



802:Insurance Issues—the Basics

A. Peter Prinsen

Vice President and General Counsel

The Graham Company

Tracey P. Rice

Director of Corporate Services and General Counsel

G.R. Sponaugle & Sons, Inc.

Susan T. Travis

Senior Corporate Counsel

Pitney Bowes, Inc.

Faculty Biographies

A. Peter Prinsen

A. Peter Prinsen is vice president and general counsel at The Graham Company, where he works with the claims services department to maximize insurance coverage, aggressively handle claims, ensure accurate reserves, and advise insureds on coverage and claims matters. He practiced insurance defense and insurance coverage litigation with a major Philadelphia law firm before joining The Graham Company.

Mr. Prinsen has received numerous awards in trial advocacy, including the International Academy of Trial Lawyers Award and the Lewis F. Powell Award for Excellence in Trial Advocacy. He is a frequent speaker on insurance-related topics. He is also active in various insurance related and legal organizations, including the Pennsylvania and Philadelphia Bar Associations, the Defense Research Institute, and the Philadelphia Association of Defense Counsel. Mr. Prinsen is a licensed insurance agent. He is also a Chartered Property and Casualty Underwriter (CPCU), Registered Professional Liability Underwriter (RPLU), and has the Associate in Claims (AIC) designation provided by the Insurance Institute of America.

He is a graduate of Penn State University, where he graduated with high honors and Villanova Law School.

Tracey P. Rice

Tracey P. Rice is the director of corporate services and general counsel for G.R. Sponaugle & Sons, Inc., a Pennsylvania-based provider of building solutions. In this versatile role, Ms. Rice's responsibilities include human resources management, coordination of the company's insurance program, safety and risk management, office and contract administration, and process improvement initiatives. She served as the company's sole in-house counsel until her progression through the organization led to her current position. In addition to her functions as lead in-house counsel, Ms. Rice oversees the functions, coordination, and administration of key corporate elements within the human resources and safety departments of the company. She has also been an integral part of the overall implementation of various corporate-wide, process-driven initiatives.

Prior to joining G.R. Sponaugle, she served as staff attorney for The Wolf Organization, a building materials distributor serving 10 states. Her practice focused on employment, real estate, and regulatory matters.

Ms. Rice serves as the chapter secretary and on the board of directors of ACCA's Central Pennsylvania Chapter.

After receiving her BA from Penn State University, Ms. Rice received her JD from Widener University School of Law.

Susan T. Travis

Susan Travis is senior corporate counsel at Pitney Bowes, Inc. for the intellectual property and technology law department providing counsel for worldwide intellectual property and technology agreements including patent, trademark, copyright, and technology licenses, confidentiality, development, and distribution agreements, consulting services, trademark, and trade name protections, maintenance contracts, private label, and co-branding, original equipment manufactures, value-added resellers, and other joint venture arrangements.

Prior to joining Pitney Bowes, Inc. Ms. Travis conducted executive employment contract negotiations and drafting, addressed insurance issues and litigation management for a not for profit organization, and worked for a \$40 billion global Fortune 100 pharmaceutical corporation conducting domestic and international negotiations and transactional work involving software licensing and development, professional service arrangements, and procurement of chemical, packaging, and other commodities. Previously, she initiated the in-house legal function and handled the general counsel, litigation management, and contractual negotiations for the North American subsidiaries of a Fortune 1000 multinational company selling goods and services in a wide range of markets and channels for photographic, and graphic arts products, medical equipment and consumables. She has also been general counsel for a privately held entrepreneurial company that supplied global consulting services, designed and built gas and chemical delivery systems in the semiconductor and pharmaceutical marketplace.

Ms. Travis is a former faculty member of Pace University School of Law, litigation associate for a New York firm, and labor counsel for a New York labor union. She has written various articles and treatise chapters, and is a lifelong member of Pennsylvania State University Alumni Association, elected to its education alumni board, president, and former member of Town of Somers zoning board.

Ms. Travis received her BS, *cum laude*, from Pennsylvania State University and her JD from Syracuse University.

**INSURANCE BASICS - WHAT
INSURANCE SHOULD YOU HAVE
AND WHAT DOES IT COVER?**

**PRESENTATION TO AMERICAN
CORPORATE COUNSEL
ASSOCIATION**

OCTOBER 10, 2003

Presenters:

Tracey P. Rice, Director of Corporate Services and
General Counsel of G. R. Sponaugle & Sons, Inc.

Susan T. Travis, Senior Corporate Counsel of
Pitney Bowes, Inc.

A. Peter Prinsen, Esquire, CPCU, RPLU, AIC, Vice
President and General Counsel of The Graham
Company

What We Will Cover Today:

1. Role of the Insured, the Insurer and the Broker
2. Standard Insurance Coverages
 - A. Workers' Compensation
 - B. General Liability
 - C. Automobile Liability & Physical Damage
 - D. Property

What We Will Cover Today: (Cont.)

- E. Boiler and Machinery
- F. Umbrella/Excess Liability
- G. Benefits Insurance
 - ✦ Health/Accident
 - ✦ Life Insurance
 - ✦ Dental/Vision

What We Will Cover Today: (Cont.)

3. Additional Coverages Most Medium to Large Size Companies Maintain
 - A. Directors & Officers
 - B. Crime
 - C. Employment Practices Liability
 - D. Pollution
 - E. Professional Liability
 - F. Transit
 - G. Fiduciary Liability
 - H. Electronic Data Processing (EDP)

What We Will Cover Today: (Cont.)

4. More Unusual/Industry Specific Coverages
 - A. Financial Institution Bonds
 - B. Marine Insurance
 - C. Internet Liability
 - D. Owner Controlled Insurance Program (OCIP)
5. Claims-Made vs. Occurrence Triggers
6. Named Insured vs. Insured vs. Additional Insured Coverage

What We Will Cover Today: (Cont.)

7. Interplay of Additional Insured Coverage and Contractual Liability Coverage
8. Certificates of Insurance

Attachments and Additional Resources Available

- Attached to these materials are the following items which will be addressed in this presentation:
 - 1) ISO Commercial General Liability Policy;
 - 2) Widget Manufacturing Company hypothetical with Purchase Order, Sales Agreement and Lease Provisions.

Attachments and Additional Resources Available (Cont.)

As an additional resource, the CD-ROM disc provided to you will contain an excellent paper written by Randy Paar, Esquire of Dickstein Shapiro Morin & Oshinsky LLP entitled "Insurance 101 - What Every In-House Counsel Should Know". We're sure that you'll find it an excellent resource as you analyze insurance coverage issues.

Role of the Insured, the Insurer and the Broker

- **Role of the Insured:**
 - ◆ Selection of a competent insurance broker
 - ◆ Honesty/Forthrightness in the completion of applications
 - ◆ Payment of premium
 - ◆ Prompt notice of losses
 - ◆ Competence in the claims process

Role of the Insured, the Insurer and the Broker

■ Role of the Insurer:

- ◆ Issuance of quotation based upon applications supplied
- ◆ Collection of premium
- ◆ Issuance of insurance policy
- ◆ Adjustment of claims (TPA exception)
- ◆ Payment of claims
- ◆ Collection and reporting of loss information
- ◆ Loss control

Role of the Insured, the Insurer and the Broker

■ Role of the Insurance Broker:

- ◆ Identify and evaluate exposures
- ◆ Develop coverage specifications
- ◆ Market insurance program to selected insurers
- ◆ Recommend appropriate proposals
- ◆ Additional services: Claims services, loss control, contract reviews, certificate of insurance issuance.

Standard Insurance Coverages

- **Workers' Compensation:**
 - ◆ Workers Compensation is a statutory benefit program for injured employees.
 - ✦ Medical benefits
 - ✦ Indemnity benefits - lost wages based on state guidelines

Standard Insurance Coverages

- **Workers' Compensation: (Cont.)**
 - ◆ Provides insurance coverage for injuries to workers which occur during the course and scope of their employment.
 - ✦ Not fault based
 - ✦ Can include coverage for employees of uninsured subcontractors
 - ✦ Can include coverage for presumed "independent contractors"
 - ✦ Subrogation (recovery from responsible party of what was paid) permitted

Standard Insurance Coverages

■ General Liability:

- ◆ Covers claims for bodily injury and property damage to third parties which arise out of your operations or the ownership of the property.
 - ◆ “Third Party” Coverage
 - ◆ Legal Liability Requirement

Standard Insurance Coverages

■ General Liability: (Cont.)

- ◆ Includes contractual liability to indemnify others
- ◆ No coverage for damage to “your work” or “your product” (policy is not a warranty)
- ◆ Includes advertising injury and personal injury (libel, slander, etc.) coverages

Standard Insurance Coverages

■ Automobile Liability & Physical Damage:

- ◆ Two Part Coverage:
 - ✦ Automobile liability covers bodily injury and property damage claims that arise out of the operation, maintenance and use of automobiles and trucks.
 - ◆ Third party bodily injury and property damage covered
 - ◆ Legal liability requirement

Standard Insurance Coverages

■ Automobile Liability & Physical Damage: (Cont.)

- ◆ Automobile physical damage covers direct physical damage to owned autos and can be extended to cover physical damage to rented or leased autos.
 - ✦ Comprehensive
 - ✦ Collision
- ◆ Covered Auto
 - ✦ Coverage follows the auto not Individuals

Standard Insurance Coverages

■ Property:

- ◆ Covers damage to scheduled buildings and other real property
- ◆ Covers damage to personal property (may extend to personal property of others)
- ◆ Can include business interruption coverage
- ◆ Generally written on an "All Risk" or specified perils basis
- ◆ Be careful of co-insurance, unscheduled locations
- ◆ Flood coverage desired/required?

Standard Insurance Coverages

■ Boiler and Machinery:

- ◆ Covers damage to "objects"
- ◆ Expansiveness of coverage depends upon definition of "objects" selected
- ◆ Can cover production machinery
- ◆ Can include business interruption coverage

Standard Insurance Coverages

■ Umbrella/Excess Liability:

- ◆ Umbrella coverage may provide broader coverage than underlying coverages
- ◆ Excess coverage supply increases the limits of insurance
- ◆ Beware of new exclusions in the Umbrella/excess layer
- ◆ Be sure to schedule all primary coverages

Standard Insurance Coverages

■ Benefits Insurance:

- ◆ Health/Accident
- ◆ Life Insurance
- ◆ Dental/Vision

Additional Coverages Most Medium to Large Size Companies Maintain

■ Directors & Officers:

- ◆ Both direct and corporate reimbursement coverage generally offered
- ◆ Claims-made coverage
- ◆ Entity coverage may be available
- ◆ Wrongful Act trigger
- ◆ Legal liability/third party only coverage

Additional Coverages Most Medium to Large Size Companies Maintain

■ Crime:

- ◆ Four basic coverages:
 - ✦ employee dishonesty
 - ✦ forgery or alteration
 - ✦ theft/robbery
 - ✦ computer fraud
- ◆ First party coverage

Additional Coverages Most Medium to Large Size Companies Maintain

■ Employment Practices Liability:

- ◆ No standard form (policies vary significantly)
- ◆ Coverage for discrimination/harassment claims
- ◆ Front pay may be excluded
- ◆ ADA accommodation cost generally excluded

Additional Coverages Most Medium to Large Size Companies Maintain

■ Pollution:

- ◆ Two types:
 - ✦ Site specific
 - ✦ Non-site specific
- ◆ Covers clean-up costs and third party liability
- ◆ Generally no landfill coverage
- ◆ Available in occurrence and claims-made triggers

Additional Coverages Most Medium to Large Size Companies Maintain

■ Professional Liability:

- ◆ Covers economic loss claims arising out of professional services
- ◆ Professional services definition issue
- ◆ Bodily injury and property damage generally excluded
- ◆ Generally claims-made coverage

Additional Coverages Most Medium to Large Size Companies Maintain

■ Transit:

- ◆ Covers your goods in transit
- ◆ Can be endorsed onto Property Policy
- ◆ Be careful of limits

Additional Coverages Most Medium to Large Size Companies Maintain

■ Fiduciary Liability:

- ◆ Covers liability arising out of the operations of employee benefit plans
- ◆ May not be needed if third party vendor and employee benefits plan GI Endorsement

Additional Coverages Most Medium to Large Size Companies Maintain

■ Electronic Data Processing (EDP):

- ◆ Specifically designed to cover computers and other computer-aided or run machinery
- ◆ Be careful of EDP definition.

More Unusual/Industry Specific Coverages

- **Financial Institution Bonds:**
 - ◆ The crime policy for the financial industry

More Unusual/Industry Specific Coverages

- **Marine Insurance:**
 - ◆ General Liability insurers exclude coverage for watercraft > 26 feet
 - ◆ Hull coverage
 - ◆ Protection & indemnity coverage for injury to seamen.

More Unusual/Industry Specific Coverages

- **Internet Liability:**
 - ◆ Forms vary widely
 - ◆ Coverage available for transmitting viruses, computer hacking and data loss

More Unusual/Industry Specific Coverages

- **Owner Controlled Insurance Program (OCIP):**
 - ◆ OCIP or “Wrap-Up”
 - ✦ Wrap-Up Insurance Program involves the purchase of certain insurance by the owner, protecting both the owner and the various contractors involved with the construction project.
 - ✦ In return for these coverages, the contractors exclude insurance costs for these coverages from their bids.

More Unusual/Industry Specific Coverages

■ Owner Controlled Insurance Program (OCIP): (Cont.)

- ◆ Types of Wrap-Ups
 - ✦ Conventional Wrap-Up
 - Single Defined Job Site
 - ✦ Rolling Wrap-Up
 - Multiple Job Sites with some common features/efficiencies
 - ✦ Maintenance Wrap-Up
 - Ongoing operations at completed site or sites

More Unusual/Industry Specific Coverages

■ Owner Controlled Insurance Program (OCIP): (Cont.)

- ◆ Coverages Normally Provided by an OCIP
 - ✦ Workers Compensation and Employers Liability
 - ✦ Commercial General Liability
 - Completed Operations Coverage - Usually 2-3 Years
 - ✦ Commercial Excess Liability
 - Limits Determined by Scope of Work - Usually \$75,000,000 and up

More Unusual/Industry Specific Coverages

- **Owner Controlled Insurance Program (OCIP): (Cont.)**
 - ✦ Commercial Excess Liability (Cont.)
 - Completed Operations Coverage - Usually 2-3 Years
 - ✦ Coverage purchased for the benefit of all parties.

Claims-Made vs. Occurrence Triggers

- **Occurrence Coverage:**
 - ◆ The most prevalent
 - ◆ Policy triggered is the one in place when the “occurrence” takes place.

Claims-Made vs. Occurrence Triggers

- **Claims Made Coverage:**
 - ◆ Usual for D&O, Professional Coverages
 - ◆ Policy triggered is the one in place when the “claim” is made
 - ◆ Watch out for retroactive date
 - ◆ “Tail Coverage” issue

Named Insured vs. Insured vs. Additional Insured Coverage

- Named insured pays the premium and gets notices.
- Named insured can address coverage with the insurer.
- Additional insured gets all the coverage the named insured gets if not limited by endorsement.

Named Insured vs. Insured vs. Additional Insured Coverage

- Additional insured coverage frequently limited to vicarious liability arising out of the named insured's work.

Named Insured vs. Insured vs. Additional Insured Coverage

- **Primary and Non-Contributory Additional Insured Status:**
 - ◆ Some contracts may require that the named insured's insurance program be endorsed so that insurance program is primary to any other insurance carried by the Additional Insured.

Interplay of Additional Insured Coverage and Contractual Liability Coverage

- Additional Insured will, most likely, also be an Indemnitee.
- Named Insureds are insured for their indemnification of Another's Tort Liability (Contractual Liability Coverage).

Interplay of Additional Insured Coverage and Contractual Liability Coverage

- If one is broader than the other (Additional Insured vs. Indemnity) which will apply? - The one most favorable to the protected entity!

Certificates of Insurance

- Show insurer, line of coverage, policy period, policy number and limits of coverage
- Frequently issued by insurance brokers
- Should show additional insured status, waiver of subrogation and loss payees (on property coverages)

QUESTIONS

WIDGET MANUFACTURING COMPANY GETS THEIR SODA MACHINE AND A LOT MORE

The employees of Widget Manufacturing Company have petitioned the management for the installation of the candy machine and the soda machine. Sam Widget contacts Deliver Now for pricing and delivery terms and ultimately issues a purchase order dated June 1, 2000 asking for delivery as soon as possible.

Deliver Now's manager is thrilled to get the order and, given the urgency of the delivery, arranges for a delivery on that day.

Dan Delivery, an employee of Deliver Now delivers the candy machine successfully, but while delivering the soda machine, has the soda machine fall onto him after the trolley wheel gets stuck in a hole in the asphalt of the delivery area. Dan Delivery sustained serious injuries as a result.

On the day following the deliveries, Deliver Now issues an Equipment Sales Agreement dated June 2, 2000. A copy of this Equipment Sales Agreement is attached as well.

Dan Delivery ultimately files suit against Widget Manufacturing Company and the owner of the property, Bad Rep Realty, in order to recover for the injuries he sustained. Widget Manufacturing Company seeks defense and indemnification from Deliver Now. Bad Rep Realty seeks defense and indemnification from Widget Manufacturing Company.

Who is obligated to pay for Dan Delivery's injuries and why?

WIDGET MANUFACTURING COMPANY



**40 Winding Way
Wallingford, PA**

Purchase Order

No. _____

Date Ordered: 6/1/00

Vendor:

Deliver Now

Ship To:

Plant

Phone:

Project:

Subject to the terms and conditions contained on the reverse, Vendor agrees to perform all labor and supply all materials and facilities necessary for prompt, proper, and complete performance of the following work:

Price: \$3,000	Terms: 30 days payment	Delivery Required: ASAP	
Qty. Ordered	Stock No./Description	Unit Price	Total
1	Candy Machine	\$1,800	\$1,800
1	Soda Machine	\$1,200	\$1,200

Special Instructions:

**Deliver ASAP. Employees
Restless**

Sam Widget

Purchasing Agent

\$3,000

We hereby accept and acknowledge your original order, according to the terms and conditions shown. Shipment will be made on _____

Authorized Signature of Vendor

Date

RETURN COPY TO ABOVE ADDRESS AS ACKNOWLEDGEMENT

PURCHASE ORDER TERMS

1. In addition to any other expressed or implied warranties, Vendor specifically and expressly warrants that the supplies or materials being provided are merchantable and suitable for their intended use.
2. Firm delivery requirements will be issued by Purchaser. Failure to comply with the delivery requirements may be deemed a material breach of this Purchase Order by Vendor. Time is therefore of the essence regarding this Purchase Order. If Vendor defaults in delivery of goods, Purchaser may cancel this Purchase Order, purchase similar goods and materials from any other person and hold Vendor accountable for any damages. Vendor shall insure its work against all risks of loss and damage. No shipment is to be made without release and consent by Purchaser. Delivery will be F.O.B. project at a time and place directed by Purchaser. Units must be shipped complete and in the proper sequence. All materials shall be delivered to the project and shall have attached identification. Vendor will furnish notarized certificates of compliance stating that all work is in full compliance with the general contract as it relates to this contract. Delivery, installation, or erection of equipment shall not be considered complete until all spare parts and approved copies of the instructions, operation and maintenance manuals are furnished. These manuals shall include drawings of all equipment. Any and all samples, test reports, certificates of compliance, warranties, guarantees, or the like, required by the general contract shall be furnished at no additional cost. Unless otherwise stated on the reverse side, the price includes delivery of all materials F.O.B. job, freight and cartage prepaid at the job location indicated on the reverse side hereof. No additional charges of any kind, including charges for boxing, packing, cartage, additional quantity or other extras will be allowed unless specifically agreed to in writing in advance by Purchaser. Except as may be otherwise provided in the Purchase Order, the price includes all applicable federal, state and local taxes occasioned by this Purchase Order. Purchaser shall not be liable for any delays, suspensions, or cost escalations. This Purchase Order may be terminated by Purchaser without cause and Vendor shall be entitled to payment only for the work performed and material supplied at the job pro-rated to the total contract price and in no case to profit on unperformed work.
3. To the fullest extent permitted by law, Vendor and any other manufacturer of the work supplied under this Purchase Order agree to indemnify, hold harmless and defend Purchaser, its affiliates, parents and subsidiaries, general contractor/construction manager and Owner and their employees, members and shareholders (the "Indemnified Parties") from and against any and all liability for loss, damage, attorneys' fees or expense which the Indemnified Parties may be held liable by reason of injury (including death) to any person (including Vendor and Vendor's employees), or damage to any property arising out of or in any manner connected with the work to be performed and products supplied, whether or not due, in whole or in part, to any act, omission, negligence or strict liability of the Indemnified Parties, whether known or unknown to Purchaser and/or Vendor.

Vendor and Purchaser further agree that the Laws of the Commonwealth of Pennsylvania shall apply to the construction and application of the indemnification/hold harmless agreement set forth above.
4. The Vendor, in addition to all other guarantees and warranties contained in this Purchase Order and the general contract, as well as those imposed by law, and not in limitation of Purchaser's other legal rights, warranties, and guarantees that its work is in strict and absolute accord with the contract, and that it shall, for a minimum of one year after the date of final acceptance of the general contract, perform any maintenance or corrective work, without cost as directed by Purchaser. Purchaser may demand assurance by bond or otherwise, from the Vendor that it will abide by its guarantees and warranties.
5. If requested by Purchaser, Vendor shall furnish Purchaser with ten (10) days complete information regarding sources of supply for all purchased materials required for its performance under this Purchase Order, including names and addresses of sources, responsible persons representing sources, and purchase order and shipping data provided, however, that Vendor shall not be required hereunder to release information concerning prices or costs of such purchased materials.
6. If delivery hereunder is made by the vehicles or conveyances of Vendor or its carrier, Vendor shall be responsible for any injury or damage to persons or property resulting from the operation of said vehicles while on the premises of Purchaser, the site of delivery, or trucking to or from said site.
7. This Purchase Order contract may not be assigned by Vendor without Purchaser's written consent. The terms and conditions of this Purchase Order may not be amended or modified without the prior written consent of Purchaser and Vendor. Any terms or conditions that Vendor attempts to apply will have no legal effect and all such terms and conditions are void as to this Purchase Order and its subject matter.
8. In the event this Purchase Order includes the leasing, renting or use of rental equipment, the Vendor and any person providing the rental equipment shall assume the responsibility for providing Contractors Equipment Insurance in the amount of the full value of said equipment and shall hold Purchaser harmless from any damage or loss to said equipment whether or not such damage or loss was caused in whole or in part by the negligence, strict liability or other actions or inactions of Purchaser. Any conflict that may exist between the terms hereof and any additional lease, rental agreement or other document pertaining to the use of rental equipment shall be resolved in accordance with the terms and conditions of this Purchase Order.
9. Prior to beginning work on the project, Vendor must provide a Certificate of Insurance providing evidence that the following insurance coverages are in effect:
 - a. Commercial General Liability Insurance with a minimum Limit of Liability of \$1,000,000 each occurrence, \$1,000,000 Products/Completed Operations Aggregate Limit and \$2,000,000 General Aggregate Limit.
 - b. Commercial Automobile Liability Insurance including Owned, Hired and Non-Owned Vehicles with a minimum limit of \$1,000,000 each accident.
 - c. Workers' Compensation Insurance which provides Statutory Benefits and Employers Liability Insurance with limits of \$500,000 (each accident and each employee by disease).
 - d. Any other insurance as may be required by law.
10. The certificate shall require that thirty (30) days written notice be provided to Purchaser prior to cancellation or non-renewal, or prior to any material change in a policy, term or condition. In addition, a renewal Certificate of Insurance shall be provided in the event that the Vendor continues to perform work for Purchaser after the certificate expiration date.
11. The Vendor is required to provide its own Property Insurance on all materials that are part of this Purchase Order until such time as the materials are accepted by the Owner. In addition, Vendor is required to provide its own Property Insurance for its own equipment, materials and tools that are used by the Vendor which are not part of the Purchase Order.

12. The Vendor waives all rights of recovery or subrogation against the Purchaser, the general contractor/construction manager and Owner for damage caused by fire or other perils to the extent covered by Property Insurance obtained pursuant to this Purchase Order, whether or not such damage was caused by the negligence, strict liability or other actions or inactions of Purchaser, general contractor/construction manager or Owner, or not.
13. Vendor agrees that Purchaser shall be named as an Additional Insured on all of Vendor's policies of insurance (except Workers' Compensation) and that Vendor's policies of insurance shall provide insurance coverage, on a primary basis, to Purchaser, and shall not require Purchaser's policies to contribute in the payment of the loss. It is specifically agreed by Vendor that Purchaser's, general contractor's/construction manager's and Owner's policies of insurance are in excess of any coverage to be provided by Vendor to Purchaser, general contractor/construction manager and Owner as Additional Insured.
14. In the event Purchaser fails to make timely payment to Vendor interest will accrue at a rate of six (6) percent per annum.
15. In the event of litigation between Purchaser and Vendor, if Purchaser prevails, Vendor will be liable for all awards or judgments as well as professional fees and costs including counsel fees incurred by Purchaser. Vendor also consents to its joinder in any proceeding brought against Purchaser, in arbitration or the Court of Common Pleas of the Commonwealth of Pennsylvania, by any party arising out of the work or any claim related thereto.

DELIVER NOW
EQUIPMENT SALES AGREEMENT

EQUIPMENT SALES AGREEMENT

DELIVER NOW 20 Delivery Way Dilbertville, PA	D N	Seller
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DATE 6/2/00

DELIVERY DATE 6/3/00
DATE

CUSTOMER'S NAME Widget Mfg. Co.

ADDRESS 40 Winding Way

CITY & STATE Wallingford, Pa

DELIVERY LOCATION Wallingford Plant

<i>QUANTITY ORDERED</i>	<i>EQUIPMENT SOLD</i>	<i>UNIT PRICE</i>	<i>TOTAL</i>
1	Candy Machine (Model XBDUV)	\$1,800	\$1,800
1	Candy Machine (Model ZBACD)	\$1,200	\$1,200

TOTAL \$3,000

IT IS AGREED THAT NO REPRESENTATIONS, PROMISES OR WARRANTIES WHATSOEVER (INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) HAVE BEEN MADE TO CUSTOMER WITH RESPECT TO THE EQUIPMENT SOLD, EXCEPT AS EXPRESSLY SPECIFIED, IN WRITING, HEREIN.

NOTICE TO CUSTOMER: DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT!

SIGNATURE OF CUSTOMER _____

ADDITIONAL TERMS AND CONDITIONS

1. **NO OTHER AGREEMENT:** Except as otherwise mutually agreed in writing, this document is the complete agreement of the parties and supersedes all other agreements or understandings, written or oral.
2. **ACCEPTANCE BY CUSTOMER OF EQUIPMENT:** Customer acknowledges receipt of the described equipment. The parties agree that the equipment was inspected by Seller and personally examined by Customer at the time of delivery to and acceptance by Customer and that the equipment was in good and serviceable condition. Customer acknowledges that his personal examination did not reveal any visually apparent defects in the equipment. Customer agrees that any inspection conducted by Seller would not have revealed latent or patent defects in the material, workmanship or capacity of the equipment.
3. **INDEMNIFICATION/GENERAL LIABILITY INSURANCE:** Customer agrees to indemnify, hold harmless and defend Seller and Seller's employees from and against any and all liability for loss, damage or expense for which Seller and Seller's employees may be held liable by reason of injury (including death) to any person or damage to any property arising out of or in any manner connected with the sale, maintenance, operation, rental or use of the equipment, whether or not due in whole or in part to any act, omission, or negligence of Seller and Seller's employees or any of its representatives, employees or third parties, whether known or unknown to Seller and Seller's employees or Customer. It is expressly understood that the indemnity contained in this paragraph covers claims by Customer's employees and that Customer expressly waives any defense to this indemnification obligation which may arise under the Workers' Compensation Act of any State (including, but not limited to an express waiver of any defense based on 77P.S.§481(b) of the Pennsylvania Workers' Compensation Act).

It is further expressly understood and agreed that the indemnity above shall survive termination or expiration of this agreement.

Customer further agrees to maintain General Liability Insurance with limits no less than \$1,000,000 and shall have Seller and Seller's employees as Additional Insureds, which insurance shall be primary insurance for Seller and Seller's employees and not contribute with Seller and Seller's employees insurance in the payment of any loss. Customer shall provide a Certificate of Insurance evidencing same before acceptance of the equipment.

4. **DAMAGE TO EQUIPMENT:**

Seller shall not be liable to Customer for any loss, delay or damage or any kind of character resulting from defects in or inefficiency of the equipment or accidental breakage thereof.

EXCERPTS FROM BAD REP REALTY/WIDGET LEASE

ARTICLE SEVEN: INSURANCE

7.01 Liability Insurance. From the time Tenant shall first enter the Premises, throughout the Lease Term and thereafter as long as Tenant shall remain in the Premises (collectively, "the Occupancy Period"), Tenant shall maintain in effect commercial general liability insurance insuring Tenant against liability for bodily injury, property damage (including loss of use of property) and personal injury at the Premises. Such insurance shall name Landlord, its property manager, and any mortgagee, and Cabot Partners limited Partnership, as additional insureds. The initial amount of such insurance shall be Three Million Dollars (\$3,000,000) per occurrence and shall be subject to periodic increases specified by Landlord based upon inflation, increased liability awards, recommendation of Landlord's professional insurance advisers, and other relevant factors. The liability insurance obtained by Tenant under this Section 7.01 shall (i) be primary; (ii) insure Tenant's obligations to Landlord under Section 7.09. The amount and coverage of such insurance shall not limit Tenant's liability nor relieve Tenant of any other obligation under this Lease. Landlord may also obtain commercial general liability insurance in an amount and with coverage determined by Landlord insuring Landlord against liability with respect to the Premises and the Property. The policy obtained by Landlord shall not be contributory, shall not provide primary insurance, and shall be excess over any insurance maintained by Tenant.

7.02 Worker's Compensation Insurance. During the Occupancy Period, Tenant shall maintain in effect Workers' Compensation Insurance (including Employees' Liability Insurance) in the statutory amount covering all employees of Tenant employed or performing services at the Premises, in order to provide the statutory benefits required by the laws of the state in which the Premises are located.

7.03 Automobile Liability Insurance. During the Occupancy Period, Tenant shall maintain in effect Automobile Liability Insurance, including but not limited to, passenger liability, on all owned, non-owned, and hired vehicles used in connection with the Premises, with a combined single limit per occurrence of not less than One Million Dollars (\$1,000,000) per vehicle for injuries or death of one or more persons or loss or damage to property.

7.04 Personal Property Insurance. During the Occupancy Period, Tenant shall maintain in effect Personal Property Insurance covering leasehold improvements paid for by Tenant and Tenant's personal property and fixtures from time to time in, on, or at the premises, in an amount not less than 100% of the full replacement

cost, without deduction for depreciation, providing protection against events protected under "All Risk Coverage," as well as against sprinkler damage, vandalism, and malicious mischief. Any proceeds from the Personal Property Insurance shall be used for the repair or replacement of the property damaged or destroyed, unless this Lease is terminated under an applicable provision herein. Landlord shall receive any proceeds from the Personal Property Insurance allocable to Tenant's leasehold improvements.

7.05 Business Interruption Insurance. During the Occupancy Period, Tenant shall maintain in effect Business Interruption Insurance, providing in the event of damage or destruction of the Premises an amount sufficient to sustain Tenant for a period of not less than one (1) year for (i) the net profit that would have been realized had Tenant's business continued; and (ii) such fixed charges and expenses as must necessarily continue during a total or partial suspension of business to the extent to which they would have been incurred had no business interruption occurred, including, but not limited to, interest on indebtedness of Tenant, salaries of executives, foremen, and other employees under contract, charges under non-cancelable contracts, charges for advertising, legal or other professional services, taxes and rents that may still continue, trade association dues, insurance premiums, and depreciation.

7.06 Property and Rental Income Insurance. During the Lease Term, Landlord shall maintain in effect all risk insurance covering loss of or damage to the Property in the amount of its replacement value with such endorsements and deductibles as Landlord shall determine from time to time. Landlord shall have the right to obtain flood, earthquake, and such other insurance as Landlord shall determine from time to time or shall be required by any lender holding a security interest in the Property. Landlord shall not obtain insurance for Tenant's fixtures or equipment or building improvements installed by Tenant. During the Lease Term, Landlord shall also maintain a rental income insurance policy, with loss payable to Landlord, in an amount equal to one year's Base Rent, plus estimated real property taxes, operating expenses, and insurance premiums. Landlord shall be liable for the payment of any deductible amount under Landlord's insurance maintained pursuant to this Article Seen, in an amount not to exceed Twenty-Five Thousand Dollars (\$25,000).

7.07 Payment of Insurance Premiums. Landlord shall pay the premiums of the insurance policies maintained by Landlord under Section 7.06 and, Tenant shall reimburse Landlord for such premiums in accordance with Section 4.02. Tenant shall pay directly the premiums of the insurance policies maintained by Tenant under Sections 7.01, 7.02, 7.03, 7.04, and 7.05.

7.08 General Insurance Provisions.

7.08 (a) Any insurance which Tenant shall be required to maintain under this Lease shall include a provision which requires the insurance carrier to give Landlord not less than thirty (30) days written notice prior to any cancellation or modification of such coverage.

7.08 (b) Prior to the earlier of Tenant's entry into the Premises or the commencement of the Lease Term, Tenant shall deliver to Landlord an insurance company certificate that Tenant maintains the insurance required by Sections 7.01, 7.02, 7.03, 7.04 and 7.05 and no less than thirty (30) days prior to the expiration or termination of any such insurance, Tenant shall deliver to Landlord renewal certificates therefore. Tenant shall provide Landlord with copies of the policies promptly upon request from time to time. If Tenant shall fail to deliver any certificate or renewal certificate to Landlord required under this Lease within the prescribed time period or if any such policy shall be canceled or modified during the Lease Term without Landlord's consent, Landlord may obtain such insurance, insurance, in which case Tenant shall reimburse Landlord, as additional Rent, for 110% of the cost of such insurance within ten (10) days after receipt of a statement of the cost of such insurance.

7.08 (c) Tenant shall maintain all insurance required under this Lease with companies having a "General Policy Rating" of A-X or better, as set forth in the most current issue of the Best Key Rating Guide. Landlord and Tenant, on behalf of themselves and their insurers, each hereby waive any and all rights of recovery against the other, or against the officers, partners, employees, agents, or representatives of the other, for loss of or damage to its property or the property of others under its control, if such loss or damage shall be covered by any insurance policy in force (whether or not described in this Lease) at the time of such loss or damage. All property insurance carried by either party shall contain a waiver of subrogation against the other party to the extent such right shall have been waived by the insured party prior to the occurrence of loss or injury.

7.09 Indemnity. As such waiver does not violate public policy and insurance is available to protect it, Tenant hereby waives all claims against Landlord, its agents, employees, officers, directors, partners and shareholders, (collectively "the Indemnitees") for damage to any property or injury to or death of any person (including Tenants' employees) in, upon or about the Premises or the Property arising at any time and from any cause, and Tenant shall hold Indemnitees harmless from and defend Indemnitees from and against all claims, liabilities, judgements, demands, causes of action, losses, damages, costs and

expenses including reasonable attorney's fees for damage to any property or injury to or death of any person (including Tenants' employees) arising out of or in any way relating to the use or occupancy of the Premises whether or not caused in whole or in part by an Indemnitee. The foregoing shall include investigation costs and all the costs and expenses incurred by landlord from the first notice that any claim or demand is to be made or may be made. The provisions of this Section 7.09 shall survive the expiration or termination of this Lease with respect to any damage, injury, or death occurring prior to such time.

ARTICLE EIGHT: OUTSIDE AREAS

8.01 **Outside Areas.** As used in this Lease, "Outside Areas" shall mean all areas within the Property which are outside the building envelope, including, but not limited to, parking areas, driveways, sidewalks, access roads, landscaping, and planted areas. Landlord, from time to time, may change the size, location, nature, and use of any of the Outside Areas, convert Outside areas, and increase or decrease Outside Area land or facilities. Tenant acknowledges that such activities may result in inconvenience to Tenant. Such activities and changes are permitted if they do not materially affect Tenant's use of the Premises.

8.02 **Use of Outside Areas.** Tenant shall have the nonexclusive right to use the Outside Areas for the purposes intended, subject to such reasonable rules and regulations ("Rules and Regulations") as landlord may establish or modify from time to time and as initially set forth in Exhibit "C". Tenant shall abide by all such Rules and Regulations and shall use its best efforts to cause others who use the Outside Areas with Tenant's express or implied permission to abide by Landlord's Rules and Regulations. At any time, Landlord may close any Outside Areas to perform any acts in the Outside Areas as, in Landlord's reasonable judgement, are desirable to maintain or improve the Property. Tenant shall not interfere with the rights of Landlord, other tenants, or any other person entitled to use the Outside Areas.

8.03 **Outside Area Maintenance.** Subject to Articles Eleven and Twelve, Landlord shall maintain the Outside Areas in good order, condition, and repair. Outside Area Maintenance expenses ("OAM Expenses") are all costs and expenses associated with the operation and maintenance of the Outside Areas and the repair and maintenance of the heating, ventilation, air conditioning, plumbing, electrical, utility, and safety systems (to the extent not performed by Tenant), including, but not limited to, the following: gardening and landscaping; snow removal; utility, water and sewage services for the Outside Area; maintenance of signs (other than tenants' signs); workers' compensation insurance; personal property taxes; rental or lease payments paid by Landlord

for rented or leased personal property used in the operation or maintenance of the Outside Area; maintenance of the Outside Areas; fees for required licenses and permits; routine maintenance and repair of roof membrane, flashing, gutters, downspouts, roof drains, skylights and waterproofing; maintenance of paving (including sweeping, striping, repairing, resurfacing, and repaving); general maintenance; painting; lighting; cleaning; refuse removal; security and similar items; reserves for roof replacement, exterior painting and other appropriate reserves; and a property management fee (not to exceed five percent (5%) of the gross rents of the Property for the calendar year). Landlord may cause any or all of such services to be provided by third parties and the cost of such services shall be included in OAM Expenses. With respect to any OAM Expenses which are included for the benefit of the Property and other property, Landlord shall make a reasonable allocation of such cost between the Property and such other property. OAM Expenses shall not include: (a) the cost of capital repairs and replacements, provided, however, that the annual depreciation (based on the useful life of the item under generally accepted accounting principles) of any such capital repair or replacement to the Outside Areas or the heating, ventilating, air-conditioning, plumbing, electrical, utility and safety systems serving the Property shall be included in the OAM Expenses each year during the term of this Lease; and (b) the cost of capital improvements, provided, however, that the annual depreciation (based on the useful life of the item under generally accepted accounting principles) of any capital improvement undertaken to reduce OAM Expenses or made in order to comply with legal requirements shall be included in OAM Expenses each year during the term of this Lease.

8.04 Tenant's Payment of OAM Expense. Tenant shall pay of all OAM Expenses in accordance with Section 4.02.

SAMPLE

340 Commercial General Liability Declarations

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG DS 01 07 98

COMMERCIAL GENERAL LIABILITY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
-------------------	--------------------

NAMED INSURED: _____
 MAILING ADDRESS: _____

POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. TIME AT
 YOUR MAILING ADDRESS SHOWN ABOVE

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

LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	\$ _____
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$ _____ Any one premises
MEDICAL EXPENSE LIMIT	\$ _____ Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ _____ Any one person or organization
GENERAL AGGREGATE LIMIT	\$ _____
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$ _____

RETROACTIVE DATE (CG 00 02 ONLY)
THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY" OR "PROPERTY DAMAGE" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW. RETROACTIVE DATE: _____ (ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS
FORM OF BUSINESS:
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)
BUSINESS DESCRIPTION: _____

SAMPLE

Commercial General Liability Declarations 341

ALL PREMISES YOU OWN, RENT OR OCCUPY							
LOCATION NUMBER				ADDRESS OF ALL PREMISES YOU OWN, RENT OR OCCUPY			

CLASSIFICATION AND PREMIUM							
LOCATION NUMBER	CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
				Prem/Ops	Prod/Comp Ops	Prem/Ops	Prod/Comp Ops
			\$	\$	\$	\$	\$
STATE TAX OR OTHER (if applicable)						\$ _____	
TOTAL PREMIUM (SUBJECT TO AUDIT)						\$ _____	
PREMIUM SHOWN IS PAYABLE:						AT INCEPTION \$ _____	
						AT EACH ANNIVERSARY \$ _____	
						(IF POLICY PERIOD IS MORE THAN ONE YEAR AND PREMIUM IS PAID IN ANNUAL INSTALLMENTS)	
AUDIT PERIOD (IF APPLICABLE)		<input type="checkbox"/> ANNUALLY		<input type="checkbox"/> SEMI-ANNUALLY		<input type="checkbox"/> QUARTERLY	
						<input type="checkbox"/> MONTHLY	

ENDORSEMENTS
ENDORSEMENTS ATTACHED TO THIS POLICY:

THESE DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS AND COVERAGE FORM(S) AND ANY ENDORSEMENT(S), COMPLETE THE ABOVE NUMBERED POLICY.

Countersigned:	By:
(Date)	(Authorized Representative)

NOTE
OFFICERS' FACSIMILE SIGNATURES MAY BE INSERTED HERE, ON THE POLICY COVER OR ELSEWHERE AT THE COMPANY'S OPTION.

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342 Commercial General Liability Coverage Form

COMMERCIAL GENERAL LIABILITY
CG 00 01 07 98

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 end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

b. This insurance applies to "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"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

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

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Commercial General Liability Coverage Form 343

- (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 any insured or any person or organization for whom you may be legally responsible; or

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- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
- g. Aircraft, Auto Or Watercraft**
- "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".
- This exclusion 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".

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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;
- (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.

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COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**1. Insuring Agreement**

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

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

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

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

2. Exclusions

This insurance does not apply to:

a. "Personal and advertising injury":

- (1) 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";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of any insured;
- (5) 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;

(6) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";

(7) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";

(8) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";

(9) Committed by an insured whose business is advertising, broadcasting, publishing or telecasting. However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section; or

(10) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

b. Any loss, cost or expense arising out of any:

(1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or

(2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

COVERAGE C MEDICAL PAYMENTS**1. Insuring Agreement**

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
 - (2) On ways next to premises you own or rent; or
 - (3) Because of your operations;
- provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

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- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
- (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.
- 2. Exclusions**
We will not pay expenses for "bodily injury":
- a. To any insured.
 - b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
 - c. To a person injured on that part of premises you own or rent that the person normally occupies.
 - d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.
 - e. To a person injured while taking part in athletics.
 - f. Included within the "products-completed operations hazard".
 - g. Excluded under Coverage A.
 - h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.
- SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**
1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
 - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All costs taxed against the insured in the "suit".
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance. These payments will not reduce the limits of insurance.
 2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

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- (2) Provides us with written authorization to:
- (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

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

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

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

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
2. Each of the following is also an insured:
 - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
 - (1) "Bodily injury" or "personal and advertising injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of Paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.

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- 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:
- "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- 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

1. 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".

2. 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.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- Damages under Coverage A; and
- Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

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SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**1. Bankruptcy**

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

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

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

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

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

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

c. You and any other involved insured must:

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

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

3. Legal Action Against Us

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

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

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over:

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

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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. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- 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.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

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b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or

c. All parts of the world if:

(1) The injury or damage arises out of:

(a) Goods or products made or sold by you in the territory described in a. above; or

(b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and

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

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

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

7. "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.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

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c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;

e. Oral or written publication of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

16. "Products-completed operations hazard":

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

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

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

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

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

17. "Property damage" means:

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

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

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

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

20. "Your product" means:

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

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

21. "Your work" means:

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

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

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