 184) 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.

Contact your agent if you have any questions.

MCN 184 05 04

SILICA EXCLUSION — LIABILITY • PART II

This endorsement extends the exclusions to any occurrence or injury arising out of silica as described.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations.

Except as provided below, all other provisions in this policy are unchanged.

ADDITIONAL EXCLUSION — SILICA

Part II C is extended to include the following:

- A. *We do not cover bodily injury, property damage, advertising injury, personal injury, or medical payments resulting from or caused by the actual, alleged, or threatened absorption of, contact with, existence of, exposure to, inhalation of, ingestion of, or presence of silica in any form, including silica particles or dust, or any products or substances containing silica.*
- B. *We do not insure any cost, expense, liability or loss arising out of any of the following:*
 - 1. Any demand, directive, order, or request that any *insured* or others clean up, contain, detoxify, monitor, neutralize, remove, test for, or treat, or in any way assess the effects of or respond to silica in any form, including silica particles or dust, or any products or substances containing silica.
 - 2. Any claim or suit by, or on behalf of, any governmental authority for damages or reimbursement because of cleaning up, containing, detoxifying, monitoring, neutralizing, removing, testing for, treating, or in any way assessing the effects of or responding to silica in any form, including silica particles or dust, or any products or substances containing silica.



Company Use Only
Date Issued: 06-19-2006
Rate: nh
Underwriter: SJ
Company Copy

SPECIAL CONTRACTORS POLICY ENDORSEMENT
MERCER INSURANCE COMPANY
100 Mercer Drive, Lock Haven, PA 17745

MCM851 (07-98)

Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Number of This Change Endorsement:

2

Amended Date:

02-24-2005

Policy Number:

SCP0001630

Policy Effective Date:

02-24-2005

Policy Expiration Date:

02-24-2006

POLICY CHANGES - DESCRIPTION

DUE TO A RECENT AUDIT, CLASS CODE FOR 2981 PAYROLL IS INCREASED FROM
\$94,043 TO \$94,540

Additional (+) / Return (-) Premium:

+ \$16

Surcharge:

Revised Annual Premium:

\$4,289

Producer/Agency-Code No:

4165

Producer/Agency-Name:

MERRITT, L. EDNER AGENCY - (814)371-7250

By:

(Authorized Representative)

JUN 20 2006

Company Use Only
Date Issued: 05-18-2005
Rate: nh
Underwriter: SJ
Company Copy

MCM851 (07-98)

SPECIAL CONTRACTORS POLICY ENDORSEMENT
MERCER INSURANCE COMPANY
100 Mercer Drive, Lock Haven, PA 17745

Named Insured (you) and Mailing Address

MARK T SULLIVAN
MARK T SULLIVAN COMPANY
PO BOX 1112
DUBOIS, PA 15801

Number of This Change Endorsement:

1

Amended Date:

02-24-2005

Policy Number:

SCP0001630

Policy Effective Date:

02-24-2005

Policy Expiration Date:

02-24-2006

POLICY CHANGES - DESCRIPTION

DUE TO A RECENT AUDIT, CLASS CODE FOR 2551 PAYROLL IS INCREASED FROM
\$60,000 TO \$94,043

Additional (+) / Return (-) Premium

+ \$1,115

Surcharge:

Revised Annual Premium:

\$4,273

Producer/Agency-Code No:

4165

Producer/Agency-Name:

MERRITT I. EDNER AGENCY - - (814)371-7250

By: _____

(Authorized Representative)

14 MAY 18 2005

BLANKET ADDITIONAL *INSURED* – CONTRACTORS

This endorsement extends the definition of *insured* to include any person or organization you have agreed to name as an additional *insured* in a written contract.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

The definition of *insured* in the Glossary is amended to include the following as *insureds* here:

Insured includes any person or organization whom *you* have agreed in a written contract, executed prior to a loss, to name as additional *insured*, but only with respect to liability arising out of *your work* for that additional *insured*.

With respect to the coverage provided by this endorsement, the following additional condition applies:

1. Any coverage provided by this amendment is excess over any valid and collectible insurance unless *you* have agreed in a written contract to have coverage apply on a primary or contributory basis.

With respect to the coverage provided by this endorsement, the following exclusions apply:

1. This insurance does not apply to any person or organization for whom *you* have purchased Owners and Contractors Protective Liability coverage whether from *us* or from any other company.
2. This insurance does not apply to *bodily injury, property damage or personal injury/advertising injury* arising out of the rendering or failure to render any professional services by *you* or for *you*, including:
 - a. The preparing, approving or failure to prepare or approve maps, drawings, Opinions, reports, surveys, change orders, designs or specifications; and
 - b. Supervisory, inspection or engineering services.

BLANKET ADDITIONAL *INSURED* – CONTRACTORS

This endorsement extends the definition of *insured* to include any person or organization you have agreed to name as an additional *insured* in a written contract.

The provisions of this endorsement apply only when the endorsement number is listed in the Declarations. Except as provided below, all other provisions in this policy are unchanged.

The definition of *insured* in the Glossary is amended to include the following as *insureds* here:

Insured includes any person or organization whom *you* have agreed in a written contract, executed prior to a loss, to name as additional *insured*, but only with respect to liability arising out of *your work* for that additional *insured*.

With respect to the coverage provided by this endorsement, the following additional condition applies:

1. Any coverage provided by this amendment is excess over any valid and collectible insurance unless *you* have agreed in a written contract to have coverage apply on a primary or contributory basis.

With respect to the coverage provided by this endorsement, the following exclusions apply:

1. This insurance does not apply to any person or organization for whom *you* have purchased Owners and Contractors Protective Liability coverage whether from *us* or from any other company.
2. This insurance does not apply to *bodily injury, property damage or personal injury/advertising Injury* arising out of the rendering or failure to render any professional services by *you* or for *you*, including:
 - a. The preparing, approving or failure to prepare or approve maps, drawings Opinions, reports, surveys, change orders, designs or specifications; and
 - b. Supervisory, inspection or engineering services.

VERIFICATION

I, STEPHEN A. ACQUINO, on behalf of The Mercer Insurance Company, hereby verify the statements set forth in the foregoing 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.

THE MERCER INSURANCE COMPANY

Date: 10 October 2007

By: Stephen A. Aquino

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103325

NO: 07-1701-CD

SERVICE # 1 OF 2

COMPLAINT FOR DECLARATORY JUDGMENT

COPY

PLAINTIFF: THE MERCER INSURANCE COMPANY

vs.

DEFENDANT: MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY and CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC.

SHERIFF RETURN

NOW, October 31, 2007 AT 10:26 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY DEFENDANT AT 104A, 90 BEAVER DRIVE, DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO BEN BLAKLEY, ATTORNEY FOR DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

EXHIBIT

tabbles

"B"

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

DOCKET # 103325

NO: 07-1701-CD

SERVICE # 2 OF 2

COMPLAINT FOR DECLARATORY JUDGMENT

PLAINTIFF: THE MERCER INSURANCE COMPANY

vs.

DEFENDANT: MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY and CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC.

SHERIFF RETURN

NOW, October 23, 2007 AT 10:00 AM SERVED THE WITHIN COMPLAINT FOR DECLARATORY JUDGMENT ON CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC. DEFENDANT AT 615 DIVISION ST., DUBOIS, CLEARFIELD COUNTY, PENNSYLVANIA, BY HANDING TO CLARENCE CATALDO, DEFENDANT A TRUE AND ATTESTED COPY OF THE ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT AND MADE KNOWN THE CONTENTS THEREOF.

SERVED BY: NEVLING / COUDRIET

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

Plaintiff,

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

CIVIL DIVISION

No. 2007-1701-CD

IMPORTANT NOTICE

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

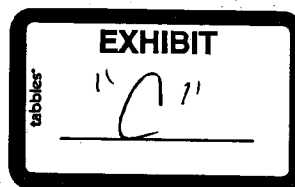
Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHA, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff, No.
vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

To: Mark Sullivan t/d/b/a Mark Sullivan Company
P.O. Box 1112
DuBois, PA 15801

Mark Sullivan t/d/b/a Mark Sullivan Company
104A, 90 Beaver Drive
DuBois, PA 15801

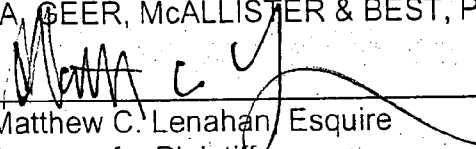
Date of Notice: February 12, 2008

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

DIBELLA, GEER, McALLISTER & BEST, P.C.

By: 
Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

IMPORTANT NOTICE

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,
vs.

No.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

To: Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc.
615 Division Street
DuBois, PA 15801

Date of Notice: February 12, 2008

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

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DIBELLA, GEER, McALLISTER & BEST, P.C.

By: 

Matthew C. Lenahan, Esquire
Attorney for Plaintiff

DiBella | Geer | McAllister | Best
ATTORNEYS AT LAW

312 Boulevard of the Allies • Pittsburgh Pennsylvania 15222 • Tel: 412.261.2900 • Fax: 412.261.3222 • www.dgmbllaw.com

Matthew C. Lenahan
mlenahan@dgmbllaw.com

February 26, 2008

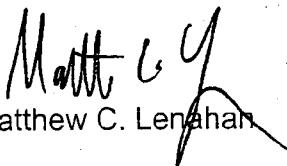
William A. Shaw
Office of the Prothonotary
P.O. Box 549
230 E. Market Street
Clearfield, PA 16830

RE: The Mercer Insurance Company v. Mark T. Sullivan t/d/b/a
Mark Sullivan Company and Clarence Cataldo t/d/b/a
Cataldo Collision Center, Inc.

Dear Sir/Madam:

Enclosed for filing is a Praecipe for Default Judgment Against Mark T. Sullivan t/d/b/a Mark Sullivan Company along with a check in the amount of \$20.00 for that filing fee.

Very truly yours,


Matthew C. Lenahan

MCL/jat

Enclosures

cc: w/encl.
Mark T. Sullivan
Benjamin S. Blakley, Esquire



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

Plaintiff,

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

CIVIL DIVISION

No. 2007-1701-CD

**PRAECIPE FOR DEFAULT
JUDGMENT AGAINST MARK T.
SULLIVAN t/d/b/a MARK SULLIVAN
COMPANY**

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

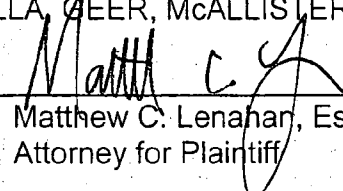
PRAECIPE FOR DEFAULT JUDGMENT

Please enter a judgment against the defendant, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY, for failure to reply to the Complaint for Declaratory Judgment which was filed on October 19, 2007. Service of the Complaint for Declaratory on Mark T. Sullivan t/d/b/a Sullivan Company was made by the Sheriff of Clearfield County on October 31, 2007. Plaintiff certifies that a ten (10) day notice was forwarded to the defendant by regular mail on February 12, 2008. A true and correct copy of the ten (10) day notice is attached hereto and identified as Exhibit "A". Therefore, please enter judgment in favor of THE MERCER INSURANCE COMPANY declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY, consistent with the relief sought in said complaint.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

By: _____


Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,
vs.

No.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

To: Mark Sullivan t/d/b/a Mark Sullivan Company
P.O. Box 1112
DuBois, PA 15801

Mark Sullivan t/d/b/a Mark Sullivan Company
104A, 90 Beaver Drive
DuBois, PA 15801

Date of Notice: February 12, 2008

IMPORTANT NOTICE

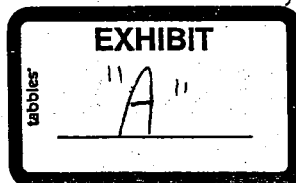
YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

DIBELLA, BEER, McALLISTER & BEST, P.C.

By: 

Matthew C. Lenahan Esquire
Attorney for Plaintiff



IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: ☐ Plaintiff ☒ Defendant ☐ Garnishee ☐ Additional Defendant
Mark T. Sullivan t/d/b/a Mark Sullivan Company

You are hereby notified that the following Order, Decree, or Judgment has been entered against you on _____.

☐ Decree Nisi in Equity

☐ Final Decree in Equity

☒ Judgment of ☐ Confession

☐ Verdict

☐ Court Order

☒ Default

☐ Non-Suit

☐ Non-Pros

☐ Arbitration Award

☒ Judgment declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, MARK T. SULLIVAN t/d/b/a MARK SULLIVAN COMPANY, consistent with the relief sought in said complaint.

☐ District Justice Transcript of Judgment in the amount of \$ _____, plus costs.

() If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY:

By _____
Deputy

If you have any questions concerning the above, please contact:

MATTHEW C. LENAHAN, ESQUIRE
DiBella, Geer, McAllister & Best, P.C.
312 Blvd. of the Allies, Third Floor
Pittsburgh, PA 15222
(412) 261-2900

DiBella | Geer | McAllister | Best

ATTORNEYS AT LAW

312 Boulevard of the Allies • Pittsburgh Pennsylvania 15222 • Tel: 412.261.2900 • Fax: 412.261.3222 • www.dgmblaw.com

Matthew C. Lenahan
mlenahan@dgmblaw.com

April 15, 2008

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
528 Liberty Blvd.
P.O. Box 487
DuBois, PA 15801

RE: The Mercer Insurance Company v. Mark T. Sullivan t/d/b/a
Mark Sullivan Company and Clarence Cataldo t/d/b/a
Cataldo Collision Center, Inc.
Case No.: 07-1701-CD

Dear Mr. Taladay:

I am in receipt of your letter of April 11, 2008, which indicates that you will not be entering an appearance on behalf of Clarence Cataldo in the above-captioned Declaratory Judgment Action, and that Mr. Cataldo will not be defending or contesting or Complaint for Declaratory Judgment in any way. I do appreciate the fact that you notified me of your intentions.

As I had already issued a Ten Day Notice of Default Judgment to Mr. Cataldo on February 12, 2008, I will go ahead and enter a Default Judgment in this matter in ten days from today's date. The entry of Default Judgment will, obviously, end the case as to Mr. Cataldo. I will presume that you will forward this letter or otherwise notify Mr. Cataldo of our intentions; if this is not the case, please contact me immediately so that we may discuss.

Also, in an effort to keep you advised as to the status of these matters, I have already entered a Default Judgment against Mr. Sullivan and, as such, entry of Default Judgment against your client will, in effect, end this matter.

Again, I do appreciate your cooperation and correspondence with me respecting these matters; if anything in this letter is inaccurate, or if you have some objection to the entry of Default Judgment in ten days, please contact me immediately so that we



DiBella | Geer | McAllister | Best

may discuss more in depth. Otherwise, I will continue to copy you on all correspondence and pleadings in this matter, and will assume that you are in contact with Mr. Cataldo respecting the same.

Very truly yours,

Matthew C. Lenahan

Matthew C. Lenahan

M.S.

MCL/mts

DiBella | Geer | McAllister | Best

ATTORNEYS AT LAW

312 Boulevard of the Allies • Pittsburgh Pennsylvania 15222 • Tel: 412.261.2900 • Fax: 412.261.3222 • www.dgmblaw.com

Matthew C. Lenahan
mlenahan@dgmblaw.com

April 21, 2008

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
528 Liberty Blvd.
P.O. Box 487
DuBois, PA 15801


RE: The Mercer Insurance Company v. Mark T. Sullivan t/d/b/a
Mark Sullivan Company and Clarence Cataldo t/d/b/a
Cataldo Collision Center, Inc.
Case No.: 07-1701-CD

Dear Mr. Taladay:

I am in receipt of your letter of April 18, 2008 confirming that you do not intend to contest the Declaratory Judgment Action, and that we should go ahead and enter a Default Judgment to conclude the case. As such, I have gone ahead and sent for filing a Praecipe for Default Judgment, which I have enclosed. When we receive a time stamped copy back from the Prothonotary, I will forward the same to you for your records.

This will conclude this case; I very much appreciate your courtesy and cooperation in this matter. If you have questions or concerns in the meantime, please don't hesitate to contact me at your convenience.

Very truly yours,



Matthew C. Lenahan

M.S.

MCL/mts
Enclosure

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

Plaintiff,

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

CIVIL DIVISION

No. 2007-1701-CD

**PRAECIPE FOR DEFAULT
JUDGMENT AGAINST CLARENCE
CATALDO t/d/b/a CATALDO
COLLISION CENTER, INC.**

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHA, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff, No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

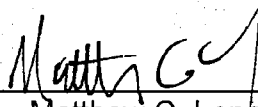
Defendants.

PRAECIPE FOR DEFAULT JUDGMENT

Please enter a judgment against the defendant, CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC., for failure to reply to the Complaint for Declaratory Judgment which was filed on October 19, 2007. Service of the Complaint for Declaratory Judgment on Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc. was made by the Sheriff of Clearfield County on October 23, 2007. Plaintiff certifies that a ten (10) day notice was forwarded to the defendant by regular mail on February 12, 2008. A true and correct copy of the ten (10) day notice is attached hereto and identified as Exhibit "A". Therefore, please enter judgment in favor of THE MERCER INSURANCE COMPANY declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC., consistent with the relief sought in said complaint.

Respectfully submitted,

DiBELLA, GEER, McALLISTER & BEST, P.C.

By: 
Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: ☐ Plaintiff ☒ Defendant ☐ Garnishee ☐ Additional Defendant
 Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc.

You are hereby notified that the following Order, Decree, or Judgment has been entered against you on _____.

☐ Decree Nisi in Equity
☐ Final Decree in Equity
☒ Judgment of ☐ Confession ☐ Verdict ☐ Court Order
 ☒ Default ☐ Non-Suit
 ☐ Non-Pros ☐ Arbitration Award

☒ Judgment declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC. , consistent with the relief sought in said complaint.

☐ District Justice Transcript of Judgment in the amount of \$_____, plus costs.

() If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY:

By _____
Deputy

If you have any questions concerning the above, please contact:

MATTHEW C. LENAHA, ESQUIRE
DiBella, Geer, McAllister & Best, P.C.
312 Blvd. of the Allies, Third Floor
Pittsburgh, PA 15222
(412) 261-2900

SIGNATURE PURSUANT TO LOCAL RULE 208.3(a)(1)(F)

I, MATTHEW C. LENAHAN, attorney for Plaintiff, hereby verify the statements set forth in the foregoing Motion for Entry of Order of Court Pursuant to Default Judgment are true and correct to the best of my knowledge, information and belief and there are good grounds to support such motion and it is not interposed merely for delay. 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.

Date: _____

5/5/2008

MATTHEW C. LENAHAN, ESQUIRE

Matthew C. Lenahan

CERTIFICATE OF SERVICE

I, MATTHEW C. LENAHAN, ESQUIRE, hereby certify that a true and correct copy of the foregoing **MOTION FOR ENTRY OF ORDER OF COURT PURSUANT TO DEFAULT JUDGMENT** was mailed by first class mail, postage prepaid, this 5 day of May, 2008 upon the following:

Benjamin S. Blakley, Esquire
Blakley & Jones
90 Beaver Drive
Box 6
DuBois, PA 15801
(Attorney for Sullivan)

Matthew B. Taladay, Esquire
Hanak, Guido and Taladay
528 Liberty Blvd.
P.O. Box 487
DuBois, PA 15801
(Attorney for Cataldo)



Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

**PRAECIPE FOR DEFAULT
JUDGMENT AGAINST CLARENCE
CATALDO t/d/b/a CATALDO
COLLISION CENTER, INC.**

Defendants.

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

FILED NO CC
mjl:31304
APR 30 2008
Att'y pd. \$20.00
Notice to
Cataldo
William A. Shaw
Prothonotary/Clerk of Courts
(15K)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff, No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

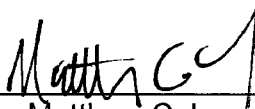
Defendants.

PRAECIPE FOR DEFAULT JUDGMENT

Please enter a judgment against the defendant, CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC., for failure to reply to the Complaint for Declaratory Judgment which was filed on October 19, 2007. Service of the Complaint for Declaratory Judgment on Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc. was made by the Sheriff of Clearfield County on October 23, 2007. Plaintiff certifies that a ten (10) day notice was forwarded to the defendant by regular mail on February 12, 2008. A true and correct copy of the ten (10) day notice is attached hereto and identified as Exhibit "A". Therefore, please enter judgment in favor of THE MERCER INSURANCE COMPANY declaring that THE MERCER INSURANCE COMPANY does not owe a duty to defend and indemnify its insured, CLARENCE CATALDO t/d/b/a CATALDO COLLISION CENTER, INC., consistent with the relief sought in said complaint.

Respectfully submitted,

DiBella, Geer, McAllister & Best, P.C.

By: 
Matthew C. Lenahan, Esquire
Attorney for Plaintiff

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

Plaintiff,

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

CIVIL DIVISION

No. 2007-1701-CD

IMPORTANT NOTICE

Filed on behalf of Plaintiff:
THE MERCER INSURANCE
COMPANY

Counsel of Record for this Party:

DONALD L. BEST, JR., ESQUIRE
PA ID NO 39221

MATTHEW C. LENAHAN, ESQUIRE
PA ID NO 92932

DiBELLA, GEER, McALLISTER &
BEST, P.C.

Firm No. 099
312 Boulevard of the Allies
Third Floor
Pittsburgh, PA 15222
(412)261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff, No.
vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

To: Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc.
615 Division Street
DuBois, PA 15801

Date of Notice: February 12, 2008

IMPORTANT NOTICE

YOU ARE IN DEFAULT BECAUSE YOU HAVE FAILED TO ENTER A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILE IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. UNLESS YOU ACT WITHIN TEN (10) DAYS FROM THE DATE OF THIS NOTICE, A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT A HEARING AND YOU MAY LOSE YOUR PROPERTY OR OTHER IMPORTANT RIGHTS. YOU SHOULD TAKE THIS NOTICE TO A LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE FOLLOWING OFFICE TO FIND OUT WHERE YOU CAN GET LEGAL HELP:

Court Administrator
Clearfield County Courthouse
230 East Market Street
Clearfield, PA 16830
(814)756-2641 ext. 5982

DIBELLA, GEER, McALLISTER & BEST, P.C.

By: 

Matthew C. Lenahan, Esquire
Attorney for Plaintiff

COPY

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY, CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

NOTICE OF ORDER, DECREE OR JUDGMENT

TO: ☐ Plaintiff ☒ Defendant ☐ Garnishee ☐ Additional Defendant
Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc.

You are hereby notified that the following Order, Decree, or Judgment has been entered
against you on April 30, 2008.

☐ Decree Nisi in Equity

☐ Final Decree in Equity

☒ Judgment of ☐ Confession

☐ Verdict

☐ Court Order

☒ Default

☐ Non-Suit

☐ Non-Pros

☐ Arbitration Award

(X) Judgment declaring that THE MERCER INSURANCE COMPANY does not owe a
duty to defend and indemnify its insured, CLARENCE CATALDO t/d/b/a CATALDO
COLLISION CENTER, INC. , consistent with the relief sought in said complaint.

☐ District Justice Transcript of Judgment in the amount of \$ _____, plus costs.

() If not satisfied within sixty (60) days, your motor vehicle operator's license will be suspended by the Pennsylvania Department of Transportation.

PROTHONOTARY:

By William L. Lohan
Deputy

If you have any questions concerning the above, please contact:

MATTHEW C. LENAHA, ESQUIRE
DiBella, Geer, McAllister & Best, P.C.
312 Blvd. of the Allies, Third Floor
Pittsburgh, PA 15222
(412) 261-2900

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,
Plaintiff,

CIVIL DIVISION

No. 2007-1701-CD

vs.

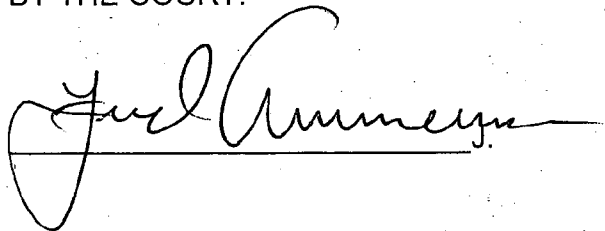
MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

ORDER OF COURT

AND NOW, this 7th day of May, 2008, upon consideration of the foregoing Motion for Entry of Order of Court Pursuant to Default Judgment, it is hereby ORDERED, ADJUDGED and DECREED that pursuant to the Declaratory Judgment Complaint filed on behalf of Plaintiff, and the default judgments received thereby, Mercer Insurance Company has no legal and/or contractual obligation to defend or indemnify Mark T. Sullivan t/d/b/a Mark Sullivan Company for any liability in the litigation filed against him or his companies by Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania and docketed at No. 2006-664.

BY THE COURT:



FILED
MAY 07 2008

4CC
Angela L. Lohan
GR

William A. Shaw
Prothonotary/Clerk of Courts

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

THE MERCER INSURANCE COMPANY,

CIVIL DIVISION

Plaintiff,

No. 2007-1701-CD

vs.

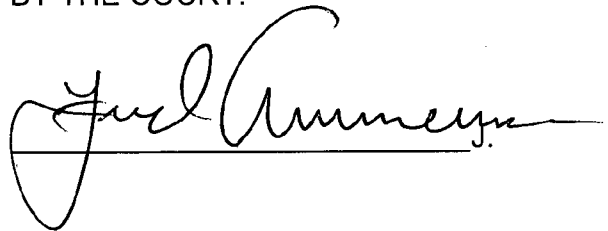
MARK T. SULLIVAN, t/d/b/a
MARK SULLIVAN COMPANY and
CLARENCE CATALDO, t/d/b/a
CATALDO COLLISION CENTER, INC.,

Defendants.

ORDER OF COURT

AND NOW, this 7th day of May, 2008, upon consideration of the foregoing Motion for Entry of Order of Court Pursuant to Default Judgment, it is hereby ORDERED, ADJUDGED and DECREED that pursuant to the Declaratory Judgment Complaint filed on behalf of Plaintiff, and the default judgments received thereby, Mercer Insurance Company has no legal and/or contractual obligation to defend or indemnify Mark T. Sullivan t/d/b/a Mark Sullivan Company for any liability in the litigation filed against him or his companies by Clarence Cataldo t/d/b/a Cataldo Collision Center, Inc. in the Court of Common Pleas of Clearfield County, Pennsylvania and docketed at No. 2006-664.

BY THE COURT:



FILED

012:47/394
MAY 07 2008

4CC
Aly Lenahan

GR

William A. Shaw
Prothonotary/Clerk of Courts

FILED

MAY 07 2008

William A. Shaw
Prothonotary/Clerk of Courts

DATE: 5/7/08

☒ You are responsible for serving all appropriate parties.

☐ The Prothonotary's office has provided service to the following parties:

☐ Plaintiff(s) ☐ Plaintiff(s) Attorney ☐ Other

☐ Defendant(s) ☐ Defendant(s) Attorney

☐ Special Instructions: