



## 908 Insurance Law for Commercial Transactions

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## Faculty Biographies

### David M. Ascher

David M. Ascher is the vice president, general counsel and secretary of The Newark Group, Inc. in Cranford, New Jersey. He advises management on the full spectrum of legal issues that arise in the course of his employer's business.

Mr. Ascher was previously in-house counsel at Vickers America Holdings, Inc., C.R. Bard, Inc., and Sea-Land Corporation and was in private practice at Squire, Sanders & Dempsey in Cleveland, Ohio.

He is the secretary of the New Jersey chapter of the East Coast Greenway Alliance and a member of the board of trustees of the South Orange-Maplewood Education Foundation.

Mr. Ascher received a B.A. from the University at Buffalo, a Masters in Community Planning from the University of Cincinnati, and is a graduate of the University at Buffalo Law School.

### Elizabeth T. MeHaffey

Elizabeth Taylor MeHaffey is the vice president of legal affairs for TIMCO Aviation Services, Inc., in Greensboro, North Carolina. TIMCO is a one of the largest independent providers of heavy maintenance, repair, overhaul, and modification services to the commercial aviation industry. TIMCO is a public company, operates in at least twelve states, and has approximately 4000 employees. Ms. MeHaffey manages the legal needs of the entire company, including selecting and overseeing outside counsel, working with sales and operations personnel to negotiate maintenance contracts with TIMCO's customers, and providing legal advice to the company's business units.

Prior to joining TIMCO, Ms. MeHaffey was in private practice with Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., in Greensboro, where she counseled clients in the areas of taxation, private equity investments, and mergers and acquisitions.

She is the mother of three children and is active in their school and recreational activities. She also volunteers her time on behalf of the Future Fund of the Community Foundation of Greensboro.

Ms. MeHaffey received a B.A., summa cum laude, from the University of North Carolina - Greensboro and graduated with high honors from the University of North Carolina School of Law.

### Stephen P. Tasy

Stephen P. Tasy is senior vice president and general counsel for the U.S. operation of the Mitsui Sumitomo Insurance Group, in Warren New Jersey, a Japanese commercial property and casualty insurer, with responsibility for all non-claim U.S. legal matters.

Prior to joining Mitsui Sumitomo, Mr. Tasy held various legal positions within the insurance industry, including, in-house legal counsel for the Chubb Group of Insurance Companies (three years as regional General Counsel for Chubb's Asia Pacific operations, based in Singapore) and before that, handling complex insurance and civil rights litigation for the New Jersey Attorney General's Office.

Mr. Tasy received his B.A. (magna cum laude) from Georgetown University and his J.D. from Seton Hall University School of Law.



## **908: Insurance Law for Commercial Transactions**

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ACC's 2005 Annual Meeting: Legal Underdog to Corporate Superhero—Using Compliance for a Competitive Advantage

October 17-19, Marriott Wardman Park Hotel



## **Insurance Law For Commercial Transactions**

### **● Policy Basics**

- Insurance Policy – A contract whereby the insurer assumes certain risks from the insured and pays money to the insured if loss occurs due to those risks.
  - Consideration for assumption of risk by insurer is Premium Payment by the insurer.
  - Risks assumed are defined in policy.
- An Insurance Policy Is A Contract of Adhesion
  - Insurer Drafts The Contract Language
  - Insured May or May Not Be Able To Negotiate The Contract Language

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## Insurance Law For Commercial Transactions

- Policy Basics (continued)
  - Insurer has a duty to draft contract language that is clear and unambiguous.
  - If contract language is ambiguous, ambiguity will be liberally construed against the insurer and in favor of the insured.
  - A limited exception for sophisticated commercial insureds capable of negotiating at arm's length with the insurer (Werner Industries, Inc. v. First State Ins. Co., 548 A.2d 188, 192, 112 N.J. 30, 38 (N.J. S. Ct. 1988))



## Insurance Law For Commercial Transactions

- Policy Basics (continued)
  - **Fortuity Is An Essential Element of Any Insurance Policy.**
    - Insurer assumes risk of loss, but whether loss will occur is unknowable.
    - Insured's known losses are generally subject to exclusion.



## Insurance Law For Commercial Transactions

- Policy Basics (continued)
  - An Insurance Policy will contain the following essential elements:
    - A “coverage grant” or insuring clause, which defines the scope of risk assumed by the insurer.
    - Payment of premium by the Insured
    - Exclusions or other conditions which limit or restrict the scope of coverage.



## Insurance Law For Commercial Transactions

- Policy Basics (continued)
  - All Risk vs. Named/Specified Peril
    - All risk policies insure against any loss arising from circumstances defined in policy.
    - Named/Specified Peril policies insure against specific loss arising from circumstance defined in policy.
    - Each subject to exclusions and other limitations on coverage.



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance
  - Commercial Property and Casualty
  - Commercial General Liability (“CGL”)
  - Commercial Automobile Liability
  - Workers’ Compensation/Employer’s Liability
  - Excess/Umbrella



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - Commercial Property and Casualty
    - Covers insured’s losses (including property damage and losses arising from interruption of business) from fire and other perils.
  - CGL
    - Covers insured’s liability to others for certain types of losses:
      - Bodily Injury
      - Property Damage
      - Certain Types of Personal Injury (including advertising injury)
      - Other losses arising from the aforementioned losses



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - CGL (continued)
    - Covers certain types of liabilities:
      - Products Liability
      - Completed Operations
      - Premises Liability
      - Contractual Liability



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - CGL (continued)
    - Products Liability
      - Covers loss from handling or use of products distributed, manufactured, sold or otherwise handled by the insured.
      - Covered loss typically occurs away from insured's premises after the insured cedes possession/control over the product.



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - CGL (continued)
    - Completed Operations:
      - Covers loss arising from events occurring after the insured completes its work and arising out of that work (*e.g.*, electrical fire after electrician rewires building)



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - CGL (continued)
    - Premises Liability:
      - Covers loss arising from insured's activities on insured's premises (*e.g.*, customer slips and falls)





## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - Commercial General Liability Insurance (continued)
    - Contractual Liability:
      - Covers loss arising from certain liabilities assumed by the insured (*e.g.*, contractual indemnification of customer for claims arising from insured's negligence)
      - Does NOT cover liability arising from insured's breach of contract



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
  - Excess/Umbrella Liability Insurance
    - Liability insurance that sits atop an underlying commercial general or other liability insurance policy and responds to covered loss when the limits of liability of the underlying policy are exhausted.



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
- Excess/Umbrella Liability Insurance (continued)
  - May involve multiple layers of insurance and multiple insurers, depending on amount of coverage purchased by the insured.
  - Insured generally has a duty to maintain underlying insurance in force.
  - Excess/Umbrella Liability Insurance may or may not respond (“drop down”) if underlying insurance lapses or is not procured in the first instance.



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
- Commercial Automobile Insurance
  - Covers damage to insured’s motor vehicle and insured’s liability to others arising from operation of motor vehicles owned, hired or used by insured
    - Covers bodily injury, property damage and other losses arising from them
    - Scope of coverage may be limited to loss arising while the motor vehicle was being operated for business purposes.



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
- Workers Compensation/Employer's Liability Insurance
  - Complementary coverages typically sold together
  - Workers' Compensation Insurance
    - Assists insured in meeting its statutory obligation to compensate insured's employees who are injured during the course of their employment, per state Workers' Compensation Act



## Insurance Law For Commercial Transactions

- 5 Types of Commercial Insurance (continued)
- Workers Compensation/Employer's Liability Insurance (continued)
  - Employer's Liability
    - Covers employees' injuries that are not compensable under state Workers' Compensation Act (*e.g.*, underage employees' injuries)
    - Covers derivative claims (*e.g.*, employee's wife's claim of loss of consortium due to employee's on-the-job injury)
    - All employers – even those not covered by WCA – can obtain Employer's Liability insurance.



## Insurance Law For Commercial Transactions

## Insurance Law For Commercial Transactions

- **Specific Insurance Provision Clauses**

- Additional Insured
- Primary Coverage
- Waiver of Subrogation
- Limits of Liability
- Insurance Underwriter Ratings

- Specific Insurance Provision Clauses (continued)

- **Additional Insured Coverage**

- Many parties (typically landlords, customers, lessors) require being named as an “additional insured”
- Insurer may name Additional Insureds under a liability policy for whom coverage is provided in addition to the coverage for the Named Insured
- Additional Insureds typically added by Endorsement.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Additional Insured Coverage (continued)
    - Current Additional Insured Endorsement wording from Insurance Services Office, Inc. ("ISO"):

**Section II** – Who is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:

      1. Your acts or omissions; or
      2. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.[ISO Form No. CG 2010 (Ed. 7 04)]



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Additional Insured Coverage (continued)
    - ISO's Current Endorsement provides coverage for Additional Insured both for vicarious liability arising out of Named Insured's sole negligence and for situations where contributory negligence of both Additional Insured and Named Insured cause loss. No coverage for loss not due at least in part to Named Insured's negligence.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Additional Insured Coverage (continued)
    - There are several versions of ISO Additional Insured Endorsement to cover various circumstances and relationships
    - Be alert! Make sure the additional insured endorsement covers both the ongoing AND completed operations of named insured. Coverage may be limited by the endorsement.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Additional Insured Coverage (continued)
    - Amendment of Insured Contract Definition
    - ISO Form No. CG 24 26
      - Amends definition of “Insured Contract”, paragraph (f) to clarify that the Named Insured is covered for contractual liability assumed pertaining to the Named Insured’s business. Coverage is for third party “bodily injury” or “property damage” provided that Named Insured causes, in whole or in part, the “bodily injury” or “property damage”. No assumed contractual liability coverage for “Bodily Injury” or “Property Damage” due to the sole negligence of the Additional Insured.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- **Primary Insurance**
  - Common requirement of those being named as additional insured.
  - Requires underwriter to acknowledge and agree that coverage as additional insured is primary to – or pays before – additional insured’s own coverage.
  - Be alert! Risk that coverage for additional insured will exhaust limits of policy, leaving named insured without adequate coverage.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - **“Other Insurance” Clause**
    - Purpose: Governs payment among multiple primary insurance policies issued by multiple insurers that may cover the same loss.
    - Three (3) Principle Types:
      - (1) Excess
      - (2) Pro Rata
      - (3) Exit or “Escape”
- Contrans, Inc. v. Ryder Truck Rental, Inc.  
836 F. 2d 163 (3rd. Cir. 1988).



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- “Other Insurance” Clause
  - Excess Clause
    - Coverage under the policy is excess of all other insurance applicable to the loss.
  - Pro Rata Clause
    - Coverage under the policy is in the same proportion to coverage available under all other insurance applicable to the loss.
    - Equal Shares: Each policy contributes to covered loss in equal shares until the policy limits of liability are exhausted.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- Waiver of Subrogation
  - Subrogation is the legal right of the Insurer, to the extent of its payment for a covered loss under an insurance policy, to pursue recovery of all or part of its payment from third parties (not the Insured) whose acts or omissions contributed to the cause of loss.
  - The Insured has a duty to cooperate with the Insurer in its subrogation efforts.





## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- Waiver of Subrogation (continued)
  - The Insurer may waive its right to subrogation. Waiver of subrogation is commonly requested by contracting parties.
  - Be alert! Consider requiring vendors/suppliers to waive subrogation against your company and its customers (do you want your vendor's insurance underwriters suing your customer?).



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- Limits/Sub-Limits of Liability
  - Limits of Liability: The mechanism by which the Insurer caps what it will pay for covered loss under the policy.
    - Per Occurrence/Per Claim Limits of Liability apply to each occurrence or claim.
    - Aggregate Limit of Liability is the most the insurer pays for the total of all occurrences or claims in a given Policy Period.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- Limits/Sub-Limits of Liability (continued)
  - Payment of multiple covered losses on a per claim or per occurrence basis during the Policy Period erodes Aggregate Limit of Liability and thus reduces the amount of the Aggregate Limit of Liability that remains available to pay future covered losses during the same Policy Period.
  - Automobile policies have per occurrence/per claim limits, not aggregate limits
  - CGL policies generally have only aggregate limits



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
- Limits/Sub-Limits of Liability (continued)
  - Sub-Limits of Liability: Used to cap the amount that the insurer will pay for certain “sub-coverages” ancillary to the principal coverage provided under the policy.
    - A Sub-Limit of Liability is typically part of, and not in addition to, the overall Limit of Liability.
    - Payment of covered loss under a Sub-Limit of Liability reduces the overall Limit of Liability remaining to pay future covered losses in the same Policy Period.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Insurance Underwriter Ratings
    - Common clause specifying criteria for Insurers providing mandatory coverage:
      - Criteria designed to ensure selection of insurer in sound financial condition that is subject to jurisdiction of local insurance regulators.
      - Insurer must have high financial and claim paying ratings from insurance rating agencies.
      - Insurer must be “authorized” (i.e. licensed) by insurance regulator in jurisdiction where covered property is located or covered loss is likely to occur.



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Insurance Underwriter Ratings (continued)
    - Insurance Rating Agencies
      - Insurance credit rating agencies evaluate:
        - » Insurers' Financial Strength
        - » Insurer's Claim Paying ability (i.e., ability to meet ongoing policyholder/claimant obligations)
      - Three Principal Rating Agencies
        - » A.M. Best Company
        - » Moody's
        - » Standard & Poors
      - Evaluations based on review of Insurer's operating performance, balance sheet and business profile



## Insurance Law For Commercial Transactions

- Specific Insurance Provision Clauses (continued)
  - Insurance Underwriter Ratings (continued)
    - Insurance Rating Agencies (continued)
      - Highly rated Insurers have solid financial strength and good claims paying ability.
      - Corporate insurance buyers use ratings to ensure that insurers providing coverage will be in a strong position to pay claims.



## Insurance Law For Commercial Transactions

- Occurrence Policies vs. Claims Made Policies
  - Occurrence Policies
    - Insurer is liable for covered loss due to an occurrence which happens during the Policy Period.
    - “Long-Tail” in that the insurer can occur liability for covered loss many years later, as long as the occurrence happened during the Policy Period.



## Insurance Law For Commercial Transactions

- Occurrence Policies vs. Claims Made Policies (continued)
  - Claims Made Policies
    - Insurer is liable for covered loss if claim is “made” (i.e. reported) during the Policy Period or a supplemental reporting period (typically, an “Extended Reporting Period” or “ERP”).
    - ERP is typically purchased by the Insured for an additional premium, but may be automatic in some policies.



## Insurance Law For Commercial Transactions

- Occurrence Policies vs. Claims Made Policies (continued)
  - Claims Made Policies (continued)
    - Automatic ERP is typically for a limited period (30 or 60 days) after the Policy Period ends, but a further extension can be purchased by the Insured for an additional premium.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts
  - Mortgages And Other Commercial Loans:
    - The mortgage lender or other financial institution extending a loan or credit to an Insured often requires the following provisions in the loan agreement:
      - Insured must obtain commercial property insurance for the property that is the subject of the loan.
      - Lender must be an Additional Insured on the policy.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
  - Mortgages And Other Commercial Loans:
    - Lender must be notified of any material change in policy terms and conditions.
    - Lender must receive advance notice of any proposed cancellation/nonrenewal of the Insured's commercial property policy.
    - Lender must be notified of any default in premium payment by the Insured, and Lender must further be given an opportunity to step in and pay premium before coverage lapses.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
- Mortgages And Other Commercial Loans:
  - In the event of loan default by the Insured, Insurer must agree to pay all of covered loss (or a portion of covered loss above a certain dollar threshold) directly to Lender.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
- Commercial Leases
  - A Commercial Landlord often imposes the following obligations upon a Tenant in the Commercial Lease:
    - Tenant (Insured) must obtain comprehensive general liability insurance, commercial property insurance and workers' compensation insurance to cover tenant's interests in respect of the leased premises.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
- Commercial Leases (continued)
  - Landlord must be an additional Insured under Tenant's policies.
  - Landlord must be notified in advance of any cancellation/nonrenewal of Tenant's policies.
  - Landlord must be notified in advance of any material modification of Tenant's policies.
  - Tenant must obtain its Insurers' consent to waive Insurers' rights of subrogation against Landlord.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
- Construction Contracts
  - Under a Construction Contract, an Owner of property subject to construction often imposes the following obligations on a Contractor:
    - Contractor must obtain contractor's liability insurance encompassing workers' compensation, bodily injury (for Contractor's employees and third parties), personal injury, property damage, motor vehicle, completed operations and contractual liability insurance.





## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
  - Construction Contracts (continued)
    - Owner must have prior notice of material changes to policy.
    - Owner must have prior notice of cancellation or nonrenewal of policy.



## Insurance Law For Commercial Transactions

- Insurance Requirements Under Specific Commercial Contracts (continued)
  - Construction Contracts (continued)
    - Owner, architect and other design professionals to be named as Additional Insureds.
    - Insurers of Owner and Contractor waive subrogation rights against each other and design professionals (e.g. architects, engineers, etc.)

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COMMERCIAL GENERAL LIABILITY  
CG 00 01 10 01

## 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.

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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.



## Insurance Law For Commercial Transactions

### ● Certificates of Insurance

- Standard form (e.g., Acord)
- Be sure that coverage required by contract is confirmed in certificate.
- Certificate should properly identify additional insured (or loss payee on property insurance) and note if there is a waiver of subrogation.
- Be alert for limitations typed at the bottom of the form.

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- 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".

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- (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 subcontractor.

**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.

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- 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.

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- 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".
- 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.

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- 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;

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#### 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.

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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:
- 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;
  - Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - 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

- The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - Insureds;
  - Claims made or "suits" brought; or
  - Persons or organizations making claims or bringing "suits".
- The General Aggregate Limit is the most we will pay for the sum of:
  - Medical expenses under Coverage **C**;
  - Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - Damages under Coverage **B**.
- 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".
- 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.

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- Subject to **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - Damages under Coverage **A**; and
  - Medical expenses under Coverage **C**
 because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 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.
- 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

- Bankruptcy**  
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
- Duties In The Event Of Occurrence, Offense, Claim Or Suit**
  - 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:
    - How, when and where the "occurrence" or offense took place;
    - The names and addresses of any injured persons and witnesses; and
    - The nature and location of any injury or damage arising out of the "occurrence" or offense.

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- If a claim is made or "suit" is brought against any insured, you must:
  - Immediately record the specifics of the claim or "suit" and the date received; and
  - 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.
- You and any other involved insured must:
  - Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - Authorize us to obtain records and other information;
  - Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
  - 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.
- 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:

- To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- 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:

- Any of the other insurance, whether primary, excess, contingent or on any other basis:
  - That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
  - That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
  - 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
  - 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.
- 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.

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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 website 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 semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".

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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, road-beds, tunnel, underpass or crossing;
    - (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
      - (a) Preparing, approving, or failing to prepare or approve, maps, 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.

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- 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:
- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - While it is in or on an aircraft, watercraft or "auto"; or
  - 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:
- Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - Vehicles maintained for use solely on or next to premises you own or rent;
  - Vehicles that travel on crawler treads;
  - Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - Power cranes, shovels, loaders, diggers or drills; or
    - Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - 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:
    - Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - Cherry pickers and similar devices used to raise or lower workers;
  - 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":
    - Equipment designed primarily for:
      - Snow removal;
      - Road maintenance, but not construction or resurfacing; or
      - Street cleaning;
    - Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
    - 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:
- False arrest, detention or imprisonment;
  - Malicious prosecution;
  - 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;
  - 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;
  - Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - The use of another's advertising idea in your "advertisement"; or
  - Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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- 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":
- 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:
    - Products that are still in your physical possession; or
    - Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - When all of the work called for in your contract has been completed.
      - 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.
      - 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.
  - Does not include "bodily injury" or "property damage" arising out of:
    - 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;
    - The existence of tools, uninstalled equipment or abandoned or unused materials; or
    - 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:
- 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
  - 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:
- An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - 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":
- Means:
    - Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - You;
      - Others trading under your name; or
      - A person or organization whose business or assets you have acquired; and
    - Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

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COMMERCIAL GENERAL LIABILITY  
CG 20 07 07 04

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

**ADDITIONAL INSURED –  
ENGINEERS, ARCHITECTS, OR SURVEYORS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. Section II – Who Is An Insured** is amended to include as an additional insured any architect, engineer, or surveyor engaged by you but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In connection with your premises; or
2. In the performance of your ongoing operations.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. Supervisory, inspection, architectural or engineering activities.

- 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.

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 POLICY NUMBER: COMMERCIAL GENERAL LIABILITY  
 CG 20 10 07 04

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

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

**B.** With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

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 CG 20 15 07 04

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

**ADDITIONAL INSURED – VENDORS**

This endorsement modifies insurance provided under the following:

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

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s) (Vendor)	Your Products
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**A. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) (referred to below as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
  - a. "Bodily injury" or "property damage" for which the vendor 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 that the vendor would have in the absence of the contract or agreement;
  - b. Any express warranty unauthorized by you;

- c. Any physical or chemical change in the product made intentionally by the vendor;
- d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;

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- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
  - (1) The exceptions contained in Sub-paragraphs d. or f.; or
  - (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.
- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

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POLICY NUMBER: COMMERCIAL GENERAL LIABILITY

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**ADDITIONAL INSURED –  
MORTGAGEE, ASSIGNEE, OR RECEIVER**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE

**Name of Person or Organization:**

**Designation of Premises:**

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

1. WHO IS AN INSURED (Section II) is amended to include as an insured the person(s) or organization(s) shown in the Schedule but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you and shown in the Schedule.
2. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

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POLICY NUMBER: **COMMERCIAL GENERAL LIABILITY**

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**ADDITIONAL INSURED – OWNERS OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**SCHEDULE**

Designation of Premises (Part Leased to You):

Name of Person or Organization:

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

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the land leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land;
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person or organization shown in the Schedule.

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CG 20 28 07 04**

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

**ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s)

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**A. Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

**B.** With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

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POLICY NUMBER:

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CG 20 37 07 04

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

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location And Description Of Completed Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Section II – Who Is An Insured** is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

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POLICY NUMBER:

COMMERCIAL AUTO  
CA 20 01 10 01

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

**LESSOR – ADDITIONAL INSURED AND LOSS PAYEE**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Endorsement Effective:	Countersigned By:  (Authorized Representative)
Named Insured:	

**SCHEDULE**

Insurance Company Policy Number Effective Date
Expiration Date
Named Insured Address
Additional Insured (Lessor) Address
Designation or Description of "Leased Autos"

Coverages	Limit Of Insurance
Liability	\$ Each "Accident"
Personal Injury Protection (or equivalent no-fault coverage)	\$
Comprehensive	ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS; MINUS: \$ For Each Covered "Leased Auto"
Collision	ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS; MINUS: \$ For Each Covered "Leased Auto"
Specified Causes of Loss	ACTUAL CASH VALUE OR COST OF REPAIR WHICHEVER IS LESS; MINUS: \$ For Each Covered "Leased Auto"

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

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#### A. Coverage

1. Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow. For a covered "auto" that is a "leased auto" **Who Is An Insured** is changed to include as an "insured" the lessor named in the Schedule.
2. The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

#### B. Loss Payable Clause

1. We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".
2. The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
3. If we make any payment to the lessor, we will obtain his or her rights against any other party.

#### C. Cancellation

1. If we cancel the policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
  2. If you cancel the policy, we will mail notice to the lessor.
  3. Cancellation ends this agreement.
- D. The lessor is not liable for payment of your premiums.

#### E. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

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#### SECTION XXXII. INSURANCE.

(a) Tenant shall maintain in full force and effect the following insurance written by one or more responsible companies with an A.M. Best rating of A-VIII or better, licensed to do business in the state in which the Premises is located in form and content reasonably satisfactory to Landlord, including, except as to subsection (a)(2) of this Section XXXII at the request of Landlord, Landlord and Landlord's managing agent as additional insureds, and Tenant shall keep deposited with the Landlord copies of all policies of insurance, or certificates thereof, with endorsements on such policies or certificates to the effect that such insurance shall not be cancelled by the insurer without at least fifteen (15) days prior notice to Landlord:

(1) Commercial General Liability insurance in the broadest form of such coverage as is available from time to time in the jurisdiction in which the Premises is located, applying to the use and occupancy of the Premises and the business operated by Tenant and on an occurrence basis in an amount not less than Three Million Dollars (\$3,000,000) combined single limit for property damage and for any personal injury, including death, to one or more than one person arising out of any one incident. At any time during the term hereof upon sixty (60) days' notice Landlord may require the Tenant to increase the amount of insurance required hereunder to a greater commercially reasonable amount as may be required by Landlord or recommended by Landlord's insurance advisor or required by Landlord's mortgagee.

(2) Worker's compensation insurance in the minimum amount required by statute covering all employees of Tenant, and, if Tenant shall contract with any independent contractor for the furnishing of labor, materials or services to Tenant, Tenant shall require such independent contractor to maintain worker's compensation insurance covering all its employees and all the employees of any subcontractor.

(3) Extended coverage property damage insurance covering Tenant's personal property located at the Premises (furniture, fixtures and equipment on a replacement cost basis) and Tenant improvements, if any.

(b) Landlord shall not be liable to Tenant for:

(1) Damage to or loss of property entrusted to employees of the Landlord.

(2) Loss of property through thefts regardless of where the theft takes place.

(3) Damage to property regardless of where the damage takes place.

(4) Damage to or loss of property caused by other tenants or occupants of the Building or caused by visitors to or in the Building.

It is specifically understood that Landlord's insurance does not cover any personal property of Tenant and Tenant shall not make any claim for loss of or damage to such property against Landlord or Landlord's insurance carrier and shall not permit its insurance carrier to make any claim for loss or damage to such property against Landlord or Landlord's insurance carrier.

SECTION XXXIII. SUBROGATION. INSURANCE PREMIUMS. Landlord and Tenant hereby waive any rights each may have against the other in connection with any of the damage occasioned to Landlord or Tenant, as the case may be, their respective property, the Building or its contents, arising from covered causes of loss which property insurance is carried or required to be carried pursuant to this sec. Each party on behalf of their respective insurance companies insuring their respective property against any such loss, hereby waives any right of subrogation that it may have against the other party.

ANNEX A  
TO  
CERTIFICATE OF [PROPERTY][LIABILITY] INSURANCE  
DATED AS OF \_\_\_\_\_, 2003  
as Insured ("Lessee")  
as Certificate Holder and Additional Insured  
("Lessor")  
LEASE AGREEMENT DATED AS OF \_\_\_\_\_, 2003 (the "LEASE"),  
BETWEEN LESSOR AND LESSEE

1. Except in the case of public liability and workers' compensation insurance, all insurance proceeds in respect of any loss or occurrence shall be adjusted by Lessee, unless an Event of Default (as defined in the Lease) shall have occurred and be continuing, in which case such proceeds shall be adjusted by the Lessor, and shall be payable (x) in respect of payments not exceeding \$150,000, provided no Event of Default shall have occurred or be continuing, to Lessee, and (y) in all other circumstances to Lessor;

2. Insurer waives all claims for insurance premiums or commissions or (if such policies provide for the payment thereof) additional premiums or assessments against Lessor;

3. In respect of the interests of Lessor, the policy shall insure Lessor regardless of:

(a) any act or omission by Lessee or any other additional insured, including any breach of any condition, declaration or warranty in any policy of insurance;

(b) the use of the Equipment (as defined in the Lease) for purposes more hazardous than permitted by the terms of the policy;

(c) any foreclosure or other proceeding or notice of sale relating to any of the Equipment; or

(d) any change in the title to or ownership of any of the Equipment;

4. This insurance shall be primary insurance, and the insurer hereunder shall be liable under such policy without right of contribution from any other insurance coverage effected by or on behalf of Lessor under any other insurance policies covering a loss that is also covered under this insurance policy, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of Lessee), shall, in the case of any commercial general public liability insurance, operate in the same manner as if there were a separate policy covering each

insured;

5. Any cancellation, lapse, termination or material modification of this insurance policy shall not be effective as to Lessor, until at least 30 days after receipt by Lessor of written notice thereof; and

6. Insurer waives any right of subrogation of the insurers against Lessor, and waives any right to set-off or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability.



**19. INSURANCE****A. Coverage**

- 1) Prior to the commencement of the Services and annually (or within thirty (30) days of coverage renewal/change), BUSINESS shall submit to CUSTOMER evidence of BUSINESS's satisfactory insurance coverage. Said insurance coverage shall:
  - a) be maintained at BUSINESS's expense at all times during the term of this Agreement and for a period of five (5) years thereafter;
  - b) name, except for workers compensation coverage, CUSTOMER, CUSTOMER's customer and their respective employees, officers, directors, representatives and agents as additional insureds;
  - c) contain a severability of interest clause;
  - d) provide that the insurance is primary and without contribution from other insurance which may be available to the additional insureds; and,
  - e) include the following insurance in the amounts noted:
    - (i) Comprehensive Aviation General Liability Insurance with a combined single limit of liability of not less than Three Hundred Million U.S. Dollars (\$300,000,000.00) for Bodily Injury, Property Damage, Products Liability, Completed Operations Coverage and Premises Operation Liability;
    - (ii) Hangar Keeper's Liability Insurance providing property damage coverage with limits of liability of Three Hundred Million U.S. Dollars (\$300,000,000.00) per occurrence; and
    - (iii) Worker's Compensation or similar and comparable, if applicable, as required by applicable law and Employer's Liability Insurance of not less than One Million U.S. Dollars (\$1,000,000.00) per occurrence or such other amount as required by local laws.

**B. All insurance coverage set forth in Paragraph A. above shall:**

- 1) contain a waiver of subrogation by BUSINESS's insurers of any rights they may have against CUSTOMER, CUSTOMER's customer and their respective employees, officers, directors, representatives, agents and subcontractors; and
- 2) contain a clause which states that any cancellation, restriction or reduction in coverage shall only be effective upon thirty (30) days' written notice to CUSTOMER and CUSTOMER's customer of such cancellation, restriction or reduction in coverage.

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**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

**GENERAL SECTION**

**A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

**B. Who is Insured**

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

**C. Workers Compensation Law**

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

**D. State**

State means any state of the United States of America, and the District of Columbia.

**E. Locations**

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE  
 WORKERS COMPENSATION INSURANCE**

**A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

**B. We Will Pay**

We will pay promptly when due the benefits required of you by the workers compensation law.

**C. We Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

**D. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

**E. Other Insurance**

We will not pay more than our share of benefits and costs covered by this insurance and other

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insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

**F. Payments You Must Make**

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

**G. Recovery From Others**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

**H. Statutory Provisions**

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
  - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

**PART TWO  
 EMPLOYERS LIABILITY INSURANCE**

**A. How This Insurance Applies**

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

**B. We Will Pay**

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed

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against such third party as a result of injury to your employee;

2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee;

provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

**C. Exclusions**

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. bodily injury intentionally caused or aggravated by you;
6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety

Act of 1969 (30 USC Sections 901-942), any

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- other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
  10. bodily injury to a master or member of the crew of any vessel;
  11. fines or penalties imposed for violation of federal or state law; and
  12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

**D. We Will Defend**

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

**E. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

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**F. Other Insurance**

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

**G. Limits of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.  
A disease is not bodily injury by accident unless it results directly from bodily injury by accident.
2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.  
Bodily injury by disease does not include disease that results directly from a bodily injury by accident.
3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

**H. Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**I. Actions Against Us**

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with

our consent or by actual trial and final judgment. This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

**PART THREE  
OTHER STATES INSURANCE**

**A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

**B. Notice**

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

**PART FOUR  
YOUR DUTIES IF INJURY OCCURS**

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal

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- papers related to the injury, claim, proceeding or suit.
- Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
  - Do nothing after an injury occurs that would interfere with our right to recover from others.
  - Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

**PART FIVE—PREMIUM**

**A. Our Manuals**

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

**B. Classifications**

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

**C. Remuneration**

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

- all your officers and employees engaged in work covered by this policy; and
- all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

**D. Premium Payments**

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

**E. Final Premium**

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

- If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
- If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

**F. Records**

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

**G. Audit**

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

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**PART SIX—CONDITIONS**

**A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

**B. Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

**C. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent. If you die and we receive notice within thirty days after your death, we will cover your legal representa-

tive as insured.

**D. Cancellation**

- You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
- We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
- The policy period will end on the day and hour stated in the cancellation notice.
- Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

**E. Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

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