



802 - Insurance Insights: Practical Issues that Affect Your Companys Day-to-Day Business

James Office

Vice President & General Counsel

Victory Wholesale Grocers

Tracey Rice

General Counsel

Room One Operations Management, LLC

Todd Silberman

Vice President & General Counsel

Express Carriers

Faculty Biographies

James Office

James Office is vice president and general counsel for Victory Wholesale Grocers, a national, privately held, grocery, health and beauty care, general merchandise and pharmaceutical products wholesale distributor in Springboro, Ohio. Mr. Office is responsible for providing legal counsel and managing the legal affairs of Victory, including legal compliance, employment, contracts, corporate, litigation, intellectual property and insurance.

Prior to joining Victory, Mr. Office was a partner in the Dayton, Ohio law firm of Chernesky, Heyman & Kress and Columbus, Ohio law firm of Robins, Preston, Beckett, Taylor & Gugle.

Mr. Office is currently, sponsorship chair and a board member of ACC's Southwest Ohio Chapter. He is the immediate past chair of the corporate counsel section of the Ohio State Bar Association, past board member of the Pharmaceutical Distributors Association, and is a fellow of the Ohio State Bar Foundation.

Mr. Office is a graduate of University of Dayton School of Law and

Tracey Rice

Tracey Poisal Rice is general counsel to Room One Corporation, a small real estate development firm located in Hershey, Pennsylvania. Ms. Rice also provides counsel to several affiliated companies including G.R. Sponaugle & Sons, Inc., a mechanical and electrical contractor. Her practice focuses on real estate, commercial construction, commercial financing, and general corporate matters. As part of her responsibilities, Ms. Rice manages the insurance portfolios for the various entities, one of which includes ownership in a captive insurance company.

Prior to joining G.R. Sponaugle, Ms. Rice was employed in-house with The Wolf Organization, a building materials distributor. Her practice focused on employment, real estate and regulatory matters.

Ms. Rice is currently serves as president of ACC's Central Pennsylvania Chapter.

Ms. Rice received her J.D. from Widener University School of Law and her B.A. from Penn State University.

Todd Silberman

Todd H. Silberman is vice president and general counsel for Express Carriers, an international trucking company, located in San Antonio, Texas. As a corporate generalist, his role is a blend of legal and business, advising principals and department heads on a myriad of issues including strategic decision making, regulatory and compliance issues, contract

negotiations, employment issues, risk management, claims and litigation as well as oversight of outside counsel.

Mr. Silberman is ACC's past chair for the small law department committee as well as a past President of ACC's South/Central Texas Chapter. Currently he serves as vice chair for the corporate council section of the State Bar of Texas. Mr. Silberman has spoken at law schools and numerous conferences. Additionally, he is on the board of directors at the community relations council, has volunteered at the Children's Bereavement Center, and has worked as a mentor with at-risk youth.

Mr. Silberman received a B.A. from the University of Florida and is a graduate of South Texas College of Law.

ACORD		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY) 8/18/2007	
PRODUCER Indianapolis, IN 46240 Phone (317) [REDACTED] Fax (317) [REDACTED]		THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.			
INSURED FJK Enterprises Ltd. Co. d/b/a Express Carriers 3302 Goliad Road San Antonio, Texas 78223		COMPANIES AFFORDING COVERAGE			
		COMPANY A Lincoln General Insurance Company (NAIC # [REDACTED])			
		COMPANY B			
		COMPANY C			
		COMPANY D			
COVERAGES					
THIS IS TO CERTIFY THAT THE POLICES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN. THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.					
CO LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY A COMPREHENSIVE FORM A PREMISES/OPERATIONS EXPLOSION / COLLAPSE / HAZARD PRODUCTS/COMPLETED OPER A CONTRACTUAL A INDEPENDENT CONTRACTORS A BROAD FORM PROPERTY DAMAGE A PERSONAL INJURY	LMU [REDACTED]	10/1/06	4/1/08	BODILY INJURY OCC BODILY INJURY AGG PROPERTY DAMAGE OCC PROPERTY DAMAGE OCC BI / PD COMBINED OCC \$1,000,000 CSL BI / PD COMBINED AGG PERSONAL INJURY AGG
	AUTOMOBILE LIABILITY A ANY AUTO ALL OWNED AUTOS (Private Pass) ALL OWNED AUTOS (Ride and Drive Passages) HIRED AUTOS NON-OWNED AUTOS GARAGE LIABILITY	LMU [REDACTED]	10/1/06	4/1/08	BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE BODILY INJURY PROPERTY DAMAGE COMBINED \$1,000,000 CSL
	EXCESS LIABILITY UMBRELLA FORM OTHER THAN UMBRELLA FORM				EACH OCCURRENCE AGGREGATE
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY THE PROPRIETARY PARTNERS/EXECUTIVE OFFICERS ARE <input type="checkbox"/> INC. <input type="checkbox"/> EXCL.				WC STAT / OTH. LIT. EL EACH ACCIDENT EL DISEASE - POLICY LIMIT EL DISEASE - EA EMPLOYEE
A	OTHER Motor Truck Cargo	LMU [REDACTED]	10/1/06	4/1/08	\$100,000 per vehicle.
DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/SPECIAL ITEMS					
CERTIFICATE HOLDER SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE SAMPLE, SAMPLE		CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE COMPANY, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 15252			
ACORD 25-N (1/95)		© ACORD CORPORATION 1998			

Indianapolis, Indiana 46240

Certificate of Insurance

Certifies placement of insurance coverage for the account of: **FJK ENTERPRISES LTD. CO.
DBA EXPRESS CARRIERS
3302 Goliad Road
San Antonio, TX 78223-4301**

with A) and B) Lincoln General Insurance Company
Policy Number A) and B) LMU [REDACTED]

For the following coverage:

A) Automobile liability (any auto), general liability, personal injury, property damage, and employers liability

B) Cargo

Note:

For combined single limits per occurrence of: A) \$1,000,000

Effective: October 1, 2006 B) \$100,000

Expiration: April 1, 2008 unless earlier cancelled.

This certificate issued to:

SAMPLE SAMPLE SAMPLE

ATTN: SAMPLe SAMPLe SAMPLe
SAMPLe SAMPLe SAMPLe
SAMPLe, SAMPLe

In the event of policy cancellation or material change, every reasonable effort will be made to advise the certificate holder named hereon, at the address indicated, of such cancellation or material change within 30 days thereof.

Signed at Indianapolis, Indiana this 1st day of October, 2006.

This certificate does not amend, extend or alter coverage afforded by the policy listed herein.

By:

15252

COVERAGE RISKS AND ALTERNATIVES TO A STANDARD COMMERCIAL GENERAL LIABILITY INSURANCE POLICY

By Charles T. Young, Esq. of McNEES WALLACE & NURICK LLC¹

The standard commercial general liability insurance policy ("CGL Policy") provides coverage for "bodily injury" or "property damage" caused by an "occurrence," defined as an "accident, including continuous or repeated exposure to substantially the same general harmful conditions." Many manufacturers, contractors, and vendors are under the impression that a standard CGL Policy provides coverage for business operations resulting in economic loss. In most circumstances, this is not the case.

A standard CGL Policy is "occurrence" based. It protects the policyholder from **acts** done while the policy is in effect. Another version of the CGL Policy is "claims made." "Claims made" policies protect insureds from **claims** made against them during the policy term. In reality, both versions of the CGL Policy tie coverage to the existence of an "occurrence." A "claims made" CGL Policy provides narrower protection by also requiring that claims be made during the policy term. Coverage ends at the conclusion of the policy term. "Occurrence" policies, in contrast, provide coverage for acts not reported until long afterward.

Many courts have held that a CGL Policy does not provide coverage for liability arising from a breach of contract, poor workmanship, or product defects. The courts have determined that, at least in the absence of personal injury, such an event does not constitute an "occurrence" for which a CGL Policy would provide coverage. In light of these decisions, a business should seriously consider the purchase of additional or alternative insurance coverage. Of course, the first step in any such decision is to evaluate the company's own particular business operations and needs.

A business involved in a service industry might do well to focus on professional liability coverage. (It is also sometimes called "errors and omissions insurance.") Insurers typically issue professional liability policies on a "claims made" basis. Unlike the "claims made" CGL Policy, however, professional liability claims are not tied to the existence of an "occurrence." Rather, a professional liability policy affords coverage for claims arising from an insured's negligence or failure to perform under an agreement.

Most service providers act pursuant to a contractual arrangement, either express or implied. Indeed, if a company is in a service industry, this is probably where its true

¹ Charles T. Young is a member of McNeess Wallace & Nurick's Insurance Litigation and Counseling practice group. He is admitted to the Pennsylvania bar and the federal bars for the Middle and Eastern District of Pennsylvania and Third Circuit Court of Appeals. His practice focuses on the litigation of insurance coverage, declaratory judgment, and bad faith cases in state and federal court. He advises businesses concerning their rights and responsibilities in pursuing insurance claims of all types.

liability arises. An "occurrence" policy provides relatively little protection. The likelihood of personal injury arising from the output of companies in the service industry is sometimes remote. The most common personal injury will be a "slip and fall" on the company's premises. On the other hand, a professional liability policy may afford significant protection for the insured's business operations, regardless of whether they might be characterized as contractual in nature.

There are, of course, other alternatives to a standard CGL Policy, but they have drawbacks. For example, "all risk" insurance generally provides coverage for "all risks" of direct physical loss or damage, except those specifically excluded. This type of insurance policy, like a true "claims made" policy, does not base coverage on the existence of an occurrence. "All risk" policies, however, more commonly cover the insured's own property, instead of his potential liability to others. There are relatively few decisions in the liability context. "All risk" policies may provide coverage for some risks (viz, a building's total collapse) that a standard CGL Policy would not cover. Nonetheless, courts tend to interpret these policies as covering the same type of "accidents" covered by an "occurrence" policy, and there is no particular reason to expect that courts will interpret "all risk" insurance any more broadly.

Bonds are promises or guarantees provided by a surety (usually an insurance company), and they represent another potential alternative to a standard CGL Policy. Unlike insurance, bonds do not provide indemnity to the company obtaining them. The company remains fully responsible. Bonds provide a form of guarantee to a third party. For instance, performance bonds guarantee completion of the project to the owner. Payment bonds guarantee payment to a particular contractor for work performed. There are other more specialized bonds. However, in order to obtain a bond, a party would typically need to contemplate the specific risk. This is sometimes extremely difficult to do. Moreover, a bond does not provide the type of protection that an insurance policy provides. Presumably, if a business contemplates a certain risk, then it would prefer to protect itself, instead of the third party. Bonds provide only indirect benefit to the company obtaining them, and they are not effective against the many unexpected risks faced by companies on a regular basis.

Companies also frequently obtain certificates of insurance from the companies with which they do business. Certificates of insurance, however, are not a good substitute for a company's own insurance coverage and/or protection against business losses. A certificate of insurance arrangement, in fact, affords extremely little protection to a company. A certificate of insurance shows only that an entity (with which the company is dealing) has insurance coverage in effect at that particular moment. The entity could cancel its coverage tomorrow. Moreover, a certificate of insurance provides little information regarding the type of coverage purchased.

A certificate of insurance is sometimes supplemented by an indemnity agreement with the other business entity. An indemnity agreement affords no rights against an insurance carrier. Rather, it requires that the other entity reimburse the company if the other entity's poor performance or defective work creates liability for the company. An

indemnity agreement is certainly helpful. It may apply to events that insurance would not cover. However, the indemnity agreement's usefulness depends on the financial strength of the other entity. There is no financial backing by an insurance carrier.

In contrast to a simple certificate of insurance and/or indemnity agreement, "additional insured" status confers direct rights against the insurer for the other business entity. Additional insured status certainly affords added protection, as compared to a certificate of insurance. An insurer is providing financial backing. However, an additional insured continues to suffer from all of the same limitations (and more) faced by the insured itself. A company added as an additional insured must understand the coverage actually provided under the policy. The courts' restrictive analysis of what constitutes an "occurrence" still applies. Moreover, an additional insured typically does not receive a copy of the policy, has no relationship with the agent or broker, and may not even have contact information. These things can all immeasurably complicate any claim.

If a company makes another entity an additional insured on its own policy, this can also create problems. The company may already be in a dispute with its business partner. By adding the other business as an "additional insured," it creates a second dispute directly involving the insurance carrier. The existence of multiple potentially responsible insurers creates other issues. Even if coverage clearly exists, the insurance carriers may dispute which one is primarily responsible. A company can lose control over the relationship with its own broker or insurance carrier. The company may be sucked into a dispute between two or more insurance carriers. These complications may further harm an already strained business relationship.

Notwithstanding the other alternatives, a company (especially one in the manufacturing or construction business) should seriously consider investing in the purchase of coverage geared to negligent workmanship and/or product defects. This is particularly true when the situation involves the use of numerous subcontractors or sub-assemblers, which can significantly increase exposure. The feasibility of obtaining coverage of this type frequently depends on the business itself. A new or untried business may have real trouble obtaining the insurance coverage. An established business or one in a more mature industry may find it much easier to get. Even if the insurance is available, the premiums may be prohibitive. Nonetheless, a company should explore the issue.

A standard CGL Policy simply does not afford the type of protection that many businesses believe it to provide. Professional liability coverage, indemnity agreements, bonds, and/or additional insured status under other policies may provide additional or alternative protection. However, a business should understand the limitations of these other products, and consider a policy specifically geared to coverage of poor workmanship, defective product, and/or breach of contract claims. This is particularly true with respect to any company involved in the manufacturing field.

Most insurance is provided through use of standardized forms. The "occurrence" based CGL Policy, professional liability coverage, and other insurance products discussed above are standard coverages that are readily available. Companies that face particular or known risks might consider specialized insurance products. Surplus lines, reinsurance arrangements, and other alternative insurance markets offer access, for a price, to virtually any type of insurance coverage. A business desiring such tailored insurance may find it necessary to pursue coverage through one or more brokers (or "producers") possessing special insurance licenses. Nevertheless, when faced with the potential of a devastating loss, a company's efforts in this respect might be well worthwhile.

(SAMPLE) RELEASE OF ALL CLAIMS

FOR AND IN CONSIDERATION of the payment to me/us at this time of the sum _____ Dollars (\$_____.00), the receipt of which is hereby acknowledged, I/we _____ being of lawful age, do hereby release, acquit and forever discharge Express Carriers, _____ and Gulf Insurance Co. of and from any and all action, causes of action, claims, demands, damages, costs, loss of services, expenses and compensation, on account of, or in any way growing out of, any and all known and unknown personal injuries and property damage resulting or to result from an accident that occurred on or about the ____ day of _____, 20__, at or near _____, __.

I/we hereby declare that the injuries sustained are permanent and progressive and that recovery therefrom is uncertain and indefinite, and in making this release and agreement it is understood and agreed that I/we rely wholly upon my/our judgment, belief and knowledge of the nature, extent and duration of said injuries, and that I/we have not been influenced to any extent whatever in making this release by any representations or statements regarding said injuries, or regarding any other matters, made by the persons, firms or corporations who are hereby released, or by any person or persons representing him or them, or by any physician or surgeon by him or them employed.

It is further understood and agreed that this settlement is the compromise of a doubtful and disputed claim, and that the payment is not to be construed as an admission of liability on the part of Express Carriers, _____ and Gulf Insurance Co. by whom liability is expressly denied.

This release contains the ENTIRE AGREEMENT between the parties hereto, and the terms of this release are contractual and not a mere recital.

I/we further state that I/we have carefully read the foregoing release and know the contents thereof, and I/we sign the same as my/our own free act.

WITNESS my/our hand and seal this _____ day of _____, 20__.

CAUTION! READ BEFORE SIGNING!

WITNESS:

Name

Address

(SAMPLE) SETTLEMENT AGREEMENT AND MUTUAL RELEASE

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is made by and between ♦ and ♦.

WHEREAS, ♦ has a claim/judgment against ♦ in Cause No. ♦, styled ♦ in the ♦ Judicial District/County Court at Law No. ♦, Bexar County, Texas; and

WHEREAS ♦ currently has pending certain claims and allegations against ♦ in Cause No. ♦, styled ♦, in the ♦ Judicial District/County Court at Law No. ♦, of Bexar County, Texas; and

WHEREAS, ♦ and ♦, in order to avoid the expense, time, and risks of litigation, have reached a full settlement of all claims, demands, rights and causes of action of whatsoever kind and nature which ♦ could assert against ♦ and any other person, entity, affiliate, firm, partnership or corporation, in any way connected or related thereto and their respective heirs, successors, employees, directors, agents, officers, assigns and representatives arising out of or in any way relating to the claims and allegations threatened to be made as defenses, offsets and counterclaims in the lawsuits referred to above, and of all claims, demands, rights, and causes of action of whatsoever kind and nature which ♦ could assert against ♦ or any other person, entity, affiliate, firm, partnership or corporation in any way related thereto, and their respective heirs, successors, employees, directors, agents, officers, assigns and representatives arising out of or in any way related t o the claims and allegations made in the lawsuits referred to hereinabove;

NOW, THEREFORE, for and in consideration of these premises and in consideration of the covenants and agreements herein contained, it is agreed as follows:

1. ♦ agrees to accept \$ _____ from ♦ in satisfaction of said claims made in Cause No. ♦ and to dismiss with prejudice the claims they have made against ♦ in Cause No. ♦ and to release ♦, its successors, heirs, assigns, agents, representatives and employees, past and present, of any and all claims demands and causes of action of whatsoever nature, whether in contract or in tor, at law or in equity, present and future, Federal and State, known or unknown, in any manner arising out of or in any way relating to the relationship between ♦ and ♦ at any time in the past up to, and including, the date of execution of this Agreement.

2. As consideration for the agreements contained herein and the release set forth hereinbelow, by these presents does hereby release, remise, and fully and forever discharge ♦, their agents, heirs, executors, administrators and assigns, past and present, and any and all of their respective properties, interest and assets of every kind and character whatsoever and wheresoever situated, from any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, dues, liens, actions and causes of action of any and every nature

whatsoever, whether in contract or in tort, at law or in equity, present and future, known or unknown, under State or Federal jurisdiction, and whether or not the economic effect of any such alleged matters arise or are discovered in the future, which ♦ has ever had, now has or may hereafter acquire or be entitled to against ♦ , their agents, successors, heirs, executors, administrators, and assigns, past and present, and any and all of its properties, interests and assets of every kind and character whatsoever and wheresoever situated by assignment or otherwise, for, on account of, relating to, arising from, or in any other way connected with or concerning any transaction, occurrence, matter or thing whatsoever arising or occurring on or prior to the date of this instrument, whether known or unknown.

As consideration for the agreements contained herein and the release set forth hereinbelow, ♦ by these presents, does hereby release, remise and fully and forever discharge ♦ and all affiliated entities, parent corporations, and holding companies, and all of their respective officers, directors, shareholders, principals, employees, agents, representatives, successors, heirs, executors, administrators and assigns, past and present, and any and all of its properties, interest and assets of every kind and character whatsoever and wheresoever situated, form any and all claims, controversies, disputes, liabilities, obligations, demands, damages, debts, dues, liens, actions and causes of action of any and every nature whatsoever, whether in contract or in tort, at law or in equity, present and future, known or unknown, under State or Federal jurisdiction, and whether or not the economic effect of any such alleged matters arise or are discovered in the future, which ♦ ever had, now has or may ever hereafter acquire or be entitled to against ♦ and all affiliated entities, parent corporations and holding companies, and all of its officers, directors, shareholders, principals, employees, agents, representatives, successors, heirs, executors, administrators and assigns, past and present, and any and all of its properties interest and assets of every kind and character whatsoever and wheresoever situated, by assignment or otherwise, for, on account of, relating to, arising from or in any other way connected with or concerning any transaction, occurrence, matter, or thing whatsoever arising or occurring on or prior to the date of this instrument, whether known or unknown.

Forthwith, upon execution hereof, ♦ and ♦ Court, their Joint Motion to Dismiss with Prejudice and Order of Dismissal with Prejudice of each and every claim made by ♦ in that lawsuit, as well as any claims made, or that could have been made, by ♦ in connection therewith.

Each party hereto expressly warrants and represents to the other that he or it has not assigned, pledged, or otherwise in any manner whatsoever, sold or transferred either by instrument in writing or otherwise, any right, title, interest or claim which it has or may have by reason of the above-described matters or any matters arising out of or related thereto, except as itemized herein:

It is expressly agreed and understood by the parties hereto that the terms hereof are contractual and not merely recitals, and that the agreements contained and the considerations set forth hereinabove are to compromise disputed claims, avoid litigation and buy peace, and that no

release or other consideration shall be construed as an admission of liability, all liability being expressly denied.

It is expressly agreed that the terms of this settlement agreement are confidential and shall not be disclosed except upon order of a court of competent jurisdiction.

The parties warrant that they have read this Settlement Agreement and Mutual Release and fully understand it to be a compromise, settlement and release of all claims, known or unknown, present or future, that they have or may have against the party or parties released, arising out of the matters described. The parties executing this Agreement warrant that they are of legal age and legally competent to execute this Agreement, and that they do so of their own free will and accord without reliance on any representation of any kind or character not expressly set forth herein. The parties also acknowledge that they have read and understand this Agreement.

Signed this ____ day of _____, 1998.

THE KELLER-MARTIN ORGANIZATION, INC

By: _____

XXX

Title:

STATE OF TEXAS §
§
COUNTY OF BEXAR §

BEFORE ME, the undersigned Notary Public, on this day personally appeared _____ in his/her capacity as _____ of the _____ COMPANY, known to me to be the person who executed the foregoing instrument and acknowledged to me that he/she executed same for the purpose and consideration therein expressed.

SUBSCRIBED AND SWORN TO before me on the ____ day of _____, 1998, to which witness my hand and official seal.

S E A L

Notary Public, State of Texas

Sample Insurance Contract Provisions

I. Sample Contract with Freight Carrier Provision

INSURANCE

(a) **Types of Coverage.** At all times during the term of this Agreement, Carrier, at its expense, shall maintain insurance of the types and amounts specified below or in the amount required by law, whichever is greater:

- (i) Workers' Compensation insurance as required by applicable law or regulation.
 - (ii) Employer's Liability Insurance of at least One Million Dollars (\$1,000,000) per person/per accident/per occupational disease.
 - (iii) Commercial Automobile Liability Insurance with limits for any auto of not less than One Million Dollars (\$1,000,000) per occurrence, or in such greater amounts as may be required by regulatory bodies have jurisdiction.
 - (iv) Cargo Liability Insurance with limits of not less than One Hundred Thousand Dollars (\$100,000.00) per occurrence, or in such greater amount as may be required by regulatory bodies have jurisdiction.
 - (v) Commercial General Liability Insurance providing for extended and broad form coverage, including without limitation: bodily injury (including death); fire; property damage, including product and completed operations; and contractual liability insurance recognizing and insuring the assumption of liability undertaken by the Carrier, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence.
- (b) **Insurance Carrier.** All such insurance shall be maintained with active and reliable insurance companies having an Insurer's Best Rate of A or better. All insurance hereunder shall be primary to any coverage carried by Shipper on its own behalf. All insurance shall provide for thirty (30) days' prior written notice to Carrier and Shipper prior to cancellation, non-renewal or material change of such coverage. Carrier shall provide to Shipper certificates of all such insurance promptly upon execution of this Agreement. Said certificates shall name Shipper and the beneficial owners of the goods transported hereunder as specified by Shipper as additional insured on all such policies. Carrier agrees to comply, at all times with the foregoing insurance requirements.
- (c) **Coverage of Subcontractors.** Carrier shall insure that the activities and operations of all owner/operators or subcontractor carrier utilized by Carrier in accordance with and in the performance of this Agreement are coverage by the same limits of insurance provided herein and that such contractor will comply with the insurance requirements of Carrier under this paragraph.
- (d) **Cargo Insurance Exclusion Prohibited; Waiver of Subrogation.** Carrier's cargo insurance policies shall not exclude coverage for unattended shipments, negligent acts, infidelity, fraud, dishonesty or criminal acts of Carrier's employees, agents, officers or directors. In the event said policy contains such exclusions, Carrier shall obtain and furnish a surety bond providing such coverage to the satisfaction of Shipper. Carrier's insurance policy(s) shall provide for waiver of Carrier's insurers subrogation rights against Shipper, its employees, agents, officers, directors and affiliates.

II. Sample Insurance Representation Provision in Asset Purchase Agreement

Insurance Policies. Schedule ____ is a correct and complete list and description, including policy numbers, of all insurance policies owned by the Seller, correct and complete, copies of which policies or binders have previously been delivered to the Purchaser. Such policies are in full force and effect, and the Seller is not in default under any of them. The Seller has not received any notice of cancellation or intent to cancel or increase or intent to increase premiums with respect to such insurance policies nor, to the knowledge of the Seller, is there any basis for any such action. Schedule ____ also contains a list of all pending claims with any insurance company and any instances within the previous three years of a denial of coverage of the Seller by any insurance company. The properties and assets of the Seller which are of an insurable character and are used or useful in the Business are insured against loss or damage by fire or other risks as is customary for companies engaged in a business similar to the Business or owning assets similar to the assets owned by the Seller.

III. Sample Insurance Provision in Security Agreement.

Debtor will keep (or cause to be kept) the Collateral insured at all times against loss by fire and/or other hazards concerning which, in the reasonable judgment of the Secured Party, insurance protection is reasonably necessary, in a company or companies reasonably satisfactory to the Secured Party and in amounts sufficient to protect Secured Party against loss or damage to said Collateral; such policy or policies of insurance will be delivered to the Secured Party, together with loss payable clauses in favor of the Secured Party as its interest may appear, in form reasonably satisfactory to the Secured Party. The insurance carrier providing the insurance shall be chosen by the Debtor, subject to approval by the Secured Party; provided that such approval shall not be unreasonably withheld or delayed.

IV. Sample Insurance Provision in a Supplier/Vendor Agreement.

Supplier agrees to maintain, at its sole cost and expense, an insurance policy or policies with the following coverage: commercial general liability, providing for, without limitation, (i) bodily injury (including death), (ii) property damage, (iii) product and completed operations; all such policies shall name Customer as an additional insured and shall provide, among other things, contractual liability insurance recognizing and insuring the assumption of liability undertaken by the Supplier. All policies shall have limits of not less than two million dollars (\$2,000,000) for damages resulting from each occurrence, and shall be primary to any coverage carried by Customer on its own behalf. Supplier shall provide Customer with a Certificate of Insurance evidencing such coverage which shall include a 30 day notice provision of any change or cancellation in such coverage. Supplier agrees to comply, at all times while any of the Products are being offered for sale by Customer, with Customer's Certificate of Insurance requirements.

VI. Sample Insurance Provision in a Commercial Lease Agreement.

INSURANCE

Section 1. Lessee shall not carry any stock of goods or do anything in or about said Leased Premises which will in any way tend to increase insurance rates on said Leased Premises or the building in which the same are located. If Lessor shall consent to such use, Lessee agrees to reimburse Lessor on a pro rata basis for any increase in premiums for insurance against loss by fire or extended coverage risks resulting from the business carried on in the Leased Premises by Lessee. If Lessee installs any electrical equipment that overloads the power lines to the building, Lessee shall at its own expense make whatever changes are necessary to comply with the requirements of insurance underwriters and insurance rating bureaus and governmental authorities having jurisdiction.

Section 2. Lessor shall, at Lessee's expense, maintain fire and extended coverage insurance for the full replacement value of the building located on the Leased Premises, which policy shall be reasonably satisfactory to Lessee. Said insurance shall not be terminable without at least thirty (30) days prior written notice from the insurer to Lessee. Lessee shall pay or reimburse Lessor the premium cost thereof upon demand.

Section 3. Lessee agrees to procure and maintain a policy or policies of insurance, at its own costs and expense, insuring from all claims, demands or actions for injury to or death of more than one person in any one accident and for damages to property in an aggregate amount of not less than \$1,000,000.00 made by or on behalf of any person or persons, firm or corporation, arising from, related to, or connected with the conduct and operation of Lessee's business in the Leased Premises. Lessor shall be named an Additional Insured Party in said policy. Such insurance shall be primary relative to any other valid and collectible insurance. Said insurance shall not be subject to cancellation except after at least thirty (30) days prior written notice to Lessor, and the policy or policies, or duly executed certificate or certificates for the same, together with satisfactory evidence of the payment of the premium thereon, shall be deposited with Lessor at the commencement of the term and renewals of such coverage. If Lessee fails to comply with such requirement, Lessor may obtain such insurance and keep the same in effect, and Lessee shall pay Lessor the premium cost thereof upon demand.

Section 4. All personal property which may be upon said Leased Premises during the term hereof or any renewal thereof shall be at and upon the sole risk and responsibility of Lessee.

Article 6. INSURANCE AND INDEMNITY

Insurance. Tenant covenants and agrees that during the term of this Lease, and any renewal or extension hereof, Tenant, at its sole cost and expense, shall obtain, maintain and keep in full force and effect the following insurance coverage:

- (i) Commercial General Liability Insurance including blanket contractual, personal injury, broad form liability and owned, non-owned and hired automobile coverage with minimum limits of One Million Dollars combined single limit for property damage and bodily injury per occurrence for any and all claims for injury or damage to persons or property occurring upon, in or about the Premises arising out of or in connection with any act or omission of Tenant, its employees, agents, contractors, customers and invitees.
- (ii) Premises Liquor Liability coverage with a limit of \$1,000,000 Each Common Cause/ \$1,000,000 Aggregate and which shall provide that any exclusions related to Assault and Battery are deleted.
- (iii) All Risk Property Casualty Insurance including without limitation, sprinkler leakage, theft and vandalism, and malicious mischief, all on a 100% replacement cost basis and covering all contents, merchandise, inventory, equipment, floor coverings, fixtures and improvements. Tenant shall apply all insurance proceeds attributable to any claim under such policy to the repair, replacement or restoration of the damage or damaged item. In addition, Tenant shall obtain and keep business interruption insurance in full force and effect during the term of this Lease.
- (iii) Workers' Compensation Insurance as required by law and Employers' Liability Coverage for a minimum of \$100,000 per occurrence.
- (iv) Excess insurance with a limit no less than \$3,000,000.
- (iv) The Commercial General Liability and Excess insurance policies shall name Landlord and any mortgagee of the Premises as additional insureds on a primary basis, provide that any other insurance which may be maintained by Landlord shall be excess and noncontributory, and shall indicate that all of Tenant's indemnity obligations under this Lease are insured.
- (v) The Workers' Compensation policy shall include a waiver of subrogation in favor of Landlord.
- (vi) All policies required hereunder shall be written in form and substance reasonably satisfactory to Landlord by an insurance company licensed and authorized to do business in the Commonwealth of Pennsylvania with a A.M. Best Rating of A- or better.
- (vii) Tenant shall provide Landlord with a certificate of insurance evidencing such insurance within ten (10) days of the Commencement Date.

Failure to Obtain Insurance. In the event Tenant shall not obtain any of the insurance required to be obtained hereunder, in addition to the remedies available to Landlord for Tenant's default, Landlord shall have the right, but not the obligation, to obtain such insurance on Tenant's behalf and Tenant shall pay to Landlord the cost thereof, as additional rent, upon demand. Landlord shall have the right to review the form, substance and limits of all of Tenant's insurance required hereunder from time to time (but no more frequently than one time per year).

Waiver of Subrogation. Landlord and Tenant each mutually agree to waive all rights of recovery against the other for loss or damage to each respective party's building, equipment, improvements or any other property whatsoever whether or not covered by any of the insurance maintained by either Landlord or Tenant. Both Landlord and Tenant and their respective insurance carriers hereby waive all rights of subrogation against the other for loss or damage to each respective party's building, equipment, improvements or any other property whatsoever covered by any of the insurance maintained by the parties pursuant to this Lease. If any of the policies of insurance required under this Lease require an endorsement to provide for the waiver of subrogation set forth in this Article, then each party shall cause them to be so endorsed.

Indemnification of Landlord. Tenant shall indemnify, defend and hold Landlord harmless from and against any and all claims, actions, damages, liability and expenses in connection with loss of life, personal injury or damage to property arising from or out of any occurrence in, upon or at the Premises or the shopping center of which the Premises is a part, any work or act or omission done in, on or about the Premises at the direction of Tenant, its agents, contractors, subcontractors, agents, employees, servants, licensees or invitees, or in connection with the occupancy or use by Tenant of the Premises or any part thereof, or occasioned wholly or in part by any negligence or other wrongful act or omission of Tenant, its contractors, agents, employees, servants, licensees, invitees or concessionaires, or any failure of Tenant to perform or comply with the covenants, terms, conditions, agreement and limitations contained in this Lease. In case Landlord shall be made a party to any litigation in connection with this Lease commenced by or against Tenant, then Tenant shall indemnify, defend and hold Landlord harmless and shall pay all costs, expenses and reasonable attorney's fees incurred or paid by Landlord in connection with such litigation, except for a successful action commenced by Tenant against Landlord.

Limitation of Liability. Tenant agrees that Landlord shall not be liable to Tenant, and Tenant hereby releases Landlord from liability for any personal injury or damage to or loss of personal property in or about the Premises from any cause whatsoever, unless such damage or loss results solely from the gross negligence or willful misconduct of Landlord. Landlord shall not be liable to Tenant for: (i) any damage to property of Tenant or of others located on the Premises, nor for the loss of or damage to any property of Tenant or others by theft or otherwise; (ii) any such damage caused by other tenants or persons in the Premises, occupants of adjacent property or the public, or caused by construction of any private, public or quasi-public work, (iii) any consequential damage or lost profits, or (iv) any damage or loss to the extent Tenant is compensated therefore by Tenant's insurance or to the extent Tenant could have obtained coverage against such damage or loss at regular rates under commonly available insurance coverage, whether or not any of the foregoing results from Landlord's gross negligence or willful misconduct. All property of Tenant kept or stored on the Premises shall be so kept or stored at the risk of Tenant only and Tenant shall hold harmless from all claims arising out of damage to the same, including subrogation claims by Tenant's insurance carrier.

Updated: 3/24/03

VII. Sample Insurance Provision in Supply Agreement Terms and Conditions

1. Insurance. Vendor shall maintain Commercial General Liability Insurance, including Product Liability, Completed Operations, and where applicable, **[Commercial Automobile Liability (arising out of the use of vehicles)]** insurance having limits of no less than **[\$1,000,000]** per occurrence and **[\$2,000,000]** aggregate with Shaw named as an additional insured. Upon Company's request, Vendor shall provide Company with a certificate of insurance evidencing such coverage. If Vendor cannot secure such insurance, Company may do so for the benefit of Vendor at Vendor's expense. Insurance will provide that it may not be changed unless Company is given 60 days' prior written notice.

VIII. Sample Insurance Provision in Construction Subcontract

Indemnity: to the fullest extent permitted by law, Subcontractor shall defend, indemnify and hold harmless the General Contractor, Construction Manager, Owner, Architect, Architect's consultants, their officers, directors, agents, employees and insurers, from and all claims, suits occurring in connection with the performance of the Work hereunder, or by or on account of an omission of the Subcontractor, its agents, consultants, employees, subcontractors, materialmen, guests, invitees, and anyone under the Subcontractor's control, regardless of whether or not such claim, suit, loss, liability, damage, cost, or expense is caused in part by the negligence of the Subcontractor. Subcontractor further shall indemnify and hold harmless the General Contractor, its officers, directors, employees and insurers from any and all costs and fees, including, but not limited to reasonable attorneys' fees, incurred by the General Contractor with establishing any of their rights in indemnification under this Subcontract. **The indemnification obligations set forth shall extend to claims by employees of Subcontractor and shall not be limited by a limitation on amounts or types of compensation, or benefits payable by or from the Subcontractor under workers' compensation acts, disability benefits acts or employee benefits acts. This indemnification provision shall be liberally construed in favor of the Subcontractor's obligations to indemnify and save harmless the General Contractor and Owner.**

All indemnification owing hereunder shall be due and payable within ten (10) days after notice by the General Contractor. The General Contractor shall give Subcontractor notice of any and all claims, suits and so forth that the General Contractor has in its sole discretion concluded will give rise to indemnification hereunder, provided that failure to give such notice shall not alter, reduce, or diminish the obligation to pay indemnification hereunder, except to the extent same has materially and adversely affected the ability of Subcontractor to defend same. The foregoing obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnitor which would otherwise exist as to any party or person described in this paragraph.

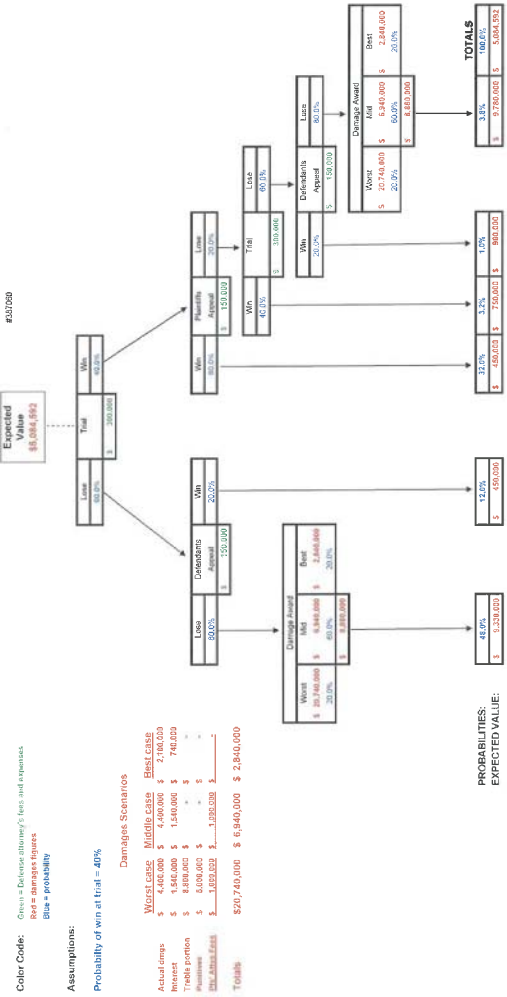
If Subcontractor has not met its obligation to indemnify pursuant to this Section or other indemnification obligations, the General Contractor shall be entitled to withhold from payment to Subcontractor an amount which the General Contractor, in its sole discretion, believes will satisfy such indemnification obligation.

Insurance Requirements: Before commencing work on the project, Subcontractor and its subcontractors of every tier will supply the General Contractor with copies of all certificates of insurance, which shall name the General Contractor and Owner as additional insured on a primary basis, showing in force the following insurance for commercial general liability, automobile liability, and workers' compensation:

- a. Commercial General Liability policies with a deductible not to exceed \$1,000 per occurrence including (1) broad form damage liability coverage, (2) premises-operations coverage, (3) explosion and collapse hazard coverage, (4) underground coverage, (5) products and completed operations hazard coverage, and (6) independent contractor coverage. The limit of liability shall be not less than \$1,000,000 for each occurrence and in the aggregate for bodily injury, and not less than \$1,000,000 for each occurrence in the aggregate for property damage.
- b. Automobile liability policy in comprehensive form affording coverage for owned, hired, and non-owned automobiles. The limit of liability shall be not less than \$1,000,000 for bodily injury and property damage combined, \$1,000,000 for each occurrence and in the aggregate.
- c. Workers' compensation insurance shall comply with the statutory form.
- d. Umbrella liability policy with a limit of liability for each occurrence and in the aggregate of at least \$2,000,000.

Theragenics Litigation Expected Value Tree

CONFIDENTIAL: SUBJECT TO ATTORNEY-CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT DOCTRINE



Color Code: Green = Defense attorney's fees and expenses
Red = attorney's fees
Blue = probability

Assumptions:

Probability of win at trial = 40%

Damages Scenarios

Scenario	Weight	Loss	Best	Worst
Actual Comp	4.00%	\$4,000,000	\$2,100,000	\$2,100,000
Settlement	8.00%	\$1,000,000	\$1,000,000	\$1,000,000
Trial Verdict	8.00%	\$1,000,000	\$1,000,000	\$2,000,000
Trial Verdict	8.00%	\$1,000,000	\$1,000,000	\$2,000,000
Totals		\$20,740,000	\$6,940,000	\$2,840,000