

**LAW OFFICES OF
BRIAN R. WHITEHEAD, P.C.**

1610 12th Street, S.E.
Salem, Oregon 97302

BRIAN R. WHITEHEAD
Attorney at Law

Telephone: (503) 364-8505
Facsimile: (503) 364-2655
E-Mail: staff@attywhitehead.com

August 20, 2018

Dan Rayfield
Nelson MacNeil Rayfield Trial Attorneys P.C
421 Water Ave NE #4200
Albany, OR 97321

RE: Sales of Fraudulent General Liability Policies to Oregon
Construction Contractors

Dear Dan:

Thanks for discussing my recent efforts to hold Atlanta Casualty Insurance Company responsible for selling fraudulent policies of insurance to Oregon Construction Contractors.

I will provide you with a copy of Plaintiff's Response to the Defendant ACIC's Motion for Summary Judgment in this matter, which basically details what has happened in this case.

Suffice to say, Atlanta Casualty Insurance Company (ACIC) and at least one other insurance company I know of, Red Shield, are selling policies which purport to be general liability policies covering a contractor's exposure to tort personal injury liability when in fact, they exclude almost every potential plaintiff that is normally present on a work site from coverage under the policy. The policy language of the ACIC insurance policy is set forth on page 2 of our Response to Summary Judgment and the applicable exclusion is set forth on page 3. As you can see, they exclude from coverage injuries to contractors, but at the end of the endorsement excluding contractors, they define contractor as basically any person present at the work site. The specific language is, "as use in this endorsement contractor shall include, but it not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor or of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner and any and all persons working for providing services and/or materials of any kind for these persons or entities mentioned therein." Basically, any person which is normally at the work site would not be covered under this policy for tort liability incurred by the insured contractor.

In my recent case, Precision Drywall, we also sued Bradley Parham, the insured's independent agent. He basically admitted that it was malpractice to sell the policy and that th policy was worthless. You can see that the general agent of ACIC, Ron Rothert, basically admitted that the policy was worthless, when conceding that the vast majority of personal injuries that would be incurred as a result of the contractor's activities would not be covered by the policy.

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Interestingly, there was never any effort or argument by ACIC or Ron Rothert Insurance, ACIC's agent, that the policy was appropriate for any contractor in Oregon. The arguments that they had no liability simply stemmed from the fact that they had disclosed in the terms of the policy. The policy stated it was worthless and, therefore no fraud had been committed. Unfortunately, this argument was accepted by the trial court and the case was dismissed.

We went ahead and settled the case against the insured's independent insurance agent, Parham, for 100% of the judgment against the insured, plus the attorney fees incurred by the insured in defending the claim, plus the 9% interest running on the judgment. The state of affairs, however, still leaves unchecked the issue of ACIC and potentially other insurers selling worthless policies to contractors in Oregon. My understanding of ORS 701.073 and its requirement that the contractor have minimum personal injury and property damage liability insurance, covering the work of the contractor, is that it is intended to protect the general contractor from uninsured tort liability and also to protect the public from such uninsured tort liability.

While the Oregon Constructor Contractors' Board requires that insurance companies confirm such coverage, it does not check to see whether the coverage actually exists or is reflected in the policy. This lack of enforcement by the Oregon Construction Contractors' Board essentially gives ACIC a license to print money and issue policies that are essentially worthless. ACIC was unable to provide us any claim that had ever been paid in Oregon for personal injury and we know, from checking the records of the Oregon Construction Contractors' Board that they sell thousands of policies in Oregon.

In deciding how to proceed in this matter, you should review *5 Star, Inc., v. ACIC*, 269 Or App 51 (2015) which was a case I was also involved in. In that case, the Oregon Court of Appeals held that because ORS 701.105 directed that the insured obtain certain coverage, not that the insurance company provide certain coverage, that statutory reformation was not available. Thus, unlike automobile insurance policies issued in Oregon, the policy is not reformed when the policy is deficient. A legislative fix would simply include language in ORS 701.105 which says that an insurer who issues a policy under ORS 701.105 to a contractor and makes a representation to the Oregon Construction Contractors' Board that the policy covers personal injury and property damage will be reformed to provide such coverage if the policy is deficient. It should also define personal injury and property damage coverage to mean tort liability incurred by the insured for either injury or property damage which is not covered by the insured's worker's compensation insurance policy and thus subject to the exclusive remedy provisions under workers' compensation law.

Thank you for your help in this matter.

Sincerely yours,

Brian R. Whitehead
Attorney at Law

BRW/ljw
Enclosure

PRIVACY POLICY

Atlantic Casualty Insurance Company believes that personal information that we collect about our customers, potential customers, and proposed insureds (referred to collectively in this Privacy Policy as "customers") must be treated with the highest degree of confidentiality. For this reason and in compliance with the Title V of the Gramm-Leach-Bliley Act ("GLBA"), we have developed a Privacy Policy that applies. For purposes of our Privacy Policy, the term "personal information" includes all information we obtain about a customer and maintain in a personally identifiable way. In order to assure the confidentiality of the personal information we collect and in order to comply with applicable laws, all individuals with access to personal information about our customers are required to follow this policy.

Our Privacy Promise

Your privacy and the confidentiality of your business records are important to us. Information and the analysis of information is essential to the business of insurance and critical to our ability to provide to you excellent, cost-effective service and products. We understand that gaining and keeping your trust depends upon the security and integrity of our records concerning you. Accordingly, we promise that:

1. We will follow strict standards of security and confidentiality to protect any information you share with us or information that we receive about you;
2. We will verify and exchange information regarding your credit and financial status only for the purposes of underwriting, policy administration, or risk management and only with reputable references and clearinghouse services;
3. We will not collect and use information about you and your business other than the minimum amount of information necessary to advise you about and deliver to you excellent service and products and to administer our business;
4. We will train our employees to handle information about you or your business in a secure and confidential manner and only permit employees authorized to use such information to have access to such information;
5. We will not disclose information about you or your business to any organization outside our company or to third party service providers unless we disclose to you our intent to do so or we are required to do so by law;
6. We will not disclose medical information about you, your employees, or any claimants under any policy of insurance, unless you provide us with written authorization to do so, or unless the disclosure is for any specific business exception provided in the law;
7. We will attempt, with your help, to keep our records regarding you and your business complete and accurate, and will advise you how and where to access your account information (unless prohibited by law), and will advise you how to correct errors or make changes to that information; and
8. We will audit and assess our operations, personnel and third party service providers to assure that your privacy is respected.

Collection and Sources of Information

We collect from a customer or potential customer only the personal information that is necessary for (a) determining eligibility for the product or service sought by the customer, (b)

administering the product or service obtained, and (c) advising the customer about our products and services. The information we collect generally comes from the following sources:

- **Submission** – During the submission process, you provide us with information about you and your business, such as your name, address, phone number, e-mail address, and other types of personal identification information;
- **Quotes** – We collect information to enable us to determine your eligibility for the particular insurance product and to determine the cost of such insurance to you. The information we collect will vary with the type of insurance you seek;
- **Transactions** – We will maintain records of all transactions with us, our affiliates, and our third party service providers, including your insurance coverage selections, premiums, billing and payment information, claims history, and other information related to your account;
- **Claims** – If you obtain insurance from us, we will maintain records related to any claims that may be made under your policies. The investigation of a claim necessarily involves collection of a broad range of information about many issues, some of which does not directly involve you. We will share with you any facts that we collect about your claim unless we are prohibited by law from doing so. The process of claim investigation, evaluation, and settlement also involves, however, the collection of advice, opinions, and comments from many people, including attorneys and experts, to aid the claim specialist in determining how best to handle your claim. In order to protect the legal and transactional confidentiality and privileges associated with such opinions, comments and advice, we will not disclose this information to you; and
- **Credit and Financial Reports** – We may receive information about you and your business regarding your credit. We use this information to verify information you provide during the submission and quote processes and to help underwrite and provide to you the most accurate and cost-effective insurance quote we can provide.

Retention and Correction of Personal Information

We retain personal information only as long as required by our business practices and applicable law. If we become aware that an item of personal information may be materially inaccurate, we will make reasonable effort to re-verify its accuracy and correct any error as appropriate.

Storage of Personal Information

We have in place safeguards to protect data and paper files containing personal information.

Sharing/Disclosing of Personal Information

We maintain procedures to assure that we do not share personal information with an unaffiliated third party for marketing purposes unless such sharing is permitted by law. Personal information may be disclosed to an unaffiliated third party for necessary servicing of the product or service or for other normal business transactions as permitted by law.

We do not disclose personal information to an unaffiliated third party for servicing purposes or joint marketing purposes unless a contract containing a confidentiality/non-disclosure provision has been signed by us and the third party. Unless a consumer consents, we do not disclose "consumer credit report" type information obtained from an application or a credit report regarding a customer who applies for a financial product to any unaffiliated third party for the

purpose of serving as a factor in establishing a consumer's eligibility for credit, insurance or employment. "Consumer credit report type information" means such things as net worth, credit worthiness, lifestyle information (piloting, skydiving, etc.) solvency, etc. We also do not disclose to any unaffiliated third party a policy or account number for use in marketing. We may share with our affiliated companies information that relates to our experience and transactions with the customer.

Policy for Personal Information Relating to Nonpublic Personal Health Information

We do not disclose nonpublic personal health information about a customer unless an authorization is obtained from the customer whose nonpublic personal information is sought to be disclosed. However, an authorization shall not be prohibited, restricted or required for the disclosure of certain insurance functions, including, but not limited to, claims administration, claims adjustment and management, detection, investigation or reporting of actual or potential fraud, misrepresentation or criminal activity, underwriting, policy placement or issuance, loss control and/or auditing.

Access to Your Information

Our employees, employees of our affiliated companies, and third party service providers will have access to information we collect about you and your business as is necessary to effect transactions with you. We may also disclose information about you to the following categories of person or entities:

- Your independent insurance agent or broker;
- An independent claim adjuster or investigator, or an attorney or expert involved in the claim;
- Persons or organizations that conduct scientific studies, including actuaries and accountants;
- An insurance support organization;
- Another insurer if to prevent fraud or to properly underwrite a risk;
- A state insurance department or other governmental agency, if required by federal, state or local laws; or
- Any persons entitled to receive information as ordered by a summons, court order, search warrant or subpoena.

Violation of the Privacy Policy

Any person violating the Privacy Policy will be subject to discipline, up to and including termination.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MINIMUM EARNED PREMIUM

If this policy is cancelled for any reason, except at the request of the Company, you agree with us that the minimum earned premium for this policy is 25% of the total policy premium, unless otherwise indicated below. It is further agreed that such minimum earned premium is not subject to short rate or pro rata adjustment.

All premium charges for adding additional insured and/or waiver of subrogation endorsements to this policy shall be 100% fully earned.

- 50% of the total policy premium
- 100% of the total policy premium
- ____ % of the total policy premium

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT

(Broad Form)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART
COMMERCIAL GENERAL LIABILITY COVERAGE PART
FARM COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
PROFESSIONAL LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:
 - A. Under any Liability Coverage, to "bodily injury" or "property damage":
 - (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
 - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
 - C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
 - (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
 - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
 - (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SERVICE OF SUIT ENDORSEMENT

It is agreed that service of process in suit may be made upon:

RON ROTHERT INSURANCE SERVICES
541 NE 20TH AVE, SUITE 102
PORTLAND

OR 97232

and that in any suit instituted against any one of them upon this contract, the Company will abide by the final decision of any Court or Appellate Court in the event of an appeal.

The above named are authorized and directed to accept service of process on behalf of the Company in any suit and/or upon the request of the Insured to give a written undertaking to the Insured that they will enter a general appearance upon the Company's behalf in the event a suit is instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefor, the Company designates the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this contract of insurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

ACI-SOS 05/99

Atlantic Cas 000392

Exhibit 1
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COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

SECTION I – COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot from equipment used to heat that building;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".

- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;

- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a sub-contractor.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance ; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

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

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
 - (1) First aid administered at the time of an accident;

- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while taking part in athletics.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

h. War

Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS -- COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.

- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section 1 – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
 - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
 - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage C;
 - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage A; and
 - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when b. below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (b) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (c) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (d) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section I - Coverage A - Bodily Injury And Property Damage Liability.
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the Insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means a land motor vehicle, trailer or semi-trailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in a. above;
 - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - (1) Power cranes, shovels, loaders, diggers or drills; or
 - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
 - (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
 - (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Coverage	Amount and Basis of Deduction PER CLAIM or PER OCCURRENCE	
Bodily Injury Liability OR	\$	\$
Property Damage Liability OR	\$ 250.00	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
 - B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
 - 1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined
 as the result of any one "occurrence".
- If damages are claimed for care, loss of services or death resulting at any time from "bodily injury", a separate deductible amount will be applied to each person making a claim for such damages.
- With respect to "property damage", person includes an organization.

2. **PER OCCURRENCE BASIS.** If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF CERTIFIED ACTS OF TERRORISM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
LIQUOR LIABILITY COVERAGE PART
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART
POLLUTION LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART
RAILROAD PROTECTIVE LIABILITY COVERAGE PART
UNDERGROUND STORAGE TANK POLICY

A. The following exclusion is added:

This insurance does not apply to:

TERRORISM

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism".

B. The following definitions are added:

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.

2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

a. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and

b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals 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.

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSIONS, LIMITATIONS, DEFINITIONS AND CONDITIONS - COMBINATION ENDORSEMENT CONTRACTING OR SERVICING RISKS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

INSURING AGREEMENT AMENDMENT - USE OF EXTRINSIC EVIDENCE - RIGHT TO DEFEND

A. Paragraph 1. a. of SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and the duty to defend the insured against any "suit" seeking covered damages. We will have the right, but not the duty to defend the insured against any "suit" for which we dispute coverage. We will have no duty to defend or indemnify the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply.

We may look to extrinsic evidence outside of the allegations and/or facts pleaded by any claimant to determine whether we owe a duty to defend or indemnify against a lawsuit seeking "bodily injury" or "property damage," provided that extrinsic evidence does not contradict a claimant's pleaded allegation and provided that evidence relates to a discrete coverage issue under the policy and not a merits or liability issue. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend a claim to which this insurance applies ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

Paragraphs b. (3), c. and d. under Paragraph 1. Insuring Agreement of SECTION I – COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY, are deleted.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

B. Paragraph 1. a. of SECTION I – COVERAGES, COVERAGE B PERSONAL AND ADVERTISING INJURY is replaced by the following:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right, but not the duty to defend the insured against any "suit" seeking covered damages. We will have no duty to defend or indemnify the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply.

We may look to extrinsic evidence outside of the allegations and/or facts pleaded by any claimant to determine whether we owe a duty to defend or indemnify against a lawsuit seeking "personal and advertising injury," provided that extrinsic evidence does not contradict a claimant's pleaded allegation and provided that evidence relates to a discrete coverage issue under the policy and not a merits or liability issue. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

- (2) Our right and duty to defend a claim to which this insurance applies ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

AGL-077 06 09

EXCLUSION – BODILY INJURY AND/OR PROPERTY DAMAGE - CLAIMS IN PROCESS

The following exclusion is added to 2. Exclusions under SECTION I - COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY.

This insurance does not apply to:

1. any loss or claim for damages arising out of or related to "bodily injury" or "property damage," whether known or unknown:
 - a. which first occurred prior to the inception date of this policy; or
 - b. which is, or is alleged to be, in the process of occurring as of the inception date of this policy.
2. any loss or claim for damages arising out of or related to "bodily injury" or "property damage," whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy.

We shall have no duty to defend or indemnify any insured against any loss, claim, "suit" or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage," unless any insured can demonstrate this endorsement does not apply.

AGL-048 10 10

EXCLUSION – PERSONAL AND ADVERTISING INJURY - CLAIMS IN PROCESS

The following exclusion is added to 2. Exclusions under SECTION I - COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY:

This insurance does not apply to:

1. Any loss or claim for damages arising out of or related to "personal and advertising injury," whether known or unknown:
 - a. which first occurred prior to the inception date of this policy; or
 - b. which is, or is alleged to be, in the process of occurring as of the inception date of this policy.
2. Any loss or claim for damages arising out of or related to "personal and advertising injury," whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy.

We shall have no duty to defend or indemnify any insured against any loss, claim, "suit" or other proceeding alleging damages arising out of or related to "personal and advertising injury," unless any insured can demonstrate this endorsement does not apply.

AGL-076 10 10

AGL-CO 01-11

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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

LIMITATION - DUTY TO DEFEND

Where there is no coverage under this policy, there is no duty to defend any insured. We are entitled to all rights of reimbursement from you or any insured or indemnitee for sums paid under this policy if it is determined that there is no coverage under the terms, conditions, limitations or exclusions of this policy.

Our determination regarding a defense obligation under this policy may be made on documentation, evidence, or information extrinsic to any complaint or pleading presented to us, provided such documentation, evidence or information does not contradict a pleaded allegation and provided such documentation, evidence or information relates solely to a discrete coverage issue under this policy.

For those qualifying as an additional insured by way of an additional insured endorsement, we have the right, but not the duty, to defend.

AGL-056 10 10

AMENDED DEFINITION - PROPERTY DAMAGE

Paragraph 17. of the Definitions Section is replaced by the following:

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

However, "property damage" does not include breach of contract, breach of any express or implied warranty, deceptive trade practices or violation of any consumer protection laws.

"Property damage" does not include any cost or expense to repair, replace, or complete any work to any property that you, or any insured, are otherwise obligated to repair, replace or complete pursuant to the terms of any contract.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

AGL-106 06 09

LIMITATION - RIGHT TO SELECT COUNSEL

We have the right to select counsel to represent any insured.

In the event that you or any insured or indemnitee are entitled by law to select independent counsel to defend you or any insured or indemnitee at the Company's expense and you or any insured or indemnitee elect to select such counsel, the attorney's fees and all other litigation expenses we must pay are limited to the rates we actually pay to counsel we retain in the ordinary course of business in the defense of similar claims in the community where the claim arose or is being defended.

AGL-074 06 09

AGL-CO 01-11

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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

CONDITION - ARBITRATION

If we and any insured do not agree whether coverage is provided under this policy for a claim made against any insured, then either party may make a written demand for arbitration.

When this demand is made, each party will select an arbitrator. The two arbitrators will select a third. If they cannot agree within 30 days, either may request that selection be made by a judge of a court having jurisdiction. Each party will:

- (1) Pay the expenses it incurs; and
- (2) Bear the expenses of the third arbitrator equally.

Unless both parties agree otherwise, arbitration will take place in the county or parish in which the address shown in the Declarations is located. Local rules of law as to procedure and evidence will apply. Any decision agreed to or damages awarded by the arbitrators may be appealed to a court of competent jurisdiction.

AGL-096 06 09

EXCLUSION - COMMUNICABLE DISEASE

This insurance does not apply to any claim, loss, costs or expense for "bodily injury," "property damage" or "personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- (1) Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- (2) Testing for a communicable disease;
- (3) Failure to prevent the spread of the disease; or
- (4) Failure to report the disease to authorities.

AGL-001 10 10

EXCLUSION - LEAD-BEARING SUBSTANCE

This insurance does not apply to any claim, loss, costs or expense for "bodily injury" or "personal and advertising injury" caused by plumbism (lead poisoning) or any disease or ailment caused by or aggravated by exposure, consumption or absorption of lead.

This insurance does not apply to any claim, loss, costs or expense for "property damage" arising out of the actual or alleged presence of lead in any form, including the costs of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning up or removal of any lead-bearing substance.

AGL-002 10 10

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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION – PUNITIVE DAMAGES

This insurance does not apply to any claim of or indemnification for punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages. If a "suit" seeking both compensatory and punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages has been brought against you for a claim covered by this policy, we will provide defense for such action. We will not have any obligation to pay for any costs, interest or damages attributable to punitive, exemplary and/or statutorily enhanced damages, including, but not limited to, multiple damages.

AGL-003 10 10

EXCLUSION – ASBESTOS OR SILICA

This insurance does not apply to any claim, loss, costs or expenses for "bodily injury" or "personal and advertising injury" caused by asbestosis, silicosis, mesothelioma, emphysema, pneumoconiosis, pulmonary fibrosis, pleuritis, endothelioma or any lung disease or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of asbestos or silica.

This insurance does not apply to any claim, loss, costs or expense for "property damage" due to or arising out of the actual or alleged presence of asbestos or silica in any form, including the cost of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning and removal of any property or substance.

AGL-004 10 10

EXCLUSION – INDEPENDENT CONTRACTORS OR SUBCONTRACTORS

This insurance does not apply to any claims, loss, costs or expense arising out of or related to the action(s) or inaction(s) of independent contractors or subcontractors by or on behalf of any insured; or for the negligent hiring, training, supervision, direction, inspection, investigation, management or retention of independent contractors or subcontractors on behalf of any insured.

AGL-005 10 10

LIMITATION - ROOFING

This insurance does not apply to any claim, loss, costs or expenses for "bodily injury," "property damage" or "personal and advertising injury" as a result of any operations, from initial inspection and pre-installation work to ongoing operations and including completed operations, involving any hot tar, wand, sprayed or sprayed-on material, torch or heat applications, hot membrane roofing or any membrane roofing system requiring heat for application.

AGL-009 01 11

CLASSIFICATION LIMITATION

This insurance does not apply to and no duty to defend is provided for "bodily injury," "property damage," "personal and advertising injury" or medical payments unless the insured can demonstrate the "bodily injury," "property damage," "personal and advertising injury" or medical payments arise out of the classification(s) shown on the Commercial General Liability Coverage Declarations, its endorsements or supplements.

AGL-015 10 10

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THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION - RAIN, SNOW AND HAIL PROPERTY DAMAGE HAZARD

This insurance does not apply to claims, loss, costs or expense due to "property damage" arising out of rain, snow, hail or any combination of these if a suitable waterproof temporary covering, able to withstand the normal elements and large enough to cover the area being worked on, has not been properly secured in place. This cover is to be put into place any time any insured leaves the job site.

Relative to roofing operations, the use of tar paper and/or felt paper does not constitute suitable waterproof temporary covering.

AGL-035 10 10

EXCLUSION - EIFS

This insurance does not apply to claims, loss, costs or expense for "bodily injury," "property damage" or "personal and advertising injury" arising from the design, manufacture, construction, fabrication, preparation, installation, application, maintenance or repair, including remodeling, service, correction, or replacement, of an exterior insulation and finish system (commonly referred to as synthetic stucco or EIFS) or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system. For the purpose of this endorsement, an exterior insulation and finish system means an exterior cladding or finish system used on any part of any structure, and consisting of:

- (1) A rigid or semi-rigid insulation board made of expanded polystyrene or other materials;
- (2) The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
- (3) A reinforced or unreinforced base coat;
- (4) A finish coat providing surface texture to which color may be added; and
- (5) Any flashing, caulking or sealant used with the system for any purpose.

For the purposes of this exclusion, a direct applied exterior finish system and/or a direct exterior finish system (both commonly referred to as DEFS) is deemed to be a substantially similar system to an EIFS system and this endorsement applies equally to what may be referred to as a DEFS.

AGL-050 10 10

AGL-CO 01-11

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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION – MOLD, BACTERIA, VIRUS AND ORGANIC PATHOGEN LIABILITY

This insurance does not apply to claims, loss, costs or expense arising from any actual or alleged:

- (1) "bodily injury," "property damage" or "personal and advertising injury;"
- (2) damages for devaluation of property or for the taking, use or acquisition or interference with the rights of others in property or air space;
- (3) to any loss, cost or expense, including but not limited to fines, penalties and attorney fees, arising out of any governmental direction or request, or any private party or citizen action, that an insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize "organic pathogens," or
- (4) to any litigation or administration procedure in which any insured may be involved as a party,

arising directly, indirectly, or in concurrence or in any sequence out of actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape of "organic pathogens," whether or not such actual, alleged or threatened existence, discharge, dispersal, release or escape is sudden, accidental or gradual in nature.

In addition, this insurance does not apply to any alleged "bodily injury," "property damage," "personal and advertising injury," loss, costs or expense including but not limited to fines, penalties and attorney fees, arising out of or related to any form of "organic pathogens," whether or not such actual, alleged or threatened existence, exposure to, discharge, dispersal, deposit, release or escape is negligently or intentionally caused by any person or entity and whether or not the liability of any insured is alleged to be direct or vicarious. This exclusion also applies whether or not such injury, damage, devaluation, cost or expense is expected or intended from the standpoint of any insured.

"Organic pathogen" means any organic irritant or contaminant, including but not limited to mold, fungus, bacteria or virus, including but not limited to their byproducts such as mycotoxin, mildew, biogenic aerosol or scent.

All other terms and conditions remain unchanged.

AGL-054 10 10

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION OF INJURY TO EMPLOYEES, CONTRACTORS AND EMPLOYEES OF CONTRACTORS

Exclusion e. Employer's Liability of SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

This insurance does not apply to:

- (i) "Bodily injury" to any "employee" of any insured arising out of or in the course of:
 - (a) Employment by any insured; or
 - (b) Performing duties related to the conduct of any insured's business;
- (ii) "Bodily injury" to any "contractor" for which any insured may become liable in any capacity; or
- (iii) "Bodily injury" sustained by the spouse, child, parent, brother or sister of any "employee" of any insured, or of a "contractor", as a consequence of any injury to any person as set forth in paragraphs (i) and (ii) of this endorsement.

This exclusion applies to all claims and "suits" by any person or organization for damages because of "bodily injury" to which this exclusion applies including damages for care and loss of services.

This exclusion applies to any obligation of any insured to indemnify or contribute with another because of damages arising out of "bodily injury" to which this exclusion applies, including any obligation assumed by an insured under any contract.

With respect to this endorsement only, the definition of "Employee" in the DEFINITIONS (Section V) of CG0001 is replaced by the following:

"Employee" shall include, but is not limited to, any person or persons hired, loaned, leased, contracted, or volunteering for the purpose of providing services to or on behalf of any insured, whether or not paid for such services and whether or not an independent contractor.

As used in this endorsement, "contractor" shall include but is not limited to any independent contractor or subcontractor of any insured, any general contractor, any developer, any property owner, any independent contractor or subcontractor of any general contractor, any independent contractor or subcontractor of any developer, any independent contractor or subcontractor of any property owner, and any and all persons working for and or providing services and or materials of any kind for these persons or entities mentioned herein.

All other terms and conditions remain unchanged.

AGL-055A 08 05

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION - TOTAL POLLUTION

Exclusion f. under Paragraph 2., Exclusions of SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or in part but for the actual, alleged or threatened discharge, dispersal, deposit, seepage, migration, release or escape of "pollutants" at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand, order or statutory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, clean up, removing, containing, treating, detoxifying, or neutralizing or in any way responding to, or assessing the effects of "pollutants".

AGL-064 06 09

AMENDMENT OF POLLUTANT DEFINITION

Paragraph 15. of the Definitions Section is replaced by the following:

The Definition of "Pollutants" in Section V - Definitions is deleted and replaced by the following:

15. "Pollutants" means solid, liquid, gaseous, or thermal irritant or contaminant or all material for which a Material Safety Data Sheet is required pursuant to federal, state or local laws, where ever discharged, dispersed, deposited, seeping, migrating or released, including onto or into the air or any air supply, water or any water supply or land, including but not limited to petroleum, oil, heating oil, gasoline, fuel oil, carbon monoxide, industrial waste, acid, alkalis, chemicals, waste, treated sewage, and associated scent or scents, smoke, off gas or off gases, vapor, soot and fumes from said substance. Waste includes material to be recycled, reconditioned, or reclaimed.

AGL-114 06 09

EXCLUSION - CHROMATED COPPER ARSENATE (CCA)

This insurance does not apply to any claim, loss, costs or expense for "bodily injury" or "personal and advertising injury" or any ailment caused by, or aggravated by exposure, inhalation, consumption or absorption of Chromated Copper Arsenate (CCA).

This insurance does not apply to any claim, loss, costs or expense for "property damage" due to or arising out of the actual or alleged presence of Chromated Copper Arsenate (CCA) in any form, including the cost of remedial investigations or feasibility studies, or to the cost of testing, monitoring, cleaning or removal of any property or substance.

AGL-065 10 10

AGL-CO 01-11

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Atlantic Cas 000420

Exhibit 1
Page 39 of 44

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

LIMITATION - MAXIMUM AVAILABLE LIMIT OF INSURANCE

When two or more coverage forms, coverage parts or policies issued by us:

This endorsement applies to all coverage forms or coverage parts and policies providing "bodily injury" and "property damage" and/or damage to premises rented to you and/or medical payments and/or "products-completed operations" and/or "personal and advertising injury."

For any loss, claim, cost or expense arising out of one occurrence:

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same occurrence, the maximum per occurrence Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy.

This endorsement applies to any insured including but not limited to any additional insured.

AGL-066 06 09

EXCLUSION - EXPECTED OR INTENDED

Exclusion 2, a. of the Commercial General Liability Coverage Form under SECTION I - COVERAGES, COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY is deleted in its entirety and replaced by the following:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of any insured

AGL-068 06 09

EXCLUSION - SNOW AND/OR ICE REMOVAL

This insurance does not apply to any claim, loss, costs or expense for "bodily injury" or "property damage" arising from any insured's operations or completed operations for the removal of snow and/or ice. This exclusion does not apply if you remove snow and/or ice from any premises that you own or rent whose address is shown on the policy.

AGL-069 10 10

EXCLUSION - CALIFORNIA, COLORADO OR NEVADA

This insurance does not apply to any claim, loss, costs or expense for "bodily injury," "property damage" or "personal and advertising injury" arising from "your work," in the states of California, Colorado or Nevada.

AGL-070 10 10

TERMS, CONDITIONS AND PREMIUM

This policy's terms, conditions and premiums are subject to change in accordance with our rates and rules in effect at the time of the renewal, continuation or anniversary.

AGL-071 01 07

AGL-CO 01-11

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Atlantic Cas 000421

Exhibit 1
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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION - EARTH MOVEMENT

This insurance does not apply to any claim, loss, costs or expense for "bodily injury," "property damage" or "personal and advertising injury" arising out of, caused by, resulting from, attributable to or contributed to, aggravated by, or related to earthquake, landslide, mud flow, subsidence, settling, slipping, falling away, shrinking, caving in, shifting, eroding, rising, heaving, tilting or any other movement of land, earth or mud.

AGL-072 10 10

EXCLUSION - MENTAL INJURY

This insurance does not apply to any claim, loss, costs or expense arising out of emotional distress, mental anguish, humiliation, mental distress, mental injury, mental suffering, worry, annoyance, anxiety, inconvenience, depression, dissatisfaction, or shock to the nervous system or any physical manifestation of any of the foregoing, or any similar injury unless it arises out of physical injury that occurs to that person.

AGL-073 10 10

LIMITATION - IMPORTED DRYWALL

This insurance does not apply to any claim, loss, costs or expense for "bodily injury" or "property damage" arising out of "your product" or "your work" resulting from any paper-coated, gypsum-filled paneling, which may be known by various names including, but not limited to drywall, wall board, sheetrock, gypsum board, or plasterboard, that was not manufactured in the United States or Canada.

AGL-079 10 10

EXCLUSION - OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This insurance does not apply to any claim, loss, costs or expense for "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location at which a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part,
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

AGL - 080 10 10

EXCLUSION - SUITS BETWEEN NAMED INSUREDS

This insurance does not apply to any claim for damages by any Named Insured against another Named Insured because of "bodily injury," "property damage" or "personal and advertising injury".

AGL - 081 10 10

AGL-CO 01-11

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Exhibit 1
Page 41 of 44

ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION - CONDOMINIUMS, TOWNHOMES, TOWNHOUSES, TRACT HOUSES - SPECIFIED STATES

Specified States: Arizona, New Mexico, Oregon, South Carolina, Washington and/or Wisconsin

A. The following exclusion is added to 2. Exclusions under SECTION I - COVERAGES, COVERAGE A, BODILY INJURY AND PROPERTY DAMAGE LIABILITY:

1. This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work", in any scheduled state above, on the new construction and/or conversion to or from any condominium, town home or townhouse project, or "tract home project." This exclusion applies regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.
2. This exclusion does not apply to repair work on any such units described in 1. above.

We shall have no duty to defend any insured against any loss, claim, "suit" or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

B. The following definition is added to Section V - Definitions.

"Tract home project" means any freestanding one, two, three four or multi-family dwelling that is constructed from multiple identical or nearly identical plans and constructed on a large piece or parcel of land which has been subdivided into ten (10) or more lots, tract, parcel or other divisions.

AGL-109 10 10

EXCLUSION - EMPLOYMENT - RELATED PRACTICES

This insurance does not apply to any claim, loss, costs or expense arising out of "bodily injury," "property damage" or "personal and advertising injury" to:

- (1) A person arising out of any:
 - (a) Refusal to employ that person;
 - (b) Termination of that person's employment; or
 - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, transfer, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

AGL-108 10 10

AGL-CO 01-11

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Exhibit 1
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ATLANTIC CASUALTY INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

EXCLUSION – VOLUNTEER WORKERS

- A. Paragraphs 2.a. Exclusions of SECTION I, COVERAGES, COVERAGE C – MEDICAL PAYMENTS is replaced by the following:

This insurance does not apply to payment of expenses for "bodily injury":

- a. To any insured

- B. Paragraphs 2.a. and 2.b. of Section II – Who Is An Insured are replaced by the following:

- a. Your "employees," other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to conduct of your business. However, none of these "employees" is an insured for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" or while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1) (a) above;
- (c) For which there is any obligation to share damages with or repay someone who must pay damages because of the injury described in Paragraphs (1) (a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by

you, any of your "employees," any partner or member (if you are partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee"), or any organization while acting as your real estate manager.

- C. Definition 20. "volunteer worker" of Section V – Definitions is deleted.

AGL-112 10 10

EXCLUSION – NEW ENTITIES

Paragraph 4. of WHO IS AN INSURED (Section II) does not apply.

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AGL-CO 01-11

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Atlantic Cas 000424

Exhibit 1
Page 43 of 44

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MARION

5 STAR, INC., an Oregon corporation,

Plaintiff,

vs.

ATLANTIC CASUALTY INSURANCE
COMPANY, and PARHAM
INSURANCE AGENCY, INC., an Oregon
corporation and BRADLEY ROBERT
PARHAM, individually,

Defendants.

Case No: 09C 12928

AFFIDAVIT OF CRAIG P. SMITH

5 STAR, INC., an Oregon corporation,

Plaintiff,

vs.

BRIAN CRIST, Individually; and ANCHOR
BAY INSURANCE MANAGERS, INC.,
a Washington State corporation and
ATLANTIC CASUALTY INSURANCE
COMPANY,

Defendants.

Case No.: 10C 20892

STATE OF OREGON

County of Marion

}
} ss.
}

I, Craig P. Smith, being first duly sworn, do hereby depose and say that:

1. I am the Administrator for the State of Oregon Construction Contractors Board ("CCB" or "Agency"). I am making this affidavit for the sole purpose of identifying the process followed by the Agency regarding proof of insurance. I have no

Ex: 4

Page: 1 of 4

Ex: E

direct knowledge of and take no position whatsoever on the underlying dispute between the parties to the captioned case.

2. In my capacity as Administrator for the Oregon Construction Contractors Board I have oversight responsibility for the licensing and enforcement functions of the Agency. Through the rulemaking and contested case process, the CCB and its Appeal Committee are ultimately responsible for the implementation and enforcement of ORS 701.073, which requires liability, personal injury and property damage insurance as a condition of licensure for construction contractors.

3. The current version of ORS 701.073 (formerly ORS 701.105) provides as follows:

701.073 Insurance requirement of licensed contractors. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions, for an amount not less than the applicable amount set forth in ORS 701.081 or 701.084.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

I believe the current version of the statute became effective on July 1, 2008 following significant legislative changes that were made in 2007. I also believe the former version of the statute, and the statute that would have been in effect in 2005, provided:

701.105 Insurance required of licensed contractors; alternative form of security; rules. (1) Except as provided in subsection (2) of this section, a contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, for an amount not less than:

(a) \$500,000 for general contractor or licensed developer.

(b) \$300,000 for a residential-only specialty contractor.

(c) \$500,000 for all other specialty contractors.

(d) \$100,000 for a limited contractor.

(e) \$300,000 for an inspector.

* * * *

(4) The contractor shall provide satisfactory evidence to the board at the time of licensure and renewal that the insurance policy or board-approved alternative form of security required by this section has been procured and is in effect.

I have been advised that it is the statute that was in effect in 2005 that is applicable to the policy at issue in the captioned case, but have no independent knowledge of this.

4. As noted above, both the 2005 and the current statute relating to liability, personal injury and property damage coverage provide that a contractor must provide the CCB with satisfactory evidence of insurance coverage. It has been the practice of the Agency to accept certificates of insurance from the contractor's insurance company as proof of coverage and compliance with ORS 701.073(2) and former ORS 701.105(4). The certificate of insurance coverage is reviewed for the purpose of determining that the minimum dollar amount of coverage required by statute is met. To the best of my knowledge, the certificates of insurance do not reference any coverage exclusions that may exist in the underlying insurance policy, and we have neither the financial resources nor the expertise necessary to evaluate actual policies of insurance; thus we have no procedures for doing so.

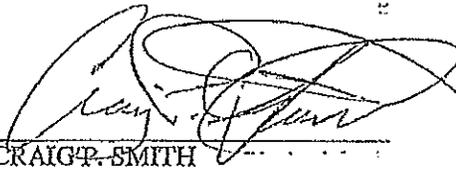
5. Given that we do not have the resources or expertise to analyze the underlying policies represented by a carrier's certificate of insurance, we rely on the information in the certificates themselves as affirmative representations by the

Ex: 4

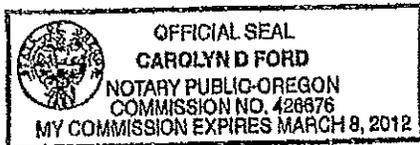
Page: 3 of 4

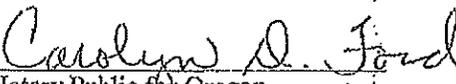
contractors, their insurance agents and carriers that the policy of insurance meets all of the requirements of the statute.

DATED this 27th day of May, 2011.


CRAIG P. SMITH

SUBSCRIBED AND SWORN TO before me on this 27th day of May, 2011.




Notary Public for Oregon
My Commission Expires: 3/8/12

Ex: 4

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IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MARION

PRECISION DRYWALL, LLC, and
RANDEL L. DUNN,

Plaintiffs,

v.

BRADLEY ROBERT PARHAM,
individually, PARHAM INSURANCE
AGENCY, INC., an Oregon corporation,
RON ROTHERT INSURANCE, INC., an
Oregon corporation and ATLANTIC
CASUALTY INSURANCE COMPANY,

Defendants.)

Case No: 16CV02159

AFFIDAVIT OF JAMES DENNO
ADMINISTRATOR, OREGON
CONSTRUCTION CONTRACTORS
BOARD

State of Oregon)
County of Marion) ss.

I, James Denno, being duly sworn under oath do hereby depose and say as follows:

1. I am the Administrator for the State of Oregon Construction Contractors Board ("CCB" or "Agency"). I am making this affidavit for the sole purpose of identifying the process followed by the Agency regarding proof of general liability insurance (public liability, personal injury and property damage insurance). I have no direct knowledge of, and take no position whatsoever on, the underlying dispute between the parties to the captioned case.

2. In my capacity as Administrator for the Oregon Construction Contractors Board I have oversight responsibility for the licensing and enforcement functions of the Agency. Through the rule making and contested case process, the CCB and its Appeal Committee are ultimately

AFFIDAVIT OF JAMES DENNO, ADMINISTRATOR CCB

LAW OFFICES OF
BRIAN R. WHITEHEAD, P.C.
1610 12th St., S.E.
Salem, Oregon 97302
(503) 364-8505

Ex: 5

Page: 1 of 3

responsible for the implementation and enforcement of ORS 701.073, which requires public liability, personal injury and property damage insurance as a condition of licensure for construction contractors.

3. The current version of ORS 701.073 (also in effect in 2011 and formerly ORS 701.105) provides as follows:

701.073 Insurance requirement of licensed contractors. (1) A contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is subject to this chapter, including the covering of liability for products and completed operations according to the terms of the policy and subject to applicable policy exclusions, for an amount not less than the applicable amount set forth in ORS 701.081 or 701.084.

(2) The contractor shall provide satisfactory evidence to the Construction Contractors Board at the time of licensure and renewal that the insurance required by subsection (1) of this section has been procured and is in effect.

4. As noted above, the current statute relating to public liability, personal injury and property damage insurance coverage provides that a contractor must provide the CCB with satisfactory evidence of insurance coverage. While the Board's rules have been amended over the years in question, it has nonetheless remained CCB's practice to accept certificates of insurance from each contractor's insurance company as proof of coverage and compliance with ORS 701.073(2). The certificate of insurance coverage is reviewed for the purpose of determining that the minimum dollar amount of coverage required by statute is met. To the best of my knowledge, the certificates of insurance normally do not reference any coverage exclusions that may exist in the underlying insurance policy, and CCB has neither the financial resources nor the expertise necessary to evaluate each individual policy of insurance; thus, CCB has no procedures for doing so. An alternative method of demonstrating insurance coverage compliance is for an insurer to enter the insurance coverage information into CCB's insurance verification web portal. Prior to use of the insurance portal, each insurance company, or its agent, must present an application for portal use to CCB. Only when the portal use application is approved, can the

insurance company use the portal to provide verification of insurance. In order to use the portal for verification of insurance coverage the insurance company, or its agent, must answer "yes" to the following statement:

"This insurance covers property damage and bodily injury."

To my knowledge, the portal does not require insurers to also state the exclusions applicable to the public liability, personal injury and property damage policy at the time of portal verification.

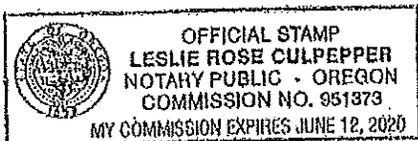
5. Given that CCB does not have the resources or expertise to analyze the underlying general liability (public liability, personal injury and property damage) insurance policies represented by the insurer's certificate of insurance, or portal entry verification, CCB relies on the information in the certificates of insurance, or the portal entry verification of insurance coverage, as affirmative representations by the contractors, their insurance agents and their insurers that the required policy of general liability (public liability, personal injury, and property damage) insurance meets all of the requirements of the statute.

DATED this 8th day of December, 2017.


James Denno.

SUBSCRIBED AND SWORN TO before me on this 8th day of December, 2017.


Notary Public for Oregon
My Commission Expires: 6/12/20



Ex: 5

Page: 3 of 3

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF MARION

PRECISION DRYWALL, LLC, and
RANDEL L. DUNN,

Plaintiffs,

v.

BRADLEY ROBERT PARHAM,
individually, PARHAM INSURANCE
AGENCY, INC., an Oregon corporation,
RON ROTHERT INSURANCE, INC., an
Oregon corporation and ATLANTIC
CASUALTY INSURANCE COMPANY,

Defendants.

Case No: 16CV02159

AFFIDAVIT OF SHEILA MARTINAK

STATE OF OREGON

County of Marion

} ss.

I, Sheila Martinak, being first duly sworn, do hereby depose and say that:

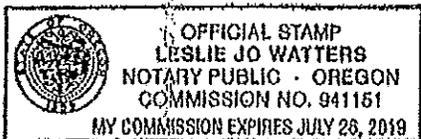
1. That I am the office manager and accounting assistant at the Law Offices of Brian R. Whitehead PC.
2. That I have reviewed a computer record requested by our law office from the Oregon Construction Contractors' Board for policies issued by ACIC in the last 10 years. There are 9,338 entries listed on the computer record.

DATED this 23rd day of August, 2016.

Sheila Martinak

Sheila Martinak

SUBSCRIBED AND SWORN TO before me on this 23rd day of August, 2016.



Leslie Jo Watters

Notary Public for Oregon
My Commission Expires: 07/26/19

Affidavit of Sheila Martinak

Ex: 2
Page: 1 of 2

LAW OFFICES OF
BRIAN R. WHITEHEAD, P.C.
1619 12th St., S.E.
Salem, Oregon 97302
(503) 364-8505

**269 Or.App. 51
344 P.3d 467**

**5 STAR, INC., an Oregon corporation, Kevin Rains and Mitzi Rains,
Plaintiffs–Appellants
v.
ATLANTIC CASUALTY INSURANCE COMPANY, Defendant–Respondent
and
Parham Insurance Agency Inc., an Oregon corporation; and Bradley
Robert Parham, an Individual, Defendants.**

**09C12928
A150818.**

Court of Appeals of Oregon.

**Argued and Submitted July 17, 2013.
Filed Feb. 11, 2015.**

[344 P.3d 468]

Brian R. Whitehead, Salem, argued the cause and filed the briefs for appellants.

Brian C. Hickman, Portland, argued the cause and filed the brief for respondent.

Before DUNCAN, Presiding Judge, and HASELTON, Chief Judge, and WOLLHEIM, Senior Judge.*

Opinion

DUNCAN, P.J.

[269 Or.App. 53]

In this civil case, plaintiff 5 Star, Inc. (5 Star) brought claims against its insurer, defendant Atlantic Casualty Insurance Company (Atlantic) for reformation of its insurance policy and for negligent procurement of insurance. Plaintiffs Kevin Rains and Mitzi Rains, who have a judgment against 5 Star, brought a claim against Atlantic pursuant to ORS 742.031, which permits direct actions by judgment creditors against the insurer of an insured, but insolvent, judgment debtor. Atlantic filed a motion for summary judgment on all of the claims against it, and the trial court granted the motion and entered a limited judgment dismissing all of the claims against Atlantic. 5 Star and the Rainses appeal. For the reasons explained below, we conclude that the trial court did not err in granting Atlantic's motion, and, therefore, we affirm.

I. STANDARD OF REVIEW

We will affirm the trial court's granting of Atlantic's motion for summary judgment if, viewing the record on summary judgment in the light most favorable to

plaintiffs, as the nonmoving party, we determine that there is no genuine issue of material fact and Atlantic is entitled to judgment as a matter of law. Jones v. General Motors Corp., 325 Or. 404, 420, 939 P.2d 608 (1997).

[344 P.3d 469]

II. HISTORICAL AND PROCEDURAL FACTS

At all times relevant to this appeal, 5 Star was a general contractor and, as such, was required by *former* ORS 701.105(1) (2003)¹ to have insurance. In 2001, Jerry Molan, the president and owner of 5 Star, contacted an insurance agent, Bradley Parham, to obtain insurance for 5 Star. Parham completed, and Molan signed, several insurance applications stating that 5 Star did not use subcontractors. Parham secured a one-year business liability policy for 5 Star from Farmers Insurance.

[269 Or.App. 54]

Farmers Insurance did not renew the policy. As a result, in 2002, Parham sought a replacement business liability policy for 5 Star and submitted an application to an insurance broker, Anchor Bay Insurance Managers (Anchor Bay). In response, Anchor Bay provided Parham a quote for insurance coverage by Atlantic. The policy contained multiple exclusions, including an exclusion for claims arising out of the actions of subcontractors.² The policy also stated:

"The coverage and terms being offered may not be the same or as broad as requested in your application. Please review carefully and advise us immediately if you have any questions."

Parham accepted the quote on behalf of 5 Star, and Atlantic issued a one-year policy. 5 Star renewed the policy with Atlantic in 2003 and 2004.

In 2005, when the policy was in effect, Kevin Rains was severely injured while working as a subcontractor for 5 Star. Rains and his wife, Mitzi Rains, brought an action against 5 Star and others. Atlantic denied coverage and refused to defend 5 Star. 5 Star did not appear to defend itself, and the trial court entered a default judgment against 5 Star, awarding the Rainses approximately \$18 million dollars. See Rains v. Stayton Builders Mart, Inc., 264 Or.App. 636, 639 n. 1, 336 P.3d 483 (2014).

Thereafter, 5 Star entered into a settlement agreement with the Rainses. The agreement relieved 5 Star of any obligation to pay the \$18 million judgment in exchange for 5 Star holding its claims against Parham and Atlantic "in trust" for the Rainses.

5 Star and the Rainses then filed the present action. 5 Star's claims against Atlantic alleged, *inter alia*, that (1) 5 Star was entitled to have its insurance policy with Atlantic reformed to include coverage for subcontractors and (2) Parham had negligently failed to procure adequate insurance for 5 Star, and Atlantic was

vicariously liable for Parham's failure because Parham was Atlantic's agent.

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More than a year later, 5 Star filed a second action, claiming, *inter alia*, that Anchor Bay and one of its employees had negligently failed to procure adequate insurance and that Atlantic was vicariously liable for that failure. The trial court had previously denied a request by 5 Star to amend the complaint in this case to include the allegations against Anchor Bay and its employee, but the court consolidated the two cases for trial.

In this action, Atlantic moved for summary judgment, and the trial court entered a limited judgment dismissing with prejudice all of the claims against Atlantic. That limited judgment is the subject of this appeal.

In the second action, the trial court entered a general judgment in favor of all of the defendants, including Atlantic, ruling that the action was untimely and, in any event, the claims lacked merit. That judgment was entered before the judgment in this action and was the subject of a separate appeal, in which we affirmed the judgment without a written opinion. 5 Star, Inc. v. Crist, 257 Or.App. 420, 304 P.3d 468 (2013).

III. CLAIM PRECLUSION

As an initial matter, Atlantic argues that 5 Star's appellate arguments are precluded

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by the final judgment in the second action. Atlantic argues that, because the two actions involve the same transaction and occurrence and seek the same damages, and because 5 Star has already prosecuted the second action to finality, the judgment in that case precludes 5 Star's appeal in this case.

Under the doctrine of claim preclusion,

"a plaintiff who has prosecuted one action against a defendant through to a final judgment binding on the parties is barred on *res judicata* grounds from prosecuting another action against the same defendant where the claim in the second action is one which is based on the same factual transaction that was at issue in the first, seeks a remedy additional or alternative to the one sought earlier, and is of such a nature as could have been joined in the first action."

Rennie v. Freeway Transport, 294 Or. 319, 323, 656 P.2d 919 (1982). This case does not present the typical scenario for

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application of claim preclusion, where one action is prosecuted to completion and a second action is subsequently brought by the same plaintiff against the same defendant. See, e.g., Krisor v. Lake County Fair Board, 256 Or.App. 190, 302 P.3d

455, rev. den., 354 Or. 61, 308 P.3d 205 (2013) (claim preclusion, as that term is typically used, formerly known as *res judicata*, prohibits a party from relitigating a cause of action against the same defendant involving the same factual transaction as was litigated in the previous adjudication, if there has been a final judgment in the first action). Here, 5 Star attempted to amend the complaint to allege the additional claims relating to Anchor Bay and its employee, but Atlantic opposed joinder. The trial court denied plaintiffs' motion to amend the complaint, and 5 Star filed the claims as a separate action. The trial court assumed that the two cases could proceed simultaneously and consolidated them for trial. Under those circumstances, we conclude that the final judgment in the second action did not preclude plaintiffs from litigating its claims in this case.

IV. REFORMATION

In its first assignment of error, 5 Star asserts that the trial court erred in "dismissing its reformation claim." 5 Star contends that it was entitled to reformation of its insurance policy with Atlantic under either of two theories: statutory reformation or common-law reformation. We address the two theories in turn.

A. Statutory Reformation

5 Star's theory of statutory reformation is that its insurance policy with Atlantic does not meet the requirements for contractor's insurance established by *former* ORS 701.105 and must be reformed to do so. *Former* ORS 701.105 provides, in part:

"[A] contractor who possesses a license as required under this chapter shall have in effect public liability, personal injury and property damage insurance covering the work of the contractor that is the subject of this chapter, for an amount not less than:

"(a) \$500,000 for a general contractor * * *.

"(b) \$300,000 for a residential-only specialty contractor.

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"(c) \$500,000 for all other specialty contractors. "(d) \$100,000 for a limited contractor.

"(e) \$300,000 for an inspector.

* * * * *

"(4) The contractor shall provide satisfactory evidence to the [Construction Contractors Board (CCB)] at the time of licensure and renewal that the insurance policy * * * has been procured and is in effect."

Thus, by its terms, *former* ORS 701.105 requires a contractor to have insurance

"covering the work of the contractor that is the subject" of ORS chapter 701. It also specifies the amount of insurance required, which varies depending on the type of contractor. 5 Star was a general contractor and, as such, it was required to have \$500,000 in insurance.

There is no dispute that 5 Star had \$500,000 in insurance; its policy with Atlantic provided insurance in that amount. However, there is a dispute about whether the insurance was adequate, in light of the fact

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that it contained exclusions from coverage, in particular, the exclusion from coverage for the actions of subcontractors. 5 Star argues that *former* ORS 701.105 does not allow for any exclusions, or at least not exclusions like the subcontractor exclusion in its policy.

Atlantic responds that *former* ORS 701.105 allows for exclusions. It points out that the text of the statute does not prohibit exclusions. And, it contends that exclusions for certain claims—such as exclusions for damages resulting from mold, asbestos, and lead—are common in contractors' insurance policies and that, reading *former* ORS 701.105 to prohibit any exclusions, would be "a sea-change in Oregon insurance law and would judicially modify nearly every contractor's policy in the state."

We need not resolve whether *former* ORS 701.105 allows exceptions to coverage because, in order to prevail on its statutory reformation claim, 5 Star must establish not only that the policy violates the statute, but also that Atlantic had an obligation to provide insurance that satisfied

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the statute and, for the reasons that follow, we reject 5 Star's argument that Atlantic had such an obligation.³

Under the doctrine of statutory reformation, or statutory incorporation, statutory requirements are deemed to be part of an insurance policy, adding to or displacing the provisions of the policy itself. *See Rhone v. Louis*, 282 Or. 693, 580 P.2d 549 (1978) (describing doctrine). As a practical matter, statutory reformation usually expands the obligations of the insurer beyond the written terms of the policy.

In this case, 5 Star argues that its insurance policy must be reformed to satisfy the requirements of *former* ORS 701.105 (which 5 Star believes prohibits all exclusions from coverage, or at least exclusions from coverage for the work of subcontractors) because Atlantic was subject to a "legal directive" to provide insurance that satisfied *former* ORS 701.105. We disagree with 5 Star's argument.

Former ORS 701.105 does not impose a legal obligation on insurers. As set out above, the statute provides that "[a] contractor who possesses a license as required under this Chapter shall have in effect public liability,

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personal injury and property damages insurance covering the work of the contractor that is the subject of this Chapter.” As 5 Star concedes, the statute is directed at contractors, not insurers. It creates a legal obligation for contractors, but it does not specify that insurers must cover particular losses.

5 Star acknowledges as much and contends that, although the statute itself is not directed at insurers, an administrative rule is, and the rule—*former* OAR 812-003-0015 (2004)—constitutes a “legal directive” to insurers. The rule provides, in pertinent part:

“(2)(a) An application for a license or renewal shall certify that the applicant has procured insurance, from an insurance

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company authorized to do business in Oregon, as required by ORS 701.105 and will continue to meet those insurance requirements for as long as the applicant is licensed. New licensees shall provide a certificate of insurance issued by an insurance company licensed in Oregon. The agency may also require such certification from renewing licensees. As a minimum, for all licensees, certification shall include the name of the insurance company, policy or binder number, effective dates of coverage, and coverage amount, and may also include the agent's name, and agent's telephone number. The CCB must be listed as the certificate holder.”

Thus, by its terms, *former* OAR 812-003-0015(2)(a) requires contractors seeking an initial license or renewal of an existing license to certify that they have the insurance coverage required by *former* ORS 701.105 and will continue to meet the insurance requirements for as long as they are licensed. The rule also states that new licensees must provide a certificate of insurance issued by an insurer and that the CCB may require such certificates from renewing licensees as well. Under the rule, the CCB “must be listed as the certificate holder.” 5 Star argues that the rule creates an obligation on insurers to determine and certify that the insurance they provide to contractors satisfies the requirements of *former* ORS 701.105.

Even assuming that an administrative rule could give rise to the application of statutory reformation, we conclude that the rule invoked by 5 Star does not. Under

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the rule, a contractor has the obligation to certify that its insurance satisfies the requirements of *former* ORS 701.105. Although the contractor may have to provide a certificate from an insurer to do so, nothing in the rule indicates that the burden is on the insurer (as opposed to the contractor) to determine the scope of the contractor's work (which it would have to do in order to certify that the insurance satisfies *former* ORS 701.105). If, for example, a contractor informs an insurer that it does not do electrical work and obtains a policy from the insurer that excludes coverage for electrical work, nothing in *former* OAR 812-003-0015(2) indicates that, if the contractor actually does electrical work during the policy period and

causes damages, the policy must be reformed to cover those damages because the insurer was somehow subject to a "legal directive" to cover those damages. Thus, contrary to 5 Star's argument, *former* OAR 812-003-0015(2) does not create a "legal directive" to insurers that would justify reformation of 5 Star's insurance policy with Atlantic.

B. Common-Law Reformation

5 Star also argues that it was entitled to reformation of its insurance policy with Atlantic under a common-law reformation theory. The test for common-law reformation in Oregon is as follows:

"[A] party must prove, by clear and convincing evidence, the following three elements:

"(1) that there was an antecedent agreement to which the contract can be reformed; (2) that there was a mutual mistake or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party; and (3) that the party seeking reformation was not guilty of gross negligence."

Pioneer Resources. LLC v. D.R. Johnson Lumber Co., 187 Or.App. 341, 364, 68 P.3d 233, rev. den., 336 Or. 16, 77 P.3d 319 (2003) (internal quotations omitted).

Atlantic argues that 5 Star's common-law reformation theory fails because, *inter alia*, there is no evidence of an antecedent agreement, let alone one that is sufficiently specific, to which the insurance policy can be reformed. See

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Aero Sales. Inc. v. City of Salem, 200 Or.App. 194, 202, 114 P.3d 510 (2005) ("[T]he antecedent agreement must be sufficiently specific so that a contract can be reformed to accurately reflect the missing term."); *Shogun's Gallery. Inc. v. Merrill*, 229 Or.App. 137, 149, 210 P.3d 920 (2009) (holding that the trial court erred by granting reformation because the parties never reached an antecedent agreement regarding whether plaintiff's improvements to the building would affect rent escalation). We agree. There is no evidence that 5 Star and Atlantic entered into an agreement about the

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terms of the coverage other than the one reflected in the written policy, much less one that was sufficiently specific that the policy could be reformed. 5 Star seeks to have the policy reformed to remove, at a minimum, the exclusion from coverage for the actions of subcontractors, but there is no evidence that Atlantic ever agreed to provide coverage that would cover the actions of subcontractors. 5 Star argues that Parham agreed to obtain coverage that would satisfy *former* ORS 701.105, and that agreement included, at least implicitly, an agreement to obtain coverage for the work of subcontractors. But, Parham was 5 Star's agent, not Atlantic's (either under a common-law theory of agency, which 5 Star does not suggest, or under ORS 744.078(4), discussed below). 5 Star may have had an agreement with

Parham, but there is no evidence that it had one with Atlantic.

V. NEGLIGENT PROCUREMENT OF INSURANCE

In its second and third assignments of error, 5 Star argues that the trial court erred in granting Atlantic's motion for summary judgment with respect to 5 Star's claim for negligent procurement of insurance. 5 Star alleged negligent procurement of insurance against both Parham and Atlantic. The claim against Atlantic is premised on Atlantic's vicarious liability for Parham's actions. 5 Star does not argue that Parham was Atlantic's agent under a common-law theory of agency. Rather, 5 Star argues only that Parham was Atlantic's agent pursuant to ORS 744.078(4). Thus, 5 Star can prevail on its negligent procurement claim against Atlantic only if (1) Parham was Atlantic's agent by operation

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of ORS 744.078(4) ; and (2) 5 Star subsequently prevails in its negligent procurement claim against Parham, which is held in abeyance pending appeal.

In its second assignment of error, 5 Star argues that the trial court erroneously concluded that Parham did not become Atlantic's agent by virtue of ORS 744.078, which provides, in part:

"(1) An insurance producer shall not act as an agent of an insurer unless:

"(a) The insurance producer is an appointed agent of that insurer; or

"(b) The insurance producer transacts insurance on behalf of another insurance producer who is an appointed agent of that insurer according to conditions and limitations established by the Director of the Department of Consumer and Business Services by rule.

"(2) Each insurer shall maintain a current list of insurance producers contractually authorized to accept applications on behalf of the insurer. Each insurer shall make the list available to the director upon request.

"(3) An insurance producer may represent as agent under one insurance producer license as many insurers as may appoint the insurance producer in accordance with this section.

"(4) Except as provided in a group contract of insurance under subsection (5) of this section, any person who solicits or procures an application for insurance *as an agent of the insurer* shall in all matters relating to the application for insurance and the policy issued in consequence of the application be regarded as the agent of the insurer issuing the policy and not the agent of the insured. Any provision in the application and policy to the contrary is invalid and of no effect."

(Emphasis added.) 5 Star argues that, under ORS 744.078(4), any person who solicits or procures an application for insurance as an agent for an insured is the

agent of the insurer in all matters relating to that application for insurance.

Setting aside for the moment the question whether Parham did, in fact, "solicit[] or procure[] an application for insurance" as provided in ORS 744.078(4), we reject 5 Star's

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contention that, apart from any common-law theory of agency, under ORS 744.078(4), whenever a person solicits or procures an application for insurance as an agent for *an insured*, that person becomes the agent of *the insurer* in all matters relating to that application for insurance. That is because the text of the statute requires a different conclusion.

[344 P.3d 474]

ORS 744.078(4) provides unambiguously that any person who solicits or procures an application for insurance *as an agent for the insurer* is the agent of the insurer in all matters relating to the application for insurance and the policy issued as a result of the application.⁴ Thus, only a person who solicits or procures an insurance policy as an agent of the insurer is an agent of the insurer in all matters relating to the application and the policy.

Context confirms our interpretation. As provided in ORS 744.078(1), an insurance producer "shall not act as an agent of an insurer" unless one of two circumstances occurs: (1) the insurance producer is an appointed agent for the insurer; or (2) the insurance producer transacts insurance on behalf of another insurance producer who is an appointed agent of the insurer. There is no contention that the record on summary judgment provides evidence of either of those circumstances here. And no reasonable reading of the statute supports 5 Star's interpretation that any person who works with an *insured* to obtain a policy of insurance becomes an agent of the *insurer*. We conclude from the unambiguous text of ORS 744.078(4) and its context that only a person who solicits or procures an insurance application as an agent of the insurer is an agent of the insurer for all other purposes

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relating to the insurance policy.⁵ There is no evidence on this record that Parham solicited or procured an application for insurance as an agent of Atlantic. Thus, the trial court did not err in granting summary judgment in favor of Atlantic on the negligent procurement claim.

[344 P.3d 475]

In light of our conclusion that Atlantic is not vicariously liable for Parham's conduct under ORS 744.078(4), we need not address 5 Star's third assignment of error, in which it contends that the trial court erred in rejecting 5 Star's contention that Parham's conduct in applying for and obtaining the insurance policy fell within the ambit of "matters relating to the application for insurance and

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the policy issued as a result of the application" under ORS 744.078(4).

VI. CONCLUSION

In sum, we conclude that 5 Star is not entitled to reversal on the ground that the trial court erred in dismissing its reformation claim because, contrary to 5 Star's statutory reformation argument, *former* OAR 812-003-0015(2)(a) does not constitute a "legal directive" that required Atlantic to provide insurance that satisfied *former* ORS 701.105, and, as for 5 Star's common-law reformation argument, there is no evidence that 5 Star and Atlantic agreed that Atlantic would provide insurance that satisfied *former* ORS 701.105.⁶ And, we further conclude that 5 Star is not entitled to reversal on the ground that the trial court erred in dismissing its negligent procurement of insurance claim against Atlantic, because, contrary to 5 Star's argument, Parham was not an agent of Atlantic under ORS 744.078(4).

Affirmed.

Notes:

* Haselton, C.J., *vice* Schuman, S.J.

¹ *Former* ORS 701.105(1) is set out below, 269 Or.App. 56-57. In 2007, ORS 701.105 was renumbered to ORS 701.073. Or. Laws 2007, ch. 836. Throughout this opinion, we refer to the *former* 2003 version of the statute, which was the version in effect at the relevant time.

² The policy stated, in pertinent part, "You or any insured are not covered for claims, loss, costs or expense arising out of the actions of Independent contractors/subcontractors for or on behalf of any Insured."

³ We do note that, to the extent that 5 Star argues that *former* ORS 701.105 requires all general contractors to have insurance to cover the work of subcontractors, it is incorrect. For the purposes of this appeal, "general contractor" is defined by ORS 701.005(3) (2003), as a contractor

"whose business operations require the use of more than two unrelated building trades or crafts that the contractor supervises or performs in whole or part, whenever the sum of all contracts on any single property, including materials and labor, exceeds an amount established by rule by the board. 'General contractor' does not include specialty contractors or limited contractors, as described in ORS 701.085."

It is true that, a general contractor, such as 5 Star, could use subcontractors, *i.e.*, "specialty contractors," ORS 701.005(11) (2003), in its work licensed under ORS chapter 701, but a contractor may be a general contractor, as defined by ORS 701.005 (2003), if the contractor itself performs two or more unrelated building trades and the sum of the contract on a single property exceeds an amount established by rule. *Former* ORS 701.105 provides that a contractor must have coverage for its work as a contractor, but it does not specify the scope of that work (which can vary from contractor to contractor). *Former* ORS 701.105 requires an individual contractor to determine the work that it performs that is subject to licensure and obtain the statutorily required coverage for that work. Nothing in *former* ORS 701.105 requires a contractor to obtain coverage for every trade or person that a contractor could use. Thus, if a general contractor does not use subcontractors, nothing in the statute requires the general contractor to obtain coverage for the work of subcontractors.

⁴ Further, the statute provides, if an insurance policy contains a provision stating that the person soliciting or procuring the application for insurance as the agent of the insurer is not, in fact, the

agent of the insurer that provision is invalid. Thus, a person who solicits or procures an application for insurance is an agent of the insurer if the person solicits or procures the application as an agent for the insurer. And ORS 744.078(4) prevents an insurer from avoiding liability for the actions of its agent in soliciting and procuring an application for insurance by including a provision in the policy expressly disclaiming any agency relationship. See *Paulson v. Western Life Insurance Defense Co.*, 292 Or. 38, 60, 636 P.2d 935 (1981) (discussing the purpose of a predecessor statute and stating that neither the insurance policy nor the application for insurance “can limit the existing agency relationship”). That issue is not involved in this case, however.

§ As 5 Star correctly notes, the text “as an agent for the insurer” was added to ORS 744.078 in 2003 as a part of a major revision of the insurance code. Or. Laws 2003, ch. 364, § 18. Before that amendment, the section read, as relevant:

“(1) An agent shall not act as an agent of an insurer unless the agent is an appointed agent of that insurer.

“ * * * * *

“(4) * * * [A]ny person who solicits or procures an application for insurance shall in all matters relating to the application for insurance and the policy issued in consequence of the application be regarded as the agent of the insurer issuing the policy and not the agent of the insured. Any provision in the application and policy to the contrary is invalid and of no effect.”

5 Star contends that the addition of the text “as an agent of the insurer” to subsection (4) supports its view that persons who assist an insured with an application for insurance become agents of the insurer as a matter of law. We briefly describe that history, because it provides potential context for and supports our interpretation of the statute.

The 2003 changes were intended to bring Oregon's insurance licensing scheme into line with most other states by eliminating the “agent” category and replacing it with the umbrella category of “insurance producer,” which was defined to encompass those who represent either the insurer or the insured. Or. Laws 2003, ch. 364, § 1. Testimony, House Committee on Business, Labor, and Consumer Affairs, SB 253 A–Engrossed, April 30, 2003, Ex. J (statement of Insurance Administrator Joel Ario). SB 253 amended ORS 744.078(4) by adding “as an agent of the insurer” after the phrase “any person who solicits or procures an application for insurance.” Or. Laws 2003, ch. 364, § 18. When the legislature amended the insurance code in 2003 to define “insurance producers” as entities who could represent either the insured or the insurer, it was necessary to clarify that under ORS 744.078(4), a person is the *agent* of the insurer only when that person is acting as an agent of the insurer—as opposed to an agent of the insured—in soliciting or procuring insurance.

Below, 5 Star offered the affidavit of a person who said he had drafted the 2003 amendments as evidence of the legislature's intent. But, contrary to 5 Star's contention, a drafter's post-enactment affidavit is not legislative history that may be considered in determining legislative intent. *Salem–Keizer Assn. v. Salem–Keizer Sch. Dist.* 243, 186 Or.App. 19, 26, 61 P.3d 970 (2003) (subsequent statements by legislators are not probative of intent of statutes already in effect).

¶ Our rejection of 5 Star's reformation claims disposes of the Raines' claims, which, as they acknowledge, are contingent on reformation of 5 Star's policy with Atlantic.
