

**IN THE SUPREME COURT OF OHIO**

NEURO-COMMUNICATION SERVICES, INC., <i>etc.</i> ,	)	Supreme Court
	)	Case No. 2021-0130
	)	
Plaintiffs/ Respondents,	)	On Review of Certified Questions
	)	From the United States District
v.	)	Court Northern District of Ohio,
	)	Eastern Division Case No. 4:20-cv-
	)	1275
THE CINCINNATI INSURANCE COMPANY;	)	
THE CINCINNATI CASUALTY COMPANY;	)	
AND THE CINCINNATI INDEMNITY	)	
COMPANY,	)	
	)	
Defendants/ Petitioners.	)	

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**PRELIMINARY MEMORANDUM OF DEFENDANTS/PETITIONERS  
IN SUPPORT OF ACCEPTANCE OF CERTIFIED QUESTIONS**

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## I. INTRODUCTION

The coronavirus has spread widely in Ohio, causing devastating losses of life, losses felt by families and communities. In order to arrest the virus' spread, the Governor and Director of the Department of Health issued orders that affected businesses. These orders caused temporary business closures, reductions in patronage and changes to business models, all to the financial detriment of many businesses. Many have made commercial property insurance coverage claims seeking to recover lost revenue. Plaintiff/Respondent Neuro-Communication Services, Inc. had its audiology practice curtailed by the pandemic and its associated government orders. Neuro-Communication seeks property insurance coverage for the costs it incurred from this curtailment of its practice. It also seeks certification of eight discrete national classes. Defendant/Petitioner Defendants/Petitioners The Cincinnati Insurance Company, The Cincinnati Casualty Company and The Cincinnati Indemnity Company (collectively, "Cincinnati") deny that Neuro-Communication's claim is covered.

"Dozens, if not hundreds of cases seeking coverage for losses related to the pandemic under policies similar or identical to that at issue in this case have been filed in both federal and state courts in Ohio. These cases have been filed against the Defendants in this case and against other insurers who offer similar products." Order of Certification to the Supreme Court of Ohio, January 19, 2021 ("Order of Certification") at PageID # 1009.<sup>1</sup>

The gist of all of these claims and lawsuits is the claimants' assertion that the presence of the virus in society, at a premises or on surfaces there, or the presence of infected people at a premises, constitutes direct physical loss or damage to property that entitles them to coverage for their business losses. Cincinnati maintains that purely financial loss is not a direct *physical* loss. It

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<sup>1</sup> A copy of the Order of Certification is Exhibit A in the Appendix.

maintains that a loss of use, especially a temporary loss of use, of premises is not a direct *physical* loss. Rather, a physical alteration or structural effect on property is necessary to have a *physical* loss. At bottom, Neuro-Communication urges the Court to replace unambiguous contract language with an urge to assist affected businesses. In the past, this Court has rejected this sort of appeal in analogous circumstances. *See, e.g., See, e.g., Foster Wheeler Enviresponse, Inc. v. Franklin City Convention Facilities Auth.*, 78 Ohio St.3d 353, 362, 678 N.E.2d 519 (1997); *see also Johnson v. Montgomery*, 151 Ohio St.3d 75, 2017-Ohio-7445, 86 N.E.3d 279, ¶¶ 14–15, 17.<sup>2</sup>

The District Court’s question meets all of the criteria in Supreme Court Practice Rule 9.01. It lies at the core of dozens if not hundreds of cases now pending in Ohio courts. The certified question here should be accepted so that the Court can address the legal meaning of the insurance policy language involved here, resolving that issue for all Ohioans. Accordingly, this Court should proceed to accept and resolve the certified question.

## **II. STATEMENT OF CASE AND FACTS**

### **A. The Federal District Court Litigation**

Neuro-Communication is an Ohio company that supplies audiology and related hearing and balance services to patients. (Cplt. ¶ 7).<sup>3</sup> Like all Ohioans, it has been affected by the pandemic.

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<sup>2</sup> *Foster Wheeler* recognizes, “It is not the responsibility or function of this court to rewrite the parties’ contract in order to provide for a more equitable result. A contract ‘does not become ambiguous by reason of the fact that in its operation it will work a hardship upon one of the parties thereto.’” *Foster Wheeler* at 362 (quoting *Ohio Crane Co. v. Hicks*, 110 Ohio St. 168, 172, 143 N.E. 388 (1924) and citing *Aultman Hosp. Assn. v. Community Mut. Ins. Co.*, 46 Ohio St.3d 51, 54–55, 544 N.E.2d 920 (1989)). *Johnson* interprets certain statutory language to be clear and unambiguous. In that setting, the Court was invited to act to better protect drunk driving victims by using public policy to unseat the otherwise applicable statute. “The role of this Court is to apply the statute as it is written—even if we think some other approach might ‘accord[ ] with good policy.’” *Johnson* at ¶ 15 (quoting *Burrage v. U.S.*, \_\_\_ U.S. \_\_\_, \_\_\_, 134 S.Ct. 881, 892, 187 L.Ed.2d 715 (2014), quoting *Badaracco v. Commr. of Internal Revenue*, 464 U.S. 386, 398, 104 S.Ct. 756, 78 L.Ed.2d 549 (1984)).

<sup>3</sup> A copy of Neuro-Communication’s Class Action Complaint is Exhibit B in the Appendix.



No reasonable person could lack sympathy for its plight. However, this is a contract case, the outcome of which should be governed by the contract's terms and conditions.

The questions before this Court were certified to the Court by Judge Benita Pearson of the U.S. District Court, Northern District of Ohio. The genesis of the U.S. District Court's certified questions is Cincinnati's motion to dismiss raising a core legal issue arising out of Neuro-Communication's complaint. As is more fully addressed below, that legal issue is whether financial losses from a temporary loss of use of premises constitutes direct physical loss or damage to Neuro-Communication's property. Cincinnati maintains that it does not because Neuro-Communication does not assert that there was any physical alteration or structural damage to its property.

Neuro-Communication claims coverage under the Cincinnati Policy's Business Income, Extra Expense, Civil Authority and Extended Business Income coverages. (Cplt. ¶¶ 15-19). All of these coverages require direct physical loss or damage to property. The determination of the meaning of provisions in Cincinnati's policy is a legal issue, suitable for this Court.

## **B. The Cincinnati Policy**

The requirement of "direct physical loss" to property is a core element in property insurance policies like the one here. 10A Plitt, *et al.*, *Couch on Insurance*, Section 148:46 (3d Ed.2020). This requirement appears in multiple places in the Policy. For example, direct physical loss or damage to the Plaintiff's property is required for Business Income coverage:

We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The suspension must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown on the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss.

(Policy at PageID # 69).<sup>4</sup> “Loss” is defined, in relevant part, as *physical* loss or *physical* damage. (*Id.* at PageID # 89) (emphasis added).

Another key term in the policy is “Covered Cause of Loss,” which is defined as “direct ‘loss’ unless the ‘loss’ is excluded or limited in this Coverage Part.” (*Id.* at PageID # 56). A Covered Cause of Loss, and thus direct physical loss or damage to property, is required for all of the types of coverage Neuro-Communication seeks. (*Id.* at PageID # 70-71). Accordingly, there is no coverage unless Neuro-Communication first establishes that there is direct physical loss or damage to covered property.

### **C. The Ohio Orders**

Neuro-Communication was affected by various Ohio state orders: Governor DeWine’s March 9, 2020 Executive Order; Director of the Ohio Department of Health Amy Acton’s March 17, 2020 order; and Director Acton’s March 22, 2020 order. (Cplt. ¶ 25). These orders regulated non-essential medical procedures and ordered Ohioans to stay at home for a period of time. Neuro-Communication alleges that pursuant to the orders, it ceased most of its operations on March 23, 2020. (Order of Certification at PageID # 1008). Neuro-Communication resumed some operations on May 4, 2020. (Cplt. ¶ 27; Order of Certification PageID # 1008).

### **D. Neuro-Communication’s Legal Theory of Recovery**

Neuro-Communication alleges it suffered a financial loss in the form of lost revenue. (Cplt. ¶ 32). Seeking coverage for this financial loss, Neuro-Communication asserts that the presence of the virus generally, along with the government regulatory orders, to which it was subject caused it to suffer a direct physical loss to its property. (Cplt. ¶¶ 29–30). Neuro-Communication does not allege any physical alteration or structural damage to its property. (Cplt. ¶¶ 21–37). Rather, it

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<sup>4</sup> A copy of the Policy is part of Exhibit B in the Appendix, beginning at PageID # 32.

asserts that Cincinnati's policy language should be read to mean that economic loss caused by a loss of use of property is, legally, direct physical loss to property. (Neuro-Communication's Brief in Opposition to Cincinnati's Motion to Dismiss at PageID # 508).<sup>5</sup> Cincinnati maintains that Neuro-Communication is wrong about the law and moved to dismiss on that basis. (Cincinnati's Brief in Support of its Motion to Dismiss at PageID # 344–349; Cincinnati's Reply in Support of its Motion to Dismiss at PageID # 532–534, 536–540).<sup>6</sup>

#### **E. The Certified Question**

The United States District Court for the Northern District of Ohio certified the following question to this Court:

Does the general presence in the community, or on surfaces at a premises, of the novel coronavirus known as SARS-CoV-2, constitute direct physical loss or damage to property; or does the presence on a premises of a person infected with COVID-19 constitute direct physical loss or damage to property at that premises?

(Order of Certification at PageID # 1008). For the reasons that follow, this Court should accept the question and proceed to address it.

### **III. LAW AND ARGUMENT**

#### **A. This Case Meets The Criteria In Practice Rule 9.01**

Supreme Court Practice Rule 9.01 sets forth two criteria for the acceptance of certified questions:

The Supreme Court may answer a question of law certified to it by a court of the United States. This rule is invoked if the certifying court, in a proceeding before it, issues a certification order finding **there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court.**

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<sup>5</sup> A copy of Neuro-Communication's opposition brief is Exhibit C in the Appendix.

<sup>6</sup> A copy of Cincinnati's dismissal brief and reply brief are Exhibits D and E, respectively, in the Appendix.

S.Ct.Prac.R. 9.01 (A) (emphasis added). The District Court correctly found that both criteria are met here. (Order of Certification at PageID # 1009–1010).

**1. There is a question of Ohio law that may be determinative of the proceeding**

This Court’s determination of the certified question will be determinative of this case. The legal issue here is whether direct physical loss necessarily entails physical alteration or structural change to property. Neuro-Communication does not allege either. Rather, its case is based on a purely financial loss. If a physical alteration is required as a matter of law, then dismissal of Neuro-Communication’s case is required. Cincinnati believes that this would be appropriate enforcement of the terms of the contract. The issue here is a legal issue that may be determinative of the case.

**2. Existing Ohio Supreme Court Precedent Does Not Directly Address The Determinative Question Here**

The issue of law before the Court concerns the interpretation of the words “direct” “accidental physical loss or accidental physical damage” to property. (Policy at PageID # 54, 89). And, in particular, this Court should address whether the modifier “physical” can encompass purely financial loss or loss of use of undamaged property. This Court has not ruled on the legal interpretation or meaning of the insurance policy language at issue here.

This Court has addressed general principles of Ohio insurance coverage law. These general principles include the principle that interpretation of an insurance policy is a matter of law for the Court. *See, e.g., Sharonville v. Am. Emps. Ins. Co.*, 109 Ohio St.3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 6; *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St.2d 241, 245–246, 374 N.E.2d 146 (1978).

Another legal principle articulated by this Court is that the core purpose of an insurance contract matters to its interpretation. *Westfield Ins. Co. v. Galatis*, 100 Ohio St.3d 216, 797 N.E.2d 1256, 2003-Ohio-5849, ¶ 20. In *Galatis*, the issue was whether uninsured motorist coverage issued

to a corporation should be deemed to cover corporate employees and their families when not engaged in company business. In that context, *Galatis* stated, “[t]he general intent of a motor vehicle insurance policy issued to a corporation is to insure the corporation as a legal entity against liability arising from the use of motor vehicles.” It found that such policies could not be construed to cover employees not involved in company business. *Galatis* at ¶ 20. Thus, in interpreting policy language, *Galatis* remained grounded in the fundamental nature of the policy at issue. The core purpose of a commercial property insurance policy is to insure buildings and personal property against physical harm such as fire or storm. (Policy at PageID # 52; 10A Plitt, *et al.*, *Couch on Insurance*, Section 148:46 (3d Ed.2020)).

Furthermore, words in an insurance policy are to be given their plain and ordinary meaning and read in context. *Sharonville* at ¶ 6. Also, when interpreting a contract, a court should read the contract as a whole, giving meaning to each term. *Alexander* at 150. As established, here, the contract’s basic grant of Business Income coverage requires that there be a suspension of operations caused by a direct “loss,” with “loss” being defined as “accidental physical loss or accidental physical damage.” (Policy at PageID # 89). Importantly, these words and phrases cannot be read together as a whole without giving meaning to the word “physical.”

“Where the terms in a contract are clear and unambiguous, a court cannot in effect create a new contract by finding an intent not expressed in the clear language employed by the parties.” *Alexander*, 53 Ohio St.2d at 246, 374 N.E.2d 146. This principle also applies to undefined words. Indeed, “[t]he mere absence of a definition in an insurance contract does not make the meaning of the term ambiguous.” *Nationwide Mut. Fire Ins. Co. v. Guman Bros. Farm*, 73 Ohio St.3d 107, 108, 652 N.E.2d 684 (1995).

Some Ohio courts that have ruled on the direct physical loss issue in coronavirus cases invoke these general principles. But despite this, they do not similarly interpret the direct physical loss language. Some cases reach diametrically opposed legal conclusions based on the same general principles. Compare *Henderson Rd. Restaurant Sys., Inc. v. Zurich Am. Ins. Co.*, N.D. Ohio No. 1:20 CV 1239, 2021 WL 168422 (Jan. 19, 2021)<sup>7</sup> with *Family Tacos, LLC v. Auto Owners Insurance Co.*, N.D. Ohio No. 5:20-CV-01922 (Feb. 17, 2021)<sup>8</sup> and *Santo's Italian Café LLC v. Acuity Ins. Co.*, N.D. Ohio No. 1:20-cv-01192, 2020 WL 7490095 (Dec. 21, 2020).

**B. The Most Applicable Ohio Precedent Is The Court of Appeals Decision In *Mastellone***

The only Ohio case that appears to address the issues here is the Eighth District Court of Appeals' decision in *Mastellone v. Lightning Rod Mutual Insurance Co.*, 8th Dist. No. 88783, 175 Ohio App.3d 23, 2008-Ohio-311, 884 N.E.2d 1130. *Mastellone* involves a range of claims under a property insurance policy. *Mastellone* at ¶¶ 1, 56. One of those claims involved exterior mold staining on a building's siding. *Id.* at ¶ 56. In addressing this claim, *Mastellone* starts with the policy language at issue: "[The insurer] agreed to insure against direct loss to property 'only if that loss is a physical loss to property.'" *Id.* at ¶ 60. In addressing the meaning of this language, *Mastellone* turns to *Couch on Insurance*, a leading insurance law treatise:

The requirement that the loss be 'physical,' given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.

*Id.* at ¶ 61 (quoting 10A *Couch on Insurance* (3d Ed.1998), Section 148:46). *Mastellone* holds that "the staining did not rise to the level of 'physical injury' to the siding, because it was only

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<sup>7</sup> *Henderson Road* certifies its decision for immediate appeal to the U.S. Sixth Circuit Court of Appeals. *Henderson Rd.* at \*17.

<sup>8</sup> A copy of *Family Tacos* is Exhibit F in the Appendix.

temporary and did not affect the structure of the wood.” *Mastellone* at ¶ 63; *see also* *Mama Jo’s, Inc. v. Sparta Ins. Co.*, S.D. Fla. No. 17-cv-23362-KMM, 2018 WL 3412974, at \*9, *aff’d*, 823 Fed.Appx. 868 (11th Cir. 2020). Indeed, the exterior mold could be cleaned from the siding, making it a temporary condition. Because the wood was not “structurally altered,” there was no direct physical loss and thus no coverage. *Mastellone* at ¶ 63. *Mastellone*’s holding is supported by *Family Tacos*, No. 5:20-cv-01922 at PageID# 767–769, *Santo’s*, 2020 WL 7490095, at \*9 and nearly 150 cases nationally. Among these many cases are *Promotional Headwear International, Inc. v. The Cincinnati Insurance Co.*, D.Kan. \_\_\_ F.Supp.3d \_\_\_, 2020 WL 7078735 (Dec. 3, 2020); *Topper Salon and Health Spa, Inc. v. Travelers Property Casualty Co. of America*, E.D.Pa. \_\_\_ F.Supp.3d \_\_\_, 2020 WL 7024287 (Nov. 30, 2020); *Real Hospitality, LLC v. Travelers Casualty Insurance Co. of America*, S.D.Miss. \_\_\_ F.Supp.3d \_\_\_, 2020 WL 6503405 (Nov. 4, 2020); *Uncork & Create v. The Cincinnati Insurance Co.*, S.D.W.Va. \_\_\_ F.Supp.3d \_\_\_, 2020 WL 6436948 (Nov. 2, 2020); and *Henry’s Louisiana Grill, Inc. v. Allied Insurance Co. of America*, N.D.Ga. \_\_\_ F.Supp.3d \_\_\_, 2020 WL 5938755 (Oct. 6, 2020).

Of course, *Mastellone* is only binding within the Eighth Appellate District. Nevertheless, it should at least be relevant, if not persuasive, throughout the state. Still, some trial courts ruling on dismissal motions have ignored *Mastellone*, making no mention of it. *See, e.g., Chapparells Inc. v. The Cincinnati Ins. Co.*, Summit C.P. No. CV-2020-06-1704, 2020 WL 7258117 (Oct. 21, 2020); *Francois Inc. v. The Cincinnati Ins. Co.*, Lorain C.P. No. 20CV201416 (Sept. 29, 2020);<sup>9</sup> *Queen’s Tower Restaurant Inc. v. Cincinnati Financial Corp.*, Hamilton C.P. No. A2001747, 2021 WL 456378 (Jan. 27, 2021); *Johansing Family Ents. LLC v. Cincinnati Specialty Underwriters Ins.*, Hamilton C.P. No. A2002349, 2021 WL 145416 (Jan. 7, 2021).

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<sup>9</sup> A copy of *Francois* is Exhibit G in the Appendix.

Other decisions address *Mastellone*, but fundamentally differ about its meaning. For example, *Santo's* extensively discusses *Mastellone*. It describes how other cases applying Ohio law in analogous circumstances rely on and follow *Mastellone*. *Santo's*, 2020 WL 7490095, at\*8–\*9 (citing *Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 Fed.Appx. 569 (6th Cir.2012) and *Ohio Cas. Ins. Co. v. Hanna*, 9th Dist. Medina No. 07CA0016-M, 2008-Ohio-3203)); *see also Family Tacos*, No. 5:20-cv-01922 at PageID# 768. *Santo's* follows *Mastellone* and concludes that direct physical loss requires structural alteration. Therefore, *Santo's* holds that there was no coverage for *Santo's* coronavirus-based Business Income coverage claim. *Santo's*, 2020 WL 7490095, at \*12.

Sandwiched between *Santo's* and *Family Tacos*, the same court issued *Henderson Road*, another coronavirus-based claim for coverage. *See Henderson Rd.*, 2021 WL 168422, at \*1. *Henderson Road* refused to follow *Mastellone*, reaching the opposite result from *Family Tacos* and *Santo's*. *Id.* at \*8, \*10. On a different note, *Sylvester & Sylvester, Inc. v. State Auto. Mut. Ins. Co.*, Stark C.P. No. 2020 CV 00817, 2021 WL 137006 (Jan. 7, 2021), is a coronavirus coverage decision that also acknowledges *Mastellone*. However, *Sylvester* neither follows *Mastellone* nor rejects it. *Sylvester* at \*3.

**C. This Court's Guidance Would Be Beneficial To Both Insurers and Insureds**

**1. Guidance would be beneficial because *Mastellone* has not resolved the issue**

*Mastellone* is well-reasoned and should be followed by Ohio courts. However, Ohio courts are inconsistent in their application of the case. Some follow *Mastellone*. Some refuse to follow *Mastellone*. Others simply ignore it. Thus, *Mastellone* is not supplying the level of certainty in the law that could be achieved with a ruling from this Court.



**2. Guidance would be beneficial because the Court's general principles have not resolved the issue here**

Like this case, the numerous coronavirus coverage cases pending in Ohio courts involve allegations that the presence of the virus, either on the insured's premises or generally in society, constitute direct physical loss or damage to property. (Order of Certification at PageID # 1009). They also often involve allegations that the government orders regulating Ohio businesses in order to slow the spread of the disease cause direct physical loss or damage. Like the complaint here, these complaints do not allege any actual physical alteration or structural damage to property.<sup>10</sup> Thus, this case presents the same core legal issue as is present generally in state and federal cases in Ohio.<sup>11</sup>

Again, while this Court has issued decisions establishing the general contours of Ohio insurance law, it has not ruled on whether policy language like Cincinnati's covers purely financial loss from a loss of use of the business operated at a premises. Accordingly, Ohio state and federal courts have been left to resolve cases based on general principles of Ohio law, reaching different conclusions. This situation is appropriate for certified questions to be addressed by this Court.

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<sup>10</sup> This description also applies to innumerable cases nationally. (Order of Certification at PageID # 1009).

<sup>11</sup> In the event that a case or cases persist beyond the resolution of this core, legal issue, a variety of inherently individual issues will follow. This is because, once discovery begins, these cases will focus on the individual plaintiffs and discovery about their individual experiences. In that event, there will be different types of insureds' businesses; different civil restrictions for different types of businesses; differences in whether insureds and/or their employees were deemed essential businesses and/or workers; different facts regarding whether the virus was ever present on an insured premises; different facts regarding each insured's, insured's employees' and customers' alleged exposure to the virus; different alleged pre-pandemic financial experience and alleged financial loss experience for each insured; different facts regarding government payments and loans received by each insured; different facts concerning partial or complete closure of each insured's business; different facts regarding when full business was resumed; different facts regarding why some insureds, such as restaurants, closed even though they were allowed to remain open; different facts regarding policy negotiation and issuance; different facts regarding whether employees were retained or terminated; different facts regarding whether access to the insured premises was allowed; and different allegations concerning bad faith.

*Scott v. Bank One Trust Co., N.A.*, 62 Ohio St.3d 39, 42–43, 577 N.E.2d 1077 (1991); *Gasco v. Global Fitness Holdings LLC*, 918 F.Supp.2d 708, 713 (S.D. Ohio 2013). A ruling on the meaning of the policy language here would determine the applicable law for dispositive motions. Those motions could be for dismissal, on the pleadings or summary judgment. Whatever the context, a determination of the law would be beneficial because it would settle the direct physical loss issue for all Ohioans.

**3. Guidance would be beneficial because it could streamline the process, leading to a more efficient resolution of these cases**

Nationally, a large number of these cases have been resolved in favor of insurers on motions to dismiss. This is because, like *Neuro-Communication*, policyholders do not allege any physical alteration or structural damage to property. Given the number of cases and the stakes for both insurers and insureds, it is a near certainty that at least one of these cases will reach this Court and the law will need to be decided. Should the Court determine that *Mastellone* is correct and physical alteration is necessary to have direct physical loss to property, that determination would likely truncate many cases to the motion to dismiss stage. At the very least, the Court’s guidance would likely affect summary judgment decisions state-wide. The result would be heightened efficiency in the disposition of these cases. Thus, acceptance now of the certified question could curtail the use of the courts’ and parties’ resources in the various cases. All Ohioans share an interest in efficiency and broad savings in time and expense.

**4. Guidance would be beneficial because it would resolve inconsistencies in decisions**

As established, there are already inconsistent rulings on the issue before the Court, and in all likelihood there are more inconsistent rulings to come. Answering the certified question now would avoid the continuing development of inconsistent rulings which “threaten to undermine

application of the law to similarly situated litigants.” (Order of Certification at PageID # 1009). Accordingly, this certification should be accepted.

**5. This Court should have the first opportunity to decide this question of Ohio law**

Like *Neuro-Communication*, a number of these cases are in federal court. A federal court sitting in diversity is tasked with predicting the legal determinations that this Court would make. *OneBeacon Am. Ins. Co. v. Am. Motorists Ins. Co.*, 679 F.3d 456, 460 (6th Cir.2012). Given this, it would be beneficial for this Court to rule, settling the issue for the federal courts. In this way, the federal courts would know this Court’s views, rather than being left to predict them. This is particularly true given the fact that there are many federal cases outside of Ohio that seek certification of nationwide classes. This creates the specter of federal courts outside of Ohio making Ohio law predictions.

**IV. CONCLUSION**

Coronavirus coverage litigation like that here has already consumed multiple litigants and courts for months. A body of jurisprudence is building nationally, and in Ohio. The core issue here, the meaning of the phrase “direct” “accidental physical loss or accidental physical damage” in the context of a property insurance policy, will govern scores of cases. Cincinnati joins Judge Pearson in seeking this Court’s guidance regarding an Ohio legal issue.

Respectfully submitted,

**DEFENDANTS, THE CINCINNATI  
INSURANCE COMPANY, THE CINCINNATI  
CASUALTY COMPANY, AND THE  
CINCINNATI INDEMNITY COMPANY**

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing was sent by electronic mail to all counsel of record at the following email addresses on the 17th day of February, 2021:

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/s/Daniel M. Kavouras (0089773)  
Counsel for Defendants/Respondents

# Appendix

# Exhibit A

Attest: Sandy Opacich, Clerk  
U.S. District Court  
Northern District of Ohio

PEARSON, J.

By: *[Signature]*  
Deputy Clerk

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

NEURO-COMMUNICATION SERVICES, )  
INC., etc., )

Plaintiffs, )

v. )

THE CINCINNATI INSURANCE )  
COMPANY; THE CINCINNATI )  
CASUALTY COMPANY; AND THE )  
CINCINNATI INDEMNITY COMPANY, )

Defendants. )

21-0130

CASE NO. 4:20-CV-1275

JUDGE BENITA Y. PEARSON

[Resolving ECF No. 10]

**ORDER OF CERTIFICATION TO THE SUPREME COURT OF OHIO**

Pursuant to Section 9 of the Rules of Practice of the Supreme Court of Ohio, the United States District Court for the Northern District of Ohio, Eastern Division, hereby certifies a question of state law to the Supreme Court of Ohio. No controlling precedent of the Supreme Court of Ohio answers this question. For reasons explained in more detail below, the Court requests that the Supreme Court of Ohio answer the certified question of state law asked in this Certification Order.

**I. Name of the Case**

The name of the case is *Neuro-Communication Services, Inc. v. Cincinnati Insurance Company*, No. 4:20-CV-1275 (N.D. Ohio filed June 10, 2020).

RECEIVED  
JAN 28 2021  
CLERK OF COURT  
SUPREME COURT OF OHIO

FILED  
JAN 28 2021  
CLERK OF COURT  
SUPREME COURT OF OHIO



(4:20-CV-1275)

**II. The Certified Question of Law**

Does the general presence in the community, or on surfaces at a premises, of the novel coronavirus known as SARS-CoV-2, constitute direct physical loss or damage to property; or does the presence on a premises of a person infected with COVID-19 constitute direct physical loss or damage to property at that premises?

**III. Statement of Facts**

**A. The Facts and Procedural History of the Instant Case**

Plaintiff purchased an “all-risk” CinciPak Insurance Policy from Defendants. The policy covers “direct ‘loss’ to Covered Property at the ‘premises’ caused by or resulting from any Covered Cause of Loss.” A Covered Cause of Loss is defined as a “direct ‘loss’” except those that are expressly and specifically excluded or limited. A “loss” is defined as “accidental physical loss or accidental physical damage.” The policy also provides civil authority coverage for business income interruption caused by a Covered Cause of Loss to property other than Plaintiff’s which results in a civil authority order prohibiting access to Plaintiff’s premises. The policy does not contain any specific exclusion for losses caused by viruses or pandemics.

As a result of the COVID-19 pandemic and civil authority orders issued in response, Plaintiff ceased almost all of its operations on March 23, 2020, and resumed some operations on May 4, 2020, leading to significant business income interruptions. Plaintiff submitted a claim to Defendants on March 23, 2020. Defendants denied the claim, arguing, “[t]he claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss.”

(4:20-CV-1275)

Plaintiff then filed the instant suit, seeking to certify a nationwide class of insureds holding similar policies who have also been denied coverage for losses related to the pandemic.

**B. This Is an Important Question of State Law Implicating Many Cases**

Dozens, if not hundreds of cases seeking coverage for losses related to the pandemic under policies similar or identical to that at issue in this case have been filed in both federal and state courts in Ohio. These cases have been filed against the Defendants in this case and against other insurers who offer similar products. As these cases wend through the various court systems, differing interpretations of Ohio contract law by different courts threaten to undermine the uniform application of that law to similarly situated litigants.

**C. The Supreme Court of Ohio Should Have The First Opportunity To Decide This Question Of State Law**

Pursuant to Ohio S. Ct. Prac. R. 9.01(A), the Rule may be “invoked if the certifying court, in a proceeding before it, issues a certification order finding there is a question of Ohio law that may be determinative of the proceeding and for which there is no controlling precedent in the decisions of this Supreme Court.” The decision to certify is within the sound discretion of this federal Court, and is most beneficial when there is a novel question of state law and no guidance from state courts. Gascho v. Global Fitness Holdings, LLC, 918 F. Supp. 2d 708, 713 (S.D. Ohio 2013). The Supreme Courts of Ohio and the United States have each instructed on the virtues of certification. “The state’s sovereignty is unquestionably implicated when federal courts construe state law.” Scott v. Bank One Trust Co., N.A., 577 N.E.2d 1077, 1080 (Ohio 1991). “[C]ertification of novel or unsettled questions of state law for authoritative answers by a

(4:20-CV-1275)

State's highest court . . . may save 'time, energy, and resources and hel[p] build a cooperative judicial federalism.'" Arizonans for Official English v. Arizona, 520 U.S. 43, 77 (1997) (quoting Lehman Bros. v. Schein, 416 U.S. 386, 391 (1974)).

As noted above, dozens, if not hundreds of cases implicating the question certified here are currently making their way through both the state and federal courts in Ohio. The certification procedure invoked here will allow the Supreme Court of Ohio to decide these questions and bring uniformity to the application of state law to these policies. Accordingly, this federal Court defers the opportunity to address this unresolved question of Ohio law to the Supreme Court of Ohio.

#### **IV. The Parties**

Neuro-Communication Services, Inc. — Plaintiff  
755 Boardman Canfield Road, Ste. C1  
Boardman, Ohio 44512

Cincinnati Insurance Company — Defendant  
6200 S. Gilmore Road  
Fairfield, Ohio 45014

Cincinnati Casualty Company — Defendant  
6200 S. Gilmore Road  
Fairfield, Ohio 45014

Cincinnati Indemnity Company — Defendant  
6200 S. Gilmore Road  
Fairfield, Ohio 45014

#### **V. Counsel for the Parties**

Plaintiff is represented by:

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(4:20-CV-1275)

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(4:20-CV-1275)

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**VI. Designation of Moving Party**

The Court designates Defendant Cincinnati Insurance Company as the moving party.

This designation is made because Defendant moved for certification.

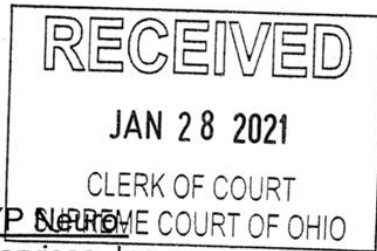
**INSTRUCTIONS TO THE CLERK**

In accordance with Ohio S.Ct.Prac.R. 9.03(A), the Clerk of the United States District Court for the Northern District of Ohio is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service.

IT IS SO ORDERED.

January 19, 2021  
Date

/s/ Benita Y. Pearson  
Benita Y. Pearson  
United States District Judge

**Other Orders**

4:20-cv-01275-BYP Neuro-Communication Services, Inc. v. Cincinnati Insurance Company et al

**U.S. District Court****Northern District of Ohio****Notice of Electronic Filing**

The following transaction was entered on 1/19/2021 at 11:18 AM EST and filed on 1/19/2021

**Case Name:** Neuro-Communication Services, Inc. v. Cincinnati Insurance Company et al

**Case Number:** 4:20-cv-01275-BYP

**Filer:**

**Document Number:** 43

**Docket Text:**

**Order of Certification to the Supreme Court of Ohio.** In accordance with Ohio S.Ct.Prac.R. 9.03(A), the Clerk of the United States District Court for the Northern District of Ohio is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service. Judge Benita Y. Pearson on 1/19/2021. (JLG)

**4:20-cv-01275-BYP Notice has been electronically mailed to:**

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**U.S. District Court  
Northern District of Ohio (Youngstown)  
CIVIL DOCKET FOR CASE #: 4:20-cv-01275-BYP**

Neuro-Communication Services, Inc. v. Cincinnati Insurance Company et al	Date Filed: 06/10/2020
Assigned to: Judge Benita Y. Pearson	Jury Demand: Plaintiff
Cause: 28:1332 Diversity-Breach of Contract	Nature of Suit: 110 Insurance
	Jurisdiction: Diversity

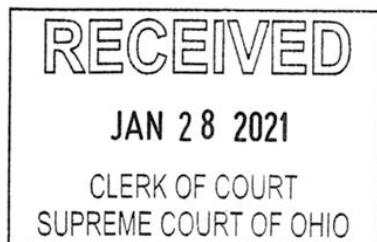
**Plaintiff**

**Neuro-Communication Services, Inc.**  
*Individually and on behalf of all others  
similarly situated  
doing business as  
Hearing Innovations*

represented by **Shanon J. Carson**  
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**Laurence J. Tooth**

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**Marisa A. Pocci**

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**TERMINATED: 09/28/2020**

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Email All Attorneys

Email All Attorneys and Additional Recipients

Date Filed	#	Docket Text
06/10/2020	<u>1</u>	Class Action <b>Complaint</b> with jury demand against All Defendants. Filing fee paid \$ 400, Receipt number AOHND-10033864. Filed by Neuro-Communication Services, Inc. (Attachments: # <u>1</u> Exhibit A Neuro-Communication Service all risk CinciPak Policy, # <u>2</u> Exhibit B Denial of Insurance Claim, # <u>3</u> Civil Cover Sheet, # <u>4</u> Summons to be issued to The Cincinnati Insurance Company, # <u>5</u> Summons to be issued to The Cincinnati Casualty Company, # <u>6</u> Summons to be issued to The Cincinnati Indemnity Company) (Coleman, Gregory) (Entered: 06/10/2020)
06/10/2020	<u>2</u>	<b>Motion</b> for attorney Gregory F. Coleman to Appear Pro Hac Vice. Filing fee \$ 120, receipt number AOHND-10033886, filed by Plaintiff Neuro-Communication Services, Inc. d/b/a Hearing Innovations. (Attachments: # <u>1</u> Exhibit A- Certificate of Good Standing)(Coleman, Gregory) (Entered: 06/10/2020)
06/11/2020		Judge Benita Y. Pearson assigned to case. (S,Ke) (Entered: 06/11/2020)
06/11/2020		Random Assignment of Magistrate Judge pursuant to Local Rule 3.1. In the event of a referral, case will be assigned to Magistrate Judge Kathleen B. Burke. (S,Ke) (Entered: 06/11/2020)
06/11/2020	<u>3</u>	Original Summons and Magistrate Consent Form issued to counsel for service upon All Defendants. (Attachments: # <u>1</u> Magistrate Consent Form) (S,Ke) (Entered: 06/11/2020)
06/12/2020	<u>4</u>	<b>Order</b> granting <u>2</u> Motion for Appearance <i>Pro Hac Vice</i> by Attorney Gregory F. Coleman for Plaintiff Neuro-Communications Services, Inc. Local Rule 5.1(c) requires that attorneys register for NextGen CM/ECF and file and receive all documents electronically. NextGen CM/ECF registration can be done online at www.pacer.gov. Login with your PACER credentials, go to the Maintenance tab, click Attorney Admissions/E-File Registration, select Ohio Northern District Court and then select <i>Pro Hac Vice</i> . If you were previously granted <i>pro hac vice</i> status and are already registered to file electronically, it is not necessary to register again. Judge Benita Y. Pearson on 6/12/2020. (JLG) (Entered: 06/12/2020)
06/16/2020		Service by Clerk. Summons and Complaint addressed to Cincinnati Casualty Company (7009 2820 0002 2082 6428), Cincinnati Indemnity Company (7009 2820 0002 2082 6435), Cincinnati Insurance Company (7009 2820 0002 2082 2082 6442) placed in U.S. Mail. Type of service: certified mail. (M,R) (Entered: 06/16/2020)
06/22/2020	<u>5</u>	Return of Service by Clerk by certified mail executed upon Cincinnati Casualty Company on 6/19/2020, no delivery date on green card, date obtained from U.S. Postal Service website; Cincinnati Indemnity Company on 6/19/2020; Cincinnati Insurance Company on 6/19/2020, filed on behalf of Neuro-Communication Services, Inc. Related document(s) <u>3</u> . (S,Ke)

		(Entered: 06/22/2020)
06/29/2020	<u>6</u>	Attorney Appearance by Marisa A. Pocci filed by on behalf of All Defendants. (Pocci, Marisa) (Entered: 06/29/2020)
07/10/2020	<u>7</u>	Attorney Appearance by Michael K. Farrell , <i>Daniel M. Kavouras, and Rodger L. Eckelberry</i> filed by on behalf of Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Farrell, Michael) (Entered: 07/10/2020)
07/10/2020	<u>8</u>	Stipulated <b>Motion</b> for extension of time until 8/3/2020 to answer <i>Plaintiff's Complaint</i> filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. Related document(s) <u>1</u> . (Farrell, Michael) (Entered: 07/10/2020)
07/13/2020		<b>Order</b> [non-document] granting <u>8</u> Defendants' Motion for Extension of Time until 8/3/2020 to Answer Complaint. Judge Benita Y. Pearson on 7/13/2020. (S,Ke) (Entered: 07/13/2020)
08/03/2020	<del>8</del> <u>9</u>	<b>Motion</b> to dismiss for failure to state a claim filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. Related document(s) <u>1</u> . (Attachments: # <u>1</u> Brief in Support, # <u>2</u> Exhibit Ex A - CDC Guidelines, # <u>3</u> Exhibit Ex B - Gavrilides Order and Transcript, # <u>4</u> Exhibit Ex C - Social Life v. Sentinel Transcript, # <u>5</u> Exhibit Ex D - 2006 ISO Circular)(Farrell, Michael) (Entered: 08/03/2020)
08/03/2020	<del>9</del> <u>10</u>	<b>Motion</b> to Certify Questions to the Ohio Supreme Court filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Attachments: # <u>1</u> Brief in Support Memorandum in Support) (Farrell, Michael) (Entered: 08/03/2020)
08/10/2020	<u>11</u>	Consent <b>Motion</b> for extension of time until September 2, 2020 to file response/reply to <u>10</u> <b>Motion</b> to Certify Questions to the Ohio Supreme Court filed by Plaintiff Neuro-Communication Services, Inc.. Related document(s) <u>10</u> . (Attachments: # <u>1</u> Proposed Order [Proposed] Order)(Coleman, Greg) (Entered: 08/10/2020)
08/13/2020	<u>12</u>	<b>Order</b> granting Plaintiff's <u>11</u> Consent Motion for Extension of Time until 9/2/2020 to File Response/Reply to Defendants' <u>10</u> Motion to Certify Questions to the Ohio Supreme Court. Judge Benita Y. Pearson on 8/13/2020. (JLG) (Entered: 08/13/2020)
08/13/2020	<u>13</u>	<b>Order</b> Pursuant to the Court's Standing Order, Defendants must "file an answer to the complaint regardless of whether they have filed or plan to file a motion to dismiss. The filing of a motion to dismiss shall not delay the time in which the party must answer the complaint." No later than 10 days from the date of this Order, Defendants shall file answers (or a joint answer) to the Complaint. Judge Benita Y. Pearson on 8/13/2020. (JLG) (Entered: 08/13/2020)
08/21/2020	<u>14</u>	<b>Answer</b> to <u>1</u> Complaint,, filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Farrell, Michael) (Entered: 08/21/2020)

08/27/2020	<u>15</u>	Unopposed <b>Motion</b> for extension of time until September 16, 2020 to file response/reply to <u>10 Motion</u> to Certify Questions to the Ohio Supreme Court, <u>9 Motion</u> to dismiss for failure to state a claim filed by Plaintiff Neuro-Communication Services, Inc. Related document(s) <u>10</u> , <u>9</u> . (Attachments: # <u>1 Proposed Order</u> )(Coleman, Greg) (Entered: 08/27/2020)
08/28/2020	<u>16</u>	<b>Order</b> granting Plaintiff's Motion for Extension of Time Related to Motion to Dismiss and Motion to Certify. ECF No. <u>15</u> . Plaintiff shall file its Responses to Defendants' Motion to Dismiss (ECF No. <u>9</u> ) and Motion to Certify Questions to the Supreme Court of Ohio (ECF No. <u>10</u> ) on or before 9/16/2020. Judge Benita Y. Pearson on 8/28/2020. (JLG) (Entered: 08/28/2020)
09/10/2020	<u>17</u>	Attorney Appearance by Laurence J. Tooth filed by on behalf of All Defendants. (Tooth, Laurence) (Entered: 09/10/2020)
09/11/2020	<u>18</u>	Attorney Appearance by Paul G. Roche filed by on behalf of Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Roche, Paul) (Entered: 09/11/2020)
09/16/2020	<u>19</u>	<b>Motion</b> for attorney Shanon J. Carson to Appear Pro Hac Vice. Filing fee \$ 120, receipt number AOHND-10269877, filed by Plaintiff Neuro-Communication Services, Inc.. (Attachments: # <u>1 Affidavit in Support of Motion</u> )(Carson, Shanon) (Entered: 09/16/2020)
09/16/2020	<u>20</u>	<b>Motion</b> for attorney Y. Michael Twersky to Appear Pro Hac Vice. Filing fee \$ 120, receipt number AOHND-10270521, filed by Plaintiff Neuro-Communication Services, Inc.. (Attachments: # <u>1 Affidavit in Support of Motion</u> )(Carson, Shanon) (Entered: 09/16/2020)
09/16/2020	<u>21</u>	<b>Opposition</b> to <u>10 Motion</u> to Certify Questions to the Ohio Supreme Court filed by Neuro-Communication Services, Inc.. (Coleman, Greg) (Entered: 09/16/2020)
09/16/2020	<u>22</u>	<b>Opposition</b> to <u>9 Motion</u> to dismiss for failure to state a claim filed by Neuro-Communication Services, Inc.. (Coleman, Greg) (Entered: 09/16/2020)
09/17/2020	<u>23</u>	<b>Order</b> granting <u>19 Motion</u> for Appearance <i>Pro Hac Vice</i> by Attorney Shanon J. Carson for Plaintiff Neuro-Communication Services, Inc. Local Rule 5.1(c) requires that attorneys register for NextGen CM/ECF and file and receive all documents electronically. NextGen CM/ECF registration can be done online at www.pacer.gov. Login with your PACER credentials, go to the Maintenance tab, click Attorney Admissions/E-File Registration, select Ohio Northern District Court and then select <i>Pro Hac Vice</i> . If you were previously granted <i>pro hac vice</i> status and are already registered to file electronically, it is not necessary to register again. Judge Benita Y. Pearson on 9/17/2020. (JLG) (Entered: 09/17/2020)
09/17/2020	<u>24</u>	<b>Order</b> granting <u>20 Motion</u> for Appearance <i>Pro Hac Vice</i> by Attorney Y. Michael Twersky for Plaintiff Neuro-Communication Services, Inc. Local Rule 5.1(c) requires that attorneys register for NextGen CM/ECF and file and receive all documents electronically. NextGen CM/ECF registration can be done online at www.pacer.gov. Login with your PACER credentials, go to the

		Maintenance tab, click Attorney Admissions/E-File Registration, select Ohio Northern District Court and then select <i>Pro Hac Vice</i> . If you were previously granted <i>pro hac vice</i> status and are already registered to file electronically, it is not necessary to register again. Judge Benita Y. Pearson on 9/17/2020. (JLG) (Entered: 09/17/2020)
09/18/2020	<u>25</u>	<b>Motion</b> by Marisa A. Pocci to withdraw as attorney filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Tooth, Laurence) (Entered: 09/18/2020)
09/21/2020	<u>26</u>	Stipulated <b>Motion</b> for extension of time until 9/30/2020 to file response/reply to <u>10 Motion</u> to Certify Questions to the Ohio Supreme Court filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. Related document(s) <u>10</u> . (Farrell, Michael) (Entered: 09/21/2020)
09/23/2020	<u>27</u>	<b>Order</b> Defendants' Agreed Motion for Extension of Time to File Reply in Support of Motion to Certify Questions to the Ohio Supreme Court, ECF No. <u>26</u> , is granted. Defendants shall file their Reply to Plaintiff's Response in Opposition to Defendants' Motion to Certify Questions of Law to the Supreme Court of Ohio (ECF No. <u>21</u> ) on or before 9/30/2020. Judge Benita Y. Pearson on 9/23/2020. (JLG) (Entered: 09/23/2020)
09/28/2020	<u>28</u>	<b>Order</b> granting Defendants' Motion to Withdraw Appearance of Attorney Marisa A. Pocci. ECF No. <u>25</u> . Judge Benita Y. Pearson on 9/28/2020. (JLG) (Entered: 09/28/2020)
09/30/2020	<u>29</u>	<b>Reply</b> in support of <u>9 Motion</u> to dismiss for failure to state a claim filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Attachments: # <u>1</u> Exhibit Court Order-09/29/2020) (Roche, Paul) (Entered: 09/30/2020)
09/30/2020	<u>30</u>	<b>Reply</b> in support of <u>10 Motion</u> to Certify Questions to the Ohio Supreme Court filed by All Defendants. (Farrell, Michael) (Entered: 09/30/2020)
10/29/2020	<u>31</u>	Notice of Supplemental Authority filed by All Plaintiffs. (Attachments: # <u>1</u> Exhibit Ex. A - September 29, 2020, Order, Francois Inc. v. The Cincinnati Insurance Company, Case No. 20CV201416, # <u>2</u> Exhibit Ex. B - October 7, 2020 Order Denying The Rule 12(b)(6) Motion to Dismiss, North State Deli, LLC, et al. vs. Cincinnati Inc. Co., No. 20-CVS-025698, # <u>3</u> Exhibit Ex. C - October 7, 2020, Order Granting Plaintiffs' Rule 56 Motion for Partial Summary Judgment, North State Deli, LLC, et al. vs. Cincinnati Inc. Co., No. 20-CVS-025698)Related document(s) <u>22</u> .(Coleman, Greg) (Entered: 10/29/2020)
11/10/2020	<u>32</u>	Notice of Supplemental Authority and Response to Plaintiff's Notice of Supplemental Authority filed by All Defendants. (Attachments: # <u>1</u> Exhibit A - Mac Prop Decision, # <u>2</u> Exhibit B - FAFB Decision)Related document(s) <u>31</u> .(Farrell, Michael) (Entered: 11/10/2020)
11/18/2020	<u>33</u>	<b>Case Management Conference Scheduling Order</b> with Telephonic Case Management Conference to be held on 1/04/2021 at 11:00 a.m. before Judge Benita Y. Pearson. Counsel for Plaintiff shall set up the conference call and

		contact Chambers directly at (330) 884-7435, with all participants on the line. The Court requires personal participation of parties at the Case Management Conference, even when the conference is telephonic. Judge Benita Y. Pearson on 11/18/2020. (Attachments: # <u>1</u> Attachment No. 1, # <u>2</u> Attachment No. 2, # <u>3</u> Attachment No. 3, # <u>4</u> Attachment No. 4, # <u>5</u> Attachment No. 5)(S,Ke) (Entered: 11/18/2020)
12/07/2020	<u>34</u>	Defendants' Second Notice of Supplemental Authority in Support of Their Motion to Dismiss filed by All Defendants. (Attachments: # <u>1</u> Exhibit A - El Novillo v. Lloyds, # <u>2</u> Exhibit B - Zwillow v Lexington, # <u>3</u> Exhibit C - Whiskey River v Illinois Cas Co, # <u>4</u> Exhibit D - BBMS v. Continental Cas Co, # <u>5</u> Exhibit E - Selane v Continental Cas Co, # <u>6</u> Exhibit F - Long Affair, # <u>7</u> Exhibit G - Goodwill v. PIIC)(Farrell, Michael) (Entered: 12/07/2020)
12/21/2020	<u>35</u>	Notice of Service of Rule 26(a)(1) Initial Disclosures filed by Neuro-Communication Services, Inc.. (Twersky, Y.) (Entered: 12/21/2020)
12/21/2020	<u>36</u>	Notice of Service of Defendants' Rule 26(a) Initial Disclosures filed by All Defendants. (Farrell, Michael) (Entered: 12/21/2020)
12/22/2020	<u>37</u>	Supplement to <b>Motion</b> to dismiss for failure to state a claim - Defendants' Third Notice of Supplemental Authority, filed by All Defendants. Related document(s) <u>9</u> . (Attachments: # <u>1</u> Exhibit A - Santo's v. Acuity Insurance, # <u>2</u> Exhibit B - Catlin Dental v. Cincinnati, # <u>3</u> Exhibit C - Michael Cetta Inc v Admiral Indemnity Company., # <u>4</u> Exhibit D - Richard Kirsch, DDS v. Aspen Am. Ins. Co., # <u>5</u> Exhibit E - Terry Black v State Auto, # <u>6</u> Exhibit F - SA Palm Beach LLC Plaintiff v Certain Underwriters at Lloyds London et al Defendants, # <u>7</u> Exhibit G - Palmer Holdings and Investments Inc v Integrity Insurance Co, # <u>8</u> Exhibit H - Kessler Dental Associates PC v Dentists Insurance Company, # <u>9</u> Exhibit I - Sultan Hajer dba Rug Outlet Plaintiff v Ohio Security Insurance Company Defendant, # <u>10</u> Exhibit J - 10012 Holdings Inc v. Sentinel Ins Co., # <u>11</u> Exhibit K - Boulevard c. Fireman's Fund, # <u>12</u> Exhibit L - Fountain v. Citizens Ins Co of Am)(Farrell, Michael) (Entered: 12/22/2020)
12/30/2020	<u>38</u>	Report of Parties' Planning Meeting <i>Discovery Plan</i> - parties do not consent to this case being assigned to the magistrate judge, filed by Neuro-Communication Services, Inc.. Related document(s) <u>33</u> .(Twersky, Y.) (Entered: 12/30/2020)
01/04/2021	<del>1</del> <u>39</u>	Stipulated <b>Motion</b> for Protective Order with Acknowledgement and Agreement to be Bound filed by Cincinnati Casualty Company, Cincinnati Indemnity Company, Cincinnati Insurance Company. (Farrell, Michael) Modified on 1/7/2021 (S,Ke). (Entered: 01/04/2021)
01/04/2021	<u>40</u>	<b>Motion</b> for attorney William A. Ladnier to Appear Pro Hac Vice. Filing fee \$ 120, receipt number AOHNDC-10538946, filed by Plaintiff Neuro-Communication Services, Inc. (Attachments: # <u>1</u> Exhibit A-Certificates of Good Standing)(Coleman, Greg - s/William A. Ladnier) Modified text on 1/4/2021 (M,TL). (Entered: 01/04/2021)

01/04/2021		<p><b>Minutes of proceedings</b> [non-document] before Judge Benita Y. Pearson. Telephonic Case Management Conference held on 1/4/2021. Present were Attorney Y. Michael Twersky as counsel for Plaintiffs; and Attorneys Daniel M. Kavouras, Michael K. Farrell, and Paul G. Roche as counsel for Defendants. Also present were Dr. Audra Branham as party representative for Plaintiffs; and Chad Douady as party representative for Defendants. The parties and the Court discussed the pending Motions. The Court indicated it would grant Defendants' Motion to Certify Questions to the Ohio Supreme Court, and ordered the parties to work together to reach a stipulation regarding the specific language of the question or questions to be certified. The parties shall file a single document containing their stipulation as to the specific language of the question or questions to be certified, or, if no stipulation can be reached, their competing proposals, on or before 12:00 p.m. Noon on 1/11/2021. A separate order will issue. (Court Reporter: None); Time: 24 Minutes. (JLG) (Entered: 01/04/2021)</p>
01/04/2021	<u>41</u>	<p><b>Order</b> granting <u>40</u> Motion for Appearance <i>Pro Hac Vice</i> by Attorney William A. Ladnier for Plaintiff Neuro-Communication Services, Inc. Local Rule 5.1(c) requires that attorneys register for NextGen CM/ECF and file and receive all documents electronically. NextGen CM/ECF registration can be done online at <a href="http://www.pacer.gov">www.pacer.gov</a>. Login with your PACER credentials, go to the Maintenance tab, click Attorney Admissions/E-File Registration, select Ohio Northern District Court and then select <i>Pro Hac Vice</i>. If you were previously granted <i>pro hac vice</i> status and are already registered to file electronically, it is not necessary to register again. Judge Benita Y. Pearson on 1/4/2021. (JLG) (Entered: 01/04/2021)</p>
01/11/2021	<u>42</u>	<p>Submission of Proposed Certified Questions filed by All Defendants. (Farrell, Michael) (Entered: 01/11/2021)</p>
01/19/2021	<u>43</u>	<p><b>Order of Certification to the Supreme Court of Ohio.</b> In accordance with Ohio S.Ct.Prac.R. 9.03(A), the Clerk of the United States District Court for the Northern District of Ohio is directed to serve copies of this Certification Order upon counsel for the parties and to file this Certification Order under the seal of this Court with the Supreme Court of Ohio, along with appropriate proof of service. Judge Benita Y. Pearson on 1/19/2021. (JLG) (Entered: 01/19/2021)</p>
01/19/2021		<p>Copy of <u>43</u> Order of Certification to the Supreme Court of Ohio was sent electronically to counsel <i>via</i> the Court's electronic filing system; and certified copy of <u>43</u> Order of Certification to the Supreme Court of Ohio and docket sheet mailed to the Office of the Clerk, Supreme Court of Ohio, 65 South Front Street, 8th Floor, Columbus, OH 43215-3431 on 1/19/2021. Related document(s) <u>43</u> . (JLG) (Entered: 01/19/2021)</p>



# Exhibit B

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

NEURO-COMMUNICATION  
SERVICES, INC. d/b/a HEARING  
INNOVATIONS, individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

THE CINCINNATI INSURANCE  
COMPANY; THE CINCINNATI  
CASUALTY COMPANY; AND THE  
CINCINNATI INDEMNITY COMPANY,

Defendants.

Case No.: 4:20-cv-1275

**CLASS ACTION COMPLAINT**

DEMAND FOR JURY TRIAL

Plaintiff Neuro-Communications Service d/b/a Hearing Innovations (“Plaintiff” or “Hearing Innovations”) brings this case on behalf of itself and all others similarly situated, against Defendants The Cincinnati Insurance Company, The Cincinnati Casualty Company, and The Cincinnati Indemnity Company (“Defendants”), and alleges as follows:

**NATURE OF THE ACTION**

1. Hearing Innovations provides comprehensive hearing and balance care for patients of all ages. Hearing Innovations takes pride in meeting the needs of all its patients, including their overall health.

2. Like many audiology practices in Ohio, Hearing Innovations was forced to significantly curtail its practice due to COVID-19 (also known as the “Coronavirus” or “SARS-CoV-2”), and the civil authority orders issued by the Governor of Ohio and the Ohio Department of Health (the “Ohio Civil Authority Orders”), as well as guidance issued by the American Academy of Audiology.

3. Hearing Innovations sought to protect itself – and believed that it had protected itself – in the event that its operations were suspended or reduced for reasons outside of its control beyond just damage to the physical premises (such as fire), by purchasing an “all-risk” property CinciPak Policy through Defendants (the “Building and Personal Property Coverage Form”). *See* Exhibit A. An “all-risk” property policy provides broad coverage for losses resulting from any cause unless expressly excluded.

4. Among other coverages, the Building and Personal Property Coverage Form *specifically* includes coverage for Business Income for twelve (12) months of actual loss sustained and Extra Expenses incurred. The policy also provides “Extended Business Income” coverage for reduction of Business Income and for Extra Expenses even once operations are resumed as well as coverage for action of Civil Authority for thirty (30) days.

5. The Building and Personal Property Coverage Form purchased by Plaintiff do not include, and are not subject to, any exclusion for losses caused by viruses or pandemics. Had Defendants, as the drafters of the policy, wanted to exclude the risks of a virus or a pandemic, and related issues, like civil authority orders and social distancing, it could easily have done so in plain text like other insurance companies purport to do (without trying to retroactively rewrite their policies).

6. Notwithstanding, when Plaintiff suffered an actual loss of Business Income and incurred Extra Expenses as a result of a covered cause of loss, Defendants

wrongfully – and in direct contravention of the policy – denied Plaintiff’s insurance claim. *See* Exhibit B. Plaintiff is not alone. Defendants have systematically refused to pay all its insureds under its Business Income, Extra Expense, Extended Business Income, and Civil Authority coverages for losses suffered related to COVID-19.

### **PARTIES**

7. Plaintiff Hearing Innovations is a corporation registered in Ohio with its principal places of business in Boardman, Ohio and Youngstown, Ohio. Hearing Innovations provides audiology and related hearing and balance services to its patients, many of which are elderly or are at high risk of severe illness from COVID-19.

8. Defendants are all headquartered in, and citizens of, Ohio. Defendants at all relevant times sold and issued insurance policies in the State of Ohio and throughout the country, including, without limitation, to Hearing Innovations.

### **JURISDICTION AND VENUE**

9. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because (a) the Classes consist of at least 100 members; (b) at least one class members is not a citizen of Ohio; and (c) the amount in controversy exceeds \$5,000,000 exclusive of interest and costs.

10. This Court has personal jurisdiction over Defendants, because a substantial portion the alleged wrongdoing occurred in the state of Ohio, and Defendants have sufficient contacts with the state of Ohio. Venue is proper in this District under 28 U.S.C. § 1391(b)(3) because a substantial portion of the acts and conduct giving rise to the claims occurred within the District.

### FACTUAL BACKGROUND

11. Plaintiff pays an annual premium of \$2,279 to Defendants, who issued to Plaintiff a Policy No. ECP 055 17 19 / EBA 055 17 19, for the annual period beginning September 14, 2019. Plaintiff performed all its obligations under the Policy, including the payment of premiums. The covered premises are located at 755 Boardman Canfield Rd Ste C1, Boardman, Ohio, 44512-4387; and 4300 Belmont Ave, Youngstown, Ohio, 44505-1084.

12. Some insurance policies cover specific and identified risks, such as hurricanes or fires. However, most property policies, including those sold by Defendants, are “all-risk” policies. These types of policies cover all risks of loss, and only exclude narrow and specifically enumerated risks.

13. In the Building and Personal Property Coverage Form (the policy issued to Plaintiff), Defendants agreed to pay “for direct ‘loss’ to Covered Property at the ‘premises’ caused by or resulting from any Covered Cause of Loss.” A Covered Cause of Loss is defined as “direct ‘loss’” except those that are expressly and specifically excluded or limited. *See* Exhibit A, Building and Personal Property Coverage Form, at A.3. A “loss” is defined as “accidental physical loss or accidental physical damage.” *Id.* at G.8.

14. Losses due to COVID-19 and the Ohio Civil Authority Orders are a Covered Cause of Loss under Defendants’ policies with the Building and Personal Property Coverage Form because they constitute direct “loss” and are not otherwise excluded.

15. In the Building and Personal Property Coverage Form, apart from general coverage, as part of additional coverages, Defendants agreed to pay for Plaintiff's actual loss of Business Income sustained due to the suspension of Plaintiff's operations. Specifically, the Policy provides:

**(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

See Exhibit A, Building and Personal Property Coverage Form, at A.5.b.(1).

16. The Building and Personal Property Coverage Form further includes Extra Expense coverage which covers "necessary expenses you sustain . . . during the 'period of restoration' that you would not have sustained if there had been no direct 'loss' to property caused by or resulting from a Covered Cause of Loss." See Exhibit A, Building and Personal Property Coverage Form, at A.5.b.(2).

17. The Building and Personal Property Coverage Form also includes Civil Authority coverage, under which Defendants agreed to pay for the actual loss of Business Income sustained when access to the scheduled premises is prohibited by

order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area. *See* Exhibit A, Building and Personal Property Coverage Form, at A.5.b.(3) (“[w]hen a Covered Cause of Loss causes damage to property other than Covered Property at a ‘premises’, we will pay for the actual loss of ‘Business Income’ and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the ‘premises’...”).

18. The Building and Personal Property Coverage Form also provides Extended Business Income coverage which provides that Defendants “will pay for actual loss of ‘Business Income’ you sustain and Extra Expense you incur” after “‘operations’ are resumed[.]” *See* Exhibit A, Building and Personal Property Coverage Form, at A.5.b.(6). This additional coverage has been extended to last for 12 consecutive months after operations are resumed. *See* FORM FCP 206 05 16. Extended Business Income coverage is meant to provide coverage for lost Business Income during the time it takes a business to bounce back from the suspension of its business operations once it restarts.

19. Moreover, not only are Business Income and the related coverages provided for in the Building and Personal Property Coverage Form, but an endorsement entitled Business Income (And Extra Expense) Coverage Form (FORM FA 213 05 16) is also affixed to the Policy and further provides for these coverages. *See also* Exhibit B (“Additionally, the Policy at Form FA 213 05 16 provides separate Business Income and Extra Expense coverage provisions[.]”).

20. As explained below, the proliferation of COVID-19 throughout the State of Ohio and throughout the Mahoning Valley, and the related Ohio Civil Authority Orders issued by local, state, and federal authorities constitute a Covered Cause of Loss triggering the Business Income, Extra Expense, Civil Authority, and Extended Business Income provisions of the Building and Personal Property Coverage Form, and of Form FA 213 05 16.

**A. Covered Cause of Loss**

**1. COVID-19**

21. On January 30, 2020, the World Health Organization (“WHO”) declared the COVID-19 outbreak a “Public Health Emergency of International Concern.”<sup>1</sup> Later, on March 11, 2020, the WHO declared COVID-19 a global health pandemic. On March 13, 2020, President Trump declared a national emergency in the face of a growing public health and economic crisis due to the COVID-19 global pandemic.

22. In the State of Ohio alone, there have been over 38,000 confirmed cases of COVID-19, and approximately 2,400 related deaths.<sup>2</sup> In Mahoning County, where Hearing Innovations is located, there have been over 1,500 confirmed cases of COVID-19, and 195 deaths.<sup>3</sup>

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<sup>1</sup>[https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)) (last visited June 10, 2020).

<sup>2</sup><https://coronavirus.ohio.gov/wps/portal/gov/covid-19/dashboards/overview> (last visited June 9, 2020).

<sup>3</sup> *Id.*



23. Published research suggests that the virus that causes COVID-19 remains stable and transmittable for up to three hours in aerosols, up to four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.<sup>4</sup>

**2. Ohio Civil Authority Orders**

24. The presence and physical spread of this deadly virus and the pandemic have caused civil authorities to issue orders requiring the suspension of businesses, including civil authorities with jurisdiction over Plaintiff's practice, to slow down the deadly and dangerous spread of COVID-19. Nearly every state in the country, including Ohio, has or had an order restricting the operation of non-essential businesses.

25. These Ohio Civil Authority Orders include:

- a. On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order No. 2020-01D, "Declaring A State of Emergency". The March 9 Order declared a "state of emergency...for the entire State to protect the well-being of the citizens of the Ohio from the dangerous effects of COVID-19."
- b. On March 17, 2020, Director of Ohio Department of Health Amy Acton issued the "Director's Order for the Management of Non-essential

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<sup>4</sup><https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days> (last visited June 10, 2020).

Surgeries and Procedures throughout Ohio”.<sup>5</sup> The March 17 Order stated that “all non-essential or elective surgeries and procedures that utilized PPE should be concluded.”

- c. On March 22, 2020, Director of Ohio Department of Health Amy Acton issued the “Director’s Stay Safe Ohio Order”. Under the March 22 Order “all individuals currently living within the State of Ohio are ordered to stay at home” unless an exception applies, and “[a]ll persons may leave their homes or place of residence only to participate in activities, businesses or operations as permitted in this Order.”

26. In addition, on March 22, 2020, the American Academy of Audiology’s Executive Committee stating that “[a]udiology practices are ‘non-essential’” recommending “[t]he most important thing we can do to protect our patients right now is to shut our physical doors.”<sup>6</sup> In addition, the Centers for Disease Control and Prevention (“CDC”) have made similar recommendations to postpone elective and non-urgent visits.

27. As a result of COVID-19, the Ohio Civil Authority Orders, the direction from the American Academy of Audiology, as well as information from other sources, including the Ohio Department of Health, Plaintiff ceased almost all its operations on March 23, 2020 and only resumed some operations on May 4, 2020.

### **3. Impact of COVID-19 and Ohio Civil Authority Orders**

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<sup>5</sup> <https://www.wksu.org/post/coronavirus-orders-issued-ohio> (last visited June 10, 2020).

<sup>6</sup> <https://www.audiology.org/message-academy-executive-committee-0> (last visited June 10, 2020).

28. Hearing Innovations and the proposed Classes defined below have suffered an actual loss of Business Income and incurring Extra Expenses due to the suspension of operations. In the case of Hearing Innovations, it had been forced to almost entirely cease business activities.

29. The presence of COVID-19 and the Ohio Civil Authority Orders (and similar civil authority orders) constitute a Covered Cause of Loss, as they constitute “accidental physical loss or accidental physical damage.”

30. Moreover, the suspension of Plaintiff’s operation was caused by “accidental physical loss or accidental physical damage” in the form of both a loss of access to the property for business purposes caused by COVID-19, and the Ohio Civil Authority Orders and the actual damage in the form of the likely physical presence of COVID-19 on or within the property.

31. Hearing Innovations is aware that at least one of its patients died as a result of COVID-19 shortly after being seen at the premises. Another patient had COVID-19 and had to be treated at the hospital. Plaintiff’s main patient population is over the age of 70 and is in a high-risk category for death due to COVID-19.

32. Plaintiff reopened on May 4, 2020. Plaintiff has incurred expenses such as purchasing masks, gloves, and plexiglass in order to reopen. After reopening, Plaintiff had less than half its normal revenue.

33. COVID-19 and the Ohio Civil Authority Orders also implicated the Civil Authority coverage, because:

- a. COVID-19 caused direct damage to property other than Covered Property at the “premises”;
- b. Access to the area immediately surrounding the damaged property was prohibited (for their business purposes) by civil authority as a result of the damage;
- c. The action of civil authority was taken in response to dangerous physical conditions resulting from COVID-19;
- d. Plaintiff suffered an actual loss of Business Income and sustained Extra Expense caused by the action of the civil authority that prohibited access (for business purposes) to the “premises”.

34. Having suffered a necessary suspension of operations implicating coverage, on or about March 23, 2020, Plaintiff submitted a claim to Defendants under its policy. Without any true investigation, Defendants denied Plaintiff’s claim. *See Exhibit B.*

35. Defendants based this denial primarily on:
  - a. The alleged lack of “direct, physical loss”; and
  - b. A purported lack of “evidence that the [civil authority] order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations” and because “the order does not restrict access to the area immediately surrounding your premises”.
36. As summarized by Defendants:

This claim does not satisfy the Policy’s insuring agreement. The claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss.

37. None of these purported reasons are credible bases for Defendants' denial of Plaintiff's claim. First, as described above, in the context of COVID-19 and the Ohio Civil Authority Orders, there was a suspension of operations caused by direct "loss" to Covered Property at the "premises" caused by or resulting from a Covered Cause of Loss. That is all that is required to compel Defendants to provide Business Income coverage. Second, it strains credibility for Defendants to assert that the Ohio Civil Authority Orders were not entered because of COVID-19 around the premises. Further, the Ohio Civil Authority Orders restricted (business) access to Plaintiff's premises.

38. The simple truth is that Defendants pre-determined its intent to deny coverage for the COVID-19 pandemic (and related civil authority orders), despite the complete absence, in the context of Business Income, Extra Expense, Extended Business Income, or the Civil Authority coverage, of a virus or pandemic exclusion.

39. Defendants, as sophisticated insurance companies, knows how to exclude viruses when they want to. Indeed, the Insurance Services Offices, Inc. ("ISO") developed a virus exclusion in the wake of the outbreak of Severe Acute Respiratory Syndrome or "SARS" in the early 2000s. Defendants' policy does not contain any relevant exclusions for viruses even though such exclusions are now commonplace.

40. In fact, the only reference to "viruses" in the entire policy are computer viruses. *See e.g.*, Ex. A at E.b.7.d.3 ("For the purpose of this Coverage Extension only,

Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system...”).

41. Boiled to its essence, the subject matter of this case is simple. Defendants have, on a widespread and class-wide basis, refused to provide Business Income, Extra Expense, Civil Authority, and Extended Business Income coverage for covered losses related to COVID19 and the related orders by civil authorities that have required the suspension of operations ***no matter*** the language or scope of coverage in any particular insurance policy.

### **CLASS ALLEGATIONS**

42. Plaintiff brings this action individually and on behalf of the following similarly situated classes (the “Classes”) pursuant to Rule 23(a), 23(b)(1), 23(b)(2), 23(b)(3), and 23(c)(4) of the Federal Rules of Civil Procedure.

43. Plaintiff seeks to represent nationwide classes defined as follows:

#### **Business Income Breach Class**

All persons and entities that: (a) had Business Income coverage under a property insurance policy without a virus exclusion issued by Defendants; (b) suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their property insurance policy; (c) made a claim under their property insurance policy issued by Defendants; and (d) were denied Business Income coverage by Defendants.

#### **Extra Expense Breach Class**

All persons and entities that: (a) had Extra Expense coverage under a property insurance policy without a virus exclusion issued by Defendants; (b) suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their

property insurance policy and incurred Extra Expenses; (c) made a claim under their property insurance policy issued by Defendants; and (d) were denied Extra Expense coverage by Defendants.

### **Civil Authority Breach Class**

All persons and entities that: (a) had Civil Authority coverage under a property insurance policy without a virus exclusion issued by Defendants; (b) suffered a loss of Business Income or incurred Extra Expenses caused by an order of a civil authority that prohibited access to the premises covered by their property insurance policy as the result of damage caused by COVID-19 to property in the surrounding area of the insureds covered property; (c) made a claim under their property insurance policy issued by Defendants; and (d) were denied Civil Authority coverage by Defendants for the loss of Business Income.

### **Extended Business Income Breach Class**

All persons and entities that: (a) had Extended Business Income coverage under a property insurance policy without a virus exclusion issued by Defendants; (b) suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their property insurance policy; (c) had a loss of “Business Income” or incurred “Extra Expenses” after reopening; (d) made a claim under their property insurance policy issued by Defendants; and (e) were denied Extended Business Income coverage by Defendants.

44. Plaintiff also seeks to represent nationwide declaratory judgment classes defined as follows:

### **Business Income Declaratory Judgment Class**

All persons and entities with Business Income coverage under a property insurance policy without a virus exclusion issued by Defendants that suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their property insurance policy.

### **Extra Expense Declaratory Judgment Class**

All persons and entities with Extra Expense coverage under a property insurance policy without a virus exclusion issued by Defendants that suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their property insurance policy and incurred Extra Expenses.

### **Civil Authority Declaratory Judgment Class**

All persons and entities with Civil Authority coverage under a property insurance policy without a virus exclusion issued by Defendants that suffered a loss of Business Income or incurred Extra Expense caused by an order of a civil authority that prohibited access to the premises covered by their property insurance policy as the result of damage caused by COVID-19 to property in the surrounding area of the insureds covered property.

### **Extended Business Income Declaratory Judgment Class**

All persons and entities with Extended Business Income coverage under a property insurance policy without a virus exclusion issued by Defendants that suffered a suspension of their operations related to COVID-19 or the Ohio Civil Authority Orders (or other civil authority order related to COVID-19) impacting the premises covered by their property insurance policy and suffered a loss of Business Income or incurred Extra Expense after reopening.<sup>7</sup>

45. Excluded from the proposed Classes are Defendants, any parent companies, subsidiaries, affiliates, officers, directors, legal representatives, employees, co-conspirators, all governmental entities, and any judge, justice, or judicial officer presiding over this matter, as well as members of their staff and immediate families. Plaintiff reserves the right to amend the Class definitions above or add appropriate subclasses during or following discovery.

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<sup>7</sup> The four Declaratory Judgment Classes together will be referred to as the “Declaratory Judgment Classes.”



46. This action is brought and may be properly maintained as a class action. There is a well-defined community of interests in this litigation and the members of the Classes are easily ascertainable.

47. The members in the proposed Classes are so numerous that individual joinder of all members is impracticable, and the disposition of the claims of the members of the Classes in a single action will provide substantial benefits to the parties and the Court.

48. This action involves common questions, which predominate over questions affecting individual members of the Classes, including (without limitation):

- whether members of the Classes suffered a covered cause of loss based on the common policies issued by Defendants;
- whether COVID-19 (and/or an order of a civil authority related to COVID-19) constitutes a Covered Cause of Loss;
- whether Defendants' Business Income coverage applies to a suspension of business operations caused by COVID-19 (and/or by an order of a civil authority related to COVID-19);
- whether Defendants' Extra Expense coverage applies to Extra Expenses caused by COVID-19 (and/or by an order of a civil authority related to COVID-19);
- whether Defendants' Extended Business Income coverage applies to a suspension of business operations caused by COVID-19 (and/or by an order of a civil authority related to COVID-19);
- whether a suspension of business operations caused by COVID-19 (and/or by an order of a civil authority related to COVID-19) qualifies as a suspension of business operations caused by direct loss;

- whether an order by a civil authority related to COVID-19 (including the Ohio Civil Authority Orders) qualifies an insured for Civil Authority coverage;
- whether members of the Classes sustained damages as a result of Defendants denying their claims made under the common policies; and
- whether Defendants breached their contracts of insurance by denying Class members' Business Income, Extra Expense, Extended Business Income, and Civil Authority claims related to COVID-19.

49. Defendants engaged in a course of common conduct that gave rise to the legal rights sought to be enforced by Plaintiff individually and on behalf of the other members of the Classes. Identical business practices and harms are involved. Individual questions, if any, are not prevalent in comparison to the numerous common questions that dominate this action.

50. Plaintiff's claims are typical of those of the members of the Classes because they are based on the same underlying facts, events, and circumstances relating to Defendants' conduct, including the systematic denial of insurance coverage related to Business Income insurance and COVID-19.

51. Plaintiff will fairly and adequately represent and protect the interests of the Classes, has no interests incompatible with the interests of the Class members, and has retained counsel competent and experienced in class action and consumer protection litigation.

52. Class treatment is superior to other options for resolution of the controversy because the relief sought for each member of the Classes is small enough such that, absent representative litigation, it would be infeasible for many members of the Classes to redress the wrongs done to them. Moreover,

individualized litigation would create potential for inconsistent judgments on identical issues and increase the delay and expense to the parties and the Court. By contrast, the class action device presents far fewer management difficulties, and provides the benefits of adjudication by a single court.

53. As a result of the foregoing, class treatment under Federal Rule of Civil Procedure 23(b)(3) is appropriate.

54. Class treatment is also appropriate under Federal Rule of Civil Procedure 23(b)(1). Plaintiff seeks class-wide adjudication related to Defendants' Business Income, Extra Expense, Extended Business Income, and Civil Authority coverages. The prosecution of separate actions by individual members of the Classes would create a risk of inconsistent adjudications.

55. Class treatment is also appropriate under Federal Rule of Civil Procedure 23(b)(2). Defendants acted or refused to act on grounds generally applicable to Plaintiff and the other members of the Classes, thereby making appropriate final injunctive and declaratory relief.

### **CLAIMS FOR RELIEF**

#### **CLAIM I: BREACH OF CONTRACT - Business Income Coverage (Plaintiff Individually and on Behalf of the Business Income Breach Class)**

56. Plaintiff hereby realleges and incorporates by reference all allegations raised in the preceding paragraphs as if fully stated herein.

57. Plaintiff brings this claim against Defendants individually and on behalf of the members of the Business Income Breach Class.

58. Plaintiff's insurance policy, as well as those of the members of the Business Income Breach Class, are contracts under which premiums were paid to Defendants in exchange for promises to pay Plaintiff and the Business Income Breach Class Members' losses for claims covered by Defendants' all-risk policy.

59. The Building and Personal Property Coverage Form states that Defendants "will pay for the actual loss of 'Business Income' you sustain due to the necessary 'suspension' of your 'operations' during the 'period of restoration'. The 'suspension' must be caused by direct 'loss' to the property at 'premises'...caused by or result from a Covered Cause of Loss."

60. "Suspension" means in relevant part: "[t]he slowdown or cessation of ...business activities[.]" and "Operations" is defined as "business activities occurring at the 'premises'" and "tenantability of the 'premises.'"

61. "Business Income" is defined as "Net Income (net profit or loss before income taxes) that would have been earned or incurred" and "[c]ontinuing normal operating expenses sustained, including payroll."

62. Period of Restoration is:

"Period of restoration" means the period of time that:

- a. Begins at the time of direct "loss".
- b. Ends on the earlier of:

- (1) The date when the property at the "premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

63. COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) caused a “direct loss” to property at a covered premises under the Plaintiff’s policy, and the policies of the other Business Income Breach Class members, by denying use of and damaging the property, and by causing a necessary suspension and reduction of operations during a period of restoration.

64. Losses caused by COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) thus triggered the Business Income provision of Plaintiff’s and the other members of the Business Income Breach Class’ insurance policies.

65. Plaintiff and the members of the Business Income Breach Class have complied with all applicable provisions of their policies.

66. Plaintiff and the members of the Business Income Breach Class made timely claims under their property insurance policies issued by Defendants.

67. Defendants have breached their coverage obligations under Plaintiff and the Business Income Breach Class Members’ policies by denying coverage for any Business Income losses incurred in connection with the COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

68. As a direct and proximate result of Defendants’ breaches, Plaintiff and the members of the Business Income Breach Class have sustained damages for which Defendants are liable, in an amount to be established at trial.

**CLAIM II: BREACH OF CONTRACT – Extra Expense Coverage  
(Plaintiff Individually and on Behalf of the Extra Expense Breach Class)**

69. Plaintiff hereby realleges and incorporates by reference all allegations raised in the preceding paragraphs as if fully stated herein.

70. Plaintiff brings this claim against Defendants individually and on behalf of the members of the Extra Expense Breach Class.

71. Plaintiff's insurance policy, as well as those of the members of the Extra Expense Breach Class, are contracts under which premiums were paid to Defendants in exchange for promises to pay Plaintiff and the Extra Expense Breach Class Members' losses for claims covered by Defendants' all-risk policy.

72. The Building and Personal Property Coverage Form states that Defendants "will pay Extra Expense you sustain during the 'period of restoration.' Extra Expense means necessary expenses you sustain . . . during the 'period of restoration' that you would not have sustained if there had been no direct 'loss' to property caused by or resulting from a Covered Cause of Loss."

73. COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) caused "direct loss" to the "Covered Property" under the Plaintiff's policy, and the policies of the other Extra Expense Breach Class members, by denying use of and damaging the Covered Property, and by causing a necessary suspension and reduction of operations during a period of restoration.

74. Losses caused by COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) thus triggered the Extra Expense provision of Plaintiff's and the other members of the Extra Expense Breach Class' insurance policies.

75. Plaintiff and the members of the Extra Expense Breach Class have complied with all applicable provisions of their policies.

76. Plaintiff and the members of the Extra Expense Breach Class made timely claims under their property insurance policies issued by Defendants.

77. Defendants have breached their coverage obligations under Plaintiff and the Extra Expense Breach Class Members' policies by denying coverage for any Extra Expenses incurred in connection with the COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

78. As a direct and proximate result of Defendants' breaches, Plaintiff and the members of the Extra Expense Breach Class have sustained damages for which Defendants are liable, in an amount to be established at trial.

**CLAIM III: BREACH OF CONTRACT – Civil Authority Coverage  
(Plaintiff Individually and on Behalf of the Civil Authority Breach  
Class)**

79. Plaintiff hereby realleges and incorporates by reference all allegations raised in the preceding paragraphs as if fully stated herein.

80. Plaintiff brings this claim against Defendants individually and on behalf of the members of the Civil Authority Breach Class.

81. Plaintiff's policy, as well as those of the members of the Civil Authority Breach Class, are contracts under which premiums were paid to Defendants in exchange for promises to pay Plaintiff and the Civil Authority Breach Class Members' losses for claims covered by the policy.

82. Plaintiff's policy, as well as those of the members of the Civil Authority Breach Class are extended to apply to:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

83. COVID-19 caused the Governor of the State of Ohio and the Ohio Department of Health to issue the Ohio Civil Authority Orders, which prohibited access to Plaintiff and the Civil Authority Breach Class Members' scheduled premises based on damage to property in the surrounding area of the scheduled premise.

84. Losses caused by COVID-19 thus triggered the Civil Authority provision of Plaintiff and the Civil Authority Breach Class Members' insurance policies.

85. Plaintiff and the Civil Authority Breach Class Members have complied with all applicable provisions of their policies.



86. Plaintiff and the Civil Authority Breach Class Members made timely claims under their property insurance policies issued by Defendants.

87. Defendants have breached their coverage obligations under Plaintiff and the Civil Authority Breach Class Members' policies by denying coverage for any Civil Authority losses incurred in connection with the COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

88. As a direct and proximate result of Defendants' breaches, Plaintiff and the Civil Authority Breach Class Members have sustained damages for which Defendants are liable, in an amount to be established at trial.

**CLAIM IV: BREACH OF CONTRACT – Extended Business Income  
Coverage  
(Plaintiff Individually and on Behalf of the Extended Business Income  
Breach Class)**

89. Plaintiff hereby realleges and incorporates by reference all allegations raised in the preceding paragraphs as if fully stated herein.

90. Plaintiff brings this claim against Defendants individually and on behalf of the members of the Extended Business Income Breach Class.

91. Plaintiff's insurance policy, as well as those of the members of the Extended Business Income Breach Class, are contracts under which premiums were paid to Defendants in exchange for promises to pay Plaintiff and the Extended Business Income Breach Class Members' losses for claims covered by Defendants' all-risk policy.

92. The Building and Personal Property Coverage Form states that Defendants will pay for actual loss of “Business Income’ you sustain and Extra Expense you incur” after “operations’ are resumed[.]” COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) caused actual loss of Business Income and Extra Expenses. Plaintiff and the members of the Extended Business Income Breach Class continue to incur loss of Business Income and to sustain Extra Expenses even once operations are resumed.

93. Losses caused by COVID-19, and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) thus triggered the Extended Business Income provision of Plaintiff’s and the other members of the Business Income Breach Class’ insurance policies.

94. Plaintiff and the members of the Extended Business Income Breach Class have complied with all applicable provisions of their policies. Plaintiff and the members of the Extended Business Income Breach Class made timely claims under their property insurance policies issued by Defendants.

95. Defendants have breached their coverage obligations under Plaintiff and the Extended Business Income Breach Class Members’ policies by denying coverage for any Extended Business Income losses incurred in connection with the COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

96. As a direct and proximate result of Defendants' breaches, Plaintiff and the members of the Extended Business Income Breach Class have sustained damages for which Defendants are liable, in an amount to be established at trial.

**CLAIM V: DECLARATORY JUDGMENT – DECLARATORY JUDGMENT  
(Claim Brought on Behalf of the Declaratory Judgment Classes)**

97. Plaintiff hereby realleges and incorporates by reference all allegations raised in the preceding paragraphs as if fully stated herein.

98. Plaintiff brings this claim against Defendants individually and on behalf of the members of the Declaratory Judgment Classes.

99. Plaintiff's policy, as well as those of the members of the Declaratory Judgment Classes, are contracts under which premiums were paid to Defendants in exchange for promises to pay losses for claims covered by their insurance policies.

100. Plaintiff and the members of the Declaratory Judgment Classes have complied with all applicable provisions of the policies.

101. Defendants have denied claims related to COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) on a uniform and class wide basis, without individual bases or investigations, such that the Court can render declaratory judgment irrespective of whether members of the Declaratory Judgment Classes have filed a claim.

102. An actual case or controversy exists regarding Plaintiff and the Declaratory Judgment Class Members' rights and Defendants' obligations under the policies to provide reimbursements for the full amount of losses incurred by Plaintiff and the Declaratory Judgment Classes Members in connection with COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

103. Pursuant to 28 U.S.C. § 2201, Plaintiff and the Business Income Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- a. Plaintiff and the Business Income Declaratory Judgment Class Members' Business Income losses incurred in connection with necessary interruption of their businesses due to the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) are insured losses under their policies; and
- b. Defendants are obligated to pay Plaintiff and the Business Income Declaratory Judgment Class Members for the full amount of the Business Income losses incurred and to be incurred in connection with the period of restoration and the necessary interruption of their businesses stemming from the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

104. Pursuant to 28 U.S.C. § 2201, Plaintiff and the Extra Expense Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- a. Plaintiff and the Extra Expense Declaratory Judgment Class Members' Extra Expenses incurred in connection with necessary interruption of their businesses due to the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) are insured losses under their policies; and

- b. Defendants are obligated to pay Plaintiff and the Extra Expense Declaratory Judgment Class Members for the full amount of the Extra Expenses incurred and to be incurred in connection with the period of restoration and the necessary interruption of their businesses stemming from the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

105. Pursuant to 28 U.S.C. § 2201, Plaintiff and the Civil Authority Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- a. Plaintiff and the Civil Authority Declaratory Judgment Class Members' Business Income losses caused by an order of a civil authority that prohibited access to the premises covered by their property insurance policy as the result of damage caused by COVID-19 to property in the surrounding area of the insureds covered property are insured losses under their policies; and
- b. Defendants are obligated to pay Plaintiff and the Civil Authority Declaratory Judgment Class for the full amount of the Business Income losses incurred and to be incurred caused by an order of a civil authority that prohibited access to the premises covered by their property insurance policy as the result of damage caused by COVID-19 to property in the surrounding area of the insureds covered property.

106. Pursuant to 28 U.S.C. § 2201, Plaintiff and the Extended Business Income Declaratory Judgment Class Members seek a declaratory judgment from this Court declaring the following:

- a. Plaintiff and the Extended Business Income Declaratory Judgment Class Members' Business Income losses and Extra Expenses during the period when operations resumed incurred in connection with necessary interruption of their businesses due to the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders) are insured losses under their policies; and

- b. Defendants are obligated to pay Plaintiff and the Extended Business Income Declaratory Judgment Class Members for the full amount of the Business Income losses and Extra Expenses losses incurred and to be incurred during the period when operations resumed in connection with necessary interruption of their businesses stemming from the presence of COVID-19 and/or orders of civil authority related to COVID-19 (like the Ohio Civil Authority Orders).

### **REQUEST FOR RELIEF**

WHEREFORE, Plaintiff, individually and on behalf of the Classes, respectfully requests that the Court enter judgment against Defendants as follows:

- i. Entering an order certifying each of the proposed Classes;
- ii. Entering an order designating Plaintiff as Class Representative, and appointing Plaintiff's undersigned attorneys as Counsel for the Classes;
- iii. Entering judgment on Counts I, II, III, and IV in favor of Plaintiff, the Business Income Breach Class, the Extra Expense Breach Class, Civil Authority Breach Class; and Extended Business Income Breach Class and awarding damages for breach of contract in an amount to be determined at trial;
- iv. Entering declaratory judgments on Count V in favor of Plaintiff and the Declaratory Judgment Classes (as set forth in Count V);
- v. Ordering Defendants to pay both pre- and post-judgment interest on any amounts awarded;
- vi. Ordering Defendants to pay reasonable attorneys' fees and costs of suit; and
- vii. Ordering such other and further relief as may be just and proper.

### **JURY DEMAND**

Plaintiff hereby demands a trial by jury on all claims so triable.

Date: June 10, 2020

/s/Gregory F. Coleman  
Gregory F. Coleman\*  
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*\*pro hac vice forthcoming*

*Attorneys for Plaintiff and the putative  
classes*

# EXHIBIT A





**The Cincinnati Insurance Company  
The Cincinnati Casualty Company  
The Cincinnati Indemnity Company**

**Policy Number:** ECP 055 17 19

**Effective Date:** 09-14-2019

**Named Insured:** NEURO-COMMUNICATION SERVICE DBA HEARING INNOVATIONS

For professional advice and policy questions or changes, please contact your local independent agency:

MAYFLOWER WOLLAM INSURANCE GROUP, INC.  
P.O. BOX 248  
NORTH JACKSON, OH 44451-0248

330-538-2273

Dear Policyholder:

**Thank you**

Thank you for trusting The Cincinnati Insurance Companies with your commercial insurance coverage. We recognize that locally based independent agents have the working knowledge to help you choose the right insurance company for your needs. Together with your local independent insurance agency, we are committed to providing you with the highest level of service.

Please review your enclosed policy information to verify your coverage details, as well as deductibles and coverage amounts. Should your needs change, your agent is available to review and update your policy.

**Please promptly report claims**

If you experience a policy-related loss, you may report it by contacting your local professional independent agency representing The Cincinnati Insurance Companies or by directly calling us toll-free at **877-242-2544** and providing your policy number and claim-related information.

Sincerely,

Sean M. Givler  
Senior Vice President - Commercial Lines



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company

Today's Date: 11-05-2019

To: NEURO-COMMUNICATION SERVICE DBA HEARING INNOVATIONS

Policy Number: ECP 055 17 19

Expiration Date: 09-14-2022

Agency: MAYFLOWER WOLLAM INSURANCE GROUP, INC. 34-394

### **Data breach and identity recovery support and resources included with your insurance policy**

Dear Policyholder:

Your policy includes Cincinnati Data Defender™ coverage for an additional premium, helping to safeguard your business against the rising costs of a data breach and offering services to assist you in the event of identity theft. Please save this information so you can access all the tools and resources that come with your cyber protection coverage. Refer to Cincinnati Data Defender Coverage Form, HC102, for a complete statement of coverages, exclusions and limits of insurance.

#### **Policyholder tools and resources**

*Data breach portal* - You gain access to [www.eriskhub.com/cic](http://www.eriskhub.com/cic), a website that provides you with the comprehensive, on-demand resources you need to:

- Prepare in advance:
  - Access online resources when you need them
  - Create your breach response plan from the template
  - Learn about breach laws that apply to your business
- Review risk management resources:
  - Use the compliance reference guide and notification letter examples
  - Locate credit bureau and government agency notification information
  - Learn how to contact data risk management experts for more help
- Manage your breach response:
  - Call the help line for breach information and assistance
  - Arrange assistance with notification letters
  - Access public relations resources to help you respond to the media

The first time you visit this website, please complete new user registration using this information:

**Access code = 12116-868**

*Identity theft services* – You also receive case management services and reimbursement for covered expenses if you, as a business owner, become the victim of identity theft or account takeover. If you suspect that you may be an identity theft victim or you have questions, please call our Identity Recovery Help Line, 866-219-9831.

**IA4463 (01/16)**

**Mailing Address:** P.O. Box 145496 • Cincinnati, Ohio 45250-5496 ■ **Headquarters:** 6200 S. Gilmore Road • Fairfield, Ohio 45014-5141  
[www.cinfin.com](http://www.cinfin.com) ■ 513-870-2000

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**Claims services**

If you suspect or know that a data breach may have exposed or compromised your organization's private, customer or personal data, a swift response is critical for your protection. Please note that the Web portal and help line provide advice and information, and using them does not satisfy any notice of claim requirement. The only way to report a claim is to contact your independent agent or call us directly, 877-242-2544. Your agent and Cincinnati Insurance will work with you to preserve your company's goodwill, prevent regulatory sanctions or fines, avoid civil litigation and safeguard your business reputation.

Please contact your agent representing Cincinnati with questions about this valuable coverage.

Thank you for trusting your agent and Cincinnati to protect your business.

Sincerely,

COMMERCIAL LINES DEPARTMENT

Commercial Lines

**IA4463 (01/16)**

**Mailing Address:** P.O. Box 145496 • Cincinnati, Ohio 45250-5496 ■ **Headquarters:** 6200 S. Gilmore Road • Fairfield, Ohio 45014-5141  
*www.cinfin.com* ■ 513-870-2000

## NOTICE TO POLICYHOLDERS DIRECT BILL ACCOUNT CREDIT PROCEDURE

This is a notice of how an account credit will be applied to your policy or to all of the policies being billed as single account.

### Account Credits

- A.** If your account is comprised of **a single policy** and an endorsement or premium audit results in a credit (return premium), the credit is applied to that policy. If your account does not have a future installment due at the time the endorsement or audit is processed, the credit is refunded to the payor listed for your account. If you do not wish for credits to be automatically applied to future unpaid installments, please contact us to request a refund. Please note that the amount of the refund may vary based upon the date you contact us and your billing schedule.
- B.** If your account is comprised of **more than one policy** and an endorsement or premium audit results in a credit (return premium), the credit is applied in the following manner:
- Payments previously applied to your account are deferred.
  - The credit that results from the endorsement or audit is applied to the policy generating the credit.
  - The payments that were deferred are then reapplied to the account in order to satisfy the amount due.
  - Any excess payment that results from the credit is applied proportionately to your policies with a future payment or installment due.
  - If you do not wish for credits to be automatically applied to future unpaid installments, please contact us to request a refund. Please note that the amount of the refund may vary based upon the date you contact us and your billing schedule.
  - If your account does not have a future installment or payment due at the time the endorsement or audit is processed, the credit is refunded to the payor listed for your account.

(Does not apply to audit return premium for payors located in New York; Does not apply to premiums due more than 30 days from the date of processing for payors located in New Hampshire. These credits are automatically refunded to the payor)

To request a refund, contact us at:

Mailing Address

The Cincinnati Insurance Company  
PO Box 14529  
Cincinnati, OH 45250-0529

Toll free phone number

877-942-2455

Electronic mail

CinciBill@cinfin.com

## DISCLOSURE OF DIRECT BILL FEES AND CHARGES

NO COVERAGE IS PROVIDED BY THIS DISCLOSURE, nor can it be construed to replace any provision of your policy. YOU SHOULD READ YOUR POLICY AND REVIEW YOUR DECLARATIONS PAGE CAREFULLY for complete information on the coverages provided.

Your insurance premium is being paid directly to us rather than to your insurance agency. We appreciate your prompt payment of the premium. Please note that these fees apply only in the event your payment is late, is returned to us for insufficient funds, or if your policy was previously canceled for nonpayment of premium and has been reinstated at either your or your agents request. We are not required to reinstate a policy once cancellation for nonpayment of premium has become effective. The decision to reinstate coverage is solely at the discretion of the company.

Not all fees are applicable in all states. The types of fees are listed below. Following the description of each fee, we list the states where the fee applies and the amount of the fee. Fees are not levied in KY, MD, MT and NC.

**Non-Sufficient Funds (NSF) Charge:** The first time a premium payment is returned due to Non-Sufficient Funds (NSF), the premium due is the installment amount. For each succeeding return of payment while continuously insured with The Cincinnati Insurance Companies, a charge is added to your next account statement. The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, FL, NJ, RI, and SC;

\$15 MA;

\$20 NY; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI, WV and WY.

**Reinstatement Charge:** The first time your account is reinstated for nonpayment of premium, the premium due is the installment amount. For each succeeding reinstatement due to nonpayment of premium while continuously insured with The Cincinnati Insurance Companies, a charge is added to your next account statement. The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, RI, and SC;

\$15 MA;

\$20 NY; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA and WY.

**Late Charge:** A charge is added to your next account statement each time your payment is received and processed after the due date as shown on the account statement. This fee will not apply to Electronic Funds Transfer (EFT). The amount of the charge is determined by the fees filed with and approved by the state where the payor of your account is located.

\$10 AK, FL, RI, and SC;

\$15 MA; and

\$25 AL, AZ, AR, CA, CO, CT, DE, DC, GA, HI, ID, IL, IN, IA, KS, LA, ME, MI, MN, MS, MO, NE, NV, NH, NM, ND, OH, OK, OR, PA, SD, TN, TX, UT, VT, VA, WA, WI and WY.



# The Cincinnati Insurance Company

A Stock Insurance Company

Headquarters: 6200 S. Gilmore Road, Fairfield, OH 45014-5141

Mailing address: P.O. Box 145496, Cincinnati, OH 45250-5496

www.cinfin.com ■ 513-870-2000

NEW

Previous Policy Number

## CinciPak™ FOR MEDICAL OFFICES COMMON POLICY DECLARATIONS

Billing Method: DIRECT BILL

POLICY NUMBER ECP 055 17 19 / EBA 055 17 19

**NAMED INSURED** NEURO-COMMUNICATION SERVICE DBA HEARING INNOVATIONS

755 BOARDMAN CANFIELD RD STE C1

**ADDRESS**

(Number & Street,  
Town, County,  
State & Zip Code)

BOARDMAN, OH 44512-4387

**Policy Period:** At 12:01 A.M., STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE

**All coverages except Automobile and / or Garage**

Policy number: ECP 055 17 19

FROM: 09-14-2019

TO: 09-14-2022

**Automobile and / or Garage**

Policy number: EBA 055 17 19

FROM: 09-14-2019

TO: 09-14-2020

Agency MAYFLOWER WOLLAM INSURANCE GROUP, INC. 34-394

City NORTH JACKSON, OH

**Legal Entity / Business Description**

LIMITED LIABILITY COMPANY

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.

**FORMS APPLICABLE TO ALL COVERAGE PARTS:**

IL0017	11/98	COMMON POLICY CONDITIONS
ICP101	05/11	CINCIPAK™ SUMMARY OF PREMIUMS CHARGED
IA904	04/04	SCHEDULE OF LOCATIONS
IA4236	01/15	POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE
IP446	08/01	NOTICE TO POLICYHOLDERS
IA4006	07/10	SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT
IA4121OH	01/16	OHIO CHANGES - CANCELLATION AND NONRENEWAL
IA4238	01/15	CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM
IA4338	05/11	SIGNATURE ENDORSEMENT
FM502	07/08	COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS
GA532	07/08	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
GA536OH	03/10	OHIO EMPLOYERS LIABILITY DEFENSE EXPENSES COVERAGE PART DECLARATIONS
MA573	06/07	ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE FORM DECLARATIONS
CA516	03/09	CRIME AND FIDELITY COVERAGE PART DECLARATIONS (COMMERCIAL ENTITIES)
AA505	03/06	BUSINESS AUTO COVERAGE PART DECLARATIONS
HC502	01/18	CINCINNATI DATA DEFENDER™ COVERAGE PART DECLARATIONS
HC503	01/18	CINCINNATI NETWORK DEFENDER™ COVERAGE PART DECLARATIONS

11-05-2019 08:22

Countersigned \_\_\_\_\_ (Date) By \_\_\_\_\_ (Authorized Representative)

# COMMON POLICY CONDITIONS

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

## A. Cancellation

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

## B. Changes

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

## C. Examination of Your Books and Records

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

## D. Inspections and Surveys

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

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

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

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

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

## E. Premiums

The first Named Insured shown in the Declarations:

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

## F. Transfer of Your Rights and Duties Under this Policy

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

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



# CinciPak™

## SUMMARY OF PREMIUMS CHARGED

Attached to and forming part of  
 POLICY NUMBER: ECP 055 17 19 / EBA 055 17 19 Effective Date: 09-14-2019  
 Named Insured: NEURO-COMMUNICATION SERVICE DBA HEARING INNOVATIONS

**THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE  
PARTS FOR WHICH A PREMIUM CHARGE IS INDICATED**

Commercial Property Coverage Part <u>W/EBC</u>	\$	1,255
Commercial General Liability Coverage Part _____	\$	280
Commercial Crime Coverage Part _____	\$	25
Electronic Data Processing Equipment Coverage Part _____	\$	INCL
Commercial Auto Coverage Part _____	\$	74
Commercial Umbrella / Excess Liability Coverage Part _____	\$	
<u>DATA DEFENDER COVERAGE PART</u>	\$	285
<u>NETWORK DEFENDER COVERAGE PART</u>	\$	242
<u>EMPLOYERS LIABILITY DEFENSE EXPENSES - OH</u>	\$	93
_____	\$	
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_____	\$	
Terrorism Coverage _____	\$	25
Installment Charge _____	\$	
<b>ANNUAL TOTAL PAYMENTS</b>	<b>\$</b>	<b>2,279</b>

	First Installment	Remaining Installment(s)
ANNUAL	*	*

\*SEE BILLING STATEMENT MAILED SEPARATELY

Automobile Coverages, Employers Liability, Employment Practices Liability Coverage, Professional Liability Coverage, Terrorism Coverage and / or Wrongful Acts Coverage, if included in the policy, are subject to Annual Adjustment of rates and premium on each anniversary of the policy.

Commercial Umbrella and Excess Liability, if included in the policy, may be subject to Annual Adjustment of premium on each anniversary. Refer to the Commercial Umbrella or Excess Liability Coverage Part Declarations form to see if this is applicable.

**ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED**

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

## **SCHEDULE OF LOCATIONS**

<u>LOC.</u>	<u>STREET ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP CODE</u>
1	755 BOARDMAN CANFIELD RD STE C1 BOARDMAN, OH 44512-4387			
2	4300 BELMONT AVE YOUNGSTOWN, OH 44505-1084			

## POLICYHOLDER NOTICE TERRORISM INSURANCE COVERAGE

**THIS ENDORSEMENT IS ATTACHED TO AND MADE PART OF YOUR POLICY IN RESPONSE TO THE DISCLOSURE REQUIREMENTS OF THE TERRORISM RISK INSURANCE ACT. THIS ENDORSEMENT DOES NOT GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY.**

Your policy may contain coverage for certain losses caused by terrorism.

**Premium:**

In accordance with the federal Terrorism Risk Insurance Act, we are required to notify you of the portion of the premium, if any, attributable to the coverage for terrorist acts certified under the Terrorism Risk Insurance Act.

- Refer to the SUMMARY OF PREMIUMS CHARGED or DECLARATIONS PAGE for the portion of your premium that is attributable to coverage for terrorist acts certified under the Act.

**Federal Participation:**

The Act also requires us to provide disclosure of federal participation in payment of terrorism losses.

- Under your policy, any losses caused by certified acts of terrorism would be partially reimbursed by the United States Government, Department of Treasury, under a formula established by federal law. Under this formula, the federal share equals a percentage, as specified in the Schedule below, of that portion of the amount of such insured losses that exceeds the applicable insurer retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

- **Schedule:**

Federal Share of Terrorism Losses	
Percentage	Calendar Year
85%	2015
84%	2016
83%	2017
82%	2018
81%	2019
80%	2020

**Cap on Insurer Participation:**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**NOTE: IF YOUR POLICY IS A RENEWAL POLICY, THIS NOTICE IS PROVIDED TO SATISFY THE REQUIREMENTS UNDER THE TERRORISM RISK INSURANCE ACT FOR POLICYHOLDER DISCLOSURE: (1) AT THE TIME OF OUR OFFER TO RENEW THE POLICY AND (2) AT THE TIME THE RENEWAL IS COMPLETED.**

**THE CINCINNATI INSURANCE COMPANY  
THE CINCINNATI CASUALTY COMPANY  
THE CINCINNATI INDEMNITY COMPANY**

**NOTICE TO POLICYHOLDERS**

Please be advised that in your application for insurance you disclosed information to The Cincinnati Insurance Company, The Cincinnati Casualty Company and The Cincinnati Indemnity Company. The information disclosed in the application and all information subsequently collected by any of these companies may be shared among all three.

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

## **SPECIAL PER OCCURRENCE DEDUCTIBLE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
CRIME AND FIDELITY COVERAGE PART**

### **A. Special Per Occurrence Deductible**

1. If an "occurrence" happens to Covered Property under the Commercial Property Coverage Part and to Covered Property under at least one of the following:

- a. The Commercial Inland Marine Coverage Part, and
- b. The Crime and Fidelity Coverage Part;

the most we will deduct from any loss or damage in any one "occurrence" is the deductible indicated on the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS.**

2. This endorsement does not apply to any of the forms listed in Paragraphs **a.** and **b.:**

- a. \* **Electronic Data Processing Coverage Form, Section III, 2. Deductible, a.(2) Specified Losses Deductible**

\* **Water Backup from Sewers, Drains, Septic Systems or Sump Pumps Endorsement**

**Windstorm or Hail Percentage Deductible Form**

**Earthquake and Volcanic Eruption Endorsement**

**Earthquake and Volcanic Eruption Endorsement (Sub-Limit Form)**

**Flood Coverage Endorsement**

**Equipment Breakdown Coverage (Including Production Equipment)**

**Equipment Breakdown Coverage (Excluding Production Equipment)**

\* **Temperature Change Coverage Form**

**Commercial Crime Coverage Form, A. Insuring Agreements, 1. Employee Theft, 2. Forgery or Alteration, 6. Computer Fraud and 7. Funds Transfer Fraud**

**Crime Expanded Coverage (XC<sup>®</sup>) Coverage or Expanded Coverage Plus Forms, A. Insuring Agreements, 1. Employee Theft and 2. Forgery or Alteration**

**Government Crime Coverage Form, A. Insuring Agreements, 1. Employee Theft - Per Loss Coverage, 2. Employee Theft - Per Employee Coverage, 3. Forgery or Alteration, 7. Computer Fraud and 8. Funds Transfer Fraud**

- \* Or such coverage as provided in the CinciPlus<sup>®</sup> Commercial Property or Commercial Property Power Expanded Coverage or Expanded Coverage Plus Forms

- b.  **Other**

**B. Definition**

For the purpose of this endorsement only, any definition of "occurrence" is deleted in its entirety and the following definition is added to:

1. **COMMERCIAL PROPERTY CONDITIONS,**
2. **COMMERCIAL INLAND MARINE CONDITIONS,**
3. **COMMERCIAL CRIME COVERAGE FORM,**
4. **CRIME EXPANDED COVERAGE (XC<sup>®</sup>) COVERAGE FORM, and**
5. **GOVERNMENT CRIME COVERAGE FORM:**

"**Occurrence**" means all loss, damage, or a sequence of loss or damage, casualties or disasters arising from a single happening or event.

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

## **OHIO CHANGES - CANCELLATION AND NONRENEWAL**

This endorsement modifies insurance provided under the following:

**BUSINESSOWNERS POLICY  
CHEMICAL DRIFT LIMITED LIABILITY COVERAGE PART - CLAIMS-MADE  
CINCINNATI CYBER DEFENSE™ COVERAGE PART  
CINCINNATI DATA DEFENDER™ COVERAGE PART  
CINCINNATI NETWORK DEFENDER™ COVERAGE PART  
CLAIMS - MADE EXCESS LIABILITY COVERAGE PART  
COMMERCIAL AUTO COVERAGE PART  
COMMERCIAL CRIME AND FIDELITY COVERAGE PART  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
COMMERCIAL INLAND MARINE COVERAGE PART  
COMMERCIAL PROPERTY COVERAGE PART  
COMMERCIAL UMBRELLA LIABILITY COVERAGE PART  
CONTRACTOR'S ERRORS AND OMISSIONS COVERAGE FORM CLAIMS-MADE  
CONTRACTOR'S LIMITED POLLUTION LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE FORM  
EMPLOYMENT PRACTICES LIABILITY COVERAGE PART  
EMPLOYEE BENEFIT LIABILITY COVERAGE PART  
EXCESS LIABILITY COVERAGE PART  
EXCESS WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE FORM  
FARM COVERAGE PART  
GOLF COURSE CHEMICAL APPLICATION LIMITED LIABILITY COVERAGE PART  
HOLE-IN-ONE COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
MACHINERY AND EQUIPMENT COVERAGE PART  
MANUFACTURER'S ERRORS AND OMISSIONS COVERAGE FORM - CLAIMS-MADE  
POLLUTION LIABILITY COVERAGE PART  
PRODUCT WITHDRAWAL COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART  
PROFESSIONAL UMBRELLA LIABILITY COVERAGE PART - CLAIMS-MADE**

- A.** With respect to a policy which has been in effect for more than 90 days, or is a renewal of a policy we issued, or is a policy for medical malpractice professional liability, the **Cancellation** Common Policy Condition is replaced by the following:
- 1.** The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
  - 2.** We may cancel this policy only for one or more of the following reasons, except as provided in Paragraph **6.** below.
    - a.** Nonpayment of premium;
    - b.** Discovery of fraud or material misrepresentation in the procurement of the insurance or with respect to any claims submitted thereunder;
    - c.** Discovery of a moral hazard or willful or reckless acts or omissions on your part which increases any hazard insured against;
    - d.** The occurrence of a change in the individual risk which substantially increases any hazard insured against after the insurance coverage has been issued or renewed except to the extent the insurer could reasonably have foreseen the change or contemplated the risk in writing the contract;
    - e.** Loss of applicable reinsurance or a substantial decrease in applicable reinsurance, if the Superintendent has determined that reasonable efforts have been made to prevent the loss of, or substantial decrease in, the applicable reinsurance, or to obtain replacement coverage;

- f. Failure of an insured to correct material violations of safety codes or to comply with reasonable written loss control recommendations; or
  - g. A determination by the Superintendent of Insurance that the continuation of the policy would create a condition that would be hazardous to the policyholders or the public.
3. We will mail written notice of cancellation to the first Named Insured, and agent if any, at the last mailing addresses known to us. Proof of mailing will be sufficient proof of notice.
  4. We will mail the notice of cancellation at least:
    - a. 10 days from the effective date of cancellation, if we cancel for non-payment of premium; or
    - b. 30 days from the effective date of cancellation, if we cancel for a reason stated in the **2.b.** through **2.g.** above; or
    - c. 60 days from the effective date of cancellation, if we cancel for a reason stated in **2.b.** through **2.g.** above, applicable to medical malpractice professional liability coverage.
  5.
    - a. The notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
    - b. The notice will also contain the date of the notice and the policy number, and will state the reason for cancellation.
  6. Policies written for a term of more than one year may be cancelled by us for any reason at an anniversary date, upon 30 days' written notice of cancellation or upon 60 days' written notice of cancellation applicable to medical malpractice professional liability coverage.
  7. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we or the first Named Insured cancels, the refund will be pro rata. The cancellation will be effective even if we have not made or offered a refund.

- B.** The following is added to the Common Policy Conditions and supersedes any provisions to the contrary:

**NONRENEWAL**

1. If we elect not to renew this policy, we will mail written notice of nonrenewal to the first Named Insured, and agent if any, at the last mailing addresses known to us. The notice will contain the date of the notice and the policy number, and will state the expiration date of the policy. We will state the reason for nonrenewal for medical malpractice professional liability coverage.
  2. We will mail the notice of nonrenewal at least 30 days before:
    - a. The expiration date of the policy; or
    - b. The anniversary date of this policy, if the policy is written for a term of more than one year.
  3. We will mail the notice of nonrenewal at least 60 days before:
    - a. The expiration date of the policy; or
    - b. The anniversary date of this policy, if the policy is written for a term of more than one year,for medical malpractice professional liability.
  4. Proof of mailing will be sufficient proof of notice.
- C.**
1. Paragraph **A.2.a.** of the **Businessowners** Common Policy Conditions is deleted.
  2. Paragraph **E.2.** of the **Cancellation** Common Policy Condition in the **Standard Property Policy** is deleted. Paragraph **E.2.** is deleted in its entirety and is replaced by the following (unless Item **A.** of this endorsement applies):

We may cancel this policy by mailing or delivering to the first Named Insured, and agent if any, written notice of cancellation at least:

    - a. 10 days before the effective date of the cancellation, if we cancel for non-payment of premium; or
    - b. 30 days before the effective date, if we cancel for any other reason.



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

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

**All Commercial Lines Coverage Parts, Coverage Forms, Policies and Endorsements subject to the federal Terrorism Risk Insurance Act and any amendments and extensions thereto**

- A.** The following definition is added with respect to the provisions of this endorsement:

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in accordance with the provisions of the federal Terrorism Risk Insurance Act, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

- B. Cap On Losses from Certified Acts of Terrorism**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we shall not be liable for the payment of any portion of the amount of such losses that ex-

ceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

- C. Application of Other Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability, omission or absence of a terrorism exclusion, does not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part, Coverage Form, Policy or Endorsement such as losses excluded by:

1. Exclusions that address war, warlike action, insurrection, rebellion, revolution, military action, nuclear hazard, nuclear materials, nuclear reaction, radiation, or radioactive contamination;
2. Exclusions that address pollutants, contamination, deterioration, fungi or bacteria; or
3. Any other exclusion,

regardless if the "certified act of terrorism" contributes concurrently or in any sequence to the loss.

- D. Sunset Clause**

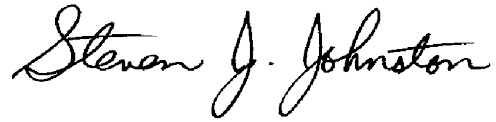
If the federal Terrorism Risk Insurance Act expires or is repealed, then this endorsement is null and void for any act of terrorism that takes place after the expiration or repeal of the Act.

## SIGNATURE ENDORSEMENT

IN WITNESS WHEREOF, this policy has been signed by our President and Secretary in the City of Fairfield, Ohio, but this policy shall not be binding upon us unless countersigned by an authorized representative of ours. The failure to countersign does not void coverage in Arizona, Virginia and Wisconsin.



Secretary



President

The signature on any form, endorsement, policy, declarations, jacket or application other than the signature of the President or Secretary named above is deleted and replaced by the above signatures.

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: ECP 055 17 19

Named Insured is the same as it appears on the Common Policy Declarations unless otherwise stated here.

Loc. (address)  
REFER TO IA904

Item	Coverage	Limits	Coin- surance	Covered Cause Of Loss	OPTIONAL COVERAGES Applicable only when an entry is made							
					Inflation Guard (%)	Replace- ment Cost (x)	Replace- ment Cost Incl. Stock (x)	Agreed Value (x)	Monthly Limit (fraction)	Maximum Period (X)	Extended Period (Days)	
1	BUSINESS INCOME W/EXTRA EXPENSE (a)	12 MONTHS ALS		SPECIAL								
1-1	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	290,000	90%	SPECIAL	4%		X	X				
2	BUSINESS INCOME W/EXTRA EXPENSE (a)	12 MONTHS ALS		SPECIAL								
2-1	BUSINESS PERSONAL PROPERTY INCLUDING IMPROVEMENTS AND BETTERMENTS	100,000	90%	SPECIAL	4%		X	X				

DEDUCTIBLE: \$500.00 unless otherwise stated \$ 1,000

### MORTGAGE HOLDER

Item Name and Address

### FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FM101	05/16	BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)
FPC405	05/16	CINCIPLUS® CINCIPAK™ MEDICAL / DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS
FPC201	05/16	CINCIPAK™ COMMERCIAL PROPERTY AMENDATORY ENDORSEMENT
FPC238	09/15	CINCIPAK™ MEDICAL OR DENTAL OFFICE POLLUTANT CLEAN-UP COVERED PROPERTY EXTENSION
FPC206	05/16	CINCIPAK™ MEDICAL OR DENTAL OFFICE ACTUAL LOSS SUSTAINED BUSINESS INCOME ENDORSEMENT
FPC211	05/16	CINCIPAK™ MEDICAL OR DENTAL OFFICE COMMERCIAL PROPERTY COVERAGE ENHANCEMENT
FPC217	05/16	CINCIPLUS® CINCIPAK™ MEDICAL / DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT
FPC230	05/16	CINCIPAK™ MEDICAL OR DENTAL OFFICE CONDOMINIUM COMMERCIAL UNIT-OWNERS PROPERTY COVERAGE ENHANCEMENT

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FORMS AND / OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

FCP402 05/16 CINCIPAK™ MEDICAL / DENTAL OFFICE BUSINESS INCOME (AND EXTRA EXPENSE)  
AMENDATORY ENDORSEMENT  
FA4078OH 05/17 OHIO CHANGES - COMMERCIAL PROPERTY  
FA450 05/16 COMMERCIAL PROPERTY CONDITIONS  
FA480 02/16 LOSS PAYABLE PROVISIONS  
FA223 05/16 WATER BACKUP DISCHARGED FROM SEWERS, DRAINS, SEPTIC OR SUMP PUMP  
SYSTEMS ENDORSEMENT  
FA244 05/11 EQUIPMENT BREAKDOWN COVERAGE (EXCLUDING PRODUCTION MACHINERY)  
FA213 05/16 BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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# BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)

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# BUILDING AND PERSONAL PROPERTY COVERAGE FORM (INCLUDING SPECIAL CAUSES OF LOSS)

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. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION G. DEFINITIONS.**

## SECTION A. COVERAGE

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

### 1. Covered Property

Covered Property, as used in this Coverage Part, means the following types of property for which a Limit of Insurance is shown in the Declarations:

#### a. Building

Building, means the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery and equipment;
  - (b) Building glass, including any lettering and ornamentation;
  - (c) Signs attached to a building or structure that is Covered Property;
  - (d) Awnings and canopies;
- (4) Personal property owned by you that is used to maintain or service a covered building or its "premises", including:
  - (a) Fire extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:

(a) Additions under construction, alterations and repairs to a covered building;

(b) Materials, equipment, supplies and temporary structures, on or within 1,000 feet of the "premises", used for making additions, alterations or repairs to a covered building.

### b. Outdoor Signs

Your outdoor signs permanently installed and not attached to a covered building, and located within 1,000 feet of the "premises".

### c. Outdoor Fences

Your outdoor fences.

### d. Business Personal Property

Your Business Personal Property consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater. Your Business Personal Property consists of the following unless otherwise specified in the Declarations or on the **BUSINESS PERSONAL PROPERTY - SEPARATION OF COVERAGE ENDORSEMENT.**

- (1) Furniture;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) The cost of labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;

- (7) Leased personal property used in your business for which you have a contractual responsibility to insure. Such leased property is not considered personal property of others in your care, custody or control;
- (8) Personal Property of Others that is in your care, custody or control or for which you are legally liable.
  - (a) This does not include personal effects owned by you, your officers, your partners, or if you are a limited liability company, your members or your managers, or your employees (including leased and temporary workers), except as provided in **5. Coverage Extensions, I. Personal Effects**;
  - (b) This does not include property of others for which you are legally liable as:
    - 1) A carrier for hire; or
    - 2) An arranger of transportation, including car loaders, consolidators, brokers, freight forwarders, or shipping associations; and
- (9) Sales samples.

**2. Property Not Covered**

Covered Property does not include:

**a. Accounts, Deeds, Money or Securities**

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, Accounts, bills, currency, deeds, food stamps or other evidences of debt, "money", notes or "securities";

**b. Animals**

Animals, unless

- (1) Owned by others and boarded by you; or
- (2) Owned by you and covered as "stock" while inside of buildings;

and then only as provided in **3. Covered Causes of Loss, c. Limitations**.

**c. Automobiles**

Automobiles held for sale;

**d. Contraband**

Contraband, or property in the course of illegal transportation or trade;

**e. Electronic Data**

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**, "Electronic data". This Paragraph **e.** does not apply to your "stock" of prepackaged software or to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.

**f. Excavations, Grading & Backfilling**

The cost of excavations, grading, backfilling or filling;

**g. Foundations**

Foundations of buildings, structures, machinery or boilers, if their foundations are below:

- (1) The lowest basement floor; or
- (2) The surface of the ground, if there is no basement.

**h. Land, Water or Growing Crops**

Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetative roof);

**i. Paved Surfaces**

Bridges, roadways, walks, patios or other paved surfaces;

**j. Property While Airborne or Waterborne**

Personal property while airborne or waterborne;

**k. Pilings or Piers**

Pilings, piers, bulkheads, wharves or docks;

**l. Property More Specifically Insured**

Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except as provided in **G. Other Insurance** of the **COMMERCIAL PROPERTY CONDITIONS**;

**m. Retaining Walls**

Retaining walls that are not part of any building described in the Declarations;

**n. Underground Pipes, Flues or Drains**

Underground pipes, flues or drains;



**o. Valuable Papers & Records and Cost to Research**

Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the cost to research, replace or restore the information on "valuable papers and records", including those which exist as "electronic data".

This does not apply to "valuable papers and records" held for sale by you.

**p. Vehicles or Self-Propelled Machines**

Vehicles or self-propelled machines (including aircraft or watercraft) that:

- (1) Are licensed for use on public roads; or
- (2) Are operated principally away from the "premises".

This paragraph does not apply to:

- (1) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;
- (2) Vehicles or self-propelled machines, other than autos, you hold for sale;
- (3) Rowboats or canoes out of water and located at the "premises"; or
- (4) Trailers, but only as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, o. Trailers (Nonowned Detached)**.

**q. Property While Outside of Buildings**

The following property while outside of buildings (except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions**):

- (1) Grain, hay, straw or other crops;
- (2) Signs, except:
  - (a) Signs attached to a covered building or structure;
  - (b) Signs for which a Limit of Insurance is shown in the Declarations.
- (3) Outdoor fences, except outdoor fences for which a Limit of Insurance is shown in the Declarations;
- (4) Radio antennas, television antennas or satellite dishes; including their lead-in wiring, masts, and towers; and

- (5) Trees, shrubs or plants (other than trees, shrubs or plants that are "stock" or part of a vegetative roof).

**3. Covered Causes of Loss**

**a. Covered Causes of Loss**

Covered Causes of Loss means direct "loss" unless the "loss" is excluded or limited in this Coverage Part.

**b. Exclusions**

- (1) We will not pay for "loss" caused directly or indirectly by any of the following, unless otherwise provided. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**(a) Ordinance or Law**

Except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**, the enforcement of or compliance with any ordinance or law:

- 1) Regulating the construction, use or repair of any building or structure; or
- 2) Requiring the tearing down of any building or structure, including the cost of removing its debris.

This exclusion applies whether "loss" results from:

- 1) An ordinance or law that is enforced even if the building or structure has not been damaged; or
- 2) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of any building or structure, or removal of its debris, following a direct "loss" to that building or structure.

**(b) Earth Movement**

- 1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
- 2) Landslide, including any earth sinking, rising or shifting related to such event;

- 3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;
- 4) Earth sinking (other than "sinkhole collapse"), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **(b)1)** through **4)** above, results in fire or explosion, we will pay for the "loss" caused by that fire or explosion.

- 5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or volcanic action, we will pay for the "loss" caused by that fire, building glass breakage or volcanic action.

Volcanic action means direct "loss" resulting from the eruption of a volcano when the "loss" is caused by:

- a) Airborne volcanic blast or airborne shock waves;
- b) Ash, dust or particulate matter; or
- c) Lava flow.

With respect to coverage for Volcanic Action, all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct "loss" to the described property.

This Earth Movement exclusion applies regardless of whether any of the above, in paragraphs **1)** through **5)**, is caused by an

act of nature or is otherwise caused.

**(c) Governmental Action**

Seizure or destruction of property by order of governmental authority. However, we will pay for "loss" caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

**(d) Nuclear Hazard**

Nuclear reaction or radiation, or radioactive contamination, however caused.

**(e) Utility Services**

- 1) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, q. Utility Services**, the failure of power, communication, water or other utility services supplied to the "premises", however caused, if the failure:

- a) Originates away from the "premises"; or
- b) Originates at the "premises", but only if such failure involves equipment used to supply the utility service to the "premises" from a source away from the "premises".

Failure of any utility service includes lack of sufficient capacity and reduction in supply. "Loss" caused by a surge of power is also excluded if the surge would not have occurred but for an event causing the failure of power.

However, if the failure or surge of power, or the failure of communication, water, wastewater removal or other utility service results in a Covered Cause of Loss, we will pay for that portion of "loss" caused by that Covered Cause of Loss.

Communication services include but are not limited to

service relating to Internet access or access to any electronic, cellular or satellite network.

**(f) War and Military Action**

- 1) War, including undeclared or civil war;
- 2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- 3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**(g) Water**

- 1) Flood, meaning the partial or complete inundation of normally dry land areas due to:
  - a) The unusual or rapid accumulation or runoff of rain or surface waters from any source; or
  - b) Waves, tidal waters, tidal waves (including tsunami); or
  - c) Water from rivers, ponds, lakes, streams, or any other body of water that rises above, overflows from, or is not contained within its natural or man-made boundary;and all whether driven by wind or not, including storm surge.
- 2) Mudslides or mudflows, which are caused by flooding as defined above in Paragraph (g)1) above. Mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current;

- 3) Water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; or
- 4) Water under the ground surface pressing on, or flowing or seeping through:
  - a) Foundations, walls, floors or paved surfaces;
  - b) Basements, whether paved or not; or
  - c) Doors, windows or other openings.
- 5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraphs (g)1), 3) or 4), or material carried or otherwise moved by mudslide or mudflow as described in Paragraph (g)2).

This exclusion applies regardless of whether any of the above in Paragraphs (g)1) through (g)5) is caused by an act of nature or is otherwise caused. An example of a situation to which this exclusion applies is the situation where a dam, levee, seawall or other boundary or containment system fails in whole or in part, for any reason, to contain the water.

However, if any of the above, as described in Paragraphs (g)1) through (g)5), results in fire, explosion or sprinkler leakage, we will pay for that portion of "loss" caused by that fire, explosion or sprinkler leakage (if sprinkler leakage is a Covered Cause of Loss).

**(h) "Fungi", Wet Rot, Dry Rot, and Bacteria**

- 1) Presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria. But if "fungi", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

- 2) This exclusion does not apply:
  - a) When "fungi", wet or dry rot or bacteria results from fire or lightning; or
  - b) To the extent that coverage is provided in **SECTION A. COVERAGE, 5. Coverage Extensions, g. "Fungi", Wet Rot, Dry Rot and Bacteria - Limited Coverage** with respect to "loss" from a cause of loss other than fire or lightning.

Exclusions **b.(1)(a)** through **b.(1)(h)** apply whether or not the "loss" event results in widespread damage or affects a substantial area.

- (2) We will not pay for "loss" caused by or resulting from any of the following:

**(a) Electrical Current**

Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:

- 1) Electrical or electronic wire, device, appliance, system or network; or
- 2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- 1) Electrical current, including arcing;
- 2) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- 3) Pulse of electromagnetic energy; or
- 4) Electromagnetic waves or microwaves.

However, if fire results, we will pay for "loss" caused by that fire.

**(b) Delay or Loss of Use**

Delay, loss of use or loss of market.

**(c) Smoke, Vapor, Gas**

Smoke, vapor or gas from agricultural smudging or industrial operations.

**(d) Miscellaneous Causes of Loss**

- 1) Wear and tear;
- 2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- 3) Smog;
- 4) Settling, cracking, shrinking or expansion;
- 5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals;
- 6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. However, if mechanical breakdown results in elevator collision, we will pay for that portion of "loss" caused by that elevator collision; or
- 7) The following causes of loss to personal property:
  - a) Marring or scratching;
  - b) Except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, a. Change in Temperature or Humidity** and **5. Coverage Extensions, q. Utility Services**;
    - i) Dampness or dryness of atmosphere; and
    - ii) Changes in or extremes of temperature.

However, if an excluded cause of loss listed in **(2)(d)1** through **7)** results in a "specified cause of "loss" or building glass breakage, we will pay for that portion of "loss" caused by that "specified cause of loss" or building glass breakage.

**(e) Explosion of Steam Apparatus**

Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. However, if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for that portion of "loss" caused by that fire or combustion explosion. We will also pay for "loss" caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

**(f) Water Seepage**

Continuous or repeated seepage or leakage of water or the presence or condensation of humidity, moisture, or vapor that occurs over a period of 14 days or more.

**(g) Freezing of Plumbing**

Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protection systems) caused by or resulting from freezing, unless:

- 1) You did your best to maintain heat in the building or structure; or
- 2) You drained the equipment and shut off the supply if the heat was not maintained.

**(h) Dishonest or Criminal Acts**

Dishonest or criminal acts (including theft) by you, any of your partners, members (if a limited liability company), officers, managers, employees (including leased workers or temporary employees) directors, trustees, or authorized representatives; whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion applies whether or not an act occurs during the hours of operation.

This **Dishonest or Criminal Acts** exclusion does not apply to acts of destruction by your employees (including leased workers or temporary employees) or by authorized representatives; except theft by employees (including leased workers or temporary employees) is not covered.

**(i) Voluntary Parting Under False Pretense**

Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

**(j) Exposure to Weather**

Rain, snow, ice or sleet to personal property in the open.

**(k) Collapse**

Collapse, including any of the following conditions of property or any part of the property:

- 1) An abrupt falling down or caving in;
- 2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- 3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to Paragraph **(k)1)** or **2)** above.

But if collapse results in a Covered Cause of Loss at the "premises", we will pay for "loss" caused by that Covered Cause of Loss.

This exclusion **Collapse** does not apply:

- 1) To the extent that coverage is provided under the **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse**; or
- 2) To collapse caused by one or more of the following:

- a) The "specified causes of loss";
- b) Breakage of building glass;
- c) Weight of rain that collects on a roof; or
- d) Weight of people or personal property.

**(l) Pollutants**

Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".

This exclusion does not apply to "loss" to glass caused by chemicals applied to the glass.

**m) Loss or Damage to Product**

We will not pay for "loss" to Covered Property consisting of merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for "loss" caused by that Covered Cause of Loss.

**(n) Neglect**

Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of "loss".

- (3)** We will not pay for "loss" caused by or resulting from any of the following in Paragraphs **(3)(a)** through **(3)(c)**. However, if an excluded cause of loss that is listed in Paragraphs **(3)(a)** through **(3)(c)** results in a Covered Cause of Loss, we will pay for that portion of "loss" caused by that Covered Cause of Loss:

**(a) Weather Conditions**

Weather conditions, but this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, (1)(a)** through **(1)(h)** to produce the "loss".

**(b) Acts or Decisions**

Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

**(c) Defects, Errors, and Omissions**

- 1)** An act, error, or omission (negligent or not) relating to:

- a) Land use;
- b) Design, specifications, construction, workmanship;
- c) Planning, zoning, development, surveying, siting, grading, compaction; or
- d) Maintenance, installation, renovation, repair, or remodeling

of part or all of any property on or off the "premises";

- 2)** A defect, weakness, inadequacy, fault, or unsoundness in materials used in construction or repair of part or all of any property on or off the "premises"; or
- 3)** The cost to make good any error in design.

**(4) Special Exclusions**

The Special Exclusions apply only to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**; and if attached to this policy, the following coverage forms: **BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM, BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM, and EXTRA EXPENSE COVERAGE FORM.**

We will not pay for:

- (a)** Any "loss" caused by or resulting from:
  - 1)** Damage or destruction of "finished stock"; or
  - 2)** The time required to reproduce "finished stock".

This Exclusion **(4)(a)** does not apply to Extra Expense.
- (b)** Any "loss" caused by or resulting from damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (c)** Any increase of "loss" caused by or resulting from:
  - 1)** Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
  - 2)** Suspension, lapse or cancellation of any license, lease or contract. However, if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such "loss" that affects your "Business Income" during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period of Indemnity Optional Coverage or any variation of these.
- (d)** Any Extra Expense caused by or resulting from suspension, lapse

or cancellation of any license, lease or contract beyond the "period of restoration".

**(e)** Any other indirect "loss".

**c. Limitations**

The following limitations apply to all policy forms and endorsements shown on the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS**, unless otherwise stated:

**(1) Limitations - Various Types of Property**

We will not pay for "loss" to property as described and limited in this section. In addition, we will not pay for any "loss" that is a consequence of "loss" as described and limited in this section.

**(a) Steam Apparatus**

Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for "loss" to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.

**(b) Hot Water Boilers**

Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.

**(c) Building Interiors**

The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- 1)** The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- 2)** The "loss" is caused by or results from thawing of

snow, sleet or ice on the building or structure.

**(d) Theft of Building Materials**

Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

- 1) Building materials and supplies held for sale by you; or
- 2) "Business Income" coverage or Extra Expense coverage.

**(e) Missing Property**

Property that is missing, where the only evidence of the "loss" is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.

**(f) Transferred Property**

Property that has been transferred to a person or to a place outside the "premises" on the basis of unauthorized instructions.

**(g) Vegetative Roofs**

Lawns, trees, shrubs or plants which are part of a vegetated roof, caused by or resulting from:

- 1) Dampness or dryness of atmosphere or of soil supporting the vegetation;
- 2) Changes in or extremes of temperature;
- 3) Disease;
- 4) Frost or hail; or
- 5) Rain, snow, ice or sleet.

**(2) Limitations - Various Property for Specified Causes**

We will not pay for "loss" to the following types of property unless caused by the "specified causes of loss" or building glass breakage:

- (a) Animals, and then only if they are killed or their destruction is deemed necessary.

- (b) Contractors equipment, machinery and tools owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

- 1) If the property is located on or within 1,000 feet of the "premises"; or
- 2) To Business Income coverage or to Extra Expense coverage.

**(3) Limitation - Personal Property Theft**

This Limitation does not apply to "Business Income" coverage or to Extra Expense coverage. For each category described in Paragraph **c.(3)(a)** through **(3)(d)** below, the most we will pay for "loss" in any one occurrence of theft to all property in that category, regardless of the types or number of articles for that category that are lost or damaged in that occurrence, are the following special limits:

- (a) \$2,500 for Furs, fur garments and garments trimmed with fur.
- (b) \$2,500 for Jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limitation does not apply to jewelry and watches worth \$100 or less per item.
- (c) \$2,500 for Patterns, dies, molds and forms.
- (d) \$250 for Stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are not additional Limits of Insurance.

**(4) Limitation - System or Appliance Defects**

- (a) We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes; and
- (b) We will not pay to replace the substance that escapes as described in Paragraph **c.(4)(a)** above.



But we will pay the cost to repair or replace damaged parts of fire extinguishing equipment if the damage results in discharge of any substance from an automatic fire protection system, or is directly caused by freezing.

However, this Limitation **c.(4)(a)** does not apply to "Business Income" Coverage or to Extra Expense Coverage.

#### 4. Additional Coverages

Unless stated otherwise, **SECTION C. DEDUCTIBLE** does not apply to Paragraph 4. **Additional Coverages**.

Unless stated otherwise, these Paragraph 4. **Additional Coverages** apply on a per location basis.

##### a. Change in Temperature or Humidity

We will pay for direct "loss" to your covered Business Personal Property caused by a change in temperature or humidity or contamination by refrigerant resulting from damage by a Covered Cause of Loss to equipment used for refrigerating, cooling, humidifying, dehumidifying, air conditioning, heating, generating or converting power (including their connections and supply or transmission lines and pipes) when located on the "premises".

This Coverage is included within the Limits of Insurance shown in the Declarations.

##### b. Debris Removal

(1) Subject to Paragraphs **b.(2)**, **(3)** and **(4)** of this Additional Coverage, we will pay your expense to remove debris of Covered Property and other debris that is on the "premises", when such debris is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct "loss".

(2) Debris Removal does not apply to costs to:

- (a) Extract "pollutants" from land or water;
- (b) Remove, restore or replace polluted land or water;
- (c) Remove debris of property of yours that is not insured under this Coverage Part, or property in your possession that is not Covered Property;

(d) Remove debris of property owned by or leased to the landlord of the building where your "premises" are located, unless you have a contractual responsibility to insure such property and it is insured under this Coverage Part;

(e) Remove any property that is Property Not Covered, including property addressed under **5. Coverage Extensions, k. Outdoor Property**.

(f) Remove property of others of a type that would not be Covered Property under this Coverage Part;

(g) Remove deposits of mud or earth from the grounds of the "premises".

(3) Subject to the exceptions in Paragraph **b.(4)** below, the following provisions apply:

(a) The most we will pay for the total of direct "loss" plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained "loss".

(b) Subject to Paragraph **b.(3)(a)**, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct "loss" to the Covered Property that has sustained "loss".

(4) We will pay up to an additional \$10,000 for debris removal expense for each "premises", in any one occurrence of direct "loss" to Covered Property, if one or both of the following circumstances apply:

(a) The total of the actual debris removal expense plus the amount we pay for direct "loss" exceeds the Limit of Insurance on the Covered Property that has sustained "loss".

(b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct "loss" to the Covered Property that has sustained "loss".

Therefore, if Paragraph **b.(4)(a)** and/or **(4)(b)** apply, our total payment for direct

"loss" and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained "loss", plus \$10,000.

### (5) Examples

The following examples assume that there is no coinsurance penalty.

#### Example #1

Limit of Insurance	\$90,000
Amount of Deductible	\$500
Amount of "Loss"	\$50,000
Amount of "Loss" Payable (\$50,000 - \$500)	\$49,500
Debris Removal Expense	\$10,000
Debris Removal Expense Payable (\$10,000 is 20% of \$50,000)	\$10,000

The debris removal expense is less than 25% of the sum of the "loss" payable plus the deductible. The sum of the "loss" payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

#### Example #2

Limit of Insurance	\$90,000
Amount of Deductible	\$500
Amount of "Loss"	\$80,000
Amount of "Loss" Payable (\$80,000 - \$500)	\$79,500
Debris Removal Expense	\$30,000
Debris Removal Expense Payable	
Basic Amount	\$10,500
Additional Amount	\$10,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows:  $\$80,000 (\$79,500 + \$500) \times .25 = \$20,000$ ; capped at \$10,500. The cap applies because the sum of the "loss" payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$30,000) exceeds 25% of the "loss" payable plus the deductible (\$30,000 is 37.5% of \$80,000), and because the sum of the "loss" payable and debris removal expense (\$79,500 + \$30,000 = \$109,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$10,000, the maximum payable under Paragraph (4). Thus the total payable for debris removal ex-

pense in this example is \$20,500; \$9,500 of the debris removal expense is not covered.

#### c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$5,000 in any one occurrence for your liability, which is determined prior to the direct "loss", for fire department service charges:

- (1) Assumed by contract or agreement; or
- (2) Required by local ordinance.

Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

#### d. Fire Protection Equipment Recharge

- (1) We will pay for the expenses you incur to recharge your automatic fire suppression system or portable fire extinguishers when the equipment is discharged:
  - (a) To combat a covered fire to which this insurance applies;
  - (b) As a result of another covered Cause of Loss other than fire; or
  - (c) As a result of an accidental discharge.
- (2) We will not pay your expenses to recharge fire protection equipment as a result of a discharge during testing or installation.
- (3) If it is less expensive to do so, we will pay your costs to replace your automatic fire suppression system or portable fire extinguishers rather than recharge that equipment.

The most we will pay in any one occurrence under this Additional Coverage is \$25,000. This Coverage is in addition to the Limits of Insurance shown in the Declarations.

#### e. Inventory or Appraisal

- (1) We will pay the necessary expenses you incur to prepare claim information as required by this Coverage Part. Expenses must result from:
  - (a) Taking inventories;
  - (b) Making appraisals; and

- (c) Preparing a statement of loss and other supporting exhibits.
- (2) We will not pay for any expenses:
  - (a) Incurred to prove that "loss" is covered;
  - (b) Incurred under **SECTION D. LOSS CONDITIONS, 2. Appraisal**;
  - (c) Incurred for examinations under oath;
  - (d) Billed by and payable to independent or public adjusters; or
  - (e) To prepare claims not covered by this Coverage Part.

The most we will pay for any one occurrence under this Additional Coverage is \$10,000. This Coverage is in addition to the shown in the Declarations.

**f. Key and Lock Expense**

- (1) If a key or master key is lost, stolen, or damaged, we will pay for:
  - (a) The actual expense of the new keys; and
  - (b) The adjustment of locks to accept new keys; or
  - (c) If required, new locks, including the expense of their installation;but only for locks at buildings or structures covered by this Coverage Part.
- (2) This Coverage does not apply to keys that were given to former employees.

The most we will pay in any one occurrence under this Additional Coverage is Limit of Insurance \$1,000. This Coverage is in addition to the Limit of Insurance shown in the Declarations.

**g. Ordinance or Law**

- (1) If a covered building or structure sustains direct "loss" from a Covered Cause of Loss, resulting in the enforcement of or compliance with an ordinance or law that is in force at the time of "loss" and regulates the demolition, construction or repair of buildings or structures, or establishes zoning or land use requirements at the "premises", then subject to **SECTION D, LOSS CONDITIONS, 4. Loss Payment**, we will pay:

**(a) Loss of Use of Undamaged Parts of Buildings**

The costs you incur to rebuild at the same "premises" any undamaged portion of your building or structure caused by enforcement of or compliance with an ordinance or law requiring demolition of undamaged parts of the same building or structure. We will only pay the costs to satisfy the minimum requirements of the ordinance or law. Losses and costs incurred in complying with recommended actions or standards that exceed actual requirements are not covered.

**(b) Demolition Costs**

The costs you incur to demolish and clear the site of undamaged parts of the same building or structure as a result of Paragraph **g.(1)(a)** above.

**(c) Increased Costs of Construction**

- 1) For buildings or structures to which **SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** applies, the increased costs to comply with the minimum standards of an ordinance or law to:
  - a) Repair or reconstruct damaged portions of that building or structure; and
  - b) Reconstruct or remodel undamaged portions of that building or structure whether or not demolition is required;

However, this increased cost of construction applies only if the building or structure is repaired, reconstructed or remodeled and is intended for occupancy similar to the building or structure it replaces, unless such occupancy is not permitted by zoning or land use ordinance or law.

- 2) For this Paragraph **g.(1)(c)** only, the increased costs to repair or reconstruct the following:

- a) The cost of excavations, grading, backfilling and filling;
- b) Foundation of the building;
- c) Pilings;
- d) Underground pipes, flues and drains.

The items listed in Paragraphs **g.2)a)** through **g.2)d)** above are deleted from **SECTION A. COVERAGE, 2. Property Not Covered;**

(2) We will not pay for:

- (a) Enforcement of or compliance with any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungi", wet or dry rot or bacteria; or
- (b) The costs associated with the enforcement of or compliance with any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungi", wet or dry rot or bacteria.

(3) We will not pay for "loss" due to any ordinance or law that:

- (a) You were required to comply with before the "loss", even if the building or structure was undamaged; and
- (b) With which you failed to comply.

(4) The terms of this Additional Coverage apply separately to each building or structure covered by this Coverage Part.

The most we will pay under this Additional Coverage is \$10,000 per building. This is in addition to the Limit of Insurance shown in the Declarations for the building suffering "loss".

#### **h. Pollutant Clean Up and Removal**

We will pay your expenses to extract "pollutants" from land or water at the "premises" if the discharge, dispersal, seepage,

migration, release, escape or emission of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each "premises" is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss during each "coverage term". This Coverage is in addition to the Limit of Insurance shown in the Declarations.

#### **i. Preservation of Property**

If it is necessary to move Covered Property from the "premises" to preserve it from imminent "loss" by a Covered Cause of Loss, we will pay for any direct "loss" to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the "loss" occurs within 60 days after the property is first moved.

This Coverage is included within Limit of Insurance shown in the Declarations for such Covered Property.

#### **j. Rewards**

We will pay to provide a reward for information that leads to a conviction for arson, theft, vandalism, or burglary. The conviction must involve a covered "loss" caused by arson, theft, vandalism, or burglary.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is \$10,000. This Coverage is in addition to the Limit of Insurance shown in the Declarations.

### **5. Coverage Extensions**

Unless amended within a particular Coverage Extension, each Extension applies to property located in or on the building described in the Declarations or in the open (or in a vehicle or portable storage unit) within 1,000 feet of the "premises".

The limits applicable to the Coverage Extensions are in addition to the Limit of Insurance shown in the Property Declarations. Limits of Insurance specified in these Extensions apply per location unless stated otherwise.

**SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**, does not apply to these Coverage Extensions.

**a. Accounts Receivable**

**SECTION C. DEDUCTIBLE** does not apply to this Coverage Extension.

(1) When you sustain direct "loss" to your accounts receivable records caused by a Covered Cause of Loss, we will pay:

- (a) All amounts due from your customers that you are unable to collect;
- (b) Interest charges on any loan required to offset amounts you are unable to collect pending our payment of these amounts;
- (c) Collection expenses in excess of your normal collection expenses that are made necessary by the "loss"; and
- (d) Other reasonable expenses that you incur to re-establish your records of accounts receivable.

(2) Coverage does not apply to:

- (a) Records of accounts receivable in storage away from the "premises"; or
- (b) Contraband, or property in the course of illegal transportation or trade.

(3) We will extend coverage to include:

**(a) Removal**

If you give us written notice within 30 days of removal of your records of accounts receivable because of imminent danger of direct "loss" from a Covered Cause of Loss, we will pay for "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limit of Insurance applicable to this Coverage Extension.

**(b) Away From Your Premises**

The most we will pay in any one occurrence is \$5,000, regardless of the number of locations, for "loss" caused by a Covered Cause of Loss to Accounts Receivable while they are away from your "premises".

This Away From Premises Limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

(4) **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension, except as follows:

- (a) **Exclusion (1)(c) Governmental Action;**
- (b) **Exclusion (1)(d) Nuclear Hazard;**
- (c) **Exclusion (1)(f) War and Military Action.**

(5) In addition to Paragraph **a.(4)** of this Coverage Extension, we will not pay for "loss" resulting from any of the following:

**(a) Dishonest or criminal acts by:**

- 1) You, your partners, employees, directors, trustees or authorized representatives;
- 2) A manager or a member if you are a limited liability company;
- 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or
- 4) Anyone else entrusted with the records of accounts receivable for any purpose.

This Paragraph **a.(5)(a)** applies whether or not such persons are acting alone or in collusion with other persons or such act occurs during the hours of employment.

However, this Paragraph **a.(5)(a)** does not apply to dishonest acts of a carrier for hire or to acts of destruction by your employees. However, theft by employees is still not covered.

**(b) Alteration, falsification, concealment or destruction of records of**

accounts receivable done to conceal the wrongful giving, taking or withholding of "money", "securities" or other property.

This exclusion applies only to the extent of the wrongful giving, taking or withholding.

- (c) Bookkeeping, accounting or billing errors or omissions.
- (d) Electrical or magnetic injury, disturbance or erasure of "electronic data" that is caused by or results from:
  - 1) Programming errors or faulty machine instructions;
  - 2) Faulty installation or maintenance of data processing equipment or component parts;
  - 3) An occurrence that took place more than 100 feet from your "premises"; or
  - 4) Interruption of electrical power supply, power surge, blackout or brownout if the cause of such occurrence took place more than 100 feet from your "premises".

But we will pay for direct "loss" caused by lightning.

- (e) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- (f) A "loss" that requires any audit of records or any inventory computation to prove its factual existence.

**(6) Determination of Receivables:**

- (a) If you cannot accurately establish the amount of accounts receivable outstanding as of the time of direct "loss", the following method will be used:
  - 1) Determine the total of the average monthly amounts of accounts receivable for the 12 months immediately preceding the month in which the direct "loss" occurs; and
  - 2) Adjust that total for any normal fluctuations in the amount of accounts receiv-

able for the month in which the direct "loss" occurred or for any demonstrated variance from the average for that month.

- (b) The following will be deducted from the total amount of accounts receivable, however that amount is established:
  - 1) The amount of the accounts for which there is no direct "loss"; and
  - 2) The amount of the accounts that you are able to re-establish or collect; and
  - 3) An amount to allow for probable bad debts that you are normally unable to collect; and
  - 4) All unearned interest and service charges.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

**b. Business Income and Extra Expense**

**SECTION C. DEDUCTIBLE** does not apply to this Coverage Extension.

**(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a) Any area within the building or on the site at which the "premises" are located if that area ser-

vices or is used to gain access to the "premises"; and

- (b) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

**(2) Extra Expense**

- (a) We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs **(2)(b)**, **(c)** and **(d)**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- (b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:
  - 1) Avoid or minimize the "suspension" of business and to continue "operations" either:
    - a) At the "premises"; or
    - b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - 2) Minimize the "suspension" of business if you cannot continue "operations".
- (c) We will also pay expenses to:
  - 1) Repair or replace property; or
  - 2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal

"operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

- (d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

**(3) Civil Authority**

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
- 2) When your "Business Income" coverage ends;

whichever is later.

**(4) Alterations and New Buildings**

We will pay for the actual loss of "Business Income" you sustain and Extra Expense you incur due to direct "loss" at the "premises" caused by or resulting from any Covered Cause of Loss to:

- (a) New buildings or structures, whether complete or under construction;
- (b) Alterations or additions to existing buildings or structures; and
- (c) Machinery, equipment, supplies or building materials located on or within 1,000 feet of the "premises" and:
  - 1) Used in the construction, alterations or additions; or
  - 2) Incidental to the occupancy of new buildings.

If such direct "loss" delays the start of "operations", the "period of restoration" for "Business Income" Coverage will begin on the date "operations" would have begun if the direct "loss" had not occurred.

**(5) Newly Purchased or Leased Locations**

We will pay the actual loss of "Business Income" you sustain and Extra Expense you incur due to direct "loss" to Covered Property at any location you purchase or lease caused by or resulting from a Covered Cause of Loss. This coverage for the Newly Purchased or Leased Locations will end when any of the following first occurs:

- (a) This policy expires;
- (b) You report values to us;
- (c) 90 days pass from the date you acquire or begin to construct the Covered Property.

**(6) Extended Business Income**

- (a) For "Business Income" Other Than "Rental Value", if the necessary "suspension" of your "operations" produces a "Business Income" or Extra Expense "loss" payable under this Coverage Part, we will pay for the actual loss of "Business Income" you sustain and Extra Expense you incur during the period that:
  - 1) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
  - 2) Ends on the earlier of:

- a) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct "loss" had occurred; or
- b) 60 consecutive days after the date determined in **b.(6)(a)1)** above.

However, Extended Business Income does not apply to loss of "Business Income" sustained or Extra Expense incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the "premises" are located.

Loss of "Business Income" must be caused by direct "loss" at the "premises" caused by or resulting from any Covered Cause of Loss.

- (b) For "Rental Value", if the necessary "suspension" of your "operations" produces a "Rental Value" "loss" payable under this Coverage Part, we will pay for the actual loss of "Rental Value" you incur during the period that:
    - 1) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
    - 2) Ends on the earlier of:
      - a) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct "loss" had occurred; or
      - b) 60 consecutive days after the date determined in **b.(6)(b)1)** above.
- However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of



Loss in the area where the "premises" are located.

Loss of "Rental Value" must be caused by direct "loss" at the "premises" caused by or resulting from any Covered Cause of Loss.

**(7) Interruption of Computer Operations**

- (a) Subject to all provisions of this Coverage Extension, you may extend the insurance that applies to "Business Income" and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" as described in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data.**
- (b) Paragraph **b.(7)(a)** does not apply to "loss" sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in Paragraph **b.(7)(c)** has not been exhausted.
- (c) The most we will pay under Paragraph **b.(7)** of this Coverage Extension is \$2,500 for all "loss" sustained and expense incurred in the "coverage term", regardless of the number of interruptions or the number of "premises" or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for subsequent interruptions in that "coverage term". A balance remaining at the end of a "coverage term" does not carry over to the next "coverage term". With respect to an interruption that begins in a "coverage term" and continues or results in additional "loss" or expense in a subsequent "coverage term", all "loss" and expense is deemed to be sustained in the "coverage term" in which the interruption began.

This \$2,500 coverage for Interruption of Computer Operations does not increase the Limit of Insurance provided in this Coverage Extension.

The most we will pay for "loss" in any one occurrence under this "Business Income" and Extra Expense Coverage Extension is \$25,000.

**c. Collapse**

The coverage provided under this Coverage Extension applies only to an abrupt collapse as described and limited in Paragraphs **c.(1)** through **c.(7)** below.

- (1) For the purpose of this Coverage Extension only, abrupt collapse means an abrupt falling down or caving in of a building or structure or any part of a building or structure with the result that the building or structure or part of the building or structure cannot be occupied for its intended purpose.
- (2) We will pay for direct "loss" to Covered Property, caused by abrupt collapse of a building or structure or any part of a building or structure insured under this Coverage Part, or that contains Covered property insured under this Coverage Part, if such collapse is caused by one or more of the following:
  - (a) Building or structure decay that is hidden from view, unless the presence of such decay is known or should reasonably have been known to an insured prior to collapse;
  - (b) Insect or vermin damage that is hidden from view, unless the presence of such damage is known or should reasonably have been known to an insured prior to collapse;
  - (c) Use of defective material or methods in construction, remodeling, or renovation if the abrupt collapse occurs during the course of the construction, remodeling, or renovation.
  - (d) Use of defective materials or methods in construction, remodeling, or renovation if the abrupt collapse occurs after construction, remodeling, or renovation is complete but only if the collapse is caused in part by:
    - 1) A cause of loss listed in Paragraph **c.(2)(a)** or **c.(2)(b)** of this Coverage Extension;
    - 2) One or more of the "specified causes of loss";

- 3) Breakage of building glass;
  - 4) Weight of people or personal property; or
  - 5) Weight of rain that collects on a roof.
- (3) This Coverage Extension does not apply to:
- (a) A building or structure or any part of a building or structure that is in danger of falling down or caving in;
  - (b) A part of a building or structure that is standing, even if it has separated from another part of the building or structure; or
  - (c) A building or structure that is standing or any part of a building or structure that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (4) With respect to the following property:
- (a) Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
  - (b) Awnings, gutters and downspouts;
  - (c) Yard fixtures;
  - (d) Outdoor swimming pools;
  - (e) Fences;
  - (f) Piers, wharves and docks;
  - (g) Beach or diving platforms; including their appurtenances;
  - (h) Retaining walls; and
  - (i) Walks, roadways and other paved surfaces;
- if an abrupt collapse is caused by a cause of loss listed in Paragraph **c.(2)(a)** through **c.(2)(d)**, we will pay for "loss" to that property only if:
- (a) Such "loss" is a direct result of the abrupt collapse of a building or structure insured under this Coverage Part; and
  - (b) The property is Covered Property under this Coverage Part.
- (5) If personal property abruptly falls down or caves in and such collapse

is **not** the result of abrupt collapse of a building or structure, we will pay for direct "loss" to Covered Property caused by such collapse of personal property only if:

- (a) The collapse of personal property was caused by a Cause of Loss listed in **c.(2)(a)** through **c.(2)(d)** of this Coverage Extension;
- (b) The personal property that collapses is inside a building; and
- (c) The property that collapses is not of a kind listed in Paragraph **c.(4)** above of this Coverage Extension, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **c.(5)** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

- (6) This Coverage Extension does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
- (7) This Coverage Extension shall not increase the Limit of Insurance provided in this Coverage Part.
- (8) The term Covered Cause of Loss includes Collapse as described and limited in Paragraphs **c.(1)** through **c.(7)**.

**d. Electronic Data**

- (1) This Coverage Extension does not apply to your "stock" of prepackaged software, or to "electronic data" which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) We will pay for the cost to replace or restore "electronic data" which has been destroyed or corrupted by a Covered Cause of Loss that applies to **SECTION A. COVERAGE, 1. Covered Property, d. Business Personal Property**. To the extent that "electronic data" is not replaced or restored, the "loss" will be valued at the cost of replacement of the me-

dia on which the "electronic data" was stored with blank media of substantially identical type.

- (3) For the purposes of this Coverage Extension only, Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, that is designed to damage or destroy any part of the system or disrupt its normal operation. However, there is no coverage for "loss" caused by or resulting from manipulation of a computer system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system or "electronic data".
- (4) The most we will pay for all direct "loss" under this Coverage Extension, regardless of the number of "premises" or computer systems involved, is \$2,500. This limit is the most we will pay for the total of all direct "loss" arising out of all occurrences that take place in the "coverage term". If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent "loss" sustained in the "coverage term". A balance remaining in a "coverage term" does not carry over to the next "coverage term". With respect to an occurrence which begins in the "coverage term" and continues or results in additional "loss" in a subsequent "coverage term", all "loss" is deemed to be sustained in the "coverage term" in which the occurrence began.

**e. Exhibitions, Fairs or Trade Shows**

We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered property of others, while it is located at exhibitions, fairs or trade shows. This Coverage Extension does not apply while Covered Property is in transit to or from the exhibition, fair or trade show.

The most we will pay for "loss" in any one occurrence is \$10,000.

The Limit of Insurance provided under this Coverage Extension does not apply per location.

**f. Fences**

We will pay for direct "loss" caused by a Covered Cause of Loss to your outdoor fences that are located within 1,000 feet of the "premises" and not otherwise insured as Covered Property in this Coverage Part.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

**g. Fungi, Wet Rot, Dry Rot, and Bacteria - Limited Coverage**

(1) The coverage described in Paragraphs **g.(2)** and **g.(3)** of this Coverage Extension only apply when the "fungi", wet or dry rot or bacteria is the result of a Covered Cause of Loss that occurs during the "coverage term" and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

(2) We will pay for "loss" by "fungi", wet or dry rot or bacteria. As used in this Coverage Extension, the term "loss" means:

(a) Direct "loss" to Covered Property caused by "fungi", wet or dry rot or bacteria, including the cost of removal of the "fungi", wet or dry rot or bacteria;

(b) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungi", wet or dry rot or bacteria; and

(c) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungi", wet or dry rot or bacteria are present.

(3) For the coverage described under Paragraph **g.(2)** of this Coverage Extension, the most we will pay for "loss", regardless of the number of claims, is \$15,000. This limit is the most we will pay for the total of all "loss" arising out of all occurrences that take place in the "coverage term". With respect to a particular occurrence of "loss" which results in "fungi", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungi", wet or dry rot or bacteria continues to be pre-

sent or active, or recurs, in a subsequent "coverage term".

- (4) The coverage provided under this Coverage Extension does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in "loss" by "fungi", wet or dry rot or bacteria, and other "loss", we will not pay more, for the total of all "loss" than the applicable Limit of Insurance on the affected Covered Property.

If there is covered "loss" to Covered Property, not caused by "fungi", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Coverage Extension, except to the extent that "fungi", wet or dry rot or bacteria causes an increase in the "loss". Any such increase in the "loss" will be subject to the terms of this Coverage Extension.

- (5) The terms of this Coverage Extension do not increase or reduce the coverage provided under:

- (a) **SECTION A. COVERAGE, 5. Coverage Extensions, c. Collapse;**
- (b) **SECTION A. COVERAGE, 5. Coverage Extensions, s. Water, Other Liquids, Powder or Molten Material Damage**

- (6) The following (6)(a) or (6)(b) apply only if "Business Income", "Rental Value", or Extra Expense Coverage applies to the "premises" and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable "Business Income", "Rental Value", or Extra Expense Coverage.

- (a) If the "loss" which resulted in "fungi", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to "loss" to property caused by "fungi", wet or dry rot or bacteria, then our payment under "Business Income" and/or Extra Expense is limited to the amount of "loss" and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- (b) If a covered "suspension" of "operations" was caused by "loss" other than "fungi", wet or dry rot or bacteria but remedia-

tion of "fungi", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for "loss" and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

- (7) This Coverage Extension does not apply to lawns, trees, plants or shrubs that are part of any vegetative roof.

**h. Glass**

- (1) If a Covered Cause of Loss occurs to building glass that is Covered Property, we will also pay necessary expenses you incur to:

- (a) Put up temporary plates or board up openings if repair or replacement of damaged glass is delayed;
- (b) Repair or replace encasing frames;
- (c) Remove or replace obstructions (except expenses to remove or replace window displays); and
- (d) Repair or replace alarm tapes.

- (2) If you are a tenant at a covered "premises" and:

- (a) The building you occupy is not Covered Property; and
- (b) You are legally liable for direct "loss" to the building glass in that building;

such building glass, for the purposes of this Paragraph **h.(2)**, is Covered Property. The most we will pay for "loss" in any one occurrence is \$5,000. This building glass is subject to the building deductible as described in **SECTION C. DEDUCTIBLE**.

- (3) For the purposes of this Coverage Extension only, **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply except as follows:

- (a) **Exclusion (1)(b) Earth Movement;**
- (b) **Exclusion (1)(c) Governmental Action;**

- (c) **Exclusion (1)(d) Nuclear Hazard;**
- (d) **Exclusion (1)(f) War and Military Action;**
- (e) **Exclusion (2)(d)1** Wear and tear; and
- (f) As listed in **Exclusion (2)(d)2**: Rust or other corrosion, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

i. **Newly Purchased, Leased or Constructed Property**

**(1) Buildings**

If buildings are Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to:

- (a) Your new buildings or additions while being built on the "premises";
- (b) Buildings you newly purchase or become newly required to insure by written contract that are:
  - 1) Intended for use by you as a warehouse; or
  - 2) Similarly used by you as buildings insured under this Coverage Part.

The most we will pay for "loss" in any one occurrence to a building under this Coverage Extension is 1,000,000 for each building.

**(2) Business Personal Property**

- (a) If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to business personal property you newly purchase or are required to insure by written contract:
  - 1) While located at buildings described in Paragraph **a.(1)** of this Coverage Extension; or
  - 2) While located in a leased building or space therein that you are not required to insure. Such lease must be for a period of 12 consecutive months or longer.

- (b) Paragraph **a.(2)(a)** of this Coverage Extension does not apply to:

- 1) Any business personal property covered under **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, e. Exhibitions, Fairs, or Trade Shows or m. Property Off Premises;**
- 2) Any business personal property that is covered under **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, p. Transportation** or is otherwise considered to be in-transit to or from a "premises".
- 3) Business personal property of others that is temporarily in your possession in the course of installing or performing work on such property, or temporarily in your possession in the course of your manufacturing or wholesaling activities.

The most we will pay for "loss" in any one occurrence to your Business Personal Property under this Coverage Extension is \$500,000 at each building.

**(3) Period of Coverage**

Coverage provided under this Coverage Extension will end when any of the following first occurs:

- (a) This policy expires,
- (b) For buildings described in Paragraph **(1)(a)** of this Coverage Extension, 90 days pass from the date you begin construction on that part of the building that would qualify as Covered Property;
- (c) For business property described in Paragraph **(1)(b)** and Paragraph **(2)(a)1**, 90 days after your purchase or lease;
- (d) For business personal property described in Paragraph **(2)(a)2**, 90 days from the effective date

of the lease of the building space in the building; or

(e) You report values to us.

We will charge you additional premium for values reported from the date you lease or purchase the property, or begin construction on that part of the building that would qualify as Covered Property.

**j. Nonowned Building Damage**

If you are a tenant at a covered "premises" and:

- (1) The building you occupy is not Covered Property; and
- (2) You are legally liable for direct "loss" to that building;

We will pay for direct "loss" to that building caused by burglary, robbery, theft or attempted theft.

This Coverage Extension does not apply to:

- (1) Glass, including lettering and ornamentation, and also necessary:
  - (a) Repair or replacement of encasing frames or alarm tapes; and
  - (b) Expenses incurred to board up openings or remove or replace obstruction.
- (2) Building materials and equipment removed from the "premises".

This Coverage Extension does not apply if you have purchased other insurance in your name on the building you occupy as required by the lease.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

**k. Outdoor Property**

We will pay for direct "loss" caused by a Covered Cause of Loss to the following types of your Covered Property:

- (1) Radio antennas, television antennas or satellite dishes (including their lead-in wiring, masts and towers);
- (2) Trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or part of a vegetative roof), including debris removal ; and
- (3) If you are a tenant, to your awnings that are attached to a building you occupy;

but only if caused by or resulting from any of the following causes of loss if they are included as Covered Causes of Loss under this Coverage Part:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion;
- (5) Aircraft; or
- (6) Falling objects.

We will pay for the debris removal expenses of the above type property that are not your Covered Property if such debris is on your "premises" due to the Covered Causes of Loss described in this Coverage Extension. If you are a tenant, we do not pay debris removal expenses for trees, plants or shrubs owned by the landlord or owner of the building you occupy.

No other coverage for debris removal expenses provided in this Coverage Part applies to this Outdoor Property Coverage Extension.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000, but not more than \$1,000 for any one tree, shrub or plant.

**l. Personal Effects**

If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to personal effects owned by:

- (1) You, your officers, or your partners, or if you are a limited liability company, your members or your managers; or
- (2) Your employees (including temporary and leased employees), including tools owned by your employees that are used in your business. However, employee tools are not covered for theft.

This Coverage Extension does not apply to "money" or "securities".

If theft is included as a Covered Cause of Loss under this Coverage Part, then this Coverage Extension has a \$500 per occurrence limitation for direct "loss" by theft.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$10,000.

**m. Property Off Premises**

(1) We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered personal property of others, while it is away from the "premises", if it is:

- (a) Temporarily at a location you do not own, lease or operate; or
- (b) In storage at a location you lease, provided the lease was executed for the first time after the beginning of the current "coverage term".

(2) This Coverage Extension does not apply to Covered Property at exhibitions, fairs, trade show, or in transit.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$10,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

**n. Signs**

We will pay for direct "loss" caused by a Covered Cause of Loss, including debris removal expense, to signs not otherwise insured by this Coverage Part.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

**o. Trailers (Nonowned Detached)**

(1) If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to trailers that you do not own, provided that:

- (a) The trailer is used in your business;
- (b) The trailer is temporarily in your care, custody or control at the "premises"; and
- (c) You have a contractual responsibility to pay for "loss" to the trailer.

(2) We will not pay for any direct "loss" that occurs:

(a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;

(b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.

(3) This insurance is excess over the amount due, whether you can collect on it or not, from any other insurance covering such property.

(4) This Coverage Extension does not apply to any property inside or on the trailer.

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$5,000.

**p. Transportation**

We will pay for direct "loss" caused by a Covered Cause of Loss to your Covered Property, including covered personal property of others while it is in or on a vehicle, including loading and unloading of the property.

The most we will pay for "loss" in any one occurrence is \$10,000.

The Limit of Insurance provided by this Coverage Extension does not apply per location.

**q. Utility Services**

We will pay for:

(1) Direct "loss" to Covered Property at your "premises" except for direct "loss" resulting from the partial or complete failure of Wastewater Removal Services; and

(2) Loss of "Business Income" you sustain and Extra Expenses you incur as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense;**

caused by or resulting from the partial or complete failure of utility services to the "premises".

The partial or complete failure of the utility services listed below must be caused by direct "loss" caused by a Covered Cause of Loss to the following property:

(1) Power Supply Property, meaning the following types of property supplying

electricity, steam or natural gas to the "premises":

- (a) Utility generating plants;
  - (b) Switching stations;
  - (c) Substations;
  - (d) Transformers; and
  - (e) Transmission, distribution, service, or similar lines, excluding all such overhead lines of any type.
- (2) Water Supply Property, meaning the following types of property supplying water to the "premises":
- (a) Pumping stations; and
  - (b) Water mains.
- (3) Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the "premises", other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities. Coverage under this Coverage Extension does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.
- (4) Communication Supply Property, meaning property supplying communication services, including service relating to Internet access or access to any electronic, cellular or satellite network; telephone, radio, microwave or television services to the "premises", such as:
- (a) Communication transmission, distribution, service or similar lines, including fiber optic lines, excluding all such overhead lines of any type;
  - (b) Coaxial cables; and
  - (c) Microwave radio relays, excluding satellites.

This Coverage Extension does not apply to "loss" to "electronic data", including destruction or corruption of "electronic data".

The most we will pay for all direct "loss" and loss of "Business Income" and Extra Expense in any one occurrence is \$25,000.

**r. Valuable Papers and Records**

**SECTION C. DEDUCTIBLE** does not apply to this Coverage Extension.

- (1) Subject to Paragraph **r.(3)** of this Coverage Extension, we will pay necessary costs you incur to re-search, replace or restore lost or damaged information on "valuable papers and records" that are your property or the property of others in your care, custody or control; resulting from direct "loss" caused by a Covered Cause of Loss.
- (2) Coverage does not apply to:
- (a) Property that cannot be replaced with other property of like kind and quality;
  - (b) Property held as samples or for delivery after sale;
  - (c) Property in storage away from the "premises", except as provided in Paragraph **r.(4)(b)** of this Coverage Extension;
  - (d) Contraband, or property in the course of illegal transportation or trade;
  - (e) "Valuable papers and records" in the form of "electronic data", including the materials on which the "electronic data" is recorded.
- (3) The most we will pay for "loss" is the least of the following amounts:
- (a) The cost of reasonably restoring the damaged property to its condition immediately before the "loss";
  - (b) The cost of replacing the damaged property with substantially identical property; or
  - (c) The actual cash value of the damaged property at the time of "loss".

However, we will not pay for "loss" unless or until the damaged property is actually replaced or restored; and then only if such replacement or restoration occurs within 36 months from the date of direct "loss".

- (4) We will extend coverage to include:
- (a) **Removal**  
If you give us written notice within 30 days of removal of your "valuable papers and records"



because of imminent danger of direct "loss" from a Covered Cause of Loss, we will pay for direct "loss" while they are:

- 1) At a safe place away from your "premises"; or
- 2) Being taken to and returned from that place.

This Removal coverage is included within the Limits of Insurance applicable to this Coverage Extension.

**(b) Away From Your Premises**

We will pay up to \$5,000 in any one occurrence, regardless of the number of locations, for direct "loss" caused by a Covered Cause of Loss to "valuable papers and records" while they are away from your "premises".

This Away From Premises limit is in addition to the Limit of Insurance applicable to this Coverage Extension.

**(5) SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension except as follows:

- (a) **Exclusion (1)(c) Governmental Action;**
- (b) **Exclusion (1)(d) Nuclear Hazard; and**
- (c) **Exclusion (1)(f) War and Military Action.**

**(6)** In addition to Paragraph **r.(5)** of this Coverage Extension, we will not pay for direct "loss" resulting from any of the following:

- (a) Dishonest or criminal acts by:
  - 1) You, your partners, employees, directors, trustees or authorized representatives;
  - 2) A manager or a member if you are a limited liability company;
  - 3) Anyone else with an interest in the records of accounts receivable, or their employees or authorized representatives; or
  - 4) Anyone else entrusted with the records of accounts receivable for any purpose.

This Paragraph **r.(6)(a)** applies whether or not such persons are acting alone or in collusion with other persons or such act occurs during the hours of employment.

However, this Paragraph **r.(6)(a)** does not apply to dishonest acts of a carrier for hire or to acts of destruction by your employees. However, theft by employees is still not covered.

- (b) Errors or omissions in processing or copying. However, we will pay for that portion of direct "loss" caused by resulting fire or explosion if these causes of loss would be covered by this Coverage Part.
- (c) Electrical or magnetic injury, disturbance or erasure of electronic recordings. But we will pay for direct "loss" caused by lightning.
- (d) Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

The most we will pay for "loss" in any one occurrence is \$25,000.

**s. Water Damage, Other Liquids, Powder or Molten Material Damage**

If a covered direct "loss" to which this insurance applies was caused by or resulted from water or other liquid, powder or molten material damage, we will also pay the cost to tear out and replace any otherwise undamaged part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes.

**SECTION B. LIMITS OF INSURANCE**

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations, except as amended in **SECTION A. COVERAGE, 3. Covered Causes of Loss, c. Limitations, 4. Additional Coverages, and 5. Coverage Extensions.**

**SECTION C. DEDUCTIBLE**

Except as otherwise provided; in any one occurrence of direct "loss" we will first reduce the amount of "loss" if required by **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance** or **SECTION F. OPTIONAL COVERAGES, 1. Agreed Value.** If the adjusted amount of direct "loss" is less than or equal to the Deductible, we will not pay for that direct "loss". If the adjusted amount of direct "loss" exceeds the Deductible, we will then

subtract the Deductible from the adjusted amount of direct "loss", and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves direct "loss" to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

## 1. Deductible Examples

### Example No. 1:

(This example assumes there is no coinsurance penalty as outlined in **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**).

Deductible:	\$250
Limit of Insurance - Bldg. 1:	\$60,000
Limit of Insurance - Bldg. 2:	\$80,000
"Loss" to Bldg. 1:	\$60,100
"Loss" to Bldg. 2:	\$90,000

The amount of "loss" to Bldg. 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Bldg. 1 plus the Deductible.

The Deductible will be subtracted from the amount of "loss" in calculating the "loss" payable for Bldg. 1:

$$\$60,100 - \$250 = \$59,850 \text{ "Loss" Payable - Bldg. 1}$$

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of "loss" payable for Bldg. 2. "Loss" payable for Bldg. 2 is the Limit of Insurance of \$80,000.

$$\text{Total amount of "loss" payable: } \$59,850 + \$80,000 = \$139,850.$$

### Example No. 2:

(This example also assumes there is no coinsurance penalty).

The Deductible and Limits of Insurance are the same as those in Example No. 1:

"Loss" to Bldg. 1: \$70,000 (Exceeds Limit of Insurance plus Deductible)

"Loss" to Bldg. 2: \$90,000 (Exceeds Limit of Insurance plus Deductible)

"Loss" Payable - Bldg. 1: \$60,000 (Limit of Insurance)

"Loss" Payable - Bldg. 2: \$80,000 (Limit of Insurance)

$$\text{Total amount of "loss" payable: } \$140,000.$$

## 2. Glass Deductible

When direct "loss" to the building you occupy only involves building glass, the Deductible for that "loss" will be the lesser of:

- a. \$500; or
- b. The Deductible shown in the Declarations for that Covered Property.

## SECTION D. LOSS CONDITIONS

The following conditions apply in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

### 1. Abandonment

There can be no abandonment of any property to us.

### 2. Appraisal

If we and you disagree on the value of the property, the amount of Net Income and operating expense, or the amount of "loss", either may make written demand for an appraisal of the "loss". In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property, the amount of Net Income and operating expense, and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we still retain our right to deny the claim.

### 3. Duties in the Event of Loss or Damage

- a. In the event of "loss" to Covered Property, you must see that the following are done in order for coverage to apply:
  - (1) Notify the police if a law may have been broken.
  - (2) Give us prompt notice of the "loss". Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the "loss" occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage. If feasible, set the damaged property aside and in the best possible order for examination. Keep a

record of your expenses necessary to protect the Covered Property for consideration in the settlement of the claim. This will not increase your limit of insurance. However, in no event will we pay for any subsequent "loss" resulting from a cause of loss that is not a Covered Cause of Loss.

- (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of "loss" claimed.
- (6) As often as may be reasonably required, permit us to inspect the property proving the "loss" and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis and permit us to make copies from your books and records.

- (7) Submit a signed sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
  - (9) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**4. Loss Payment**

- a. In the event of "loss" insured by this Coverage Part, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of **SECTION D. LOSS CONDITIONS, 7. Valuation** or any applicable provision that amends or supercedes this valuation condition.

- b. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property, except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law.**
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust "losses" with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. Our payment for "loss" to personal property of others and personal effects will only be for the account of the owner of the property.
- g. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- h. We will pay for insured "loss" within 30 days after we receive the sworn proof of loss if you have complied with all of the terms of this Coverage Part; and
  - (1) We have reached agreement with you on the amount of "loss"; or
  - (2) An appraisal award has been made.

**i. Loss Payment - Ordinance or Law.**

With respect to **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law:**

**(1) Loss of Use of Undamaged Parts of Building**

When there is a loss in value of an undamaged portion of a building or structure to which this coverage applies, the loss payment for that building, including damaged and undamaged portions, will be determined as follows:

(a) If **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** applies and the property is repaired or replaced, on the same "premises" or another "premises"; we will not pay more than the lesser of:

- 1) The amount you actually spend to repair, rebuild or reconstruct the building, but not for more than the amount it would cost to restore the building on the same "premises" and to the same height, floor area, style and comparable quality of the original property insured; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages g. Ordinance or Law for Loss of Use of Undamaged Parts of Building** for the building that has suffered "loss".

(b) If **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION F. OPTIONAL COVERAGES, 3. Replacement Cost** applies and the property is not repaired or replaced, or if the Replacement Cost Coverage Option does not apply, we will not pay more than the lesser of:

- 1) The "actual cash value" of the building at the time of "loss"; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Loss of Use of Undamaged Parts of Building** for the building that has suffered "loss".

**(2) Demolition Costs**

Loss payment for Demolition Costs will be determined as follows:

We will not pay more than the lesser of the following:

- (a) The amount you actually spend to demolish and clear the site of the "premises"; or

- (b) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Demolition Costs** for the building that has suffered "loss".

**(3) Increased Costs of Construction**

Loss payment for **Increased Costs of Construction** will be determined as follows:

- (a) We will not pay for the increased cost of construction until the property is actually repaired or replaced, at the same "premises" or another location and unless the repairs or replacement are made as soon as reasonably possible after the direct "loss", not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same "premises", or if you elect to rebuild at another "premises", the most we will pay for the **increased cost of construction** is the lesser of:

- 1) The increased cost of construction at the same "premises"; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Increased Costs of Construction** for the building that has suffered "loss".

- (c) If the ordinance or law requires relocation to another location the most we will pay for the increased cost of construction is the lesser of:

- 1) The increased cost of construction at the new location; or
- 2) The limit of insurance indicated in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law for Increased Costs of Construction** for the building that has suffered "loss".

**(4) Proportional Payments**

If the building or structure sustains both direct "loss" that is covered un-

der this Coverage Part and direct "loss" that is not covered under this Coverage Part; and as a result of the direct "loss" in its entirety you are required to comply with the ordinance or law, we will not pay the full amount of direct "loss" otherwise payable under the terms of **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**. Instead, we will pay a proportion of such direct "loss"; meaning the proportion that the covered direct "loss" bears to the total direct "loss".

**j. Loss Determination - Business Income and Extra Expense**

With respect to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**,

- (1) The amount of "Business Income" and "Rental Value" "loss" will be determined based on:
  - (a) The Net Income of the business before the direct "loss" occurred;
  - (b) The likely Net Income of the business if no direct "loss" had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (c) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct "loss"; and
  - (d) Other relevant sources of information, including:
    - 1) Your financial records and accounting procedures;
    - 2) Bills, invoices and other vouchers; and
    - 3) Deeds, liens or contracts.
- (2) The amount of Extra Expense will be determined based on:
  - (a) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct "loss"

had occurred. We will deduct from the total of such expenses:

- 1) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
  - 2) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
- (b) Necessary expenses that reduce the "Business Income" and "Rental Value" "loss" that otherwise would have been incurred.

**(3) Resumption of Operations**

We will reduce the amount of your:

- (a) "Business Income" and "Rental Value" "loss", other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or "stock") at the "premises" or elsewhere.
  - (b) Extra Expense "loss" to the extent you can return "operations" to normal and discontinue such Extra Expense.
- (4) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

**k. Party Walls**

A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the "loss" to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the "loss" to the party wall, subject to all applicable policy provisions all other provisions of this **SECTION D. LOSS CONDITIONS, 4. Loss Payment** including:

- (1) Limit of Insurance shown in the Declarations;
- (2) **SECTION D. LOSS CONDITIONS, 7. Valuation**; and
- (3) **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**.

Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of **COMMERCIAL PROPERTY CONDITIONS, I. Transfer Of Rights Of Recovery Against Others To Us** in this Coverage Part.

**5. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

**6. Vacancy**

**a. Description of Terms**

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:
  - (a) When this Coverage Part is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
  - (b) When this Coverage Part is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:
    - 1) Rented to a lessee or sublessee and used by them to conduct their customary operations; or
    - 2) Used by the building owner to conduct customary operations.

- (2) Buildings under construction or renovation are not considered vacant.

**b. Vacancy Provisions**

If the building where direct "loss" occurs has been vacant for more than 60 consecutive days before that "loss", we will:

- (1) Not pay for any "loss" caused by any of the following, even if they are Covered Causes of Loss:
  - (a) Vandalism;
  - (b) Sprinkler leakage, unless you have protected the system against freezing;
  - (c) Building glass breakage;
  - (d) Water damage;
  - (e) Theft; or
  - (f) Attempted theft.
- (2) Reduce the amount we would otherwise pay for the "loss" by 15% with respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** of this Loss Condition.

**7. Valuation**

We will determine the value of Covered Property in the event of direct "loss" as follows:

- a. At "Actual Cash Value" as of the time of direct "loss", except as provided in **b.**, **c.**, **d.**, and **e.** below.
- b. If the Limit of Insurance for Building satisfies **SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance**, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property. However, the following property will be valued at actual cash value even when attached to the building:

- (1) Awnings or floor coverings;
- (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
- (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.

- d. Glass at the cost of replacement with safety glazing material if required by law.
- e. Tenant's Improvements and Betterments at:
  - (1) Replacement Cost of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the "loss" or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.
  - (3) Nothing if others pay for repairs or replacement.
  - (4) For the purposes of valuation, tenants' improvements and betterments are not considered to be the personal property of others.

**SECTION E. ADDITIONAL CONDITIONS**

The following conditions apply in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies.

- a. We will not pay the full amount of any "loss" if the value of Covered Property at the time of direct "loss" times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of direct "loss" by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in step (1);

- (3) Multiply to the total amount of "loss", before the application of any deductible, by the figure determined in step (2); and
- (4) Subtract the deductible from the figure determined in step (3).

We will pay the amount determined in step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the "loss" yourself.

**Example No. 1 (Underinsurance):**

The value of the property is: \$250,000  
 The coinsurance percentage is: 80%  
 The Limit of Insurance is: \$100,000  
 The Deductible is: \$250  
 The amount of "loss" is: \$40,000

Step (1):

$\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):

$\$100,000 \text{ divided by } \$200,000 = .50$

Step (3):

$\$40,000 \times .50 = \$20,000$

Step (4):

$\$20,000 - \$250 = \$19,750$ .

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

**Example No. 2 (Adequate Insurance):**

The value of the property is: \$250,000  
 The coinsurance percentage is: 80%  
 The Limit of Insurance is: \$200,000  
 The Deductible is: \$250  
 The amount of "loss" is: \$40,000

Step (1):

$\$250,000 \times 80\% = \$200,000$  (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):

$\$200,000 : \$200,000 = 1.00$

Step (3):

$\$40,000 \times 1.00 = \$40,000$

Step (4):

$\$40,000 - \$250 = \$39,750$ .

We will pay no more than \$39,750 "loss" in excess of the Deductible. No penalty applies.

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example No. 3:**

The values of the property are:

Bldg. at Location No. 1:	\$75,000
Bldg. at Location No. 2:	\$100,000
Personal Property at Location No. 2:	<u>\$75,000</u>
	250,000

The coinsurance percentage is: 90%  
 The Limit of Insurance for Buildings and Personal

Property at Location Nos. 1 and 2 is:	\$180,000
The Deductible is:	\$1,000
The amount of "loss" is:	
Bldg. at Location No. 2:	\$30,000
Personal Property at Location No. 2:	<u>\$20,000</u>
	\$50,000

Step (1):

\$250,000 X 90% = \$225,000  
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):

\$180,000 : \$225,000 = .80

Step (3):

\$50,000 X .80 = \$40,000

Step (4):

\$40,000 - \$1,000 = \$39,000.

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgage Holders**

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered "loss" to buildings or structures to each mortgage holder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage holder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply

with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any "loss" and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgage holder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgage holder at least ten days before the expiration date of this policy.

**SECTION F. OPTIONAL COVERAGES**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.



**1. Agreed Value**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for direct "loss" to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Limit of Insurance indicated in the most current Statement of Values that applies to this Coverage Part.
- b. If the Agreed Value Optional Coverage is deleted from the policy, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage does not apply.
- c. The terms of this Optional Coverage apply only to "loss" that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the policy expiration date.
- d. This Agreed Value Optional Coverage does not apply to **SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense.**

**2. Inflation Guard**

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the beginning of the current "coverage term" or any other Coverage Part change amending the Limit of Insurance, multiplied by
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), multiplied by
  - (3) The number of days since the beginning of the current "coverage term" or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365. In the event of "loss", this number of days ends at the original date of "loss".

Example:

If: The applicable Limit of Insurance is: \$100,000

The Annual percentage increase is: 8%

The number of days since the beginning of the policy year (or last policy change) is: 146

The amount of increase is  
 $\$100,000 \times .08 \times (146/365) = \$3,200$

**3. Replacement Cost**

- a. Replacement Cost (without deduction for depreciation) replaces "Actual Cash Value" in **SECTION D. LOSS CONDITIONS, 7. Valuation** of this **BUILDING AND PERSONAL PROPERTY COVERAGE FORM.**
- b. This Optional Coverage does not apply to:
  - (1) Personal Property of others, except leased personal property as described in **SECTION A. COVERAGE, 1. Covered Property, d.(7)**. The valuation of such leased personal property will be based on the amount for which you are liable under the lease, but not to exceed the replacement cost of the leased item.
  - (2) Personal effects;
  - (3) Contents of a residence;
  - (4) Manuscripts;
  - (5) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac;
  - (6) "Stock" unless the Replacement Cost including "Stock" option is shown in the Declarations; or
  - (7) Property, that at the time of "loss":
    - (a) Is outdated, or obsolete and is stored or not being used; or
    - (b) Has no practical value to you.
- c. You may make a claim for "loss" covered by this insurance on an "Actual Cash Value" basis instead of on a replacement cost basis. In the event you elect to have "loss" settled on an "Actual Cash Value" basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the "loss".
- d. We will not pay on a replacement cost basis for any "loss":
  - (1) Until the lost or damaged property is actually repaired or replaced with other property of generally the same construction and used for the same

purpose as the lost or damaged property; and

- (2) Unless the repairs or replacement have been completed or at least underway within 2 years following the date of "loss".

e. We will not pay more for "loss" on a replacement cost basis than the least of:

- (1) The Limit of Insurance applicable to the lost or damaged property;

- (2) The cost to replace, on the same "premises", the lost or damaged property with other property:

(a) Of comparable material and quality; and

(b) Used for the same purpose; or

- (3) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use, or repair of any building or structure except as provided in **SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law.**

## SECTION G. DEFINITIONS

1. "Actual cash value" means replacement cost less a deduction that reflects depreciation, age, condition and obsolescence.

2. "Business Income" means the:

a. Net Income (net profit or loss before income taxes) that would have been earned or incurred; and

b. Continuing normal operating expenses sustained, including payroll.

3. "Computer programs" means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

4. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

a. The year commencing on the Effective Date of this Coverage Part at 12:01 A.M. standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if

any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 A.M. standard time at your mailing address shown in the Declarations on the earlier of:

(1) The day the policy period shown in the Declarations ends; or

(2) The day the policy to which this Coverage Part is attached is terminated or cancelled.

b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".

5. "Electronic data" means information, facts or "computer programs" stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

6. "Finished stock" means stock you have manufactured, except "stock" you have manufactured that is held for sale on the "premises" of any retail outlet insured under this Coverage Part.

7. "Fungi" means any type or form of fungus, and includes, but is not limited to, any form or type of mold, mushroom or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

8. "Loss" means accidental physical loss or accidental physical damage.

9. "Money" means:

a. Currency, coins and bank notes whether or not in current use; and

b. Travelers checks, registered checks and money orders held for sale to the public.

10. "Operations" means:

a. Your business activities occurring at the "premises"; and

b. The tenantability of the "premises", if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.

11. "Period of restoration" means the period of time that:

a. Begins at the time of direct "loss".

b. Ends on the earlier of:

- (1) The date when the property at the "premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
      - (2) The date when business is resumed at a new permanent location.
    - c. "Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:
      - (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
      - (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".
    - d. The expiration date of the policy will not cut short the "period of restoration".
- 12. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
  - a. You are regularly or otherwise engaged in activities which taint or degrade the environment; or
  - b. You use, generate or produce the "pollutant".
- 13. "Premises" means the Locations and Buildings described in the Declarations.
- 14. "Rental Value" means "Business Income" that consists of :
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the "premises" described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the "premises" which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that "premises", including:
    - (1) Payroll; and
    - (2) The amount of charges, which are the legal obligation of the tenant(s) but would otherwise be your obligations.
- 15. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or other property and includes:
  - a. Tokens, tickets, revenue and other stamps whether or not in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which are not of your own issue; but does not include "money". Lottery tickets held for sale are not "securities" or evidences of debt.
- 16. "Sinkhole collapse" means the sudden settlement or collapse of earth supporting the Covered Property into subterranean voids created by the action of water on a limestone or similar rock formation. This does not include:
  - a. The cost of filling sinkholes;
  - b. Sinking or collapse of land into man-made subterranean cavities; or
  - c. The value of the land.
- 17. "Specified causes of loss" means fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; "sinkhole collapse"; volcanic action; falling objects; weight of snow, ice or sleet; and water damage.
  - a. Falling objects does not include "loss" to:
    - (1) Personal property in the open; or
    - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
  - b. Water damage means:
    - (1) Accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam; and
    - (2) Accidental discharge or leakage of water or waterborne material as the direct result of the breaking apart or cracking of a water or sewer pipe that is located off the "premises" and is part of a municipal potable water supply system or municipal sanitary sewer system, if the breakage or cracking is caused by wear and tear.

But water damage does not include "loss" otherwise excluded under the terms of **BUILDING AND BUSINESS PERSONAL PROPERTY, SECTION A. COVERAGE, 3. Covered Causes of Loss, (g) Water**. Therefore, for example, there is no coverage under this Coverage Part in the situation in which discharge or leakage of water results from the breaking apart or cracking of a pipe which was caused by or related to weather-induced flooding, even if wear and tear contributed to the breakage or cracking. As another example, and also in accordance with the terms of the Exclusion **(g) Water**, there is no coverage for "loss" caused by or related to weather-induced flooding which follows or is exacerbated by pipe breakage or cracking attributable to wear and tear.

To the extent that accidental discharge or leakage of water falls within the criteria set forth in **18.b.(1)** or **18.b.(2)** of this definition of "Specified causes of loss", such

water is not subject to the provisions of Exclusion **(g) Water**.

- 18.** "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.
- 19.** "Suspension" means:
  - a.** The slowdown or cessation of your business activities; and
  - b.** That a part or all of the "premises" is rendered untenable.
- 20.** "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, card index systems, deeds, drawings, films, maps, mortgages, or proprietary information.

But "valuable papers and records" does not mean "money" or "securities" or "electronic data", including the materials on which the "electronic data" is recorded.

**CinciPlus®**  
**CinciPak™**  
**MEDICAL/DENTAL OFFICE**  
**PROPERTY XC+® (EXPANDED COVERAGE PLUS)**  
**ENDORSEMENT**  
**SUMMARY OF COVERAGE LIMITS**

This is a summary of the Coverages and the Limits of Insurance provided by the CinciPlus® CinciPak™ Medical/Dental Office Property XC+® (Expanded Coverage Plus) Endorsement, **FCP 217**, in combination with the Commercial Property Coverage Form, **FM 101**, which are included in this policy. **No coverage is provided by this summary.** Refer to endorsement **FCP 217** and the Commercial Property Coverage Form, **FM 101**, to determine the scope of your insurance protection.

<u><b>Blanket Coverages:</b></u>	<u><b>Blanket Coverage Limit:</b></u>	<b>Page No. FCP217</b>
	\$ 150,000 in total for all loss arising from all Blanket Coverages arising from a single occurrence, except as noted otherwise in the form.	
Accounts Receivable		1
Debris Removal		6
Electronic Data Processing Property (EDP):		2
Duplicate and Backup Electronic Data		2
Newly Purchased EDP		2
In Transit or Away From Premises		3
Worldwide Laptop Coverage		3
Ordinance or Law (Increased Construction Costs and Demolition)		4
Peak Season		5
Personal Property of Others		5
Tenant Move Back Expenses		5
Valuable Papers and Records		4
Water Backup from Sewers, Drains or Sump Pumps		10

<u><b>Other Coverages</b></u> (not subject to Blanket Coverage Limit):	<u><b>Limit of Insurance:</b></u>	<b>Page No. FCP217</b>
Brands and Labels	\$25,000	8
Business Income and Extra Expense:		
Interruption of Computer Operations	\$25,000 (sub-limit, subject to a 24 hour deductible)	1

<b><u>Other Coverages</u></b> (not subject to Blanket Coverage Limit):	<b><u>Limit of Insurance:</u></b>	<b>Page No. FCP217</b>
Inflation Guard	4% on all Building Property referenced in the Declarations	8
Lessor's Leasehold Interest	Actual loss sustained up to \$25,000	9
Limitation - Personal Property Theft:		8
Furs, fur garments and garments trimmed with fur	\$2,500	8
Jewelry, watches, watch movements, jewels, pearls and precious and semi-precious stones.	\$5,000 (Limitation not applicable to watches and jewelry worth \$500 or less per item.)	8
Bullion, gold, silver, platinum and other precious alloys or metals	\$25,000	8
Patterns, dies, molds and forms	\$2,500	9
Nonowned Building Damage:		7
Loss caused by theft, burglary or robbery	Up to the Business Personal Property (BPP) Limit of Insurance	8
Loss by any other Covered Cause of Loss	\$25,000 or the BPP Limit of Insurance (whichever is less)	8
Ordinance or Law (other than Increased Construction Costs and Demolition)	Subject to the Building Limit of Insurance	4
Ordinance or Law - Increased Period of Restoration	\$50,000	10
Outdoor Property	\$25,000 (\$1,000 for any one tree, shrub or plant)	5
Temperature Change	\$50,000	6
Unauthorized Business Card Use	\$5,000	9

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

## CinciPak™

### COMMERCIAL PROPERTY AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

#### COMMERCIAL PROPERTY COVERAGE PART

**I. SECTION A. COVERAGE, Paragraph 2. Property Not Covered** is amended as follows:

Subparagraphs **f., g., i., j., k., m.** and **n.** are deleted in their entirety.

**II. SECTION A. COVERAGE, Paragraph 3. Covered Causes of Loss, b. Exclusions, (4) Special Exclusions** is amended as follows:

Special Exclusions **(a)** and **(b)** are deleted in their entirety.

**III. SECTION A. COVERAGE, Paragraph 3. Covered Causes of Loss, c. Limitations** is amended as follows:

**A. Subparagraph (1) Limitations - Various Types of Property** is amended as follows:

1. Limitation **(c) Building Interiors** is deleted in its entirety and replaced by the following:

**(c) Building Interiors**

The interior of any building or structure caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- 1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- 2) The "loss" is caused by or results from thawing of snow, sleet or ice on the building or structure.

2. Limitation **(d) Theft of Building Materials** is deleted in its entirety.

**B. Subparagraph (3) Limitation - Personal Property Theft, item (d)** is deleted in its entirety.

**IV. SECTION A. COVERAGE, Paragraph 4. Additional Coverages** is amended as follows:

**A. The following Additional Coverages** are amended as follows:

1. The Limit of Insurance referenced in Subparagraph **(4)** of **b. Debris Removal** is amended to \$25,000.
2. The Limit of Insurance referenced in **c. Fire Department Service Charge** is amended to \$25,000.
3. **Fire Protection Equipment Recharge - Actual Expenses Incurred**

For this endorsement only, the last paragraph in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, d. Fire Protection Equipment Recharge** is deleted in its entirety and replaced by the following:

The most we will pay in any one occurrence under this Additional Coverage is the reasonable and necessary expenses you incur to recharge your automatic fire suppression system or portable fire extinguishers. This coverage is in addition to the Limits of Insurance shown in the Declarations.

4. **g. Ordinance or Law** is amended as follows:

- a. The Limit of Insurance referenced in the last paragraph is amended to \$25,000; and

- b. Paragraph **(1)** is amended to include the following:

- (d) Cost to Repair, Rebuild or Reconstruct Tenants Improvements and Betterments**

The increased cost to repair, rebuild or reconstruct tenant's improvements and betterments, as described in **SECTION A. COVERAGE; 1. Covered Property, d.**

**Business Personal Property**, Subparagraph (6), caused by enforcement of building, zoning or land use ordinance or law.

- 5. The Limit of Insurance referenced in **h. Pollutant Clean Up and Removal** is amended to \$25,000.
- 6. The number of days referenced in Subparagraph (2) of **i. Preservation of Property** is amended to 90.

**B.** The following **Additional Coverages** are added:

**1. Peak Season Limit Increase**

- a. The Limit of Insurance for Business Personal Property will automatically increase by 25% to provide for seasonal variations.
- b. This increase will apply only if the Limit of Insurance shown for Business Personal Property in the Declarations is at least 100% of your average monthly values during the lesser of:
  - (1) The 12 months immediately preceding the date the "loss" occurs; or
  - (2) The period of time you have been in business as of the date the "loss" occurs.

**2. Leasehold Improvements**

If your lease is cancelled in accordance with a valid lease provision as the direct result of a Covered Cause of Loss to property at the location in which you are a tenant, and you cannot legally remove Tenant Improvements and Betterments, as described in **SECTION A. COVERAGE; 1. Covered Property, d. Business Personal Property**, Subparagraph (6), we will extend Business Personal Property coverage to apply to the unamortized value of Tenant Improvement and Betterment that remain and that you were forced to abandon.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is \$25,000.

**3. Lease Assessment**

Your Business Personal Property is extended to apply to your share of any assessment charged to all tenants by the building owner as a result

of direct physical damage caused by or resulting from a Covered Cause of Loss to building property you occupy as agreed to in your written lease agreement.

The most we will pay for "loss" in any one occurrence under this Additional Coverage is \$2,500.

**4. Temporary Relocation of Property**

- (1) If Covered Property is removed from the "premises" and stored temporarily at a location you own, lease or operate while the "premises" is being renovated or remodeled, we will pay for direct "loss" of that stored property:
  - (a) Caused by or resulting from a Covered Cause of Loss;
  - (b) Up to \$50,000 at each temporary location in any one occurrence; and
  - (c) During the storage period of up to 90 consecutive days but not beyond the expiration of this policy.
- (2) This Additional Coverage does not apply if the stored property is more specifically insured.

**V. SECTION A. COVERAGE**, Paragraph **5. Coverage Extensions** is amended as follows:

**A.** The following **Coverage Extensions** are amended as follows:

**1. Coverage Extension a. Accounts Receivable** is amended as follows:

- a. The Limit of Insurance referenced in Subparagraph (3)(b) **Away From Your Premises** is amended to \$25,000; and
- b. The last Paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$50,000.

**2. Coverage Extension b. Business Income and Extra Expense** is amended to include the following:

- (9) Business Income From Dependent Properties
  - (a) We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your



"operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to "dependent property" caused by or resulting from any Covered Cause of Loss.

However, this Coverage Extension does not apply when the only "loss" to "dependent property" is "loss" to "electronic data", including destruction or corruption of "electronic data". If the "dependent property" sustains "loss" to "electronic data" and other property, coverage under this Coverage Extension will not continue once the other property is repaired, rebuilt or replaced.

The most we will pay for "loss" in any one occurrence for each "dependent property" location is \$10,000. This \$10,000 of coverage for Business Income From Dependent Properties does not increase the Limit of Insurance provided in this Coverage Extension.

(b) We will reduce the amount of your "Business Income" loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

- 1) Source of materials; or
- 2) Outlet for your products.

(c) If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

(d) **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS** is amended to include the following definition:

"Dependent property" means property operated by others whom you depend on to:

1) Deliver materials or services to you, or to others for your account (Contributing Locations). But, any property which delivers the following services is not a Contributing Location with respect to such services:

- a) Water supply services;
- b) Power supply services;
- c) Communication supply services, including services relating to internet access or access to any electronic network;

2) Accept your products or services;

3) Manufacture products for delivery to your customers under contract for sale; or

4) Attract customers to your business.

The "dependent property" must be located in the coverage territory of this Coverage Part.

(e) In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS**, the "Period of restoration" Definition, with respect to "dependent property", is replaced by the following:

"Period of restoration" means the period of time that:

1) Begins twenty-four (24) hours after the time of direct "loss" caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property"; and

2) Ends on the date when the property at the premises of the "dependent property" should be repaired, re-

built or replaced with reasonable speed and similar quality.

"Period of restoration" does not include any increased period required due to the enforcement of any ordinance or law that:

- 1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- 2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this Coverage Part will not cut short the "period of restoration".

- 3. The Limit of Insurance referenced in **f. Fences** is amended to \$10,000.
- 4. The Limit of Insurance referenced in **h. Glass** Subparagraph (2) is amended to \$25,000
- 5. In Coverage Extension, **i. Newly Purchased, Leased, or Constructed Property**, Paragraphs (3)(b), (3)(c) and (3)(d) the number 90 is deleted and replaced by the number 180.
- 6. The last paragraph of **j. Nonowned Building Damage** is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Coverage Extension is your Business Personal Property Limit of Insurance for the "premises" where the "loss" occurs.

- 7. Coverage Extension **k. Outdoor Property** is deleted in its entirety and replaced by the following:

**k. Outdoor Property**

We will pay for direct "loss" caused by a Covered Cause of Loss to the following types of your Covered Property:

- (1) Radio antennas, television antennas or satellite dishes

(including their lead-in wiring, masts and towers); and

- (2) Trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or part of a vegetative roof), including debris removal;

but only if caused by or resulting from any of the following causes of loss if they are included as Covered Causes of Loss under this Coverage Part:

- (a) Fire;
- (b) Lightning;
- (c) Explosion;
- (d) Riot or Civil Commotion;
- (e) Aircraft;
- (f) Falling objects;
- (g) Theft; or
- (h) Vehicle; and

- (3) Awnings that are attached to a building that you occupy as a tenant.

We will pay for the debris removal expenses of the above type property that are not your Covered Property if such debris is on your "premises" due to the Covered Causes of Loss described in this Coverage Extension. If you are a tenant, we do not pay debris removal expenses for trees, plants, or shrubs owned by the landlord or owner of the building you occupy.

No other coverage for debris removal expenses provided in this Coverage Part applies to this Outdoor Property Coverage Extension.

The most we will pay for "loss" in any one occurrence under the Coverage Extension is \$10,000, but not more than \$1,000 for any one tree, shrub or plant.

- 8. **SECTION A, COVERAGE 5. Coverage Extensions I. Personal Effects** is deleted in its entirety and replaced by the following:

**I. Personal Effects**

If business personal property is Covered Property in this Cover-

age Part, we will pay for direct "loss" caused by a Covered Cause of Loss to personal effects owned by:

- (1) You, your officers, or your partners, or if you are a limited liability company, your members or your managers; or
- (2) Your employees (including temporary and leased employees), including tools owned by your employees that are used in your business.

This Coverage Extension does not apply to "money" or "securities".

The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

- 9. The Limit of Insurance referenced in **n, Signs** is amended to \$10,000.
- 10. The Limit of Insurance referenced in **r. Valuable Papers and Records Subparagraph (4)(b) Away From Your Premises** is amended to \$25,000.

B. The following **Coverage Extensions** are added:

**1. Appurtenant Buildings and Structures**

- a. When a Limit of Insurance is shown in the Declarations for Building at the "premises", you may extend that insurance to apply to direct "loss" of incidental appurtenant buildings or structures, within 1,000 feet of that "premises", caused by or resulting from a Covered Cause of Loss.
- b. When a Limit of Insurance is shown in the Declarations for Business Personal Property at the "premises", you may extend that insurance to apply to direct "loss" of Business Personal Property within incidental appurtenant buildings or structures within 1,000 feet of that "premises", caused by or resulting from a Covered Cause of Loss.
- c. Incidental appurtenant buildings or structures include:
  - (1) Storage buildings;

- (2) Carports;
- (3) Garages;
- (4) Pump houses; or
- (5) Above ground tanks;

which have not been specifically described in the Dedarations.

- d. The most we will pay for "loss" in any one occurrence under this Coverage Extension for any combination of "loss" to Building and Business Personal Property is \$50,000, regardless of the number of "premises" involved.

**2. Fine Arts**

For the purposes of this endorsement only:

- a. You may extend the insurance provided by this Coverage Part to apply to paintings, etchings, pictures, tapestries, art glass windows, and other bona fide works of art of rarity, historical value, or artistic merit. The direct "loss" must be caused by or result from a Covered Cause of Loss.

- b. **SECTION D. LOSS CONDITIONS, 7. Valuation** is deleted in its entirety and replaced by the following:

We will determine the value of Covered Property in the event of "loss" at the market value at the time of direct "loss".

- c. The most we will pay for "loss" in any one occurrence under this Coverage Extension is \$25,000.

**3. Ordinance or Law - Increased Period of Restoration**

- a. When:
  - (1) A Covered Cause of Loss occurs to property at the "premises"; and
  - (2) The Declarations show that you have coverage for Business Income and Extra Expense;

you may extend that insurance to apply to the amount of actual loss of "Business Income" you sustain and reasonable Extra Expense you incur during the increased period of "suspension"

of "operations" caused by or resulting from the enforcement of any ordinance or law that:

- (1) Regulates the construction, repair or replacement of any property;
  - (2) Requires the tearing down or replacement of any parts of property not damaged by a Covered Cause of Loss; and
  - (3) Is in force at the time of "loss".
- b. This Coverage Extension applies only to the period that would be required, with reasonable speed, to reconstruct, repair or replace the property to comply with the minimum requirements of the ordinance or law.
- c. This Coverage Extension does not apply to:

- (1) Loss due to an ordinance or law that:
    - (a) You were required to comply with before the "loss", even if the property was undamaged; and
    - (b) You failed to comply with; or
  - (2) Costs associated with the enforcement of any ordinance or law that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".
- d. The most we will pay for "loss" under this Coverage Extension in any one occurrence is \$25,000 at each "premises".

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

**CinciPak<sup>TM</sup>**

**MEDICAL OR DENTAL OFFICE POLLUTANT CLEAN-UP  
COVERED PROPERTY EXTENSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

For this endorsement only, **SECTION A - COVERAGES, COVERAGE 4. Additional Coverages, h. Pollutant Clean Up and Removal**, is deleted in its entirety and replaced with the following:

We will pay your expenses to extract "pollutants" from Covered Property and land or water at the "premises" if the discharge, dispersal, seepage, migration, release, escape or emission of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each "premises" is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss during each "coverage term". This is in addition to the Limits of Insurance shown in the Declarations.

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

**CinciPak™**

**MEDICAL OR DENTAL OFFICE ACTUAL LOSS SUSTAINED  
BUSINESS INCOME ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

- A.** This endorsement applies to the following Coverage Forms:
- BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM**
- BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM**
- B.** For the purposes of this endorsement only, **SECTION A. COVERAGE, 5. Additional Coverages, c. Extended Business Income, (1), (b), (ii)** is deleted in its entirety and replaced by the following, and **(iii)** is added:
- (ii)** 12 consecutive months after the date determined in **c.(1)(a)** above; or
  - (iii)** 12 consecutive months after the date of direct "loss".
- C.** For the purposes of this endorsement only, **SECTION A. COVERAGE, 5. Additional Coverages, c. Extended Business Income, (2), (b), (ii)** is deleted in its entirety and replaced by the following, and **(iii)** is added:
- (ii)** 12 consecutive months after the date determined in **c.(2)(a)** above; or
  - (iii)** 12 consecutive months after the date of direct "loss".
- D.** For the purposes of this endorsement only, **SECTION F. DEFINITIONS, 9., b.** is deleted in its entirety and replaced by the following:
- b.** Ends on the earlier of:
    - (1)** The date when the property at the "premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality;
    - (2)** The date when business is resumed at a new permanent location; or
    - (3)** 12 consecutive months after the date of direct "loss".
- E.** When 12 months ALS (an acronym of Actual Loss Sustained) is shown in the Declarations as the Limit of Insurance for Business Income for a specific item, **SECTION B. LIMITS OF INSURANCE** is deleted in its entirety for that item.

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

## **CinciPak™**

# **MEDICAL OR DENTAL OFFICE COMMERCIAL PROPERTY COVERAGE ENHANCEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL PROPERTY COVERAGE PART**

- I. SECTION A. COVERAGE**, Paragraph **3. Covered Causes of Loss**, **b. Exclusions**, is amended as follows:

Exclusions **(1)(b) Earth Movement** and **(1)(g) Water** do not apply to:

- A.** Covered Business Personal Property; or
- B. BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense.**

- II. SECTION A. COVERAGE**, Paragraph **5. Coverage Extensions** is amended as follows:

- A.** The following **Coverage Extensions** are amended as follows:

- 1. a. Accounts Receivable** is amended as follows:

- a.** The Limit of Insurance referenced in Subparagraph **(3)(b) Away From Your Premises** is amended to \$25,000

- b.** The last Paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Accounts Receivable Coverage Extension is \$100,000.

This amendment of the Accounts Receivable Coverage Extension replaces, and is not in addition to, the amendment of the Accounts Receivable Coverage Extension in CinciPak™ Commercial Property Amendatory Endorsement.

- 2.** The Limit of Insurance referenced in **e. Exhibitions Fairs or Trade Shows** is amended to \$25,000.

**SECTION A, COVERAGE, 5. Coverage Extensions, i. Personal Effects** is deleted in its entirety and replaced by the following:

### **I. Personal Effects**

If business personal property is Covered Property in this Coverage Part, we will pay for direct "loss" caused by a Covered Cause of Loss to personal effects owned by:

- (1)** You, your officers, or your partners, or if you are a limited liability company, your members or your managers; or

- (2)** Your employees (including temporary and leased employees), including tools owned by your employees that are used in your business.

This Coverage Extension does not apply to "money" or "securities".

This amendment of the Personal Effects Coverage Extension replaces, and is not in addition to, the amendment of the Personal Effects Coverage Extension in the CinciPak™ Commercial Property Amendatory Endorsement.

- 4.** The Limit of Insurance referenced in **m., Property Off Premises** is amended to \$25,000.

- 5.** The Limit of Insurance referenced in **p., Transportation** is amended to \$25,000.

- 6. q. Utility Services** is deleted in its entirety and replaced by the following:

**q. Utility Services**

We will pay for direct "loss" to Covered Property at your "premises" caused by or resulting from the partial or complete failure of utility services to the "premises".

The partial or complete failure of the utility services listed below must be caused by direct "loss" caused by a Covered Cause of Loss to the following property:

**(1)** Power Supply Property, meaning the following types of property supplying electricity, steam or natural gas to the "premises":

- (a)** Utility generating plants;
- (b)** Switching stations;
- (c)** Substations;
- (d)** Transformers; and
- (e)** Transmission, distribution, service, or similar lines, excluding all such overhead lines of any type.

**(2)** Water Supply Property, meaning the following types of property supplying water to the "premises":

- (a)** Pumping stations; and
- (b)** Water mains.

**(3)** Communication Supply Property, meaning property supplying communication services, including service relating to internet access or access to any electronic, cellular, or satellite network; telephone, radio, microwave, or television services to the "premises", such as:

- (a)** Communication transmission, distribution, service, or similar lines including fiber optic lines, excluding all such overhead lines of any type;
- (b)** Coaxial cables; and
- (c)** Microwave radio relays, excluding satellites.

This Coverage Extension does not apply to "loss" to

"electronic data", including destruction or corruption of "electronic data".

**7. r. Valuable Papers and Records** is amended as follows:

**a.** The following is added to Paragraph **(2)**:

**(f)** Two year old x-rays, and x-rays in excess of two years of age.

**b.** The Limit of Insurance referenced in Subparagraph **(4)(b)** Away From Your Premises is amended to \$25,000.

**c.** The last Paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Valuable Papers and Records Coverage Extension is \$100,000.

This amendment of the Valuable Papers and Records Coverage Extension replaces, and is not in addition to, the amendment of the Valuable Papers and Records Coverage Extension in the CinciPak™ Commercial Property Amendatory Endorsement.

**B.** The following **Coverage Extensions** are added:

**1. Tenant's Glass**

For the purposes of this endorsement only,

**a.** It is agreed and understood that Paragraph **(2)** of Coverage Extension **h. Glass** is deleted in its entirety and replaced by the following.

**b.** If you are a tenant at a covered "premises" and:

**(1)** The building you occupy is not Covered Property; and

**(2)** You are legally liable for direct "loss" to the building glass in that building;

such building glass, for the purposes of this Paragraph **h.(2)** is Covered Property. We will pay for direct "loss" to that building glass, including lettering and ornamentation.



c. If a Covered Cause of Loss occurs to building glass, as provided for under this Coverage Extension, we will also pay necessary expenses you incur to:

- (1) Put up temporary plates or board up openings if repair or replacement of damaged glass is delayed;
- (2) Repair or replace encasing frames;
- (3) Remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include expenses to remove or replace window displays; and
- (4) Repair or replace alarm tapes.

d. **SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply, except for:

- (1) Exclusion (1)(b) **Earth Movement**;
- (2) Exclusion (1)(c) **Governmental Action**;
- (3) Exclusion (1)(d) **Nuclear Hazard**;
- (4) Exclusion (1)(f) **War and Military Action**;
- (5) Exclusion (2)(d)1 **Wear and tear**; and
- (6) As listed in Exclusion (2)(d)2:

Rust or other corrosion, hidden or latent defect or any quality in property that causes it to damage or destroy itself.

**2. Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**

For the purposes of this endorsement only:

a. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions (1)(g) Water, Paragraph 3** is deleted in its entirety and replaced by the following:

3) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; or

b. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions (1)(g) Water, Paragraph 5** is deleted in its entirety and replaced by the following:

5) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, waterborne material carried or otherwise moved by any of the water referred to in Paragraphs 1), 3) or 4), or material carried or otherwise moved by mudslide or mudflow as described in Paragraph 2).

c. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

**Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems**

We will pay for "loss" caused by or resulting from water or waterborne material that has entered and then backs up through and is discharged from a sewer, drain (including roof drains and related fixtures), septic system, sump pump systems or related equipment.

d. **SECTION C. DEDUCTIBLE** is amended by adding the following:

**Water Backup Deductible**

We will not pay for "loss" in any one occurrence caused by or resulting from water or waterborne

material which backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment, until the amount of "loss" exceeds the Deductible shown in the Declarations, or \$1,000, whichever is greater. We will then pay the amount for "loss" in excess of that deductible, up to the applicable limit indicated in Para-

graph **e.** of this Coverage Extension.

- e.** The most we will pay for "loss" in any one occurrence, including any applicable "Business Income", "Rental Value" and "Extra Expense", under this Coverage Extension is \$25,000.

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

**CinciPlus®**  
**CinciPak™**  
**MEDICAL/DENTAL OFFICE**  
**PROPERTY XC+® (EXPANDED COVERAGE PLUS)**  
**ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE PART**  
**COMMERCIAL PROPERTY COVERAGE PART**

The insurance coverage and Limits of Insurance provided by this endorsement are excess of, and apply in addition to, any similar or identical coverage provided by any other endorsement attached to the above referenced Coverage Parts, or by any other Coverage Part forming a part of the policy of insurance of which the above referenced Coverage Parts form a component.

**SCHEDULE**

Blanket Coverage Limit	The Limit of Insurance stated in the Summary of Coverage Limits
Applicable only to those coverages subject to the Blanket Coverage Limit, as indicated in this endorsement	

**A. Accounts Receivable**

For the purposes of this endorsement only:

1. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, the second paragraph in **(3)(b) Away From Your Premises** is deleted in its entirety and replaced by the following:

This limit of insurance for **Away From Your Premises** coverage is not included within the Blanket Coverage Limit and is separate and in addition to the Blanket Coverage Limit.

2. In **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, a. Accounts Receivable**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Accounts Receivable Coverage Extension is the Blanket Coverage Limit as provided in Section **T**. of this endorsement.

**B. Business Income and Extra Expense**

**Interruption of Computer Operations**

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, b. Business Income and Extra Expense**, is modified as follows:

1. For **Interruption of Computer Operations**, all references to \$2,500 in **b. Business Income and Extra Expense, Paragraph (7)(c)** are deleted and replaced with the Limit of Insurance indicated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Interruption of Computer operations.
2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS** is amended as follows:

With respect to a "suspension" of "operations" caused only by an interruption in computer operations due to the destruction or corruption of "electronic da-

ta" as described in **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**, Paragraph **a.** of Definition **12.** "Period of restoration" is deleted and replaced by the following:

- a.** Begins 24 hours after the time of direct "loss".

**C. Electronic Data Processing Property**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended by adding the following:

**Electronic Data Processing Property**

**(1) Covered Property**

You may extend the Coverage provided by this Coverage Part to apply to direct "loss" to Covered Property consisting of your:

- (a)** Data processing equipment;
- (b)** Air conditioning and other electrical equipment, used exclusively with your data processing equipment;
- (c)** Programming documentation and instruction manuals;
- (d)** "Electronic data", but only as excess over what is valid and collectible under **SECTION A. COVERAGE, 5. Coverage Extensions, d. Electronic Data**;
- (e)** Media, meaning materials on which "electronic data" is recorded, such as magnetic tapes, disc packs, paper tapes and cards, floppy discs and compact discs used in processing units; and
- (f)** Property of others in your care, custody or control that is similar to property described in **(1)(a)** through **(e)** above.

**(2) Property Not Covered**

This Coverage Extension does not apply to:

- (a)** Accounts, records, documents and other "valuable papers and records" unless they are programming documentation or instruction manuals.

However, we will cover these items once they are converted to "electronic data" form.

- (b)** "Electronic data" or media that cannot be replaced with similar property of equal quality.

- (c)** Your property that you have rented or leased to someone else and that property is not at your "premises".
- (d)** Any machine or apparatus that is used for research, medical, diagnostic, surgical, dental or pathological purposes.
- (e)** "Production equipment".

**(3) Exclusions**

**(a) BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply except as follows:

- 1) Exclusion (1)(c) Governmental Action;**
- 2) Exclusion (1)(d) Nuclear Hazard;**
- 3) Exclusion (1)(f) War and Military Action;**
- 4) Exclusion (2)(b) Delay or Loss of Use;**
- 5) Exclusion (2)(d) Miscellaneous Causes of Loss, 1) Wear and tear;**
- 6) Exclusion (2)(h) Dishonest or Criminal Acts;**
- 7) Exclusion (3)(b) Acts or Decisions; and**
- 8) Exclusion (3)(c) Defects, Errors and Omissions.**

**(b)** In addition to Paragraph **(3)(a)** of this Coverage Extension, we will not pay for the following:

Hidden or latent defect, gradual deterioration, and depreciation. However, if direct "loss" by a Covered Cause of Loss results, we will pay for that resulting "loss".

**(4) Duplicate and Backup "Electronic Data"**

We will pay for direct "loss" resulting from any of the Covered Causes of Loss to duplicate and backup "electronic data" that you store at a premises not described in the Declarations providing such "electronic data" is not covered by another policy.

**(5) Newly Purchased Electronic Data Processing Property**

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, i. Newly Purchased, Leased or Constructed Property** is deleted in its entirety and replaced by the following:

- (a) We will pay for direct "loss" from a Covered Cause of Loss to newly purchased or leased Covered Property described in Paragraph (1) of this Coverage Extension while at:
- 1) Locations that are newly purchased or leased;
  - 2) Your newly constructed buildings or additions at a "premises"; or
  - 3) Any "premises" described in the Declarations.
- (b) Insurance under this Coverage Extension for such newly acquired property, or Covered Property already insured by this Coverage Extension which is moved to a newly acquired location, will end when any of the following first occurs:
- 1) This Coverage Part expires;
  - 2) 90 days pass from the date you acquire your new property or move Covered Property to a newly acquired location; or
  - 3) You report values to us.

**(6) In Transit or Away From Premises**

**SECTION A. COVERAGE, 5. Coverage Extensions, e. Exhibitions, Fairs or Trade Shows, m. Property Off Premises and p. Transportation** are deleted in their entirety and replaced by the following:

- (a) You may extend the insurance provided by this Coverage Extension to apply to Covered Property as described in Paragraph (1):
- 1) While in or on a vehicle, including loading and unloading; or
  - 2) While at a location that is not your "premises".
- (b) This **In Transit or Away From Premises** coverage does not apply per location.

**(7) Worldwide Laptop Coverage**

- (a) You may extend the insurance provided by this Coverage Extension to apply to your laptops, notebooks and similar highly portable personal computers, including their peripherals and accessories, while such specific Covered Property is:
- 1) In your or your employee's care, custody and control;
  - 2) Not located at a premises you own or lease; and
  - 3) Not located in the coverage territory stated in Paragraph 2. of the Commercial Property Condition **H. Policy Period, Coverage Territory**, provided that location is not under a United States Department of State trade or travel restriction at the time of "loss".

(b) This **Worldwide Laptop Coverage** does not apply per location.

**(8) Electronic Data Processing Property Deductible**

**SECTION C. DEDUCTIBLE** is amended to include the following:

We will not pay for direct "loss" in any one occurrence unless the amount of "loss" exceeds the Deductible shown in the Declarations. We will then pay the amount of "loss" in excess of the Deductible, up to the Limit of Insurance provided by this Coverage Extension.

However, direct "loss" caused by or resulting from any of the following Causes of Loss will have the greater of the Deductible shown in the Declarations or \$1,000 as the applicable deductible:

- a. "Loss" caused by faulty construction, error in design or processing, or service or work upon the data processing system;
- b. "Loss" resulting in mechanical breakdown, short circuiting, blowout, or other electrical damage, unless caused by lightning; or
- c. "Loss" caused by or resulting from interruption of power supply, power surge, blackout or brownout.

**(9) Electronic Data Processing Property Valuation**

**SECTION D. LOSS CONDITIONS, 7. Valuation** is deleted in its entirety and replaced by the following:

**7. Valuation of Electronic Data Processing Property**

In the event of direct "loss", we will determine the value of Covered Property as described in Paragraph (1) of this Coverage Extension as follows:

- a. Except for "electronic data"
  - (1) If you repair or replace this Electronic Data Processing property within a reasonable time following the "loss", the property will be valued at the full cost of repair or replacement.

However, the most we will pay is the least of the following:

- (a) The actual cost to repair or restore the property with materials of like kind and quality;
- (b) The cost of replacing that property with property of similar quality and function;
- (c) The amount you actually and necessarily spend to repair or replace the property; or
- (d) The Limit of Insurance applicable to the property.

- (2) If you do not repair or replace this property within a reasonable time following a "loss", the most we will pay will be the least of the following:

- (a) "Actual cash value" of the property;
- (b) "Actual cash value" of repairs with material of like kind and quality; or
- (c) The Limit of Insurance applicable to the property.

We reserve the right to repair or replace the property or to pay for the property in money.

In the event of "loss", the value of property will be

determined at the time of "loss".

- b. For "electronic data"

We will not pay more than the actual reproduction costs of your "electronic data". If you do not replace or reproduce your "electronic data" following the "loss", the most we will pay is the cost of blank media as described in Paragraph C.(1)(e) of this Coverage Extension.

**(10) Electronic Data Processing Property Additional Definition**

The following definition is added to **SECTION G. DEFINITIONS** of the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**:

**"Production equipment"** means any machinery and related components, including any integrated or dedicated computer system, which is used, or can be used, to produce or process other tangible property.

The most we will pay for "loss" in any one occurrence under this Electronic Data Processing Property Coverage Extension is the Blanket Coverage Limit as provided in Section T. of this endorsement.

**D. Ordinance or Law**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, g. Ordinance or Law**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under Paragraph (a) **Loss of Use of Undamaged Parts of the Building** is the Limit of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** as applicable to the covered building or structure incurring "loss". This Coverage is included within, and not in addition to, that applicable Limit of Insurance.

The most we will pay for all "loss" in any one occurrence under Paragraph (b) **Demolition Costs** and Paragraph (c) **Increased Costs of Construction** is the Blanket Coverage Limit as provided in Section T. of this endorsement per building or structure suffering "loss". This is an additional Limit of Insurance applicable to the building or structure suffering "loss".

**E. Valuable Papers and Records**

For the purposes of this endorsement only:

1. In the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the second paragraph in **(4)(b) Away From Your Premises** is deleted in its entirety and replaced by the following:

The limit of insurance for **Away From Your Premises** is not included within the Blanket Coverage Limit and is separate and in addition to the Blanket Coverage Limit.

2. In the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, r. Valuable Papers and Records**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Valuable Papers and Records Coverage Extension is the Blanket Coverage Limit as provided in Section **T.** of this endorsement.

#### F. Outdoor Property

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, k. Outdoor Property**, the last paragraph is deleted in its entirety and replaced by the following:

The most we will pay for "loss" in any one occurrence under this Outdoor Property Coverage Extension is the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Outdoor Property, but not more than the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for any one tree, shrub, or plant.

#### G. Tenant Move Back Expenses

For purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

##### Tenant Move Back Expenses

1. We will reimburse you for expenses you pay for Covered Move Back Expenses of your tenants who temporarily vacate a portion of the building at a "premises". The vacancy must have occurred while the portion of the building rented by your tenant could not be occupied due to di-

rect "loss" to your Covered Property caused by or resulting from a Covered Cause of Loss during the "coverage term". The move back must be completed within 60 calendar days after the portion of the building rented by your tenant has been repaired or rebuilt and is ready for occupancy.

2. Covered Move Back Expenses means only documented, reasonable and necessary expenses of:
  - a. Packing, insuring and transporting business personal property;
  - b. Re-establishing electric utility and communication services, less refunds from discontinued services;
  - c. Assembling and setting up fixtures and equipment; or
  - d. Unpacking and re-shelving stock and supplies.
3. If your tenants have valid and collectible insurance for Covered Move Back Expenses, we will pay only for the amount of Covered Move Back Expenses in excess of the amount payable from such other insurance.
4. The most we will pay for "loss" in any one occurrence under this Tenant Move Back Expenses Coverage Extension is the Blanket Coverage Limit as provided in Section **T.** of this endorsement.

#### H. Peak Season

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

##### Peak Season

1. In the event that the limit of insurance stated in the Declarations for Business Personal Property is insufficient to fully insure a covered "loss" due to a Peak Season Demand for your inventory, we will pay up to the Blanket Coverage Limit as provided in Section **T.** of this endorsement to that "loss".
2. Peak Season Demand means a temporary (90 consecutive days or less) increase in your inventory to meet a seasonal demand as verified by:
  - a. Your previous inventory records for that historical period of time; and
  - b. Custom and practice in your industry.

**I. Personal Property of Others**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

**Personal Property of Others**

In the event that the limit of insurance stated in the **COMMERCIAL PROPERTY COVERAGE DECLARATIONS** for Business Personal Property is insufficient to fully insure a covered "loss" to both your Covered Personal Property and property described in Paragraph (8) of **SECTION A. COVERAGE, 1. Covered Property, d. Business Personal Property**, we will pay up to the Blanket Coverage Limit in any one occurrence as provided in Section T. of this endorsement for such property.

**J. Debris Removal**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

In the event that the limits of insurance stated in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages, b. Debris Removal** are insufficient to fully cover a "loss" insured thereunder, we will pay up to the Blanket Coverage Limit in any one occurrence as provided in Section T. of this endorsement.

**K. Temperature Change**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

**Temperature Change**

**1. Coverage**

- a. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 1. Covered Property** is deleted in its entirety and replaced by the following:

Covered Property means "perishable stock" located in a building at a "premises".

- b. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 2. Property Not Covered** is deleted in its entirety and replaced by the following:

Covered Property does not include:

**"Perishable Stock" Not in Buildings**

"Perishable stock" located on buildings, in or on vehicles, or otherwise in the open.

**2. Covered Causes of Loss**

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, a. Covered Causes of Loss** is deleted in its entirety and replaced by the following:

**a. Covered Causes of Loss**

Covered Causes of Loss means direct "loss" from "temperature change" to Covered Property unless "loss" is excluded or limited in this Coverage Part.

**3. Excluded Causes of Loss**

- a. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** does not apply to this Coverage Extension, except as follows:

- (1) Exclusion (1)(b) **Earth Movement**;
- (2) Exclusion (1)(c) **Governmental Action**;
- (3) Exclusion (1)(d) **Nuclear Hazard**;
- (4) Exclusion (1)(f) **War and Military Action**;
- (5) Exclusion (1)(g) **Water**; or
- (6) Exclusion (1)(h) **"Fungi", Wet Rot, Dry Rot, and Bacteria**.

- b. In addition to Paragraph 3.a. of this Coverage Extension, we will not pay for direct "loss" caused by or resulting from any of the following:

- (1) The disconnecting of any heating, refrigerating, cooling or humidity control system from the source of its power;
- (2) The deactivation of electrical power caused by the manipulation of any switch or other device (on "premises") used to control the flow of electrical power or current;



- (3) The inability of an Electrical Utility Company or other power source to provide sufficient power due to:
  - (a) Lack of fuel, or
  - (b) Governmental order;
- (4) The inability of a power source at the "premises" to provide sufficient power due to the lack of generating capacity to meet demand; or
- (5) Breaking of any glass that is a permanent part of any heating, refrigeration, cooling or humidity control unit.

#### 4. Limits of Insurance

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION B. LIMITS OF INSURANCE** is deleted in its entirety and replaced by the following:

##### **SECTION B. LIMITS OF INSURANCE**

- a. The most we will pay for all "loss" in any one occurrence, including any applicable "Business Income", "Rental Value" and Extra Expense loss, is the Limit of Insurance indicated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Temperature Change.
- b. The Limit of Insurance for Temperature Change is not an additional amount of insurance and will not increase the Limit of Insurance shown in the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** for Business Personal Property or "stock".

#### 5. Duties in the Event of Loss

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 3. Duties in the Event of Loss or Damage, a.(2)** is deleted in its entirety and replaced by the following:

- (2) All claims under this Temperature Change Coverage Extension should be reported immediately upon occurrence. Include a description of the damaged "stock". All damaged "stock" must be available for inspection and verification.

#### 6. Coinsurance

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance** does not apply to the coverage provided by this endorsement.

#### 7. Definitions

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS** is amended to include the following definitions:

- a. "Perishable stock" means personal property:
  - (1) Preserved and maintained under controlled conditions; and
  - (2) Susceptible to "loss" if the controlled conditions change.
- b. "Temperature change" means:
  - (1) The fluctuation or total interruption of electrical power, either on or off "premises", resulting from conditions beyond your control.
  - (2) Mechanical breakdown of any refrigerating or cooling apparatus or equipment (on "premises") including the blowing of any fuse, fuses, or circuit breakers.
  - (3) Contamination by refrigerant.
  - (4) The freezing of "perishable stock" resulting from the faulty operation of any stationary heating plant, when such "perishable stock" is contained within a building at the "premises".

#### L. Nonowned Building Damage

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, j. Nonowned Building Damage** is deleted in its entirety and replaced by the following:

If you are a tenant, you may extend the insurance provided by this Coverage Part for Business Personal Property to direct "loss" that occurs to the building at a "premises" you occupy but do not own.

This Coverage Extension applies only if your lease makes you legally responsible for that part of the building sustaining "loss".

- 1. This Coverage Extension does not apply to:

- a. Glass, including lettering and ornamentation, and also necessary:
    - (1) Repair or replacement of encasing frames or alarm tapes; and
    - (2) Expenses incurred to board up openings or remove or replace obstruction.
  - b. Building materials and equipment removed from the "premises".
2. The most we will pay for "loss" in any one occurrence under this Nonowned Building Damage Coverage Extension is:
- a. The actual "loss" sustained up to the applicable Limit of Insurance for Business Personal Property for direct "loss" caused by theft, burglary or robbery, or the attempt of the foregoing; or
  - b. The applicable Limit of Insurance for Business Personal Property or the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Nonowned Building Damage, whichever is less, for "loss" caused by any other Covered Cause of Loss, not referenced in 2.a. above.

**M. Inflation Guard**

For the purposes of this endorsement only, the **COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS** is amended to show the percentage (%) shown in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Inflation Guard in the **OPTIONAL COVERAGE - Inflation Guard** column for each scheduled Building Property. If an Inflation Guard percentage is already indicated on the Commercial Property Coverage Part Declarations for that Building Property, this percentage is excess of that Inflation Guard percentage for that Building Property.

**N. Brands and Labels**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

**Brands and Labels**

If branded or labeled merchandise that is Covered Property is damaged by a Covered

Cause of Loss, we may take all or any part of the property at an agreed or appraised value. If so, you may:

- 1. Stamp 'salvage' on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
- 2. Remove the brands or labels, if doing so will not physically damage the merchandise. You must relabel the merchandise or its containers to comply with the law.

The most we will pay for "loss" in any one occurrence under this Brands and Labels Coverage Extension is the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Brands and Labels.

**O. Limitation - Personal Property Theft**

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, c. Limitations, (3) Limitation - Personal Property Theft** is deleted in its entirety and replaced by the following:

**(3) Limitation - Personal Property Theft**

This Limitation does not apply to Business Income coverage or to Extra Expense coverage. The special limit shown for each category, **(3)(a)** through **(3)(d)**, is the most we will pay for direct "loss" to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:

- (a) The Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for furs, fur garments and garments trimmed with fur.
- (b) The Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for jewelry, watches, watch movements, jewels, pearls and precious and semi-precious stones. This limit does not apply to jewelry and watches worth \$500 or less per item.
- (c) The Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE**

**PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for bullion, gold, silver, platinum and other precious alloys or metals.

- (d) The Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for patterns, dies, molds and forms.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

**P. Lessor's Leasehold Interest**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages** is amended to include the following:

**Lessor's Leasehold Interest**

1. We will pay for the cost of Covered Leasehold Interest you sustain due to the cancellation of lease contracts by your tenants. The cancellation must result from direct "loss" to your Covered Property at the "premises" caused by or resulting from a Covered Cause of Loss during the "coverage term".
2. Covered Leasehold Interest:
  - a. Means the difference between the:
    - (1) Rent you were collecting at the "premises" prior to the direct "loss"; and
    - (2) "Rental Value" of the "premises" after the direct "loss" has been repaired or rebuilt; and
  - b. Does not mean refunds or rebates of:
    - (1) Prepaid rent;
    - (2) Security or other deposits made by your tenants; or
    - (3) Insurance, taxes or other payments made on your behalf by tenants.
3. The most we will pay for "loss" in any one occurrence under this Lessor's Leasehold Interest Additional Coverage is the least of:
  - a. Your Covered Leasehold Interest for the 12 months immediately following

the "period of restoration" plus the 90 days of Extended Business Income but ending with the normal expiration date of each cancelled lease; or

- b. The Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for all Covered Leasehold Interest of all your tenants canceling their leases arising out of an occurrence at a "premises".

**Q. Unauthorized Business Card Use**

1. For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 4. Additional Coverages** is amended to include the following:

**Unauthorized Business Card Use**

We will pay for your loss of "money" or charges and costs you incur that result directly from the unauthorized use of credit, debit or charge cards issued in your business name, including:

- a. Fund transfer cards;
- b. Charge plates; or
- c. Telephone cards.

The most we will pay in any one occurrence under this Unauthorized Business Card Use Additional Coverage is the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS**.

2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 2. Property Not Covered** is amended by deleting Paragraph a. in its entirety and replacing it with the following:

Covered Property does not include:

- a. **Accounts, Deeds, Money or Securities**

Except as provided in **SECTION A. COVERAGE:**

- (1) **4. Additional Coverages, Unauthorized Business Card Use;** and

**(2) 5. Coverage Extensions, a. Accounts Receivable,**

Accounts, bills, currency, deeds, food stamps or other evidences of debt, "money", notes or "securities";

**R. Ordinance or Law - Increased Period of Restoration**

For the purposes of this endorsement only, in **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions, Ordinance or Law - Increased Period of Restoration**, Paragraph **d.** is deleted in its entirety and replaced by the following:

- d. The most we will pay for loss of "Business Income", "Rental Value" and Extra Expense in any one occurrence under this Ordinance or Law - Increased Period of Restoration Coverage Extension is the Limit of Insurance stated in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** at each "premises".

**S. Water Backup Discharged from Sewers, Drains or Sump Pump Systems**

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended by adding the following:

**Water Backup from Sewers, Drains or Sump Pump Systems**

For the purposes of this endorsement only:

1. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Cause of Loss, b. Exclusions, (1)(g) Water**, Paragraph **3)** is deleted in its entirety and replaced by the following:
  - 3) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; or
2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, (1)(g) Water**, Paragraph **5)** is deleted in its entirety and replaced by the following:

- 5) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, waterborne material carried or otherwise moved by any of the water referred to in Paragraphs **1), 3) or 4)**, or material carried or otherwise moved by mudslide or mudflow as described in Paragraph **(g)2)**.

3. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions**, is amended to include the following:

**Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems**

We will pay for "loss" caused by or resulting from water or waterborne material that has entered and then backs up through and is discharged from a sewer, drain (including roof drains and related fixtures), septic system, sump pump system or related equipment.

4. **SECTION C. DEDUCTIBLE** is amended by adding the following:

**Water Backup Deductible**

We will not pay for "loss" in any one occurrence caused by or resulting from water or waterborne material which backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment, until the amount of "loss" exceeds the Deductible shown in the Declarations, or \$1,000, whichever is greater. We will then pay the amount for "loss" in excess of that deductible, up to the applicable limit indicated in Paragraph **5.** of this Coverage Extension.

5. The most we will pay for "loss" in any one occurrence, including any applicable "Business Income", "Rental Value" and Extra Expense, under this Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems Coverage Extension is the Limit of Insurance shown in the **MEDICAL/DENTAL OFFICE PROPERTY XC+® (EXPANDED COVERAGE PLUS) ENDORSEMENT SUMMARY OF COVERAGE LIMITS** for Water Backup from Sewers, Drains, Septic or Sump Pump Systems.

**T. Blanket Coverage Limit**

We will pay up to the Limit of Insurance stated in the Schedule of this endorsement in total in any one occurrence for the sum of all

"loss" insured under coverages provided in this endorsement which are subject to the Blanket Coverage Limit. You may apportion

this Limit among these coverages as you choose.

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

**CinciPak™**  
**MEDICAL OR DENTAL OFFICE CONDOMINIUM COMMERCIAL  
UNIT-OWNERS PROPERTY COVERAGE ENHANCEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**Schedule of Optional Coverages**

<b>Coverage</b>	<b>Loc. Number</b>	<b>Bldg. Number</b>	<b>Limit of Insurance</b>
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**Loss Assessment**

**Miscellaneous Real Property**

**Deductibles**

**Loss Assessment:** \$500 deductible per occurrence

**Miscellaneous Real Property:** \$500 unless otherwise indicated as \$ \_\_\_\_\_

**A. Covered Property**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 1. Covered Property** is deleted in its entirety and replaced by the following:

**1. Covered Property**

Covered Property, as used in this Coverage Part, means the following types of property described in this Section **A.1.**, and limited in **A.2. Property Not Covered**, for which a Limit of Insurance is shown in the Declarations:

**a. Business Personal Property**

Your Business Personal Property consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater. Your Business Personal Property consists of the following unless otherwise specified in the Declarations or in the **BUSINESS PERSONAL PROPERTY - SEPARATION OF COVERAGE ENDORSEMENT**.

- (1) Furniture;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Your use interest as unit-owner in fixtures, improvements, installations, additions and alterations making up a part of the building and owned by you;
- (6) The cost of labor, materials or services furnished or arranged by you on personal property of others;
- (7) Leased personal property used in your business for which you have a contractual responsibility to insure. Such leased property is not considered personal property of others in your care, custody or control;
- (8) Personal Property of Others that is in your care, custody or control or for which you are legally liable;
- (9) Sales samples; and

- (10) If contained within a unit, whether owned by you or the Condominium Association, appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

Business personal property does not include personal effects owned by you, your officers, your partners, or if you are a limited liability company, your members or your managers, or your employees (including leased and temporary workers), except as provided in **5. Coverage Extensions, I. Personal Effects.**

#### B. Amendment to Property Not Covered

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 2. Property Not Covered** is amended to include the following:

Any of the following types of property contained within a unit, regardless of ownership, provided your Condominium Association agreement requires the Association to insure it:

- (1) Fixtures, improvements, installations, additions, and alterations that are a part of the building; and
- (2) Appliances, such as those used for refrigerating, ventilating, cooking, dishwashing, laundering, security or housekeeping.

#### C. Insurance Trustee

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment** is amended to include the following:

For direct "loss" covered by this policy, if you name an insurance trustee, we will adjust losses with you, but we will pay the insurance trustee. If we pay the trustee, the payments will satisfy your claims against us.

#### D. Mortgage Holders

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E. ADDITIONAL CONDITIONS, 2. Mortgage Holders** is deleted in its entirety and replaced by the following:

- a. The term "mortgage holder" includes trustee.
- b. We will pay for covered "loss" to Covered Property to each mortgage holder shown on the Declarations in their order of precedence, as their interests may appear.
- c. The mortgage holder has the right to receive loss payment even if the mortgage

holder has started foreclosure or similar action on Covered Property.

- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgage holder will still have the right to receive loss payment if the mortgage holder:

- (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;
- (2) Submits a signed, sworn Proof of Loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgage holder.

All of the terms of this Coverage Part will then apply directly to the mortgage holder.

- e. If we pay the mortgage holder for any "loss" and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

- (1) The mortgage holder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
- (2) The mortgage holder's right to recover the full amount of the mortgage holder's claim will not be impaired.

At our option, we may pay to the mortgage holder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this Coverage Part, we will give written notice to the mortgage holder at least 30 days before the effective date of cancellation.
- g. If we elect not to renew this Coverage Part, we will give written notice to the mortgage holder at least 30 days before the expiration date of this Coverage Part.

#### E. Amendment of Coverage Part Conditions

For the purposes of this endorsement only, **COMMERCIAL PROPERTY CONDITIONS, G. Other Insurance** is deleted in its entirety and replaced by the following:

1. The Condominium Association may have other insurance covering the same property as this Coverage Part. In such case, the coverages provided by this Coverage Part are excess of that Condominium Association insurance and will not contribute with such other insurance.

2. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered "loss". Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
3. If there is other insurance covering the same "loss", other than that described in 1. and 2. above, we will pay only for the amount of covered "loss" in excess of the amount due from that other insurance, whether you can collect on it or not. However, we will not reimburse any deductible or difference between Actual Cash Value and Replacement Cost valuations. We will not pay more than the applicable Limit of Insurance.

#### F. Loss Assessment Coverage

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

##### Loss Assessment

When a Limit of Insurance is shown on the Schedule of this endorsement for Loss Assessment Coverage:

- (1) We will pay for your share of an assessment charged to all unit-owners by the Condominium Association, when the assessment is made;
  - (a) During the policy period shown in the Declarations; and
  - (b) As a result of direct "loss" to property in which each unit-owner has an undivided interest, if such "loss" is caused by a Cause of Loss covered under this policy.
- (2) The most we will pay for each assessment is the Loss Assessment Limit of Insurance for the applicable unit shown in the Schedule of this endorsement.
- (3) We will not pay for "loss" in any one occurrence until the amount of "loss" exceeds the Loss Assessment deductible shown in the Schedule of this endorsement.

#### G. Miscellaneous Real Property

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 5. Coverage Extensions** is amended to include the following:

##### Miscellaneous Real Property

When a Miscellaneous Real Property Limit of Insurance is shown on the Schedule of this endorsement:

- (1) The following is added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 1. Covered Property:**

##### **Miscellaneous Real Property**

Miscellaneous real property means condominium property that is not included under your Business Personal Property provided that:

- (a) The condominium property pertains to your condominium unit only; or
  - (b) You have a duty to insure the condominium property according to the Condominium Association agreement.
- (2) The most we will pay for "loss" in any one occurrence is the Miscellaneous Real Property Limit of Insurance shown in the Schedule of this endorsement.
  - (3) We will not pay for a "loss" in any one occurrence until the amount of "loss" exceeds the lesser of:
    - (a) \$500 deductible; or
    - (b) The Deductible shown in the Schedule of this endorsement.

We will then pay the amount of "loss" in excess of that Deductible, up to the applicable Limit of Insurance. No other deductible in this Coverage Part applies to Miscellaneous Real Property.

- (4) The Condominium Association may have other insurance covering the same property as this Coverage Part. If it does, we will only pay the excess over what should have been received from that other property insurance. We will pay the excess whether the other insurance can be collected or not.



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

**CinciPak™**  
**MEDICAL/DENTAL OFFICE BUSINESS INCOME**  
**(AND EXTRA EXPENSE) AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE PART**

**SCHEDULE**

Valued Daily Loss of Income			
Location	Building	Limit Per Day	Number of Days
1	1	500	30
2	1	500	30

**I. SECTION A. COVERAGE**, Paragraph **5. Additional Coverages** of the Business Income (and Extra Expense) Coverage Part is amended to include the following:

**f. Utility Services**

We will pay for the actual loss of "Business Income" you sustain and Extra Expense you incur caused by or resulting from the partial or complete failure of the utility services listed below. The partial or complete failure of the utility services listed below must be caused by direct "loss" caused by a Covered Cause of Loss to the following property.

- (1) Communications Supply Property, meaning property supplying communication services, including service relating to Internet access or access to any electronic, cellular, or satellite network; telephone, radio, microwave, or television services to the "premises", such as:
  - (a) Communication transmission, distribution, service, or similar lines including fiber optic transmission lines, excluding all such overhead lines of any type;
  - (b) Coaxial cables; and

- (c) Microwave radio relays, excluding satellites.
- (2) Power Supply Property, meaning the following types of property supplying electricity, steam or natural gas to the "premises":
  - (a) Utility generating plants;
  - (b) Switching stations;
  - (c) Substations;
  - (d) Transformers; and
  - (e) Transmission, distribution, service or similar lines, excluding all such overhead lines of any type.
- (3) Wastewater removal Property, meaning a utility system for removing wastewater and sewage from the "premises", other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities. Coverage under this Additional Coverage does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.

(4) Water Supply Property, meaning the following types of property supplying water to the "premises":

- (a) Pumping Stations; and
- (b) Water mains.

This Additional Coverage does not apply to "loss" to "electronic data" including destruction or corruption of "electronic data".

**g. Valued Daily Loss of Income**

- (1) We will pay the stated Limit Per Day indicated in the Schedule of this endorsement for loss of income due to the necessary "suspension" of your "operations" during the "period of restoration" caused by or resulting from any Covered Cause of Loss, up to the Number of Days indicated in the Schedule of this endorsement.
- (2) A day is defined as a period of twenty-four hours, beginning at midnight, and during which the "operations" of the insured were or normally would be performed. We shall pay the Limit Per Day indicated in the Schedule of this endorsement for each full day of total "suspension" of business conducted by you at the "premises" where the "loss" occurred.
- (3) For each day, during which there is a partial "suspension" of your "operations", a part of the Limit Per Day indicated in the Schedule of this en-

dorsement will be paid. That part of the Limit Per Day will be calculated by determining the ratio of reduced hours of "operations" compared to normal hours of "operations", times the Limit Per Day indicated in the Schedule of this endorsement.

- (4) You agree that if you could resume complete or partial "operations" at your "premises" or at another location, the amount we pay you shall be determined as if such complete or partial "operations" had been resumed.

**II. SECTION F. DEFINITIONS** of the Business Income (and Extra Expense) Coverage Part is amended as follows:

With respect to a "suspension" of "operations" insured under **SECTION A. COVERAGE**, Paragraph **5. Additional Coverages, f. Utility Services** of the Business Income (and Extra Expense) Coverage Part, Paragraph **a.** of Definition **9.** "Period of restoration" is deleted and replaced by the following:

- a.** Begins 24 hours after the time of direct physical "loss".

**III. SECTION A. COVERAGE, 3.b. Exclusions** of the Commercial Property Coverage Part is amended as follows:

- A.** Exclusions **(1)(b) Earth Movement** and **(1)(g) Water** do not apply to Business Income and Extra Expense Coverage.

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

**OHIO CHANGES - COMMERCIAL PROPERTY**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**A.** Paragraphs **c.** and **h.** of the **Loss Payment** Condition are replaced by the following, except as provided in Paragraph **B.**:

**c.** We will give you notice, within 21 days after we receive a properly executed proof of loss, that we:

- (1) Accept your claim;
- (2) Deny your claim; or
- (3) Need more time to investigate your claim.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 45 days, of the status of the investigation and of the continued time needed for the investigation.

**h.** Provided you have complied with all the terms of this Coverage Part, we will pay for covered "loss" or damage within:

- (1) 10 days after we accept your claim if such acceptance occurs within the first 21 days after we receive a properly executed proof of loss, unless the claim involves an action by a probate court or other extraordinary circumstances as documented in the claim file; or
- (2) Five days after we accept your claim if such acceptance occurs more than 21 days after we receive a properly executed proof of loss, and
  - (a) An appraisal award has been made; or
  - (b) We have reached an agreement with you on the amount of "loss" that was in dispute.

**B.** Paragraph **A.** does not apply to the **Loss Payment** Loss Condition in the following forms:

- 1. Business Income (And Extra Expense) Coverage Form;
- 2. Business Income (Without Extra Expense) Coverage Form;

- 3. Extra Expense Coverage Form; and
- 4. Leasehold Interest Coverage Form; and
- 5. Mortgage Interest Coverage Form.

In the forms listed above, the **Loss Payment** Loss Condition is replaced by the following:

**LOSS PAYMENT**

**a.** We will give you notice, within 21 days after we receive a properly executed proof of loss, that we:

- (1) Accept your claim;
- (2) Deny your claim; or
- (3) Need more time to investigate your claim.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 45 days, of the status of the investigation and of the continued time needed for the investigation.

**b.** Provided you have complied with all the terms of this Coverage Part, we will pay for covered "loss" or damage within:

- (1) 10 days after we accept your claim if such acceptance occurs within the first 21 days after we receive a properly executed proof of loss, unless the claim involves an action by a probate court or other extraordinary circumstances as documented in the claim file; or
- (2) Five days after we accept your claim if such acceptance occurs more than 21 days after we receive a properly executed proof of loss, and

- (a) An appraisal award has been made; or
- (b) We have reached an agreement with you on the amount of "loss" that was in dispute.

## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. Concealment, Misrepresentation or Fraud

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. Control of Property

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of direct "loss", the breach of condition does not exist.

### C. Insurance Under Two or More Coverages

If two or more of this policy's coverages apply to the same "loss", we will not pay more than the actual amount of the "loss".

### D. Legal Action Against Us

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct "loss" occurred.

### E. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

### F. No Benefit to Bailee

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. Other Insurance

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered "loss". Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same "loss", other than that described in 1. above, we will pay only for the amount of covered "loss" in excess of the amount due from that other insurance, whether you can collect on it or not. **However, we will not reimburse any deductible or difference between Actual Cash Value and Replacement Cost valuations.** We will not pay more than the applicable Limit of Insurance.

### H. Policy Period, Coverage Territory

Under this Coverage Part:

1. We cover "loss" commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

### I. Transfer of Rights of Recovery Against Others to Us

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after direct "loss" to impair them. But you may waive your rights against another party in writing:

1. Prior to a direct "loss" to your Covered Property or Covered Income.
2. After a direct "loss" to your Covered Property or Covered Income only if, at time of direct "loss", that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

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

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

#### SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
1	1	LEAF CAPITAL FUNDING, LLC ISAOA / ATIMA C/O: INSURANCE SERVICING CENTER PO BOX 979127 MIAMI, FL 33197-9127	B

**A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

#### **B. Loss Payable**

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

#### **C. Lender's Loss Payable**

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;

- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

(1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

(2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and

- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Coverage Part will then apply directly to the Loss Payee.

- d. If we pay the Loss Payee for any "loss" and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

(1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and

(2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
- a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

#### D. Contract of Sale

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

#### E. Building Owner Loss Payable Clause

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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

## LOSS PAYABLE PROVISIONS

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART

#### SCHEDULE

Loc	Bldg	Loss Payee Name and Address:	Applicable Clause (Enter B, C, D or E):
2	1	LEAF CAPITAL FUNDING, LLC ISAOA / ATIMA C/O: INSURANCE SERVICING CENTER PO BOX 979127 MIAMI, FL 33197-9127	B

**A.** Nothing in this endorsement increases the applicable Limit of Insurance. We will not pay any Loss Payee more than their financial interest in the Covered Property, and we will not pay more than the applicable Limit of Insurance on the Covered Property.

For the purposes of this endorsement only, the following are added to **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment**, as indicated in the Schedule of this endorsement.

#### **B. Loss Payable**

For Covered Property in which both you and a Loss Payee shown in the Schedule of this endorsement have an insurable interest, we will:

1. Adjust losses with you; and
2. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.

#### **C. Lender's Loss Payable**

1. The Loss Payee shown in the Schedule of this endorsement is a creditor, including a mortgageholder or trustee, whose interest in Covered Property is established by such written instruments as:

- a. Warehouse receipts;
- b. A contract for deed;

- c. Bills of lading;
- d. Financing statements; or
- e. Mortgages, deeds of trust, or security agreements.

2. For Covered Property in which both you and a Loss Payee have an insurable interest:

- a. We will pay for covered "loss" to each Loss Payee in their order of precedence, as interests may appear.
- b. The Loss Payee has the right to receive loss payment even if the Loss Payee has started foreclosure or similar action on the Covered Property.
- c. If we deny your claim because of your acts or because you have failed to comply with the terms of the Coverage Part, the Loss Payee will still have the right to receive loss payment if the Loss Payee:

(1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

(2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and



- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the Loss Payee.

All of the terms of this Coverage Part will then apply directly to the Loss Payee.

- d. If we pay the Loss Payee for any "loss" and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:

(1) The Loss Payee's rights will be transferred to us to the extent of the amount we pay; and

(2) The Loss Payee's rights to recover the full amount of the Loss Payee's claim will not be impaired.

At our option, we may pay to the Loss Payee the whole principal on the debt plus any accrued interest. In this event, you will pay your remaining debt to us.

3. If we cancel this policy, we will give written notice to the Loss Payee at least:
- a. 10 days before the effective date of cancellation if we cancel for your non-payment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.

4. If we elect not to renew this policy, we will give written notice to the Loss Payee at least 10 days before the expiration date of this policy.

#### **D. Contract of Sale**

1. The Loss Payee shown in the Schedule of this endorsement is a person or organization you have entered a contract with for the sale of Covered Property.
2. For Covered Property in which both you and the Loss Payee have an insurable interest we will:
  - a. Adjust losses with you; and
  - b. Pay any claim for "loss" jointly to you and the Loss Payee, as interests may appear.
3. For Covered Property that is the subject of a contract of sale, the word "you" includes the Loss Payee.

#### **E. Building Owner Loss Payable Clause**

1. The Loss Payee shown in the Schedule of this endorsement is the owner of the building in which you are a tenant.
2. We will adjust losses to the building with the Loss Payee. Any loss payment made to the Loss Payee will satisfy your claims against us for the owner's property.
3. We will adjust losses to tenants' improvements and betterments with you, unless the lease provides otherwise.

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

**WATER BACKUP DISCHARGED FROM SEWERS, DRAINS,  
SEPTIC OR SUMP PUMP SYSTEMS ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL PROPERTY COVERAGE PART**

**SCHEDULE**

(Enter an "x" in one of the OPTION boxes to activate coverage.)

**OPTION I**

Coverage applies at all "premises" indicated on the Declarations page.

**OPTION II**

Coverage applies only at "premises" scheduled below:

Loc	Bldg	Address
1	1	755 BOARDMAN CANFIELD RD STE C1 BOARDMAN, OH 44512-4387
2	1	4300 BELMONT AVE YOUNGSTOWN, OH 44505-1084

**Limit of Insurance Per "Premises":** \$ 25,000

**Deductible Per Occurrence:** \$ 1,000

This endorsement applies only to the "premises" indicated in the Schedule of this endorsement.

**A. Modified Water Exclusion**

For the purposes of this endorsement only:

1. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusion (1)(g) Water**, Paragraph 3) is deleted in its entirety and replaced by the following:
  - 3) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, water that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment; or

2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusion (1)(g) Water**, Paragraph 5) is deleted in its entirety and replaced by the following:
  - 5) Except as provided in **SECTION A. COVERAGE, 5. Coverage Extensions, Water Backup Discharged from Sewers, Drains, Septic or Sump Pump Systems**, waterborne material carried or otherwise moved by any of the water referred to in Paragraphs (g)1), (g)3) or (g)4), or material carried or otherwise moved by mudslide or mudflow as described in Paragraph (g)2).

**B. Coverage - Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems**

With respect to the "premises" identified in the Schedule of this endorsement, and for the purposes of this endorsement only:

**BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, a. Covered Causes of Loss** is deleted in its entirety and replaced by the following:

**a. Covered Cause of Loss**

Covered Causes of Loss means water or waterborne material that has entered and then backs up through and is discharged from a sewer, drain (including roof drains and related fixtures), septic system, sump pump system or related equipment located on a "premises" identified in the Schedule of this endorsement;

**C. Exclusions**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions, Paragraph (2)** is amended to include the following:

1. The coverage provided by this endorsement does not apply if discharge as described in Paragraph **B.** is caused by or results from:
  - a. Failure to perform routine maintenance or repairs necessary to keep a sewer, drain, septic or sump pump system or similar equipment free from obstruction and in proper working condition;
  - b. Sump pump system failure due to the failure of power or other utility services supplied to a "premises" identified in the Schedule of this endorsement; or
  - c. Equipment breakdown of any sump pump system or similar equipment.
2. We will not pay the cost of repairing or replacing a sewer, drain, septic or sump pump system or any related parts or equipment.
3. This endorsement does not apply if discharge as described in Paragraph **B.** is caused by or results from flood, meaning the partial or complete inundation of normally dry land areas due to:

- a. The unusual or rapid accumulation or runoff of rain or surface waters from any source; or
- b. Waves, tidal waters, tidal waves (including tsunami); or
- c. Water from rivers, ponds, lakes, streams, or any other body of water that rises above, overflows from, or is not contained within its natural or man-made boundary; and

All whether driven by wind or not, including storm surge.

**D. Coinsurance**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E. ADDITIONAL CONDITIONS, 1. Coinsurance** is deleted in its entirety.

**E. Limit of Insurance**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION B. LIMITS OF INSURANCE** is amended to include the following:

1. The most we will pay for all "loss" to Covered Property, including loss of "Business Income", "Rental Value" and Extra Expense, in any one occurrence caused by or resulting from water or waterborne material that has entered and then backs up through and is discharged from a sewer, drain, septic system, sump pump system or related equipment is the applicable Limit of Insurance shown in the Schedule of this endorsement.
2. The Limit of Insurance described in Paragraph **E.1.** is not an additional amount of insurance, and is included in the total Limit of Insurance referenced in the Declarations for the Coverages and "premises" indicated in the Schedule of this endorsement.

**F. Deductible**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION C. DEDUCTIBLE** is amended to include the following:

**Water Backup Discharged From Sewers, Drains, Septic or Sump Pump Systems**

1. The deductible indicated in the Schedule of this endorsement is the only deductible that applies to each direct "loss" caused by water or waterborne material that backs up through and is discharged

from a sewer, drain, septic system, sump pump or related equipment.

2. We will not pay for "loss" in any one occurrence until the amount of "loss" exceeds the deductible shown in the Declarations or the Schedule of this endorsement, whichever is greater. We will then pay the amount of "loss" in excess of the deductible, up to the applicable Limit of Insurance in the Schedule of this endorsement.

#### **G. Other Insurance**

For the purposes of this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION D. LOSS CONDITIONS, 4. Loss Payment** is amended to include the following:

The Coverage provided by this endorsement is excess over any other valid insurance, whether you can collect from it or not.

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

## **EQUIPMENT BREAKDOWN COVERAGE**

**(Excluding Production Machinery)**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL PROPERTY COVERAGE FORM**

#### **A. COVERAGE**

1. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE** is amended by adding the following:

We will pay for direct damage to Covered Property caused by or resulting from an "accident" at the "premises".

2. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, b. Exclusions** is amended by:

- a. Adding the following to **(1)(e) Utility Services, (1)(g) Water 1, (2)(a) Electrical Current, (2)(d) Miscellaneous Causes of Loss, (2)(j) Exposure to Weather, (3)(a) Weather Conditions, (3)(b) Acts or Decisions, and (3)(c) Defects, Errors, and Omissions**:

However, this exclusion does not apply if these causes of loss are caused by, or result from, an "accident" to Covered Property at the "premises".

- b. Deleting in its entirety **(2)(e) Explosion of Steam Apparatus**.

3. **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss, c. Limitations** is amended:

- a. By deleting in its entirety:  
**(1) (1)(a) Steam Apparatus; and**  
**(2) (1)(b) Hot Water Boilers,**

- b. And by adding the following:

The following limitations apply only to "loss" covered by this endorsement. The sublimits provided in Paragraphs **(1), (2)** and **(3)** below are included within, and are not in addition to, the Limit of Insurance shown in the Declarations as applicable to the Covered Property. These limits, or the applicable Limit of Insurance shown in the Declarations as applicable to the Covered Property, whichever is less,

apply. These limits apply to direct damage only.

- (1) Ammonia Contamination Limitation**

If Covered Property is contaminated by ammonia as a result of an "accident" to Covered Property at the "premises", the most we will pay for this kind of damage, including salvage expense, is \$50,000 per location.

- (2) Data, Media and Software Restoration**

If "electronic data" is destroyed or corrupted as a result of an "accident" to covered equipment, the most we will pay for the expenses incurred by you for the restoration of that "electronic data" is \$50,000 for all loss sustained in the "coverage term", regardless of the number of "accidents" or the number of "premises" involved.

- (3) "Hazardous Substance" Limitation**

The following applies despite the operation of the Ordinance or Law Exclusion.

If Covered Property is damaged, contaminated or polluted by a "hazardous substance" as a result of an "accident" to Covered Property at the "premises", the most we will pay for any additional expenses incurred by you for clean up, repair, replacement or disposal of that property is \$50,000. As used here, additional expenses mean expenses incurred beyond those for which we would be liable if no "hazardous substance" had been involved.

#### **B. Additional Coverages**

For the purposes of the coverages in this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION**

**A. COVERAGE, 4. Additional Coverages** is amended as follows:

1. The first paragraph is deleted in its entirety and replaced with the following:

All other terms and conditions of this Coverage Part, including Limits of Insurance and deductibles, apply to these Additional Coverages.

2. The following is added:

**a. Drying Out**

If electrical equipment included in Covered Property requires "drying out" as a result of a "flood", the reasonable expense incurred for the "drying out" will be covered. This Additional Coverage is included within the Limit of Insurance shown in the Declarations as applicable to the Covered Property.

**b. Expediting Expenses**

With respect to "loss" covered by this endorsement, and with respect to your damaged Covered Property, we will pay the reasonable extra cost to:

- (1) Make temporary repairs;
- (2) Expedite permanent repairs; and
- (3) Expedite permanent replacement.

**c. Non-Owned Utility Service Equipment**

We will pay for indirect loss resulting from an "accident" to non-owned utility equipment described in **E. Definitions, 1.a.(6)** but we will not pay for any expense to repair or replace direct damage to non-owned utility equipment that:

- (1) You do not own, lease or rent, or
- (2) That is not in your care custody and control.

This Additional Coverage is included within the Limit of Insurance shown in the Declarations as applicable to the Covered Property.

**C. Deductible**

For the purposes of the coverages in this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION C. DEDUCTIBLE** is amended by adding the following:

The deductible applicable to "loss" covered by this endorsement is \$500, or the deductible indicated in the Declarations as being applicable

to the lost or damaged Covered Property, whichever is greater.

**D. Conditions**

For the purposes of the coverages in this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION E. ADDITIONAL CONDITIONS** is amended by adding the following:

**1. Suspension**

Whenever any covered equipment is found to be in, or exposed to, a dangerous condition, any of our representatives may immediately suspend the insurance against "loss" from an "accident" to that covered equipment. This can be done by delivering or mailing a written notice of suspension to:

- a. Your last known address; or
- b. The address where the covered equipment is located.

Once suspended in this way, your insurance can be reinstated only by written notice from us.

If we suspend your insurance, you will get a pro rata refund of premium for that covered equipment. However, the suspension will be effective even if we have not yet made or offered a refund.

**2. Inspection**

If any Covered Property requires inspection to comply with state or municipal boiler and pressure vessel regulations, we agree to perform such inspection on your behalf.

**E. Definitions**

For the purposes of the coverages in this endorsement only, **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION G. DEFINITIONS** is amended by adding the following:

**1. a. "Accident"** means a sudden and accidental breakdown of the following covered equipment:

- (1) Any boiler;
- (2) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents;
- (3) Any piping and its accessory equipment;
- (4) Any refrigeration or air conditioning system; or

- (5) Any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.
- (6) Equipment of a type described in definition a.(1) through (5) above which you do not own, lease or rent and is not in your care, custody or control that is on or within one mile of a covered "location", and is supplying you with electricity, gas, water, steam, heat, refrigeration, air conditioning or communication services.

At the time the breakdown occurs, it must become apparent by physical damage that requires repair or replacement of the covered equipment or part thereof.

- b. None of the following is an "accident":
  - (1) Depletion, deterioration, corrosion or erosion, wear and tear;
  - (2) Leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
  - (3) The functioning of any safety or protective device; or
  - (4) The breakdown of any structure or foundation.
- c. None of the following are covered equipment:
  - (1) Any sewer piping, underground gas piping, or piping forming a part of a sprinkler system;
  - (2) Water piping other than boiler feed water piping, boiler condensate return piping or water piping forming a part of a refrigeration or air conditioning system;
  - (3) Insulating or refractory material;
  - (4) Vehicle, elevator, escalator, conveyor, hoist or crane;
  - (5) Felt, wire, screen, die, extrusion plate, swing hammer, grinding disc, cutting blade, non-electrical cable, chain, belt, rope, clutch plate, brake pad, nonmetallic part, or any part or tool subject to periodic replacement; or
  - (6) "Production Machinery".
- d. If a strike, riot, civil commotion, act of sabotage or vandalism results in an "accident", this insurance applies. However, the War and Military Action Exclusion and the conditions of this Coverage Part still apply.

- 2. **"Drying out"** means restoration of electrical equipment to service following a "flood" by removal of excess moisture from that equipment including:
  - a. Application of heat or controlled electrical current, circulation of air, or use of dehumidification equipment, after rinsing the electrical equipment with clean fresh water if necessary to flush away "flood" debris;
  - b. "Drying out" can be done in place or equipment can be disconnected and removed to a repair facility for drying if necessary.
  - c. "Drying out" does not include or apply to:
    - (1) Replacement or repair of any electrical equipment or parts thereof; or
    - (2) Any expense related to deconstruction, demolition, or reconstruction of any building component, structure or part thereof to gain access to electrical equipment.
- 3. **"Flood"** means a general and temporary condition of partial or complete inundation of normally dry land areas due to:
  - a. The overflow of inland or tidal waters;
  - b. The unusual or rapid accumulation or runoff of surface waters from any source; or
  - c. Mudslides or mudflows, which are caused by flooding as defined above in Paragraph 3.b. For the purpose of this Covered Cause of Loss, a mudslide or mudflow involves a river of liquid and flowing mud on the surface of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

All flooding in a continuous or protracted event will constitute a single "flood".
- 4. **"Hazardous Substance"** means a substance declared to be hazardous to health by a governmental agency.
- 5. **"Production Machinery"** means:
  - a. Production or process machine or apparatus that processes, forms, cuts, shapes grinds or conveys raw material, material in process or finished products, and the computers and their peripherals that control or operate such a machine or apparatus.
  - b. Machine or apparatus used for research, medical, diagnostic, surgical, dental or pathological purposes, and computers and their peripherals that control or operate such a machine or apparatus.

## BUSINESS INCOME (AND EXTRA EXPENSE) 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. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION F. DEFINITIONS**.

### SECTION A. COVERAGE

Coverage is provided as described and limited below for one or more of the following options for which a Limit of Insurance is shown in the Declarations:

- a. "Business Income" including "Rental Value".
- b. "Business Income" other than "Rental Value".
- c. "Rental Value".

If option **a.** above is selected, the term "Business Income" will include "Rental Value". If option **c.** above is selected, the term "Business Income" will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

#### 1. Business Income

- a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and for which a "Business Income" Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.
- b. With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
  - (1) Any area within the building or on the site at which the "premises" are lo-

cated if that area services or is used to gain access to the described "premises".

- (2) Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

#### 2. Extra Expense

- a. Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".
- b. Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c. If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
  - (1) Avoid or minimize the "suspension" of business and to continue "operations" either:
    - (a) At the "premises"; or
    - (b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - (2) Minimize the "suspension" of business if you cannot continue "operations".
- d. We will also pay expenses to:
  - (1) Repair or replace property; or



- (2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs 2.a. thru 2.d. does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

### 3. Covered Causes of Loss

See **BUILDING AND PERSONAL PROPERTY COVERAGE FORM, SECTION A. COVERAGE, 3. Covered Causes of Loss**.

### 4. Limitation for Electronic Data

- a. Coverage for "Business Income" does not apply when a "suspension" of "operations" is caused by destruction or corruption of "electronic data", or any "loss" to "electronic data", except as provided under **SECTION A. COVERAGE, 5. Additional Coverages, d. Interruption of Computer Operations**.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of "electronic data", or any "loss" to "electronic data", except as provided under **SECTION A. COVERAGE, 5. Additional Coverages, d. Interruption of Computer Operations**.
- c. This Limitation does not apply when "loss" to "electronic data" involves only "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

### 5. Additional Coverages

The Additional Coverages in Paragraphs 5.a. through 5.e. are included within and not additional "Business Income" and Extra Expense Limits of Insurance.

#### a. Alterations and New Buildings

We will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain due to direct "loss" at the "premises" caused by or re-

sulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 1,000 feet of the "premises" and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct "loss" delays the start of "operations", the "period of restoration" for "Business Income" coverage will begin on the date "operations" would have begun if the direct "loss" had not occurred.

#### b. Civil Authority

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

**c. Extended Business Income**

**(1) "Business Income" Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Business Income" "loss" payable under this Coverage Part, we will pay for the actual loss of "Business Income" you sustain during the period that:

- (a)** Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b)** Ends on the earlier of:
  - (i)** The date you could restore your "operations", with reasonable speed, to the level which would generate the "Business Income" amount that would have existed if no direct "loss" had occurred; or
  - (ii)** 60 consecutive days after the date determined in **c.(1)(a)** above.

However, Extended Business Income does not apply to loss of "Business Income" sustained as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the "premises" are located.

Loss of "Business Income" must be caused by direct "loss" at the "premises" caused by or resulting from any Covered Cause of Loss.

**(2) "Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this Coverage Part, we will pay for the actual loss of "Rental Value" you sustain during the period that:

- (a)** Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b)** Ends on the earlier of:
  - (i)** The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct "loss" had occurred; or

- (ii)** 60 consecutive days after the date determined in **c.(2)(a)** above.

However, Extended Business Income does not apply to loss of "Rental Value" sustained as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the "premises" are located.

Loss of "Rental Value" must be caused by direct "loss" at the described "premises" caused by or resulting from any Covered Cause of Loss.

**d. Interruption of Computer Operations**

- (1)** Subject to all provisions of this Additional Coverage - **Interruption of Computer Operations**, you may extend the insurance that applies to "Business Income" and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" due to a Covered Cause of Loss. This Additional Coverage - **Interruption of Computer Operations** does not apply when "loss" to "electronic data" only involves "loss" to "electronic data" which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2)** The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (3)** The most we will pay under this Additional Coverage - **Interruption of Computer Operations** is \$2,500 for all "loss" sustained and expense sustained in any "coverage term", regardless of the number of interruptions or the number of "premises", locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this

amount, then the balance is available for "loss" or expense sustained as a result of subsequent interruptions in that "coverage term". A balance remaining at the end of a "coverage term" does not increase the amount of insurance in the next "coverage term". With respect to any interruption which begins in one "coverage term" and continues or results in additional "loss" or expense in that subsequent "coverage term", all "loss" and expense is deemed to be sustained in the "coverage term" in which the interruption began.

- (4) This Additional Coverage - **Interruption in Computer Operations** does not apply to "loss" sustained or expense sustained after the end of the "period of restoration", even if the amount of insurance stated in Paragraph **d.(3)** of this Additional Coverage has not been exhausted.

**e. Ingress and Egress**

We will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by the prevention of existing ingress or egress at a "premises" shown in the Declarations due to direct "loss" by a Covered Cause of Loss at a location contiguous to such "premises". However, coverage does not apply if ingress or egress from the "premises" is prohibited by civil authority.

Ingress and egress coverage for "Business Income" will begin immediately after the time of the direct "loss" and will continue for a period up to 30 consecutive days.

Ingress and egress coverage for Extra Expense will begin at time of the direct "loss" and will continue for 30 consecutive days or whenever your Ingress and Egress "business income" coverage ends, whichever occurs first.

**6. Coverage Extension**

The limit applicable to the Coverage Extension is in addition to the Limit of Insurance. **SECTION D. ADDITIONAL CONDITION, 1. Coinsurance** does not apply to this Coverage Extension.

**Newly Purchased or Leased Locations**

- a. You may extend your "Business Income" and Extra Expense coverages to apply to property located at:
- (1) New buildings or additions while being built on a "premises";

- (2) Buildings you newly purchase or become required to insure by written contract; or
- (3) Leased buildings or space therein that you are not required to insure. Such lease must be for a period of 12 consecutive months or longer.

This does not apply to property situated at trade shows, fairs or exhibitions.

- b. The most we will pay in total for "Business Income" and Extra Expense "loss" under this Coverage Extension is \$100,000 at each location described in Paragraph **6.a**.
- c. Insurance under this Coverage Extension will end when any of the following first occurs:
- (1) This policy expires;
- (2) 90 days pass from the date you begin construction on that part of the building that would qualify as Covered Property;
- (3) 90 days pass from the date you purchase, lease, or become contractually required to insure property described in Paragraphs **6.a.(2)** and **(3)**; or
- (4) You report values to us when you acquire your new building or business personal property.

We will charge you additional premium for values reported from the date you purchase or lease the property or begin construction on that part of the building that would qualify as Covered Property.

**SECTION B. LIMITS OF INSURANCE**

The most we will pay for "loss" in any one occurrence is the applicable Limit of Insurance shown in the Declarations.

**SECTION C. LOSS CONDITIONS**

The following conditions apply in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

**1. Appraisal**

If we and you disagree on the amount of "Business Income" or Extra Expense "loss", either may make written demand for an appraisal of the "loss". In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separate-

ly the amount of "Business Income" or Extra Expense "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

## 2. Duties in the Event of Loss

a. You must see that the following are done in the event you have a "Business Income" or Extra Expense "loss":

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct "loss". Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when, and where the direct "loss" occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent "loss" resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the "loss" and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- (7) Cooperate with us in the investigation or settlement of the claim.
- (8) If you intend to continue your business, you must resume all or part of

your "operations" as quickly as possible.

- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

## 3. Loss Determination

a. The amount of "Business Income" "loss" will be determined based on:

- (1) The Net Income of the business before the direct "loss" occurred;
- (2) The likely Net Income of the business if no direct "loss" had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct "loss"; and
- (4) Other relevant sources of information, including:
  - (a) Your financial records and accounting procedures;
  - (b) Bills, invoices and other vouchers; and
  - (c) Deeds, liens or contracts.

b. The amount of Extra Expense will be determined based on:

- (1) All expenses that exceed the normal operating expenses that would have been sustained by "operations" during the "period of restoration" if no direct "loss" had occurred. We will deduct from the total of such expenses:
  - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
  - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

- (2) Necessary expenses that reduce the "Business Income" "loss" that otherwise would have been incurred.

**c. Resumption of Operations**

We will reduce the amount of your:

- (1) "Business Income" "loss", other than Extra Expense to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the "premises" or elsewhere.
- (2) Extra Expense "loss" to the extent you can return "operations" to normal and discontinue such Extra Expense.

- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

**4. Loss Payment**

We will pay for insured "loss" within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part and:

- a. We have reached agreement with you on the amount of "loss"; or
- b. An appraisal award has been made.

**SECTION D. ADDITIONAL CONDITION**

**1. Coinsurance**

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the **COMMON POLICY CONDITIONS** and the **COMMERCIAL PROPERTY CONDITIONS**.

We will not pay the full amount of any "Business Income" "loss" if the Limit of Insurance for "Business Income" is less than:

- a. The Coinsurance percentage shown for "Business Income" in the Declarations; times
- b. The sum of:
- (1) The Net Income (Net Profit or Loss before income taxes), and
- (2) Operating expenses, including payroll expenses,

that would have been earned or incurred (had no direct "loss" occurred) by your "operations" at the "premises" for the 12 months following the inception, or last previous anniversary date, of this Coverage Part (whichever is later).

Instead, we will determine the most we will pay using the following steps:

1. Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this Coverage Part by the Coinsurance percentage;
2. Divide the Limit of Insurance for the described "premises" by the figure determined in Step 1.; and
3. Multiply the total amount of "loss" by the figure determined in Step 2.

We will pay the amount determined in Step 3. or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

1. Prepaid freight - outgoing;
2. Returns and allowances;
3. Discounts;
4. Bad debts;
5. Collection expenses;
6. Cost of raw stock and factory supplies consumed (including transportation charges);
7. Cost of merchandise sold (including transportation charges);
8. Cost of other supplies consumed (including transportation charges);
9. Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
10. Power, heat and refrigeration expenses that do not continue under contract (if Form **CP 15 11** is attached);
11. All payroll expenses or the amount of payroll expense excluded (if Form **FA 465** is attached); and
12. Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion - not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

**Example No. 1 (Underinsurance):**

When: The Net Income and operating expenses for the 12 months follow-

ing the inception, or last previous anniversary date of this Coverage Part at "premises" would have been \$400,000.

The Coinsurance percentage is 50%  
 The Limit of Insurance Is \$150,000  
 "Business Income" "loss" is \$80,000  
 Step 1: \$400,000 X 50% = \$200,000  
 (the minimum amount of insurance to meet your Coinsurance requirements)  
 Step 2: \$150,000 ÷ \$200,000 = .75  
 Step 3: \$ 80,000 X .75 = \$60,000

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

**Example No. 2 (Adequate Insurance):**

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date of this Coverage Part at the "premises" would have been \$400,000.

The Coinsurance percentage is 50%  
 The Limit of Insurance Is \$200,000  
 "Business Income" "loss" is \$80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 (\$400,000 x 50%). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of "loss").

This condition does not apply to Extra Expense.

**SECTION E. OPTIONAL COVERAGES**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

**1. Maximum Period of Indemnity**

- a. **SECTION D. ADDITIONAL CONDITIONS, 1. Coinsurance** does not apply to this Coverage Part at the "premises" to which this Optional Coverage applies.
- b. The most we will pay in total for "Business Income" and Extra Expense "loss" is the lesser of:
  - (1) The amount of "Business Income" and Extra Expense "loss" sustained during the 120 days immediately following the beginning of the "period of restoration"; or

- (2) The Limit of Insurance shown in the Declarations.

**2. Monthly Limit of Indemnity**

- a. **SECTION D. ADDITIONAL CONDITIONS, 1. Coinsurance** does not apply to this Coverage Part at the "premises" to which this Optional Coverage applies.
- b. The most we will pay for "Business Income" "loss" in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance; multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

**Example:**

When: The "Business Income" Limit of Insurance is \$120,000

The fraction shown in the Declarations for this Optional Coverage is 1/4

The most we will pay for "loss" in each period of 30 consecutive days is: \$120,000 X 1/4 = \$30,000.

If, in this example, the actual amount of "Business Income" "loss" is:

Days	1-30	\$40,000
Days	31-60	20,000
Days	61-90	30,000
		<u>\$90,000</u>

We will pay:

Days	1-30	\$30,000
Days	31-60	20,000
Days	61-90	30,000
		<u>\$80,000</u>

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be on file with the Company and must show financial data for your "operations":
    - (a) During the 12 months prior to the date of the Work Sheet; and
    - (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
  - (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies. The "Business Income" Limit of Insurance indicated on the Declarations should

be at least equal to the Agreed Value, which is determined by:

- (a) The Coinsurance percentage shown in the Declarations; multiplied by
- (b) The amount of Net Income and Operating Expenses for the following 12 months you report on the Work Sheet.

b. Except as noted in c. below, the **ADDITIONAL CONDITION Coinsurance** is suspended until the expiration date of this Coverage Part.

c. We will reinstate the **ADDITIONAL CONDITION Coinsurance** automatically if you do not submit a new Work Sheet and Agreed Value:

- (1) When you request a change in your "Business Income" Limit of Insurance; or
- (2) When you request the coinsurance percentage be changed on the Work Sheet.

d. If the "Business Income" Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

- (1) The "Business Income" Limit of Insurance; divided by
- (2) The Agreed Value.

**Example:**

When: The Limit of Insurance is \$100,000

The Agreed Value is \$200,000

"Business Income" "loss" is \$80,000

Step (a):  $\$100,000 \div \$200,000 = .50$

Step (b):  $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

**4. Extended Period of Indemnity**

In **SECTION A. COVERAGE, 5. Additional Coverages, c. Extended Business Income**, the number "60" in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

**SECTION F. DEFINITIONS**

1. "Business Income" means the:

- a. Net income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

b. Continuing normal operating expenses sustained, including payroll.

2. "Computer programs" means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

3. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 A.M. standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 A.M. standard time at your mailing address shown in the Declarations on the earlier of:

- (1) The day the policy period shown in the Declarations ends; or
- (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.

b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".

4. "Electronic data" means information, facts or "computer programs" stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment.

5. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a coinsurance percentage shown for "Business Income" in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the "premises" of any retail outlet insured under this Coverage Part.

6. "Loss" means accidental physical loss or accidental physical damage.
7. "Operations" means:
  - a. Your business activities occurring at the "premises"; and
  - b. The tenantability of the "premises", if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.
8. "Period of restoration" means the period of time that:
  - a. Begins at the time of direct "loss".
  - b. Ends on the earlier of:
    - (1) The date when the property at the "premises" should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.
  - c. "Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:
    - (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
    - (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".
  - d. The expiration date of the Coverage Part will not cut short the "period of restoration".
9. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, asbestos, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
  - a. You are regularly or otherwise engaged in activities which taint or degrade the environment; or
  - b. You use, generate or produce the "pollutant".
10. "Premises" means the Locations and Buildings described in the Declarations.
11. "Rental Value" means "Business Income" that consists of:
  - a. Net income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the "premises" described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the "premises" which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that "premises", including:
    - (1) Payroll; and
    - (2) The amount of charges, which are the legal obligation of the tenant(s) but would otherwise be your obligations.
12. "Suspension" means:
  - a. The slowdown or cessation of your business activities; and
  - b. That a part or all of the "premises" is rendered untenable if coverage for "Business Income" including "Rental Value" or "Rental Value" applies.
13. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, card index systems, deeds, drawings, films, maps, mortgages, or proprietary information. But "valuable papers and records" does not mean "money" or "securities" or "electronic data", including the materials on which the "electronic data" is recorded.



# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

Attached to and forming part of POLICY NUMBER: ECP 055 17 19

Named Insured is the same as it appears in the Common Policy Dedarations

**LIMITS OF INSURANCE**

EACH OCCURRENCE LIMIT	\$ 2,000,000	
GENERAL AGGREGATE LIMIT	\$ 4,000,000	
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$ 4,000,000	
PERSONAL & ADVERTISING INJURY LIMIT	\$ 2,000,000	ANY ONE PERSON OR ORGANIZATION
DAMAGE TO PREMISES RENTED TO YOU LIMIT		ANY ONE
\$100,000 limit unless otherwise indicated herein:	\$ 2,000,000	PREMISES
MEDICAL EXPENSE LIMIT		
\$5,000 limit unless otherwise indicated herein:	\$	ANY ONE PERSON

CLASSIFICATION	CODE NO.	PREMIUM BASE	RATE		ADVANCE PREMIUM	
			Products / Completed Operations	All Other	Products / Completed Operations	All Other
LOC. 1 - OH MEDICAL OFFICES INCL PROD AND/OR COMP OP	06067 A	1,680	60.365			101
LOC. 2 - OH MEDICAL OFFICES INCL PROD AND/OR COMP OP	06067 A	900	60.365			54
EXTENDED LIABILITY	20296			2%		125 MP

The General Liability Coverage Part is subject to an annual minimum premium.

TOTAL ANNUAL PREMIUM \$ 280

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO COMMERCIAL GENERAL LIABILITY COVERAGE PART:**

GA101	12/04	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
GCP202	09/17	CINCIPAK™ COMMERCIAL GENERAL LIABILITY EXTENDED LIABILITY ENDORSEMENT
CG2244	04/13	EXCLUSION - SERVICES FURNISHED BY HEALTH CARE PROVIDERS
GA2160H	03/10	OHIO LIABILITY COVERAGE ENHANCEMENT
GA3024	05/14	EXCLUSION - ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY - WITH LIMITED BODILY INJURY EXCEPTION
GCP201	05/11	CINCIPAK™ COMMERCIAL GENERAL LIABILITY AMENDATORY ENDORSEMENT

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

Throughout this Coverage Part 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 Coverage Part. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED**.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

### SECTION I - COVERAGES

#### COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

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

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; **SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**; or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS**.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under

#### SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the "coverage term" in which "bodily injury" or "property damage" occurs, you did not know, per Paragraph **1.d.** below, that the "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part.
- c. "Bodily injury" or "property damage" which:
- (1) Occurs during the "coverage term"; and
  - (2) Was not, prior to the "coverage term", known by you, per Paragraph **1.d.** below, to have occurred;
- includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the "coverage term" in which it first became known by you.
- d. You will be deemed to know that "bodily injury" or "property damage" has occurred at the earliest time when any "authorized representative":
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
  - (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
  - (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
  - (5) Becomes aware, or reasonably should have become aware, of a

condition from which "bodily injury" or "property damage" is substantially certain to occur.

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

## 2. Exclusions

This insurance does not apply to:

### a. Expected or Intended Injury

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the insured or which is in fact expected or intended by the insured, even if the injury or damage is of a different degree or type than actually expected or intended. 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. When a claim for such "bodily injury" or "property damage" is made, we will defend that claim provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### 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 sustained in the "workplace";
- (2) An "employee" of the insured arising out of the performance of duties related to the conduct of the insured's business; or
- (3) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraphs (1) or (2) 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. Pollutant

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission 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, Paragraph (a) does not apply to:

- 1) "Bodily injury" to any person injured while on any premises, site or location owned or occupied by, or rented or loaned to, you provided:

- a) The injury is caused by the inadequate ventilation of vapors;
- b) The person injured is first exposed to such vapors during the policy period; and
- c) Within 30 days of such first exposure, the person injured is clinically diagnosed or treated by a physician for the medical condition caused by the exposure to such vapors. However, Paragraph **c)** does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

This exception **1)** shall apply only to Named Insureds; we shall have no duty to defend or pay damages for any person or organization that is not a Named Insured. However, this paragraph does not apply if the "bodily injury" is caused by vapors produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

For the purpose of the exception granted in Paragraph **1)** only, vapors means any gaseous or airborne irritant or airborne contaminant, including smoke, fumes, vapor or soot, but excluding asbestos, which is discharged, dispersed, emitted, released or escapes from materials, machinery or equipment used in the service or maintenance of the premises. Vapors does not mean any gaseous or

airborne irritants or contaminants used in a manufacturing process or which is the product or by-product of any manufacturing process;

- 2) "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 this Coverage Part as an additional insured with respect to your ongoing operations or "your work" 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
- 3) "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:
  - 1) Any insured; or
  - 2) Any person or organization for whom you may be legally responsible;
- (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, Paragraph **(d)** does not apply to:
  - 1) "Bodily injury" or "property damage" arising out of the discharge, dispersal, seepage, migration, release, es-

cape or emission of fuels, lubricants or other operating fluids, or exhaust gases, which are needed to perform, or are the result of, 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, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids, or exhaust gases, escape, seep or migrate, or are discharged, dispersed, released or emitted with the intent to cause "bodily injury" or "property damage" or with the knowledge that "bodily injury" or "property damage" is substantially certain to occur, or if such fuels, lubricants or other operating fluids, or exhaust gases, are brought on or to the premises, site or location with such intent to escape, seep or migrate, or be discharged, dispersed, released or emitted as part of the operations being performed by such insured, contractor or subcontractor;

- 2) "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
- 3) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
- (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 op-

erations 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, Paragraphs (2)(a) and (b) do not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto or Watercraft**

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

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

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 51 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:

(a) The operation of machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

#### **h. Mobile Equipment**

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

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by

governmental authority in hindering or defending against any of these.

#### **j. Damage to Property**

"Property damage" to:

(1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of an 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 or explosion) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit 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.

**i. 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**

Any liability or 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".

**p. Asbestos**

"Bodily injury" or "property damage" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Employment-Related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) or (c) above is directed.

This exclusion applies:

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

**r. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that "bodily injury" or "property damage" had occurred or had begun to occur, in whole or in part, prior to the "coverage term" in which such "bodily injury" or "property damage" occurs or begins to occur.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that "bodily injury" or "property damage" has occurred or has begun to occur at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage";
- (3) First observes, or reasonably should have first observed, the "bodily injury" or "property damage";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that "bodily injury" or "property damage" had occurred or had begun to occur; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "bodily injury" or "property damage" is substantially certain to occur.

**s. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data".

**t. Distribution of Material in Violation of Statutes**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions **c.** through **q.** do not apply to "property damage" by fire or explosion to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE.**

**COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

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

- (1) The amount we will pay for damages is limited as described in **SECTION III - LIMITS OF INSURANCE;** and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY; SECTION I - COVERAGES, COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY;** or medical expenses under **SECTION I - COVERAGES, COVERAGE C. MEDICAL PAYMENTS.**

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.**

- b. This insurance applies to "personal and advertising injury" only if:
  - (1) The "personal and advertising injury" is caused by an offense arising out of your business; and
  - (2) The "personal and advertising injury" offense was committed in the "coverage territory" during the policy period; and
  - (3) Prior to the "coverage term" in which the "personal and advertising injury" offense is committed, you did not know, per Paragraph **1.d.** below, that the offense had been committed or had begun to be committed, in whole or in part.
- c. "Personal and advertising injury" caused by an offense which:
  - (1) Was committed during the "coverage term"; and



- (2) Was not, prior to the "coverage term", known by you, per Paragraph 1.d. below, to have been committed;

includes any continuation, change or resumption of that offense after the end of the "coverage term" in which it first became known by you.

- d. You will be deemed to know that a "personal and advertising injury" offense has been committed at the earliest time when any "authorized representative":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means, other than as described in (3) above, that the offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

## 2. Exclusions

This insurance does not apply to:

### a. Knowing Violation of Rights of Another

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

### b. Material Published With Knowledge of Falsity

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

### c. Material Published Prior to Coverage Term

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the later of the following:

- (1) The inception of this Coverage Part; or
- (2) The "coverage term" in which insurance coverage is sought.

### d. Criminal Acts

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

### e. Contractual Liability

"Personal and advertising injury" for which the insured 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 "personal and advertising injury" is caused by or arises out of an offense committed subsequent to the execution of the contract or agreement. When a claim for such "personal and advertising injury" is made, we will defend that claim, provided the insured has assumed the obligation to defend such claim in the "insured contract". Such defense payments will not reduce the limits of insurance.

### f. Breach of Contract

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

### g. Quality or Performance of Goods - Failure to Conform to Statements

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

### h. Wrong Description of Prices

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

### i. Infringement of Copyright, Patent, Trademark or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, pat-

ent, trademark, trade secret or other intellectual property rights.

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

**j. Insureds in Media and Internet Type Businesses**

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

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

However, this exclusion does not apply to Paragraphs **17. a., b. and c.** of "personal and advertising injury" under **SECTION V - DEFINITIONS.**

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

**k. Electronic Chatrooms or Bulletin Boards**

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

**l. Unauthorized Use of Another's Name or Product**

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

**m. Employment Related Practices**

"Personal and advertising injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Other employment-related practices, policies, acts or omissions including but not limited to coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation

or discrimination directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs **(a), (b) or (c)** above is directed.

This exclusion applies:

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

**n. Pollutant**

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

**o. Pollutant-Related**

Any loss, cost or expense arising out of any:

- (1) 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
- (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".

**p. Asbestos**

"Personal and advertising injury" arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**q. Additional Insured Prior Knowledge**

An additional insured added by attachment of an endorsement to this Coverage Part that is seeking coverage for a claim or "suit", if that additional insured knew, per the following paragraph, that a "personal and advertising injury" offense had been committed or had begun to be committed, in whole or in part, prior to the "coverage term" in which such offense

was committed or began to be committed.

An additional insured added by attachment of an endorsement to this Coverage Part will be deemed to have known that a "personal and advertising injury" offense has been committed or has begun to be committed at the earliest time when that additional insured, or any one of its owners, members, partners, managers, executive officers, "employees" assigned to manage that additional insured's insurance program, or "employees" assigned to give or receive notice of an "occurrence", "personal and advertising injury" offense, claim or "suit":

- (1) Reports all, or any part, of the "personal and advertising injury" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "personal and advertising injury";
- (3) First observes, or reasonably should have first observed, the offense that caused the "personal and advertising injury";
- (4) Becomes aware, or reasonably should have become aware, by any means other than as described in (3) above, that the "personal and advertising injury" offense had been committed or had begun to be committed; or
- (5) Becomes aware, or reasonably should have become aware, of a condition from which "personal and advertising injury" is substantially certain to occur.

**r. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**s. Distribution of Material in Violation of Statutes**

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- a. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- b. The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- c. Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**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 three years of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

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

**c. Injury on Normally Occupied Premises**

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

**d. Workers' Compensation and Similar Laws**

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

**e. Athletic Activities**

To any person injured while officiating, coaching, practicing for, instructing or participating in any physical exercises or games, sports, or athletic contests or exhibitions of an athletic or sports nature.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**.

**SUPPLEMENTARY PAYMENTS - COVERAGES A AND B**

We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

1. All expenses we incur.
2. 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.
3. 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.
4. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", in-

cluding actual loss of earnings up to \$250 a day because of time off from work.

5. All costs taxed against the insured in the "suit".
6. Prejudgment interest awarded against the insured on that part of the judgment we become obligated to pay and which falls within the applicable limit of insurance. 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.
7. 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.

**SECTION II - WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
2. Each of the following is also an insured:
  - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by

you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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

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

(2) "Property damage" to property:

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

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

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:
  - (1) With respect to liability arising out of the maintenance or use of that property; and
  - (2) Until your legal representative has been appointed.

d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. Insurance under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

**SECTION III - LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits".

2. a. The General Aggregate Limit is the most we will pay for the sum of:

- (1) Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;
- (2) Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- (3) Damages under **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY**.

This General Aggregate Limit will not apply if either the Location General Aggregate

gate Limit of Insurance, Paragraph **2.b.**, or the Construction Project General Aggregate Limit of Insurance, Paragraph **2.c.** applies.

**b.** A separate Location General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each location owned by, or rented or leased to you and is the most we will pay for the sum of:

**(1)** Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

**(2)** Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**,

which can be attributed to operations at only a single location owned by, or rented or leased to you.

**c.** A separate Construction Project General Aggregate Limit of Insurance, equal to the amount of the General Aggregate Limit shown in the Declarations, shall apply to each construction project and is the most we will pay for the sum of:

**(1)** Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and

**(2)** Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

which can be attributed only to ongoing operations and only at a single construction project.

**d.** Only for the purpose of determining which General Aggregate Limit of Insurance, **2.a.**, **2.b.**, or **2.c.**, applies:

**(1)** Location means premises involving the same or connecting lots, or premises, whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

**(2)** Construction project means a location you do not own, rent or lease where ongoing improvements, alterations, installation, demolition or maintenance work is performed by you or on your behalf. All connected ongoing improvements, alterations, installation, demolition or maintenance work performed by you or on

your behalf at the same location for the same persons or organizations, no matter how often or under how many different contracts, will be deemed to be a single construction project.

**3.** The Products-Completed Operations Aggregate Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

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

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

**a.** Damages under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY**; and

**b.** Medical expenses under **COVERAGE C. MEDICAL PAYMENTS**;

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. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire or explosion, 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. MEDICAL PAYMENTS** 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 "coverage term".

**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

a "personal and advertising injury" offense which may result in a claim. To the extent possible, notice should include:

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

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

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

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

c. You and any other involved insured must:

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

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

### 3. Legal Action Against Us

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

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

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable

under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

### 5. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** 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 insurance for "your work";
  - (b) That is Fire or Explosion 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 **SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, g. Aircraft, Auto or Watercraft.**

- (2) Any other primary insurance available to the insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the insured has been added as an additional insured by attachment of an endorsement.
- (3) Any other insurance:
- (a) Whether primary, excess, contingent or on any other basis, except when such insurance is written specifically to be excess over this insurance; and
- (b) That is a consolidated (wrap-up) insurance program which has been provided by the prime contractor/project manager or owner of the consolidated project in which you are involved.

When this insurance is excess, we will have no duty under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** or **COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY** 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.

## 6. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If:
- (1) The earned premium is less than the deposit premium, we will return the excess to the first Named Insured; or
- (2) The earned premium is greater than the deposit premium, the difference will be due and payable to us by the first Named Insured upon notice from us.
- 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.

## 7. Representations

By accepting this Coverage Part, 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 Coverage Part in reliance upon your representations.

## 8. 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.

**9. 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.

**10. Two or More Coverage Forms or Policies Issued by Us**

If this Coverage Part and any other Coverage Form, Coverage Part or policy issued to you by us or any company affiliated with us apply to the same "occurrence" or "personal and advertising injury" offense, the aggregate maximum limit of insurance under all the Coverage Forms, Coverage Parts or policies shall not exceed the highest applicable limit of insurance under any one Coverage Form, Coverage Part or policy. This condition does not apply to any Coverage Form, Coverage Part or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Part.

**11. 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, telecast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. "Advertisement" includes a publicity article. For purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an "advertisement".

2. "Authorized representative" means:

- a. If you are designated in the Declarations as:

- (1) An individual, you and your spouse are "authorized representatives".
  - (2) A partnership or joint venture, your members, your partners, and their spouses are "authorized representatives".
  - (3) A limited liability company, your members and your managers are "authorized representatives".
  - (4) An organization other than a partnership, joint venture or limited liability company, your "executive officers" and directors are "authorized representatives". Provided you are not a publicly traded organization, your stockholders are also "authorized representatives".
  - (5) A trust, your trustees are "authorized representatives".
- b. Your "employees":
- (1) Assigned to manage your insurance program; or
  - (2) Responsible for giving or receiving notice of an "occurrence", "personal and advertising injury" offense, claim or "suit";
- are also "authorized representatives".

3. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

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

5. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at

- 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
- (1) The day the policy period shown in the Declarations ends; or
  - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
- b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
6. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in **a.** above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in **a.** above;
    - (2) The activities of a person whose home is in the territory described in **a.** above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication,provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in **a.** above or in a settlement to which we agree.
7. "Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
8. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
9. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
10. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
11. "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.
12. "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 "property damage" by fire or explosion 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", "property damage" or "personal and advertising injury" 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", "property damage" or "personal and advertising injury" arising out of construction or demolition operations, within 50 feet of any rail-

road property and affecting any rail-road bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

(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 Paragraph (2) above and supervisory, inspection, architectural or engineering activities;

(4) That indemnifies an advertising, public relations or media consulting firm for "personal and advertising injury" arising out of the planning, execution or failure to execute marketing communications programs. Marketing communications programs include but are not limited to comprehensive marketing campaigns; consumer, trade and corporate advertising for all media; media planning, buying, monitoring and analysis; direct mail; promotion; sales materials; design; presentations; point-of-sale materials; market research; public relations and new product development;

(5) Under which the insured, if an advertising, public relations or media consulting firm, assumes liability for "personal and advertising injury" arising out of the insured's rendering or failure to render professional services, including those services listed in Paragraph (4), above;

(6) That indemnifies a web-site designer or content provider, or Internet search, access, content or service provider for injury or damage arising out of the planning, execution or failure to execute Internet services. Internet services include but are not limited to design, production, distribution, maintenance and administration of web-sites and web-banners; hosting web-sites; registering domain names; registering with search

engines; marketing analysis; and providing access to the Internet or other similar networks; or

(7) Under which the insured, if a web-site designer or content provider, or Internet search, access, content or service provider, assumes liability for injury or damage arising out of the insured's rendering or failure to render Internet services, including those listed in Paragraph (6), above.

13. "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" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

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

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

15. "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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

16. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
17. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a. False arrest, detention or imprisonment;
  - b. Malicious prosecution;
  - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;

- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

18. "Pollutant" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, re-conditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether the injury or damage is caused directly or indirectly by the "pollutants" and whether:

- a. The insured is regularly or otherwise engaged in activities which taint or degrade the environment; or
- b. The insured uses, generates or produces the "pollutant".

19. "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; or

(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; or

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

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

- b. Does not include "bodily injury" or "property damage" arising out of:
- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a schedule, states that products-completed operations are included.
20. "Property damage" means:
- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, "electronic data" is not tangible property.
21. "Suit" means a civil proceeding in which money 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;
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
22. "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.
23. "Volunteer worker" means a person who is not your "employee", and who donates his or

her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

24. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of "occurrence".
25. "Your product":
- a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - (a) You;
      - (b) Others trading under your name; or
      - (c) A person or organization whose business or assets you have acquired; and
    - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
    - (2) The providing of or failure to provide warnings or instructions.
  - c. Does not include vending machines or other property rented to or located for the use of others but not sold.
26. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes:
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
    - (2) The providing of or failure to provide warnings or instructions.

## NUCLEAR ENERGY LIABILITY EXCLUSION (Broad Form)

1. The insurance does not apply:

**A.** Under any Liability Coverage, to "bodily injury" or "property damage":

(1) With respect to which an insured under this Coverage Part is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or

(2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the insured is, or had this Coverage Part not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B.** Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.

**C.** Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an insured; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by

an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this exclusion:

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

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

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

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

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

"Nuclear facility" means:

**A.** Any "nuclear reactor";

**B.** Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

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

D. Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

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

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

**CinciPak™**  
**COMMERCIAL GENERAL LIABILITY EXTENDED**  
**LIABILITY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

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**B. Limits Of Insurance:**

The Commercial General Liability Limits of Insurance apply to the insurance provided by this endorsement, except as provided below:

**1. Employee Benefit Liability Coverage**

Each Employee Limit: \$1,000,000  
Aggregate Limit: \$3,000,000  
Deductible Amount: \$ 1,000

**3. Supplementary Payments**

Bail Bonds: \$2,500

**7. Property Damage To Borrowed Equipment**

Each Occurrence Limit: \$10,000  
Deductible Amount: \$ 250



**C. Coverages**

**1. Employee Benefit Liability Coverage**

- a. The following is added to **Section I - Coverages**:

**Employee Benefit Liability Coverage**

**(1) Insuring Agreement**

- (a) We will pay those sums that the insured becomes legally obligated to pay as damages caused by any act, error or omission of the insured, or of any other person for whose acts the insured is legally liable, 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 against any "suit" seeking damages to which this insurance does not apply. We may, at our discretion, investigate any report of an act, error or omission and settle any claim or "suit" that may result. But:

- 1) The amount we will pay for damages is limited as described in **Section III - Limits Of Insurance**; and
- 2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under **Supplementary Payments**.

- (b) This insurance applies to damages only if the act, error or omission, is negligently committed in the "administration" of your "employee benefit program"; and
  - 1) Occurs during the policy period; or
  - 2) Occurred prior to the "first effective date" of

this endorsement provided:

- a) You did not have knowledge of a claim or "suit" on or before the "first effective date" of this endorsement.

You will be deemed to have knowledge of a claim or "suit" when any "authorized representative";

- i) Reports all, or any part, of the act, error or omission to us or any other insurer;
- ii) Receives a written or verbal demand or claim for damages because of the act, error or omission; and

- b) There is no other applicable insurance.

**(2) Exclusions**

This insurance does not apply to:

- (a) **Bodily Injury, Property Damage Or Personal And Advertising Injury**

"Bodily injury", "property damage" or "personal and advertising injury".

- (b) **Dishonest, Fraudulent, Criminal Or Malicious Act**

Damages arising out of any intentional, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including the willful or reckless violation of any statute.

- (c) **Failure To Perform A Contract**

Damages arising out of failure of performance of contract by any insurer.

**(d) Insufficiency Of Funds**

Damages arising out of an insufficiency of funds to meet any obligations under any plan included in the "employee benefit program".

**(e) Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation**

Any claim based upon:

- 1) Failure of any investment to perform;
- 2) Errors in providing information on past performance of investment vehicles; or
- 3) Advice given to any person with respect to that person's decision to participate or not to participate in any plan included in the "employee benefit program".

**(f) Workers' Compensation And Similar Laws**

Any claim arising out of your failure to comply with the mandatory provisions of any workers' compensation, unemployment compensation insurance, social security or disability benefits law or any similar law.

**(g) ERISA**

Damages for which any insured is liable because of liability imposed on a fiduciary by the Employee Retirement Income Security Act of 1974, as now or hereafter amended, or by any similar federal, state or local laws.

**(h) Available Benefits**

Any claim for benefits to the extent that such benefits are available, with reasonable effort and cooperation of the insured, from the applicable funds accrued or other collectible insurance.

**(i) Taxes, Fines Or Penalties**

Taxes, fines or penalties, including those imposed under the Internal Revenue Code or any similar state or local law.

**(j) Employment-Related Practices**

Any liability arising out of any:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment - related practices, acts or omissions; or
- (4) Consequential liability as a result of (1), (2) or (3) above.

This exclusion applies whether the insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(3) Supplementary Payments**

**Section I - Coverages, Supplementary Payments - Coverages A and B** also apply to this Coverage.

**b. Who Is An Insured**

As respects **Employee Benefit Liability Coverage, Section II - Who Is An Insured** is replaced by the following:

- (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 part-

ners, and their spouses are also insureds but only with respect to the conduct of your business.

- (c) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - (d) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - (e) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
- (2) Each of the following is also an insured:
- (a) Each of your "employees" who is or was authorized to administer your "employee benefit program";
  - (b) Any persons, organizations or "employees" having proper temporary authorization to administer your "employee benefit program" if you die, but only until your legal representative is appointed; or
  - (c) 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) 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 no other similar insurance applies to that organi-

zation. However, coverage under this provision:

- (a) Is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier; and
- (b) Does not apply to any act, error or omission that was committed before you acquired or formed the organization.

### c. Limits Of Insurance

As respects **Employee Benefit Liability Coverage, Section III - Limits Of Insurance** is replaced by the following:

- (1) The Limits of Insurance shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** and the rules below fix the most we will pay regardless of the number of:
  - (a) Insureds;
  - (b) Claims made or "suits" brought;
  - (c) Persons or organizations making claims or bringing "suits";
  - (d) Acts, errors or omissions; or
  - (e) Benefits included in your "employee benefit program".
- (2) The Aggregate Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages because of acts, errors or omissions negligently committed in the "administration" of your "employee benefit program".
- (3) Subject to the limit described in (2) above, the Each Employee Limit shown in Section **B. Limits Of Insurance, 1. Employee Benefit Liability Coverage** of this endorsement is the most we will pay for all damages sustained by any one "employee", including damages sustained by such "employee's" dependents and beneficiaries, as a result of:
  - (a) An act, error or omission; or

- (b) A series of related acts, errors or omissions, regardless of the amount of time that lapses between such acts, errors or omissions;

negligently committed in the "administration" of your "employee benefit program".

However, the amount paid under this endorsement shall not exceed, and will be subject to the limits and restrictions that apply to the payment of benefits in any plan included in the "employee benefit program."

**(4) Deductible Amount**

- (a) Our obligation to pay damages on behalf of the insured applies only to the amount of damages in excess of the Deductible Amount stated in the Declarations as applicable to Each Employee. The limits of insurance shall not be reduced by the amount of this deductible.

- (b) The Deductible Amount stated in the Declarations applies to all damages sustained by any one "employee", including such "employee's" dependents and beneficiaries, because of all acts, errors or omissions to which this insurance applies.

- (c) The terms of this insurance, including those with respect to:

- 1) Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2) Your duties, and the duties of any other involved insured, in the event of an act, error or omission, or claim;

apply irrespective of the application of the Deductible Amount.

- (d) We may pay any part or all of the Deductible Amount to effect settlement of any claim or "suit" and, upon no-

tification of the action taken, you shall promptly reimburse us for such part of the Deductible Amount as we have paid.

**d. Additional Conditions**

As respects **Employee Benefit Liability Coverage, Section IV - Commercial General Liability Conditions** is amended as follows:

- (1) Item **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** is replaced by the following:

**2. Duties In The Event Of An Act, Error Or Omission, Or Claim Or Suit**

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

- (1) What the act, error or omission was and when it occurred; and
- (2) The names and addresses of anyone who may suffer damages as a result of the act, error or omission.

- 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 re-

ceived 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 an act, error or omission 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 without our consent.

(2) Item **5. Other Insurance** is replaced by the following:

**5. Other Insurance**

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

**a. Primary Insurance**

This insurance is primary except when **c.** 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 **b.** below.

**b. Method Of Sharing**

If all of the other insurance permits contribu-

tion 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.

**c. No Coverage**

This insurance shall not cover any loss for which the insured is entitled to recovery under any other insurance in force previous to the effective date of this Coverage Part.

**e. Additional Definitions**

As respects **Employee Benefit Liability Coverage, Section V - Definitions** is amended as follows:

(1) The following definitions are added:

1. "Administration" means:

- a. Providing information to "employees", including their dependents and beneficiaries, with respect to eligibility for or scope of "employee benefit programs";
- b. Interpreting the "employee benefit programs";
- c. Handling records in connection with the "employee benefit programs"; or
- d. Effecting, continuing or terminating any "employee's" participation in

any benefit included in the "employee benefit program".

However, "administration" does not include:

- a. Handling payroll deductions; or
  - b. The failure to effect or maintain any insurance or adequate limits of coverage of insurance, including but not limited to unemployment insurance, social security benefits, workers' compensation and disability benefits.
2. "Cafeteria plans" means plans authorized by applicable law to allow "employees" to elect to pay for certain benefits with pre-tax dollars.
3. "Employee benefit programs" means a program providing some of all of the following benefits to "employees", whether provided through a "cafeteria plan" or otherwise:
- a. Group life insurance; group accident or health insurance; dental, vision and hearing plans; and flexible spending accounts; provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
  - b. Profit sharing plans, employee savings plans, employee stock ownership plans, pension plans and stock subscription plans, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;

c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and

d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.

4. "First effective date" means the date upon which coverage was first effected in a series of uninterrupted renewals of insurance coverage.

(2) The following definitions are deleted in their entirety and replaced by the following:

8. "Employee" means a person actively employed, formerly employed, on leave of absence or disabled, or retired. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

21. "Suit" means a civil proceeding in which money damages because of an act, error or omission 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;

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or

c. An appeal of a civil proceeding.

**2. Unintentional Failure To Disclose Hazards**

**Section IV - Commercial General Liability Conditions, 7. Representations** is amended by the addition of the following:

Based on our dependence upon your representations as to existing hazards, if unintentionally you should fail to disclose all such hazards at the inception date of your policy, we will not reject coverage under this Coverage Part based solely on such failure.

**3. Supplementary Payments**

Under **Section I - Supplementary Payments - Coverages A and B:**

Paragraph **2.** is replaced by the following:

Up to the limit shown in Section **B. Limits Of Insurance, 3.** Bail Bonds of this endorsement 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.

This amendment of the Supplementary Payments - Bail Bonds limit replaces, and is not in addition to, the amendment of the Supplementary Payments - Bail Bonds limit (**II.A.2.**) in the CinciPak™ Commercial General Liability Amendatory Endorsement.

**4. 180 Day Coverage For Newly Formed Or Acquired Organizations**

**Section II - Who Is An Insured** is amended as follows:

Subparagraph **a.** of Paragraph **3.** is replaced by the following:

- a.** Insurance under this provision is afforded only until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

**5. Waiver Of Subrogation**

**Section IV - Commercial General Liability Conditions, 9. Transfer Of Rights Of Recovery Against Others To Us** is amended by the addition of the following:

We waive any right of recovery we may have against any person or organization against whom you have agreed to waive such right of recovery in a written contract or agreement because of payments we make for injury or damage arising out of

your ongoing operations or "your work" done under a written contract or agreement with that person or organization and included in the "products-completed operations hazard". However, our rights may only be waived prior to the "occurrence" giving rise to the injury or damage for which we make payment under this Coverage Part. The insured must do nothing after a loss to impair our rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce those rights.

**6. Automatic Additional Insured - Specified Relationships**

**a.** The following is added to **Section II - Who Is An Insured:**

- (1)** Any person(s) or organization(s) described in Paragraph **6.a.(2)** of this endorsement (hereinafter referred to as additional insured) whom you are required to add as an additional insured under this Coverage Part by reason of a written contract, written agreement, written permit or written authorization.
- (2)** Only the following persons or organizations are additional insureds under this endorsement, and insurance coverage provided to such additional insureds is limited as provided herein:

**(a) Managers Or Lessors Of Premises**

The manager or lessor of a premises leased to you with whom you have agreed per Paragraph **6.a.(1)** of this endorsement to provide insurance, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you, subject to the following additional exclusions:

This insurance does not apply to:

- (i)** Any "occurrence" which takes place after you cease to be a tenant in that premises;
- (ii)** Structural alterations, new construction or demolition operations performed by or on be-

half of such additional insured.

**(b) Lessor Of Leased Equipment**

Any person or organization from whom you lease equipment when you and such person(s) or organization(s) have agreed per Paragraph **6.a.(1)** of this endorsement to provide insurance. Such person(s) or organization(s) are insureds only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s). A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends. However, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

**(c) Vendors**

Any person or organization (referred to below as vendor) with whom you have agreed per Paragraph **6.a.(1)** of this endorsement to provide insurance, but only with respect to "bodily injury" or "property damage" arising out of "your products" which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

- (i)** The insurance afforded the vendor does not apply to:
  - 1)** "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This

exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;

- 2)** Any express warranty unauthorized by you;
- 3)** Any physical or chemical change in the product made intentionally by the vendor;
- 4)** Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
- 5)** Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- 6)** Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- 7)** Products which, after distribution or sale by you, have been labeled or re-labeled or used as a container, part or ingredient of any other thing or sub-



stance by or for the vendor; or

8) "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

a) The exceptions contained in Paragraphs **(c)(i4)** or **6** of this endorsement; or

b) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

(ii) This insurance does not apply to any insured person or organization:

1) From whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products; or

2) When liability included within the "products-completed operations hazard" has been excluded under this Coverage Part with respect to such products.

**(d) State Or Governmental Agency Or Subdivision Or Political Subdivision - Permits Or Authorizations Relating To Premises**

Any state or governmental agency or subdivision or political subdivision with which you have agreed per Paragraph **6.a.(1)** of this endorsement to provide insurance, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

(i) The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or

(ii) The construction, erection or removal of elevators; or

(iii) The ownership, maintenance or use of any elevators covered by this insurance.

**(e) Mortgagee, Assignee Or Receiver**

Any person or organization with whom you have agreed per Paragraph **6.a.(1)** of this endorsement to provide insurance, but only with respect to their liability as mortgagee, assignee, or receiver and arising out of the ownership, maintenance, or use of the premises by you. However, this insurance does not apply to structural alterations, new construction and demolition operations

performed by or for that person or organization.

- (3) The insurance afforded to additional insureds described in Paragraph **6.a.(1)** of this endorsement:

- (a) Only applies to the extent permitted by law; and
- (b) Will not be broader than that which you are required by the written contract, written agreement, written permit or written authorization to provide for such additional insured; and
- (c) Does not apply to any person, organization, vendor, state, governmental agency or subdivision or political subdivision, specifically named as an additional insured under any other provision of, or endorsement added to, this Coverage Part, provided such other provision or endorsement covers the injury or damage for which this insurance applies.

- b. With respect to the insurance afforded to the additional insureds described in Paragraph **6.a.(1)** of this endorsement, the following is added to **Section III - Limits Of Insurance**:

The most we will pay on behalf of the additional insured is the amount of insurance:

- (1) Required by the written contract, written agreement, written permit or written authorization described in Paragraph **6.a.(1)** of this endorsement; or
- (2) Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

- c. **Section IV - Commercial General Liability Conditions** is amended to add the following:

**Automatic Additional Insured Provision**

This insurance applies only if the "bodily injury" or "property damage" occurs, or the "personal and advertising injury" offense is committed:

- (1) During the policy period; and
- (2) Subsequent to your execution of the written contract or written agreement, or the issuance of a written permit or written authorization, described in Paragraph **6.a.(1)**.

- d. **Section IV - Commercial General Liability Conditions** is amended as follows:

Condition **5. Other Insurance** is amended to include:

**Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured per Paragraph **6.a.(1)** of this endorsement provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract, agreement, permit or authorization described in **6.a.(2)** of this endorsement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

**7. Property Damage To Borrowed Equipment**

- a. The following is added to **Exclusion 2.j. Damage To Property** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

Paragraphs (3) and (4) of this exclusion do not apply to tools or equipment loaned to you, provided they are not being used to perform operations at the time of loss.

- b. With respect to the insurance provided by this section of the endorsement, the following additional provisions apply:

- (1) The Limits of Insurance shown in the Declarations are replaced by the limits designated in **Section B. Limits Of Insurance, 7. Property Damage To Borrowed**

**Equipment** of this endorsement with respect to coverage provided by this endorsement. These limits are inclusive of and not in addition to the limits being replaced. The Limits of Insurance shown in **Section B. Limits Of Insurance, 7. Property Damage To Borrowed Equipment** of this endorsement fix the most we will pay in any one "occurrence" regardless of the number of:

- (a) Insureds;
- (b) Claims made or "suits" brought; or
- (c) Persons or organizations making claims or bringing "suits".

## (2) Deductible Clause

- (a) Our obligation to pay damages on your behalf applies only to the amount of damages for each "occurrence" which are in excess of the Deductible Amount stated in **Section B. Limits Of Insurance, 7. Property Damage To Borrowed Equipment** of this endorsement. The limits of insurance will not be reduced by the application of such deductible amount.
- (b) **Section IV - Commercial General Liability Conditions, 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**, applies to each claim or "suit" irrespective of the amount.
- (c) We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

## 8. Employees As Insureds - Specified Health Care Services And Good Samaritan Services

Paragraph **2.a.(1)(d)** under **Section II - Who Is An Insured** does not apply to:

- a. Your "employees" who provide professional health care services on your behalf as a duly licensed nurse,

emergency medical technician or paramedic in the jurisdiction where an "occurrence" or offense to which this insurance applies takes place; or

- b. Your "employees" or "volunteer workers", other than an employed or volunteer doctor, providing first aid or good samaritan services during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

## 9. Broadened Notice Of Occurrence

Paragraph **a.** of **Condition 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit** under **Section IV - Commercial General Liability Conditions** is replaced by the following:

- 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.

This requirement applies only when the "occurrence" or offense is known to an "authorized representative".

## 10. Nonowned Aircraft

The following is added to **Exclusion 2.g. Aircraft, Auto Or Watercraft** under **Section I - Coverage A - Bodily Injury And Property Damage Liability**:

This exclusion does not apply to an aircraft you do not own, provided that:

- a. The pilot in command holds a current effective certificate, issued by a duly constituted authority of the United States of America or Canada, designating that person as a commercial or airline transport pilot;
- b. The aircraft is rented with a trained, paid crew; and
- c. The aircraft does not transport persons or cargo for a charge.

## 11. Bodily Injury Redefined

**Section V - Definitions, 4.** "Bodily injury" is replaced by the following:

4. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.

## 12. Expected Or Intended Injury Redefined

The last sentence of **Exclusion 2.a. Expected Or Intended Injury** under **Section I - Coverage A - Bodily Injury And Property Damage Liability** is replaced by the following:

This exclusion does not apply to "bodily injury" or "property damage" resulting from

the use of reasonable force to protect persons or property.

## 13. Former Employees As Insureds

The following is added to Paragraph 2. under **Section II - Who Is An Insured:**

2. Each of the following is also an insured:

Any of your former "employees", directors, managers, members, partners or "executive officers", including but not limited to retired, disabled or those on leave of absence, but only for acts within the scope of their employment by you or for duties related to the conduct of your business.

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

**EXCLUSION - SERVICES FURNISHED BY  
HEALTH CARE PROVIDERS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

**Description Of Operations:**

AUDIOLOGY

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

The following exclusion is added to Paragraph 2. **Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability** and Paragraph 2. **Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:**

With respect to any operation shown in the Schedule, this insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1. The rendering of or failure to render:
  - a. Medical, surgical, dental, X-ray or nursing service, treatment, advice or instruction, or the related furnishing of food or beverages;
  - b. Any health or therapeutic service, treatment, advice or instruction; or

- c. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement or personal grooming;
- 2. The furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or
- 3. The handling or treatment of dead bodies, including autopsies, organ donation or other procedures.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved that which is described in Paragraph 1., 2. or 3.

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

## **OHIO LIABILITY COVERAGE ENHANCEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The provisions of this endorsement apply only as respects Ohio Liability Coverage afforded hereunder.

- A.** For the purposes of this endorsement only, **SECTION I - COVERAGES** is amended to include the following:

#### **COVERAGE D. OHIO LIABILITY COVERAGE**

##### **1. Insuring Agreement**

- a.** We will pay those sums to which this insurance applies that the insured becomes legally obligated to pay as damages because of "bodily injury" sustained by any "employee" of the insured arising out of or in the course of his or her employment by the insured, provided the "employee", at the time of the injury, was covered under a workers compensation policy and subject to a "workers compensation law". We will have the right and duty to defend any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" 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 this coverage.

No other obligation or liability to pay sums or perform acts or services is covered unless expressly provided for under **SUPPLEMENTARY PAYMENTS**.

- b.** This insurance applies to "bodily injury" only if:

- (1) The "bodily injury" is caused by an "occurrence" that takes place in the "coverage territory".

- (2) Except when (3) below applies, the "bodily injury" occurs during the policy period.

- (3) Provided the "bodily injury" is a disease, the "bodily injury" is caused by or aggravated by conditions of employment by you and the injured "employee's" last day of last exposure to the conditions causing or aggravating such "bodily injury" occurs during the policy period.

- c.** The damages we will pay, where recovery is permitted by law, include damages:

- (1) For:

- (a) Which you are liable to a third party by reason of a claim or "suit" against you by that third party to recover the damages claimed against such third party as a result of injury to your "employee";
- (b) Care and loss of services; and
- (c) Consequential "bodily injury" to a spouse, child, parent, brother or sister of the injured "employee";

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

- (2) Because of "bodily injury" to your "employee" that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

##### **2. Exclusions**

This insurance does not apply to:

**a. Contractual Liability**

Liability assumed by you under any contract or agreement;

**b. Punitive Damages**

Multiple, exemplary or punitive damages, including but not limited to any award of attorney fees, costs or interest awarded as a result of an award for multiple, exemplary or punitive damages;

**c. Violation of Laws**

"Bodily injury" suffered or caused by any "employee" while employed in violation of law with your actual knowledge or the actual knowledge of an insured;

**d. Statutory Obligations**

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

**e. Crew Members**

"Bodily injury" to a master or member of the crew of any vessel or any member of the flying crew of any aircraft;

**f. Termination, Coercion or Discrimination**

Damages arising out of coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any "employee", or arising out of other employment or personnel decisions concerning the insured, whether or not accompanied by a "bodily injury";

**g. Intentional Injury**

"Bodily injury" caused by acts committed by or at the direction of an insured with the deliberate intent to injure or with the belief that the injury was substantially certain to occur. As used in this endorsement, substantially certain means that an insured acts with deliberate intent to cause an "employee" to suffer "bodily injury".

**h. War**

"Bodily injury", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

**i. Failure to Comply with Worker's Compensation Law**

Any claim or "bodily injury" with respect to which the insured is:

(1) Deprived of common law defenses; or

(2) Otherwise subject to penalty;

because of your failure to secure your obligations or other failure to comply with any "workers compensation law";

**j. Asbestos**

Damages arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner.

**k. Federal Laws**

Any premium, assessment, penalty, fine, benefit, liability or other obligation imposed by or granted pursuant to:

(1) The Federal Employer's Liability Act (45 USC Section 51-60);

(2) The Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173);

(3) The Longshore and Harbor Workers' Compensation Act (33 USC Sections 910-950);

(4) The Outer Continental Shelf Lands Act (43 USC Section 1331-1356);

(5) The Defense Base Act (42 USC Sections 1651-1654);

(6) The Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942);

- (7) The Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872);
- (8) Any other workers compensation, unemployment compensation or disability laws or any similar law; or
- (9) Any subsequent amendments to the laws listed above;

**I. Violation of Age Laws or Employment of Minors**

"Bodily injury" suffered or caused by any person:

- (1) Knowingly employed by you in violation of any law as to age; or
- (2) Under the age of 14 years, regardless of any such law.

**3. Supplementary Payments**

The **SUPPLEMENTARY PAYMENTS - COVERAGES A and B** also apply to this insurance.

**B. WHO IS AN INSURED**

For the purposes of this endorsement only, **SECTION II - WHO IS AN INSURED** is deleted in its entirety and replaced by the following:

- 1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only

with respect to their duties as trustees.

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.

**C. LIMITS OF INSURANCE**

For the purposes of this endorsement only, **SECTION III - LIMITS OF INSURANCE** is amended as follows:

Item **5.** is deleted in its entirety and replaced by the following:

- 5. The Each Occurrence Limit is the most we will pay for damages under Coverage **D.** because of all "bodily injury" arising out of any one "occurrence".

**D. CONDITIONS**

For the purposes of this endorsement only, **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**, Items **2.** and **5.** are deleted in their entirety and replaced by the following:

- 2. **Duties in the Event of Occurrence, Injury, Claim or Suit**
  - a. You must see to it that we or our agent are notified as soon as practicable of an "occurrence" or "bodily injury" which may result in a claim. To the extent possible, notice should include:
    - (1) How, when and where the "occurrence" or "bodily injury" took place;
    - (2) The names and addresses of any injured persons and witnesses; and
    - (3) The nature and location of any injury.
  - 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 re-



ceived in connection with the injury, claim, proceeding or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us and assist us, as we may request, in the investigation or settlement of the claim or "suit";
- (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 to which this insurance may also apply; and
- (5) Do nothing after an injury occurs that would interfere with our right to recover from others.

- 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.

#### 5. Other Insurance

- a. Excess - This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis.

We will have no duty to defend any claim or "suit" that any other insurer has a duty to defend. If no other insurer defends, we will undertake to do so, but will be entitled to the insured's right against all those other insurers.

We will pay the amount of the loss 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 Condition and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations.

- b. Method of Sharing - If all 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.

#### E. DEFINITIONS

For the purposes of this endorsement only, **SECTION V - DEFINITIONS** is amended as follows:

1. Definition **16.** is deleted in its entirety and replaced by the following:

16. "Occurrence" means a happening or event or continuous or repeated exposure to conditions which occur during the policy period which result in "bodily injury". All such exposure to substantially the same general conditions shall be deemed one "occurrence".

2. The following definition is added:

"Workers compensation law" means the workers compensation law and any occupational disease law of:

- a. The State of Ohio.
- b. Another state if the "employee" is injured as a result of operations which are necessary or incidental to the insured's Ohio operations.

This does not include provisions of any law providing non-occupational disability benefits.

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

**EXCLUSION - ACCESS OR DISCLOSURE OF  
CONFIDENTIAL OR PERSONAL INFORMATION AND  
DATA-RELATED LIABILITY - WITH  
LIMITED BODILY INJURY EXCEPTION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**A.** Exclusion 2.s. of **Section I - Coverage A - Bodily Injury and Property Damage Liability** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**s. Access or Disclosure of Confidential or Personal Information and Data-Related Liability**

Damages arising out of:

- (1)** Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2)** The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph **(1)** or **(2)** above.

ing out of that which is described in Paragraph **(1)** or **(2)** above.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to damages because of "bodily injury".

**B.** The following is added to Paragraph **2. Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Access or Disclosure of Confidential or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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

## CinciPak™

# COMMERCIAL GENERAL LIABILITY AMENDATORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**I. SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, Paragraph 2. Exclusions** is amended as follows:

**A.** Exclusion **j. Damage to Property** is deleted in its entirety and replaced by the following:

**j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of an 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, explosion, lightning, smoke, soot or water) to premises, including the con-

tents of such premises, rented to you for a period of 7 or fewer consecutive days, for which the amount we will pay is limited to the Damage To Premises Rented To You Limit 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".

**B.** The last Paragraph of **2. Exclusions** is deleted in its entirety and replaced by the following:

Exclusions **c.** through **q.** do not apply to "property damage" by fire, explosion, lightning, smoke, soot or water to premises while rented to you or temporarily occupied by you with permission of the owner, for which the amount we will pay is limited to the Damage to Premises Rented To You Limit as described in **SECTION III - LIMITS OF INSURANCE.**

**II. SECTION I - COVERAGES, SUPPLEMENTARY PAYMENTS - COVERAGES A AND B,** is amended as follows:

**A.** Paragraph **2.** is deleted in its entirety and replaced by the following:

**2.** Up to \$1,000 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.

**B.** Paragraph **4.** is deleted in its entirety and replaced by the following:

4. 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 \$500 a day because of time off from work.

**III. SECTION III - LIMITS OF INSURANCE,** Paragraph **6.** is deleted in its entirety and replaced by the following:

6. Subject to **5.** above, the Damage to Premises Rented to You Limit is the most we will pay under **COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, explosion, lightning, smoke, soot or water, while rented to you or temporarily occupied by you with permission of the owner.

**IV. SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS,** Condition **5. Other**

**Insurance** Paragraph **b.(1)(b)** is deleted in its entirety and replaced by the following:

- (b) That is Fire, Explosion, lightning, smoke, soot or Water Damage insurance for premises rented to you or temporarily occupied by you with permission of the owner;

**V. SECTION V. - DEFINITIONS,** Definition **12.** "Insured contract" Paragraph **a.** is deleted in its entirety and replaced by the following:

- 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 "property damage" by fire, explosion, lightning, smoke, soot or water to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## OHIO EMPLOYERS LIABILITY DEFENSE EXPENSES COVERAGE PART DECLARATIONS

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Attached to and forming part of POLICY NUMBER: ECP 055 17 19

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Named Insured is the same as it appears in the Common Policy Declarations

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### Limits of Insurance

\$ 500,000 Bodily Injury - Each Employee  
\$ 1,000,000 Aggregate

Class Code Number	ESTIMATED TOTAL ANNUAL PAYROLL	RATE	ESTIMATED ANNUAL PREMIUM
20320	200,000	0.02	93
		<b>MINIMUM PREMIUM</b>	<b>ADVANCE PREMIUM</b>
		93	93

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**FORMS AND / OR ENDORSEMENTS APPLICABLE TO EMPLOYERS LIABILITY COVERAGE PART:**  
GA106OH 03/10 OHIO EMPLOYERS LIABILITY DEFENSE EXPENSES COVERAGE FORM

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# OHIO EMPLOYERS LIABILITY DEFENSE EXPENSES COVERAGE FORM - TABLE OF CONTENTS

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**Notice: This Coverage Part provides "defense expenses" coverage only. The coverage specified in this Coverage Part is only for "defense expenses" as defined in SECTION V - DEFINITIONS. Please read and review the Coverage Part carefully and discuss the coverage with your agent.**

## **OHIO EMPLOYERS LIABILITY DEFENSE EXPENSES COVERAGE FORM**

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

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. 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**

#### **1. Insuring Agreement**

- a.** To the fullest extent permitted by Ohio Law, we will pay on an insured's behalf those "defense expenses" that an insured incurs because of a claim or "suit" for "bodily injury" sustained by your "employee" in the "workplace" and caused by an alleged "intentional act" to which this insurance applies. It shall be your duty, not our duty, to defend any claim or "suit", provided you shall only retain counsel as mutually agreed upon with us. We shall at all times have the right, but not the duty, to associate with the insureds in the investigation or defense of any claim or "suit" to which this insurance applies.

But:

- (1)** The amount we will pay for "defense expenses" is limited as described in **SECTION III - LIMITS OF INSURANCE**; and
- (2)** Our duty to pay "defense expenses" ends at the earliest of the following times:
- (a)** When the applicable limit of insurance is used up;
  - (b)** When an insured is convicted of a criminal offense arising from an "intentional act";
  - (c)** When an insured pleads guilty to a criminal offense arising from an "intentional act";
  - (d)** When a court of competent jurisdiction has determined that an insured committed an "intentional act"; or

- (e)** When an insured admits to having committed an "intentional act".

No other obligation or liability to pay sums or perform acts or services is covered.

- b.** This insurance applies to "bodily injury" only if:
- (1)** The "bodily injury" is caused by an "occurrence", provided the "employee", at the time of the injury, was covered under a workers compensation policy and was subject to a "workers compensation law" of Ohio.
  - (2)** Except when **(3)** below applies, the "bodily injury" occurs during the policy period.
  - (3)** Provided the "bodily injury" is a disease, the "bodily injury" is caused by or aggravated by conditions of employment by you and the injured "employee's" last day of last exposure to the conditions causing or aggravating such "bodily injury" occurs during the policy period.
- c.** If you are sued, the original "suit" and any related legal actions for damages for "bodily injury" must be brought in the United States of America, its territories or possessions or Canada.

#### **2. Exclusions**

This insurance does not cover:

**a. Contractual Liability**

Liability assumed by you under any contract or agreement;

**b. Violation of Laws**

"Bodily injury" suffered or caused by any "employee" while employed in violation of law with your actual knowledge or the actual knowledge of an insured;

**c. Statutory Obligations**

Your obligation under a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;

**d. Crew Members and Federal Laws**

"Bodily injury":

- (1) To any member of the flying crew of any aircraft;
- (2) To any master or member of the crew of any vessel;
- (3) To any "employee" subject to the Longshore and Harbor Workers' Compensation Act, the Federal Employer's Liability Act or the Federal Coal Mine Health and Safety Act, or any subsequent amendments to these laws;

**e. Other than Intentional Acts**

"Bodily injury" to any "employee" as the result of negligent, grossly negligent, wanton, reckless or willful misconduct;

**f. Termination, Coercion or Discrimination**

Damages arising out of coercion, criticism, demotion, evaluation, failure to promote, reassignment, discipline, defamation, harassment, humiliation, discrimination or termination whether or not accompanied by a "bodily injury";

**g. War**

"Bodily injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these;

**h. Failure to Comply with Worker's Compensation Law**

Any claim or "bodily injury" with respect to which you are deprived of any defense or

defenses or are otherwise subject to penalty because of default in premium payment under, or any other failure to comply with the provisions of any "workers compensation law";

**i. Asbestos**

Damages arising out of, attributable to, or any way related to asbestos in any form or transmitted in any manner;

**j. Judgments, Settlements or Punitive Damages**

Any judgments, awards, settlements, punitive damages, exemplary damages, statutory damages, restitution, or fines of any type, including but not limited to, any award of attorney fees, costs, or interest against the insured.

**SECTION II - WHO IS AN INSURED**

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 insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

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 Limits of Insurance of the Ohio Employers Liability Defense Expense Coverage Part Declarations and the rules below fix the most we will pay regardless of the number of:



- a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Bodily Injury - Each "Employee" limit is the most we will pay for all "defense expenses" covered by this Coverage Part due to or arising out of "bodily injury" sustained by a single "employee" regardless of the number of insureds alleged to have committed an "intentional act" resulting in such "bodily injury".
  3. The Aggregate limit is the most we will pay for all "defense expenses" covered by this Coverage Part due to or arising out of "bodily injury" regardless of the number of "employees" sustaining such "bodily injury".

The Limits of Insurance of this Coverage Part apply separately to each "coverage term".

#### **SECTION IV - 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 Intentional Act, Claim or Suit**

- a. You must see to it that we are notified promptly of any claim or "suit" to which this insurance applies. To the extent possible, notice should include:
  - (1) How, when and where the alleged "intentional act" took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damages arising out of the alleged "intentional act".
- b. You and any other involved insured must:
  - (1) Immediately send us copies of any demand notices, summonses or legal papers received in connection with the claim or "suit"; and
  - (2) Provide us with all information, assistance and cooperation which we reasonably request and agree that in the event of a claim or "suit" no insured will do anything that may prejudice our position or our potential or actual rights of recovery.
- c. No insured will, except at that insured's own cost, voluntarily make a "defense expenses" payment, assume any "defense expenses" obligation, or incur any "defense expenses" without our consent.

##### **3. Concealment or Fraud**

This Coverage Part shall be void if, whether before or after a claim is made, an insured has:

- a. Intentionally concealed or misrepresented any material fact or circumstance; or
- b. Made false statements or engaged in fraudulent conduct;

relating to this Coverage Part.

##### **4. 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 "defense expenses" from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

We will not be liable for "defense expenses" that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance.

##### **5. Other Insurance**

**Excess** - This insurance is excess over any other insurance, whether primary, excess, contingent or on any other basis.

##### **6. Representations**

By accepting this Coverage Part, 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 Coverage Part in reliance upon your representations.

##### **7. Review of Your Occupational Injuries and Illnesses Records**

We will have the right to review your OSHA or other occupational injuries and illnesses records as they relate to this Coverage Part at any time during the policy period and up to three years afterward.

##### **8. 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 Coverage Part 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.

**9. Transfer of Rights of Recovery Against Others To Us**

If the insured has rights to recover all or part of any "defense expenses" 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.

**10. 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. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
2. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at our mailing address shown in the Declarations, and if a multi-year policy, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
3. "Defense expenses" means necessary and reasonable legal fees, costs and expenses incurred by an insured as a result of an investigation, defense and appeal of a claim or "suit". "Defense expenses" shall not include an insured's remuneration or overhead expenses. "Defense expenses" also shall not include costs incurred by an insured as a result of the investigation, defense or appeal of any criminal or administrative claim or proceeding.
4. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
5. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
6. "Intentional act" means an act committed by you, or any of your "employees", during the course of employment, with the intent to injure another or with the belief that the injury was substantially certain to occur. As used in this Coverage Part, substantially certain means that you, or your "employee(s)", acted with deliberate intent to cause an "employee" to suffer "bodily injury".
 

"Intentional act" includes your deliberate removal of an equipment safety guard and your deliberate misrepresentation of a toxic or hazardous substance provided "bodily injury" to your "employee" occurs as a direct result.
7. "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".
8. "Occurrence" means a happening or event or a continuous or repeated exposure to conditions which occur during the policy period which result in "bodily injury". All such exposure to substantially the same general conditions existing at or emanating from the "workplace" shall be deemed one "occurrence".
9. "Suit" means a civil proceeding in which "bodily injury" to which this Coverage Part applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which the insured must submit or does submit with our consent;
  - b. Any other alternative dispute resolution proceeding to which the insured submits with our consent; or
  - c. An appeal of a civil proceeding.
10. "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.
11. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by the Named Insured to work on the date of "occurrence".
12. "Workers compensation law" means the workers compensation law and any occupational disease law of the State of Ohio. This does not include provisions of any law providing non-occupational disability benefits.

# NUCLEAR ENERGY LIABILITY EXCLUSION

## (Broad Form)

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

"Hazardous properties" include radioactive, toxic, or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

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

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

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

"Nuclear facility" means:

  - (a) Any "nuclear reactor";
  - (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";
  - (c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

**THE CINCINNATI INSURANCE COMPANY**  
A Stock Insurance Company

**ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE  
FORM DECLARATIONS**

**NOTICE: INSURANCE COVERAGE UNDER ANY PARTICULAR COVERAGE INCLUDED WITHIN THIS FORM IS NOT IN FORCE UNLESS THE CORRESPONDING SECTION OF THESE DECLARATIONS HAS BEEN COMPLETED.**

Attached to and forming a part of POLICY NUMBER: ECP 055 17 19

Named Insured is the same as it appears in the Common Policy Declarations

**COVERAGE PROVISIONS** (Only those items marked by an , where so indicated, are applicable):

**Limits of Insurance:**

**Limit of Insurance:**

Blanket:

**Coverage A - Electronic Data Processing Property:** ..... \$

See Scheduled Premises Endorsement

**Coverage A - Coverage Extensions:**

**Limit of Insurance - Unless Otherwise Stated:**

- a. **Debris Removal:** ..... \$50,000 - \$
- b. **Duplicate and Backup Electronic Media and Records:** ..... \$10,000 - \$ 25,000
- c. **Off Premises:** 20% of the Coverage A Limit of Insurance subject to a maximum of: \$50,000 \$
- d. **Pollutant Clean Up and Removal** ..... \$10,000 - \$
- e. **Recharge or Refill of a Fire Protection Device:** ..... \$50,000 - \$
- f. **Third Party Host:** ..... \$10,000 - \$

**Limit of Insurance:**

Blanket:

**Coverage B - Business Income and Extra Expense:** ..... \$

See Scheduled Premises Endorsement

**Coverage C - Additional Coverages:**

**Limit of Insurance - Unless Otherwise Stated:**

- 1. **Denial of Service** ..... \$ 10,000 - \$
- 2. **Loss Establishment Expenses** ..... \$ 5,000 - \$
- 3. **Malicious Code** ..... \$ 10,000 - \$
- 4. **Unauthorized Use** ..... \$ 10,000 - \$

**Note:** The maximum aggregate Limit of Insurance for any Additional Coverage in any one "coverage term" is three times the Limit of Insurance stated here.

**Deductibles:**

**Deductible:**

**Coverage A:**

**Basic:** ..... \$ 500  
**Specified Losses:** ..... \$ 1,000

**Coverage B:**

**(Hours)** 24

**FORMS AND / OR ENDORSEMENTS APPLICABLE TO ELECTRONIC DATA PROCESSING**

**COVERAGE FORM:**

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CM0140	04/08	OHIO CHANGES
MA135	11/99	COMMERCIAL INLAND MARINE CONDITIONS
MA4015	06/07	SCHEDULED PREMISES ENDORSEMENT

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**LOSS PAYEE (if any)**

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**SPECIAL PROVISIONS (if any)**

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# ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE FORM

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

Throughout this Coverage Part the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

## Section I - Coverages

### Coverage A - Electronic Data Processing Property

#### 1. Insuring Agreement

We will pay for "loss" to Covered Property resulting from a Covered Cause of Loss.

#### 2. Covered Property

Covered Property, as used in Coverage A of this Coverage Part, means the following type of property:

- a. Your "hardware";
- b. Climate control equipment, and other electrical equipment, used exclusively with your "hardware";
- c. Your "electronic media and records";
- d. Your "telecommunications equipment";
- e. Your programming documentation and instruction manuals; and
- f. Similar property of others in your care, custody or control,

While located:

- a. On your "premises" or within one thousand (1,000) feet thereof (except as may be provided in the **Section I - Coverages, Coverage A - Electronic Data Processing Property, 5. Coverage Extensions**); and
- b. In the "coverage territory" (except as may be provided in the **Section I - Coverages, Coverage A - Electronic Data Processing Property, 5. Coverage Extensions**).

#### 3. Property Not Covered

Covered Property does not include:

- a. "Electronic media and records" that cannot be replaced with similar property of like kind and quality.
- b. Property that you have rented or leased to another person or organization and is not at your "premises".
- c. Contraband or property in the course of illegal transit or trade.
- d. "Production equipment".
- e. Copyrights, patents, trademarks, trade secrets or other intellectual property.
- f. Personally identifiable information of persons or entities other than you or your employees.
- g. Property held as samples or for sale.
- h. Records of accounts receivable.
- i. Any machine or apparatus that is used for research, medical, diagnostic, surgical, dental or pathological purposes.
- j. "Electronic securities", "evidences of debt", "money" and "securities".
- k. "Valuable papers and records".

#### 4. Covered Causes of Loss

Covered Causes of Loss, with respect to Coverage A, means risks of direct "loss" to Covered Property except those causes of "loss" listed in **Section II - Exclusions**.

#### 5. Coverage Extensions

Unless stated otherwise, the Limits of Insurance referenced in the following Coverage Extensions are in addition to, and not included within, **Section III - Limits of Insurance and Deductibles, 1. Limits of Insurance** for Coverage A.

##### a. Debris Removal

- (1) We will pay your expense to remove the debris of Covered Property caused by or resulting from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within one hundred-eighty (180) days of the date of direct "loss".



(2) The most we will pay under this Coverage Extension is twenty-five (25) percent (%) of:

- (a) The amount we pay for the direct "loss" to Covered Property; plus
- (b) The deductible in this Coverage Part applicable to that "loss".

This Coverage Extension is included within the Limit of Insurance shown in the Declarations for Coverage **A**. However, if:

- (a) The sum of direct "loss" and debris removal expense exceeds the Limit of Insurance for Coverage **A**; or
- (b) The debris removal expense exceeds the amount payable under the twenty-five (25) percent (%) limitation in this Coverage Extension;

we will pay up to the additional Limit of Insurance for Debris Removal stated in the Declarations for each "premises" in any one "occurrence".

(3) This Coverage Extension does not apply to costs to:

- (a) Extract "pollutants" from land or water; or
- (b) Remove, restore or replace polluted land or water.

**b. Duplicate and Backup Electronic Media and Records**

We will pay up to the Limit of Insurance for Duplicate and Backup Electronic Media and Records stated in the Declarations in any one "occurrence" for "loss" to "electronic media and records" due to a Covered Cause of Loss while such property is stored away from your "premises" other than "temporarily".

This Coverage Extension does not apply to "loss" insured under the Third Party Host Coverage Extension.

**c. Off Premises**

We will pay up to the Limit of Insurance for Off Premises stated in the Declarations in any one "occurrence" for "loss" to Covered Property due to a Covered Cause of Loss while such property is away from your "premises":

- (1) "Temporarily" in transit;

- (2) "Temporarily" in storage; or
- (3) In the custody of your employee for the purpose of conducting your business.

This is not an additional Limit of Insurance. It is included within the Coverage **A** Limit of Insurance.

This Coverage Extension applies to Covered Property whether or not it is located within the "coverage territory".

If the Limit of Insurance stated in the Declarations is other than the \$50,000 maximum stated, then the Limit of Insurance that applies to all "loss" in any one "occurrence" is the greater of the limit stated or the twenty percent (20%) of the Coverage **A** Limit of Insurance limitation.

**d. Pollutant Clean Up and Removal**

(1) We will pay your expenses to extract "pollutants" from land or water at the "premises" if the discharge, dispersal, seepage, migration, release, escape or emission of the "pollutants":

- (a) Is from Covered Property;
- (b) Is caused by a Covered Cause of Loss; and
- (c) Occurs during the policy period.

The expenses will be paid only if they are reported to us in writing within one hundred eighty (180) days of the date on which the Covered Cause of Loss occurs.

(2) This Coverage Extension does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

(3) The most we will pay under this Coverage Extension for each "premises" for the sum of all covered expenses arising out of Covered Causes of Loss during each "coverage term" is the Limit of Insurance stated in the Declarations for Pollutant Clean Up and Removal.

**e. Preservation of Property**

If it is necessary to move Covered Property from the "premises" to preserve it from "loss" by a Covered Cause of Loss, we will pay for any direct "loss" to that property:

- (1) While it is being moved or while "temporarily" stored at a location other than a "premises"; and
- (2) Only if the "loss" occurs within thirty (30) days after the property is first moved.

This Coverage Extension is included within the Limit of Insurance shown in the Declarations for Coverage **A**.

**f. Recharge or Refill of a Fire Protection Device**

We will pay for your expense to recharge or refill any fire protective devices that are designed specifically to protect Covered Property when these devices have been discharged in a "loss" insured by Coverage **A** of this Coverage Part or have been accidentally discharged. The most we will pay in any one "loss" or "sudden and accidental" discharge is the Limit of Insurance for Recharge or Refill of a Fire Protection Device stated in the Declarations.

**g. Third Party Host**

We will pay up to the Limit of Insurance for Third Party Host stated in the Declarations in any one "occurrence" for "loss" to:

Your "electronic media and records" away from your "premises" due to a Covered Cause of Loss, but only while such "electronic media and records" are hosted in the "hardware" of a third party information technology provider, with whom you have directly contracted for such service.

This is not an additional Limit of Insurance. It is included within the Coverage **A** Limit of Insurance.

This Coverage Extension:

- (1) Applies to "electronic media and records" whether or not they are located within the "coverage territory"; and
- (2) Does not apply to "loss" insured under the Duplicate and Backup Electronic Media and Records Coverage Extension.

**h. Newly Acquired Property**

We will provide coverage as follows:

- (1) On newly acquired Covered Property up to the total limit shown on the Declarations Page for Total Covered Property whether located at a current location or newly acquired location,

but in no event shall we pay more than \$250,000 under this Coverage Extension for any one "loss".

You will report such newly acquired property, or Covered Property already insured by this policy which is moved to a newly acquired location, to us within 90 days from the date the Covered Property is acquired or moved, as the case may be, and pay any additional premium due. If you do not report such property or movement of property, coverage will cease automatically after the 90 days has elapsed. However, in no event shall coverage be extended beyond the expiration of this policy.

**Coverage B - Business Income and Extra Expense**

**1. Insuring Agreement**

We will pay your actual loss of "business income" as well as "extra expense" that results from the necessary "suspension" of your "operations" during the "period of restoration" due to "loss" to Covered Property resulting from a Covered Cause of Loss.

**2. Covered Property**

Covered Property, as used in Coverage **B** of this Coverage Part, is the same as that applicable to Coverage **A**.

**3. Property Not Covered**

Covered Property does not include Property Not Covered under Coverage **A**.

**4. Covered Causes of Loss**

Covered Causes of Loss, with respect to Coverage **B**, means risks of direct "loss" to Covered Property except those causes of "loss" listed in **Section II - Exclusions**.

**5. Additional Coverage**

This Additional Coverage does not provide additional Limits of Insurance.

**Extended Business Income**

If the necessary "suspension" of your "operations" produces a "business income" loss payable under this Coverage Part, we will pay for the actual loss of "business income" you incur during the period that:

- a. Begins on the date Covered Property is actually repaired, rebuilt or replaced and "operations" are resumed; and
- b. Ends on the earlier of:

- (1) The date you could restore your "operations", with reasonable speed, to the level which would generate the "business income" that would have existed if no direct "loss" to Covered Property due to a Covered Cause of Loss had occurred; or

- (2) Sixty (60) consecutive days after the date determined in **5.a.** above.

However, Extended Business Income does not apply to loss of "business income" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where your "premises" are located.

### Coverage C - Additional Coverages

The Limits of Insurance provided in the following Additional Coverages are included within and are not in addition to the Limits of Insurance applicable to Coverages **A** or **B**, unless stated otherwise therein.

#### 1. Denial of Service

We will pay up to the Limit of Insurance stated in the Declarations for Denial of Service for loss of "business income" or "extra expense" under Coverage **B** caused by a "denial of service".

#### 2. Loss Establishment Expenses

Subsequent to the detection of a potential "loss" insured under Coverage **A** or **B**, we will pay up to the Limit of Insurance stated in the Declarations for "loss establishment expenses" incurred within ninety (90) days of the detection of the "loss" or potential "loss".

This Limit of Insurance is in addition to the Limits of Insurance for Coverages **A** and **B**.

#### 3. Malicious Code

We will pay up to the Limit of Insurance stated in the Declarations for Malicious Code for all "loss", loss of "business income" or "extra expense" under Coverages **A** and **B** arising from the introduction of a "malicious code" to your "electronic media and records" or "hardware" by any person or organization other than:

- (1) You;
- (2) Your partners;
- (3) Your directors;
- (4) Your officers;
- (5) Your trustees;

- (6) Your members, if you are a limited liability company; or
- (7) A person or organization, other than your employees, to whom you have entrusted Covered Property.

#### 4. Unauthorized Use

We will pay up to the Limit of Insurance stated in the Declarations for Unauthorized Use for all "loss", loss of "business income" or "extra expense" under Coverages **A** and **B** arising from "unauthorized use" by any person or organization other than:

- (1) You;
- (2) Your partners;
- (3) Your directors;
- (4) Your officers;
- (5) Your trustees;
- (6) Your members, if you are a limited liability company; or
- (7) A person or organization, other than your employees, to whom you have entrusted Covered Property.

### Section II - Exclusions

#### Coverage A - Electronic Data Processing Property and Coverage B - Business Income and Extra Expense - Exclusions

The following exclusions apply to Coverages **A** and **B**, unless stated otherwise herein:

1. We will not pay for a "loss", loss of "business income" or "extra expense" caused directly or indirectly by any of the following. Such "loss", loss of "business income" or "extra expense" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss", loss of "business income" or "extra expense":

##### a. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread if the fire would be covered under this Coverage Part.

##### b. Nuclear Hazard

- (1) Any weapon employing atomic fission or fusion; or

- (2) Nuclear reaction or radiation, or radioactive contamination from any other cause.
  - c. **Satellite Communications**  
The disruption or failure of any satellite communication system, or any part thereof.
  - d. **War and Military Action**
    - (1) War, including undeclared or civil war;
    - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
    - (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.
  - e. **Utility Interruption**  
The intentional suspension of any utility service by you or the utility provider.
  - f. **Tidal Wave or Tsunami**  
Tidal wave or tsunami, even if attributable to an earthquake or volcanic eruption.
2. We will not pay for "loss", loss of "business income" or "extra expense" caused by or resulting from any of the following:
- a. Delay or loss of market, except as may be provided under Coverage B.
  - b. Dishonest or criminal acts by you, any of your partners, directors, trustees, officers, members or managers (if you are a limited liability company) or anyone entrusted with the property, except employees, whether or not acting alone or in collusion with others or whether or not occurring during the hours of employment. But this exclusion does not apply to a carrier for hire.
  - c. Discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" unless the discharge, dispersal, seepage, migration, release, escape or emission is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release, escape or emission of "pollutants" results in a "specified cause of loss", we will pay for the "loss" caused by that "specified cause of loss".
- d. Interruption, disruption, or slow down in normal network service or function due to activity on the network or network server.  
This exclusion does not apply to "denial of service".
  - e. Voluntary parting with any property by you or anyone entrusted with the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
  - f. Unauthorized instructions to transfer property to any person or to any place.
  - g. Bookkeeping, accounting or billing errors or omissions.
  - h. Any processing or work upon Covered Property. But if "loss" by fire results, we will pay for that resulting "loss", loss of "business income" or "extra expense".
  - i. "Denial of service", "malicious code" or "unauthorized use".  
However, this exclusion shall not apply to the extent that insurance coverage is provided under **Section I - Coverages, Coverage C - Additional Coverages.**
3. We will not pay for a "loss", loss of "business income" or "extra expense" caused by or resulting from any of the following. But if "loss", loss of "business income" or "extra expense" caused by a Covered Cause of Loss results, we will pay for that resulting "loss", loss of "business income" or "extra expense":
- a. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.
  - b. Wear and tear, hidden or latent defect, gradual deterioration, or depreciation.
  - c. The failure of "hardware" or "electronic media and records" to function as designed or anticipated to function by you or any other person or organization providing, designing or recommending said "hardware" or "electronic media and records" to you.  
However, this exclusion will not apply if the failure of "hardware" or "electronic media and records" to function is caused by:
    - (1) A Covered Cause of Loss emanating from a source external to the "hardware" or "electronic media and records"; or
    - (2) The "sudden and accidental" "mechanical breakdown" of "hardware".

4. Insurance provided by Coverages **A** and **B** does not apply to:

a. Payment of costs, fees, or other expenses you incur in establishing either the existence or the amount of "loss", loss of "business income" or "extra expense", except as provided for under **Section I - Coverages, Coverage C - Additional Coverages, 2. Loss Establishment Expenses.**

b. "Loss", loss of "business income" or "extra expense", or any part thereof, the proof of which as to its existence or amount is dependent solely upon:

- (1) An inventory computation;
- (2) A profit and loss computation; or
- (3) An audit of records.

5. Insurance provided by Coverage **A** does not apply to loss of "business income" or "extra expense".

### Section III - Limits of Insurance and Deductibles

#### 1. Limits of Insurance

a. The most we will pay for any one "occurrence" is the applicable Limits of Insurance for Coverages **A** and **B** and **Coverage C - Additional Coverages, 2. Loss Establishment Expenses** stated in the Declarations or any endorsement amendatory thereof.

b. With respect to **Section I - Coverages, Coverage C - Additional Coverages:**

(1) Under **Coverage C - Additional Coverages, 2. Loss Establishment Expenses**, we will not pay more than the lesser of:

- (a) The Limit of Insurance stated in the Declarations for Loss Establishment Expenses; or
- (b) The actual cost of the "loss" insured under Coverages **A** or **B** in "Loss establishment expenses".

(2) In the event that a single "occurrence" involves one or more of the following:

- (a) "Denial of service";
- (b) "Malicious code"; or
- (c) "Unauthorized use",

the most we will pay in total is the single highest Limit of Insurance ap-

plicable to the Additional Coverages applicable to the "loss".

(3) The most we will pay for all "loss" in any "coverage term" for each Additional Coverage is three times the Limit of Insurance stated for each in the Declarations.

#### 2. Deductibles

##### a. Coverage A

We will not pay for "loss" in any one "occurrence" until the amount of the adjusted "loss" before applying the applicable Limits of Insurance exceeds the Deductible shown in the Deductible section of the Declarations for Coverage **A**. We will then pay the amount of the adjusted "loss" in excess of the Deductible, up to the applicable Limit of Insurance.

(1) The Basic Deductible shown on the Declarations applies to "loss" from all Covered Causes of Loss except those referenced in (2) below.

(2) The Specified Losses Deductible shown on the Declarations applies to "loss" caused by "sudden and accidental" "mechanical breakdown" or artificially generated electrical disturbance.

##### b. Coverage B

We will not pay your actual loss of "business income" or "extra expense" arising from any one "loss" until and unless the necessary "suspension" of your "operations" has exceeded the Deductible in hours stated in the Declarations for Coverage **B**. We will then pay the amount of your actual loss of "business income" or "extra expense" in excess of the Deductible, up to the Limit of Insurance.

##### c. Coverage C

We will not pay for "loss", loss of "business income", "extra expenses" or "loss establishment expenses" under **Section I - Coverages, Coverage C - Additional Coverages** unless and until an insured "loss", loss of "business income" or "extra expenses" under Coverage **A** or **B** exceeds their deductible.

### Section IV - Additional Conditions

The following Conditions apply in addition to the Commercial Inland Marine Conditions and the Common Policy Conditions:

#### 1. Coverage A - Electronic Data Processing Property - Conditions

The following Condition applies to Coverage **A** only:

**Valuation**

In the **COMMERCIAL INLAND MARINE CONDITIONS, GENERAL CONDITIONS, F. Valuation** is replaced by the following with respect to Covered Property under Coverage **A**:

**a.** Valuation of Covered Property under Coverage **A**, other than that described in Paragraph **b.** below:

If you repair or replace this property with due diligence following "loss", the property will be valued at the full cost of repair or replacement. However, the most we will pay is the least of the following:

- (1) The cost of replacing that property with property of similar or greater quality and function, provided the cost is no greater than the original purchase price of the property plus twenty (20) percent (%);
- (2) The amount you actually and necessarily spend to repair or replace the property; or
- (3) The Limit of Insurance applicable to the property.

If you do not repair or replace this property with due diligence following "loss", the most we will pay will be the least of the following:

- (a) The "actual cash value" of the property;
- (b) The "actual cash value" of repairs with material of like kind and quality; or
- (c) The Limit of Insurance applicable to the property.

We reserve the right to repair or replace the property or to pay for the property in "money".

In the event of "loss", the value of property will be determined as of the date of "loss".

**b.** Valuation of "electronic media and records":

- (1) We will not pay for more than the actual reproduction costs of covered "electronic media and records".
- (2) But we will not pay the cost to duplicate research or operations that were developed away from your "premises" that led to the develop-

ment of your "electronic media and records" or that led to the development of any proprietary or confidential information or intellectual property.

- (3) If you do not replace or reproduce the "electronic media and records", the most we will pay is the cost of blank "electronic media and records".

The most we will pay is the Limit of Insurance shown on the Declarations.

**2. Coverage B - Business Income and Extra Expense - Conditions**

The following Conditions apply to Coverage **B** only:

**a. Appraisal**

In the **COMMERCIAL INLAND MARINE CONDITIONS, LOSS CONDITIONS, B. Appraisal** is replaced by the following:

If you and we disagree on the amount of Net Income and operating expense or the amount of loss, either may make a written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that a judge of a court having jurisdiction make selection. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each will:

- (1) Pay its chosen appraiser; and
- (2) Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**b. Loss Determination**

- (1) The amount of "business income" loss will be determined based on:
  - (a) The Net Income of the business before the Covered Cause of Loss occurred;
  - (b) The likely Net Income of the business if no Covered Cause of Loss had occurred, but not including any Net Income that likely would have resulted from an increase in the volume of

business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;

- (c) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the Covered Cause of Loss; and
- (d) Other relevant sources of information, including:

- 1) Your financial records and accounting procedures;
- 2) Bills, invoices and other vouchers; and
- 3) Deeds, liens or contracts.

(2) The amount of "extra expense" will be determined based on:

(a) All necessary and reasonable expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no Covered Cause of Loss had occurred. We will deduct from the total of such expenses:

- 1) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
- 2) Any "extra expense" that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and

(b) All necessary and reasonable expenses that reduce the "business income" loss that otherwise would have been incurred.

### c. Resumption of Operations

(1) We will reduce the amount of your:

(a) "Business income" loss other than "extra expense", to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise

or stock) at the "premises" or elsewhere.

(b) "Extra expense" loss to the extent you can return "operations" to normal and discontinue such "extra expense".

(2) If you do not resume "operations" or do not resume "operations" as quickly as possible, we will pay based on the length of time it should have taken with due diligence to resume operations as quickly as possible.

### 3. Common Conditions

The following Conditions apply to all Coverages provided under this Coverage Part:

#### a. Duties in the Event of Loss

In the **COMMERCIAL INLAND MARINE CONDITIONS, LOSS CONDITIONS, C. Duties in the Event of Loss** is replaced by the following:

(1) In the event of:

- (a) "Loss" to Covered Property; or
- (b) Loss of, or loss from damage to Covered Property, or a situation that may result in loss of, or loss from damage to Covered Property,

You must see that the following are done:

- 1) Notify the police if a law may have been broken.
- 2) Notify us as soon as possible. Include a description of any property involved.
- 3) As soon as possible, give us a description of how, when and where the loss occurred.
- 4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside in the best possible order for examination.

- 5) As often as may be reasonably required, permit us to:
  - a) Inspect the property proving the loss;
  - b) Examine your books, records, "electronic media and records" and "hardware";
  - c) Take samples of damaged and undamaged property for inspection, testing and analysis; and
  - d) Make copies from your books, records, "electronic media and records" and "hardware".
- 6) Send us signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- 7) Cooperate with us in the investigation or settlement of the claim.
- 8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- 9) Make no statement that will assume any obligation or admit any liability, for any loss for which we may be liable, without our prior written consent.
- 10) Promptly send us any legal papers or notices received concerning the loss.

(2) We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

**b. Blanket Insurance**

If blanket insurance is indicated () in the Declarations, the Limit of Insurance for that Coverage applies to all "premises" within the "coverage territory".

**c. Joint Insured**

(1) If more than one Insured is named in the Declarations, the first Named In-

sured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered under this policy, then the next Named Insured will become the first Named Insured.

- (2) If any Insured or partner, officer, or member or manager (applicable to limited liability companies) of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An employee of any Insured is considered to be an employee of every Insured.
- (4) If this insurance or any of its coverages is cancelled or terminated as to any Insured, loss sustained by that Insured is covered only if discovered no later than one year from the date of that cancellation or termination.
- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all the loss had been sustained by one Insured.

**d. Legal Action Against Us**

In the **COMMERCIAL INLAND MARINE CONDITIONS, GENERAL CONDITIONS, B. Legal Action Against Us** is replaced by the following:

No one may bring legal action against us under this Coverage Part unless:

- (1) There has been full compliance with all the terms of this Coverage Part;
- (2) At least ninety (90) days has passed since you filed proof of loss with us; and
- (3) Brought within two (2) years from the date you discover the loss in question.

**e. Loss Payee**

For Covered Property in which both you and a Loss Payee listed in the Declarations have an insurable interest, we will:

- (1) Adjust "losses" with you; and
- (2) Pay any claim for insured "loss" jointly to you and the Loss Payee, as interests may appear.

**f. Multi-Year Policies**



If this Coverage Part is issued for more than one annual policy period, the premium may be adjusted at the inception of each following "coverage term" based on our rates in effect at that time.

**g. Non-Accumulation of Limits of Insurance**

Regardless of the number of "coverage terms" this insurance remains in force or the number of premiums paid, no Limit of Insurance accumulates from year to year or period to period.

**h. Other Insurance**

In the **COMMERCIAL INLAND MARINE CONDITIONS, LOSS CONDITIONS, F. Other Insurance** is replaced by the following:

- (1) If you have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
- (2) If there is other insurance covering the same loss or damage, other than that described in (1) above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.
- (3) Irrespective of Paragraphs h.(1) or (2) above, this Coverage Part is always excess of a "service agreement". We will pay only the amount of insured "loss" that is not covered by the "service agreement" in the form of repairs or other compensation. But we will not pay more than the applicable Limit of Insurance.

**i. Protective Safeguards**

You must maintain the protective safeguards stated by you to be in effect at a "premises" when this coverage began.

If you fail to keep the protective safeguards:

- 1) In working condition at a "premises"; and
- 2) In operation when you are closed to business;

Coverage for which the protective safeguards apply is automatically suspended at that "premises" if you fail to notify us immediately. This suspension will last until the equipment or services are back in operation.

**j. Recoveries**

In the **COMMERCIAL INLAND MARINE CONDITIONS, LOSS CONDITIONS, I. Recoveries** is replaced by the following:

- (1) Any recoveries, less the cost of obtaining them, made after settlement of loss covered by this insurance will be distributed as follows:
  - (a) To you, until you are reimbursed for any loss that you sustain that exceeds the Limit of Insurance plus the Deductible Amount, if any;
  - (b) Then to us, until we are reimbursed for the settlement made;
  - (c) Then to you, until you are reimbursed for that part of loss equal to the Deductible Amount, if any.
- (2) You will pay us the amount of all recoveries you receive for a "loss" paid by us. But any recoveries in excess of the amount we have paid belong to you.
- (3) Recoveries do not include any recovery from insurance, suretyship, reinsurance, security or indemnity taken for our benefit.

**k. Transfer of Your Rights of Recovery Against Others to Us**

In the **COMMERCIAL INLAND MARINE CONDITIONS, LOSS CONDITIONS, K. Transfer of Rights of Recovery Against Others to Us** is replaced by the following:

You must transfer to us all of your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**Section V - Definitions**

The following terms, when appearing in quotation marks, have the following meanings wherever used in this Coverage Part:

1. "Actual cash value" means replacement cost less a deduction that reflects depreciation, age, condition and obsolescence.

2. "Business income" means the:
  - a. Net Income (net profit or loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal operating expenses incurred, including payroll.
3. "Computer system" means a configuration of "hardware" and "electronic media and records", including "telecommunications equipment" which may be integrated into or connected to such "hardware", purposely designed to perform a particular function or functions.
4. "Coverage term" means the following individual increment, or if a multi-year policy period, increments, of time, which comprise the policy period of this Coverage Part:
  - a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year policy period, each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the policy period shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
5. "Coverage territory" means the United States of America (including its territories and possessions), Puerto Rico and Canada.
6. "Denial of service" means the malicious and intentional inundating of your "computer system" with messages, instructions, queries or requests that deplete resources enough to restrict, limit or prevent access for the purposes of nuisance, sabotage or malicious tampering which has the effect of:
  - a. Depleting system resources available through the Internet to authorized external users of your "computer system"; and
  - b. Impeding Internet access of authorized external users to your "computer system".
7. "Electronic media and records" means information, facts, instructions, concepts and programs converted and stored in a form usable in "hardware". It also includes the materials, such as magnetic tapes, disc packs, paper tapes and cards, floppy discs and compact discs, upon which such information, facts, instructions, concepts and programs are recorded and stored.
8. "Electronic securities" means any share, participation, or other interest in property of, or an enterprise of, the issuer or an obligation of the issuer which:
  - a. Is a type commonly dealt in upon securities exchanges or markets;
  - b. Is either one of a class or series or by its terms divisible into a class or series of shares, participations, interests, or obligations; and
    - (1) Is not represented by an instrument;
    - (2) Is part of a master or global certificate; or
    - (3) Represents a paper certificate that has been surrendered by a financial institution and which paper certificate has been combined into a master depository note and the paper certificates are immobilized and such security is shown as an electronic entry on the account of the transferor, pledgor, or pledgee on the books of a Central Depository.
9. "Evidences of debt" means instruments executed by your customer and held by you which in the regular course of business are treated as evidencing the customer's debt to you, including records of charges and accounts receivable.
10. "Extra expense" means the necessary and reasonable expenses you incur during the "period of restoration" that you would not have incurred if there had been no "loss" due to a Covered Cause of Loss to Covered Property.
11. "Hardware" means an assemblage of electronic machine components capable of accepting and processing "electronic media and records" for the purpose of producing desired results.
 

However, "hardware" does not include "telecommunications equipment".
12. "Loss" means:

- a. "Sudden and accidental" physical loss or physical damage; and
  - b. With respect only to "denial of service", "malicious code" or "unauthorized use", also includes "sudden and accidental" damage, loss of use, loss of access or loss of functionality.
- 13.** "Loss establishment expenses" means actual and necessary expenses incurred at our request to assist you in establishing either the existence or the amount of loss insured under this Coverage Part.
- 14.** "Malicious code" means a computer code created for the purpose of destroying, corrupting or otherwise adversely affecting a "computer system".
- 15.** "Mechanical breakdown" means the malfunction or failure of moving or electronic parts, component failure, faulty installation or blow-out.
- 16.** "Money" means:
- a. Currency, coins, and bank notes in current use and having a face value;
  - b. Travelers checks, registered checks, and money orders held for sale to the public; and
  - c. Electronic cash equivalents.
- 17.** "Occurrence" means an act or event or a series of related acts or events that result in a Covered Cause of Loss.
- 18.** "Operations" means your business activities occurring at the "premises".
- 19.** "Other property" means any tangible property of value other than "money", "securities", "electronic securities", or "electronic media and records".
- However, "other property" does not include copyrights, patents, trademarks, trade secrets or other intellectual property.
- 20.** "Period of restoration" means that period of time that:
- a. Begins with the end of the time deductible for Coverage **B** referenced in the Declarations. Such deductible commences on the date and time of direct "loss" to Covered Property due to a Covered Cause of Loss; and
  - b. Ends on the earlier of:
    - (1) The date you could restore your "operations", with reasonable speed, to the condition that would have existed if no direct "loss" to Covered Property due to a Covered Cause of Loss had occurred; or
    - (2) As long as it would reasonably take to repair, rebuild or replace the damaged Covered Property.
- 21.** "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
- a. You are regularly or otherwise engaged in activities which taint or degrade the environment; or
  - b. You use, generate or produce the "pollutant".
- 22.** "Premises" means any building you lease, rent or own and while you occupy it in conducting your business.
- 23.** "Production equipment" means any machinery and related components, including any integrated or dedicated "computer system", which is used, or can be used, to produce or process other tangible property.
- 24.** "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or "other property" and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. "Evidences of debt" issued in connection with credit or charge cards not issued by you.
- 25.** "Service agreement" means a service plan or warranty, or other similar service or warranty agreement, even if it is characterized as insurance.
- 26.** "Specified causes of loss" means: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
- a. Sinkhole collapse means the "sudden and accidental" sinking or collapse of

- land into underground empty spaces created by the action of water on limestone or dolomite. This cause of "loss" does not include:
- (1) The cost of filling sinkholes; or
  - (2) Sinking or collapse of land into manmade underground cavities.
- b. Falling objects does not include "loss" to:
- (1) Covered Property in the open; or
  - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means "sudden and accidental" discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.
27. "Sudden and accidental" means abrupt, immediate and brief as well as unintended and unexpected and without prior notice.
28. "Suspension" means the complete or partial cessation of your business activities.
29. "Telecommunications equipment" means telephones, including any related switching systems or similar equipment, fax machines and other similar equipment used to transmit voice or "electronic media and records" communications over telephone lines, data lines or air waves.
- However, "telecommunications equipment" does not include "hardware".
30. "Temporarily" means:
- a. Not permanently; and
  - b. For a period of 30 consecutive days or less.
31. "Unauthorized use" means:
- a. Illegal or malicious entry into your "computer system" by a person not authorized to do so by you which results in the distortion or corruption of such "computer system"; or
  - b. Entry into or use of your "computer system" by a party:
    - (1) Not authorized by you to do so; or
    - (2) Authorized by you to do so, but who does so to use it in an unauthorized manner,Which results in the distortion or corruption of your "computer system".
32. "Valuable papers and records" means inscribed, printed or written documents, manuscripts or records, including abstracts, books, deeds, drawings, films, maps or mortgages.

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

## **OFFICE OF FOREIGN ASSETS CONTROL (OFAC) COMPLIANCE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE PART**

**Section IV - Additional Conditions, 3. Common Conditions** is amended to include the following:

#### **Office of Foreign Assets Control (OFAC) Compliance**

Whenever insurance coverage provided by this policy would be in violation of any United States economic or trade sanctions, such insurance coverage shall be null and void.

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

## OHIO CHANGES

This endorsement modifies insurance provided under the following:

### COMMERCIAL INLAND MARINE COVERAGE PART

Loss Condition **E. Loss Payment** in the Commercial Inland Marine Conditions is replaced by the following:

#### **E. Loss Payment**

1. We will give you notice, within 21 days after we receive a properly executed proof of loss, that we:
  - a. Accept your claim;
  - b. Deny your claim; or
  - c. Need more time to investigate your claim.

If we need more time to investigate your claim, we will provide an explanation for our need for more time. We will continue to notify you again in writing, at least every 45 days, of the status of the investigation and of the continued time needed for the investigation.

2. We will not pay you more than your financial interest in the Covered Property.
3. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claim against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

4. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
5. Provided you have complied with all the terms of this policy, we will pay for covered loss or damage within:
  - a. 10 days after we accept your claim if such acceptance occurs within the first 21 days after we receive a properly executed proof of loss, unless the claim involves an action by a probate court or other extraordinary circumstances as documented in the claim file; or
  - b. Five days after we accept your claim if such acceptance occurs more than 21 days after we receive a properly executed proof of loss, and
    - (1) An appraisal award has been made; or
    - (2) We have reached an agreement with you on the amount of loss that was in dispute.
6. We will not be liable for any part of a loss that has been paid or made good by others.

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

## **COMMERCIAL INLAND MARINE CONDITIONS**

The following conditions apply in addition to the Common Policy Conditions and applicable Additional Conditions in Commercial Inland Marine Coverage Forms:

### **LOSS CONDITIONS**

#### **A. Abandonment**

There can be no abandonment of any property to us.

#### **B. Appraisal**

If we and you disagree on the value of the property or the amount of "loss", either may make written demand for an appraisal of the "loss". In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

#### **C. Duties in the Event of Loss**

You must see that the following are done in the event of "loss" to Covered Property:

1. Notify the police if a law may have been broken.
2. Give us prompt notice of the "loss". Include a description of the property involved.
3. As soon as possible, give us a description of how, when and where the "loss" occurred.
4. Take all reasonable steps to protect the Covered Property from further damage and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent "loss" resulting from a cause of loss that is not a Covered Cause of Loss. Also if feasible, set the damaged property aside and in the best possible order for examination.
5. Make no statement that will assume any obligation or admit any liability, for any "loss" for which we may be liable, without our consent.
6. Permit us to inspect the property and records proving "loss".

7. If requested, permit us to question you under oath, at such times as may be reasonably required, about any matter relating to this insurance or your claim, including your books and records. In such event, your answers must be signed.

8. Send us a signed, sworn statement of "loss" containing the information we request to settle the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

9. Promptly send us any legal papers or notices received concerning the "loss".

10. Cooperate with us in the investigation or settlement of the claim.

#### **D. Insurance Under Two or More Coverages**

If two or more of this policy's coverages apply to the same "loss", we will not pay more than the actual amount of the "loss".

#### **E. Loss Payment**

We will pay or make good any "loss" covered under this Coverage Part within 30 days after:

1. We reach agreement with you;
2. The entry of final judgment; or
3. The filing of an appraisal award.

We will not be liable for any part of a "loss" that has been paid or made good by others.

#### **F. Other Insurance**

If you have other insurance covering the same "loss" as the insurance under this Coverage Part, we will pay only the excess over what you should have received from the other insurance. We will pay the excess whether you can collect on the other insurance or not.

#### **G. Pair, Sets or Parts**

1. Pair or Set

In case of "loss" to any part of a pair or set we may:

- a. Repair or replace any part to restore the pair or set to its value before the "loss"; or
- b. Pay the difference between the value of the pair or set before and after the "loss".

2. Parts

In case of "loss" to any part of Covered Property consisting of several parts when complete, we will only pay for the value of the lost or damaged part.

**H. Privilege to Adjust with Owner**

In the event of "loss" involving property of others in your care, custody or control, we have the right to:

1. Settle the "loss" with the owners of the property. A receipt for payment from the owners of that property will satisfy any claim of yours.
2. Provide a defense for legal proceedings brought against you. If provided, the expense of this defense will be at our cost and will not reduce the applicable Limit of Insurance under this insurance.

**I. Recoveries**

Any recovery or salvage on a "loss" will accrue entirely to our benefit until the sum paid by us has been made up.

**J. Reinstatement of Limit After Loss**

The Limit of Insurance will not be reduced by the payment of any claim, except for total "loss" of a scheduled item, in which event we will refund the unearned premium on that item.

**K. Transfer of Rights of Recovery Against Others to Us**

If any person or organization to or for whom we make payment under this insurance has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after "loss" to impair them.

**GENERAL CONDITIONS**

**A. Concealment, Misrepresentation or Fraud**

This Coverage Part is void in any case of fraud, intentional concealment or misrepresentation of a material fact, by you or any other insured, at any time, concerning:

1. This Coverage Part;
2. The Covered Property;

3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

**B. Legal Action Against Us**

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all the terms of this Coverage Part; and
2. The action is brought within 2 years after you first have knowledge of the "loss".

**C. Liberalization**

If, within 45 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

**D. No Benefit to Bailee**

No person or organization, other than you, having custody of Covered Property, will benefit from this insurance.

**E. Policy Period**

We cover "loss" commencing during the policy period shown in the Declarations.

**F. Valuation**

The value of property will be the least of the following amounts:

1. The actual cash value of that property;
2. The cost of reasonably restoring that property to its condition immediately before "loss"; or
3. The cost of replacing that property with substantially identical property.

In the event of "loss", the value of property will be determined as of the time of "loss".



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

## **SCHEDULED PREMISES ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**ELECTRONIC DATA PROCESSING EQUIPMENT COVERAGE PART**

**I. Schedule:**

Location Number	Coverage A Limit of Insurance	Coverage B Limit of Insurance
1 - 1	25,000	10,000
2 - 1	25,000	10,000

**Blanket Insurance:**

Location Number	Coverage A Limit of Insurance	Coverage B Limit of Insurance

**Newly Acquired Property**

Limit of Insurance: \$250,000 - Unless Otherwise Stated

**II. Section I - Coverages** is amended as follows:

**Section I - Coverages, Coverage A - Electronic Data Processing Property, Paragraph 5. Coverage Extensions** is amended to include the following:

**NEWLY ACQUIRED PROPERTY**

- (1) We will pay up to the Limit of Insurance for Newly Acquired Property stated in the Schedule of this endorsement in any one "occurrence" for "loss" to "newly acquired" Covered Property due to a Covered Cause of Loss:
  - (a) In excess of the Limit of Insurance for Coverage **A** applicable to the "premises" stated in the Schedule of this endorsement; or
  - (b) At a location you lease, rent or own in the "coverage territory" and while you occupy it in conducting your business, but which has not yet been reported to us as a "premises".
- (2) You will report such "newly acquired" Covered Property to us within ninety (90) days of its acquisition and pay any additional premium due. Insurance coverage under this Coverage Extension ceases at the earlier of:
  - (a) Ninety (90) days elapsing from the date of acquisition; or
  - (b) The expiration of the policy period.

**III. Section IV - Additional Conditions** is amended as follows:

- 3. **Common Conditions, b. Blanket Insurance** is hereby deleted and replaced by the following:

**b. Blanket Insurance**

If blanket insurance is indicated by () in the Schedule of the Scheduled Premises Endorsement, the Limit of Insurance for each Coverage applies to all "premises" listed in the endorsement.

**IV. Section V - Definitions** is amended as follows:

**A.** Definition **22.** "Premises" is hereby deleted and replaced by the following:

**22.** "Premises" means any building located at an address referenced in the Schedule of the Scheduled Premises Endorsement you lease, rent or own and while you occupy it in conducting your business.

**B.** The following definition is added:

"Newly acquired" means:

**a.** First acquired; or

**b.** First moved to a new location within the "coverage territory" not yet reported to us as a "premises",

since the inception of the current "coverage term".

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## CRIME AND FIDELITY COVERAGE PART DECLARATIONS (COMMERCIAL ENTITIES)

Attached to and forming part of POLICY NUMBER: ECP 055 17 19

Named Insured is the same as it appears in the Common Policy Declarations

Item    Location (address)  
REFER TO CA911

Employee Benefit Plan(s) Included as Insureds:

**Coverage is Written:**

**Primary**                       **Excess**                       **Coindemnity**                       **Concurrent**

Coverage is provided only for the Crime Coverage for which a Limit of Insurance is shown below:

Insuring Agreements Forming Part of This Coverage Part	Limit of Insurance	Deductible Amount
	Per Occurrence	Per Occurrence
1. <b>Employee Theft</b>	\$ 50,000	\$ 500
2. <b>Forgery or Alteration</b>	\$ 25,000	\$ 500
3. <b>Inside the Premises - Theft of Money and Securities</b>	\$ 15,000	\$ 500
4. <b>Inside the Premises - Robbery or Safe Burglary of Other Property</b>	\$	\$
5. <b>Outside the Premises</b>	\$ 5,000	\$ 500
6. <b>Computer Fraud</b>	\$	\$
7. <b>Funds Transfer Fraud</b>	\$	\$
8. <b>Money Orders and Counterfeit Money</b>	\$ 10,000	\$ 500
	\$	\$

Forms and endorsements applicable to this Coverage Part at policy inception.

CR0020    05/06    COMMERCIAL CRIME COVERAGE FORM (DISCOVERY FORM)  
 CCP402    02/14    CINCIPAK™ MEDICAL / DENTAL OFFICE COMMERCIAL CRIME AMENDATORY  
 ENDORSEMENT  
 CA440    08/07    COMMERCIAL CRIME COVERAGE FORM AMENDATORY ENDORSEMENT  
 CA481OH    10/12    OHIO CHANGES - LEGAL ACTION AGAINST US  
 CA911    08/07    CRIME AND FIDELITY SCHEDULE OF LOCATIONS

The Crime and Fidelity Coverage Part (Commercial Entities) consist of this Declaration Form and the Commercial Crime Coverage Form.

## **COMMERCIAL CRIME COVERAGE FORM (DISCOVERY FORM)**

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

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

### **A. Insuring Agreements**

Coverage is provided under the following Insuring Agreements for which a Limit of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place at any time which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period to Discover Loss Condition **E.1.g.:**

#### **1. Employee Theft**

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

#### **2. Forgery or Alteration**

**a.** We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

**(1)** Made or drawn by or drawn upon you; or

**(2)** Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

**b.** If you are sued for refusing to pay any instrument covered in Paragraph **2.a.**, on the basis that it has been

forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay is in addition to the Limit of Insurance applicable to this Insuring Agreement.

### **3. Inside The Premises - Theft of Money and Securities**

**a.** We will pay for loss of "money" and "securities" inside the "premises" or "banking premises":

**(1)** Resulting directly from "theft" committed by a person present inside such "premises" or "banking premises"; or

**(2)** Resulting directly from disappearance or destruction.

**b.** We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

**c.** We will pay for loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of or unlawful entry into those containers.

### **4. Inside the Premises - Robbery or Safe Burglary of Other Property**

**a.** We will pay for loss of or damage to "other property":

**(1)** Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or

**(2)** Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

**b.** We will pay for loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.

- c. We will pay for loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

**5. Outside the Premises**

- a. We will pay for loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. We will pay for loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

**6. Computer Fraud**

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from the use of any computer to fraudulently cause a transfer of that property from inside the "premises" or "banking premises":

- a. To a person (other than a "messenger") outside those "premises"; or
- b. To a place outside those "premises".

**7. Funds Transfer Fraud**

We will pay for loss of "funds" resulting directly from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

**8. Money Orders and Counterfeit Money**

We will pay for loss resulting directly from your having accepted in good faith, in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or bank that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

**B. Limit of Insurance**

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or Coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any

one of those Insuring Agreements or Coverages.

**C. Deductible**

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

**D. Exclusions**

1. This insurance does not cover:

**a. Acts Committed by You, Your Partners or Your Members**

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members";

whether acting alone or in collusion with other persons.

**b. Acts of Employees Learned of by You Prior to the Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of that "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Of Employees, Managers, Directors, Trustees or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.**

**d. Confidential Information**

Loss resulting from:

- (1) The unauthorized disclosure of your confidential information including, but not limited to, pat-

ents, trade secrets, processing methods or customer lists; or

- (2) The unauthorized use or disclosure of confidential information of another person or entity which is held by you including, but not limited to, financial information, personal information, credit card information or similar non-public information.

**e. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**f. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property".
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance.
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**g. Legal Fees, Costs and Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2**.

**h. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation or radioactive contamination, however caused.

**i. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of 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.

**j. War and Military Action**

Loss or damage resulting from:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**2. Insuring Agreement A.1. does not cover:**

**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

**b. Trading**

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

**c. Warehouse Receipts**

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

**3. Insuring Agreements A.3., A.4. and A.5. do not cover:**

**a. Accounting or Arithmetical Errors or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**b. Exchanges or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**c. Fire**

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to "money" and "securities"; and
- (2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles or Equipment and Accessories**

Loss of or damage to motor vehicles, trailers or semi-trailers or equipment and accessories attached to them.

**f. Transfer or Surrender of Property**

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "banking premises":
  - (a) On the basis of unauthorized instructions;
  - (b) As a result of a threat to do bodily harm to any person;
  - (c) As a result of a threat to do damage to any property;
  - (d) As a result of a threat to introduce a denial of service attack into your computer system;
  - (e) As a result of a threat to introduce a virus or other malicious instruction into your computer system which is designed to damage, destroy or corrupt data or computer programs stored within your computer system;
  - (f) As a result of a threat to contaminate, pollute or render substandard your products or goods; or
  - (g) As a result of a threat to disseminate, divulge or utilize:
    - (i) Your confidential information; or

(ii) Weaknesses in the source code within your computer system.

(2) But, this Exclusion does not apply under Insuring Agreement **A.5.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting of Title to or Possession of Property**

Loss resulting from your, or anyone acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement **A.6.** does not cover:**

**a. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**b. Funds Transfer Fraud**

Loss resulting from a "fraudulent instruction" directing a financial institution to transfer, pay or deliver "funds" from your "transfer account".

**c. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

5. Insuring Agreement **A.7.** does not cover:

**COMPUTER FRAUD**

Loss resulting from the use of a computer to fraudulently cause a transfer of "money", "securities" or "other property".

**E. Conditions**

The following Conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable to all Insuring Agreements**

**a. Additional Premises or Employees**

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" need not be given and no additional premium need be paid for the remainder of the Policy Period shown in the Declarations.

**b. Concealment, Misrepresentation or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceal or misrepresent a material fact concerning:

- (1) This insurance;
- (2) The property covered under this insurance;
- (3) Your interest in the property covered under this insurance; or
- (4) A claim under this insurance.

**c. Consolidation - Merger or Acquisition**

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but

- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

**d. Cooperation**

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

**e. Duties in the Event of Loss**

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property" you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.** or **A.2.**) involves a violation of law, you must also notify the local law enforcement authorities.
- (2) Submit to examination under oath at our request and give us a signed statement of your answers.
- (3) Produce for our examination all pertinent records.
- (4) Give us a detailed, sworn proof of loss within 120 days.
- (5) Cooperate with us in the investigation and settlement of any claim.

**f. Employee Benefit Plans**

- (1) The "employee benefit plans" shown in the Declarations (hereafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**
- (2) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator must select a Limit of Insurance for Insuring Agree-



ment **A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required if each Plan were separately insured.

- (3) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "funds" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (4) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (5) If two or more Plans are insured under this insurance, any payment we make for loss:
- (a) Sustained by two or more Plans; or
  - (b) Of commingled "funds" or "other property" of two or more Plans;
- resulting directly from an "occurrence" will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required for each Plan bears to the total Limit of Insurance of all Plans sustaining loss.
- (6) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.

**g. Extended Period to Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insur-

ance provides coverage for loss sustained prior to its effective date.

- (2) No later than 1 year from the date of that cancellation with regard to any "employee benefit plans".

**h. Joint Insured**

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member" or officer of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages is cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
- (a) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than 1 year from the date of that cancellation with regard to any "employee benefit plans".
- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.

- (6) Payment by us to the first Named Insured for loss sustained by any Insured, other than an "employee benefit plan", shall fully release us on account of such loss.

**i. Legal Action Against Us**

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this insurance;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within 2 years from the date you "discovered" the loss.

If any limitation in this Condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

**j. Liberalization**

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

**k. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

- (a) You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.
- (b) You have other insurance covering the same loss other than that described in Paragraph **(1)(a)**, we will only pay for the amount of loss that exceeds:

- (i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or

- (ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

- (a) When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

- (b) However, if loss covered under this insurance is subject to a Deductible, we will reduce the Deductible Amount shown in the Declarations, by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**l. Ownership of Property; Interests Covered**

The property covered under this insurance is limited to property:

- (1) That you own or lease; or
- (2) That you hold for others whether or not you are legally liable for the loss of such property.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

**m. Policy Bridge - Discovery Replacing Loss Sustained**

- (1) If this insurance replaces insurance that provided you with an extended period of time after cancellation in which to discover loss and which did not terminate

at the time this insurance became effective:

(a) We will not pay for any loss that occurred during the Policy Period of that prior insurance which is "discovered" by you during the extended period to "discover" loss, unless the amount of loss exceeds the Limit of Insurance and Deductible Amount of that prior insurance. In that case, we will pay for the excess loss subject to the terms and conditions of this policy.

(b) However, any payment we make for the excess loss will not be greater than the difference between the Limit of Insurance and Deductible Amount of that prior insurance and the Limit of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to this excess loss.

(2) The Other Insurance Condition **E.1.k.** does not apply to this Condition.

**n. Records**

You must keep records of all property covered under this insurance so we can verify the amount of any loss.

**o. Recoveries**

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or you, shall be applied net of the expense of such recovery:

(a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;

(b) Second, to us in satisfaction of amounts paid in settlement of your claim;

(c) Third, to you in satisfaction of any Deductible Amount; and

(d) Fourth, to you in satisfaction of any loss not covered under this insurance.

(2) Recoveries do not include any recovery:

(a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or

(b) Of original "securities" after duplicates of them have been issued.

**p. Territory**

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**q. Transfer of Your Rights of Recovery Against Others to Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**r. Valuation - Settlement**

(1) The value of any loss for purposes of coverage under this policy shall be determined as follows:

(a) Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

(i) At face value in the "money" issued by that country; or

(ii) In the United States of America dollar equivalent determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".

(b) Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (i) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
  - (ii) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
    - i. Market value of the "securities" at the close of business on the day the loss was "discovered"; or
    - ii. The Limit of Insurance applicable to the "securities".
- (c) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
- (i) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose;
  - (ii) The amount you actually spend that is necessary to repair or replace the lost or damaged property; or
  - (iii) The Limit of Insurance applicable to the lost or damaged property.

- i. Until the lost or damaged property is actually repaired or replaced; and
- ii. Unless the repairs or replacement are made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (2) We will, at your option, settle loss or damage to property other than "money":
- (a) In the "money" of the country in which the loss or damage occurred; or
  - (b) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage occurred determined by the rate of exchange published in *The Wall Street Journal* on the day the loss was "discovered".

(3) Any property that we pay for or replace becomes our property.

**2. Conditions Applicable to Insuring Agreement A.1.**

**a. Termination as to Any Employee**

This Insuring Agreement terminates as to any "employee":

- (1) As soon as:
  - (a) You; or
  - (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you.

- (2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If

With regard to Paragraphs **r.(1)(c)(i)** through **r.(1)(c)(iii)**, we will not pay on a replacement cost basis for any loss or damage:

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

**b. Territory**

We will pay for loss caused by any "employee" while temporarily outside the territory specified in the Territory Condition **E.1.p.** for a period of not more than 90 consecutive days.

**3. Conditions Applicable to Insuring Agreement A.2.**

**a. Deductible Amount**

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.2.**

**b. Electronic and Mechanical Signatures**

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

**c. Proof of Loss**

You must include with your proof of loss any instrument involved in that loss, or, if that is not possible, an affidavit setting forth the amount and cause of loss.

**d. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.p.** does not apply to Insuring Agreement **A.2.**

**4. Conditions Applicable to Insuring Agreements A.4. and A.5.**

**a. Armored Motor Vehicle Companies**

Under Insuring Agreement **A.5.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

**b. Special Limit of Insurance for Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

(1) Precious metals, precious or semi-precious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or

(2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**5. Conditions Applicable to Insuring Agreement A.6.**

**a. Special Limit of Insurance for Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

**b. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.p.** does not apply to Insuring Agreement **A.6.**

**F. Definitions**

1. "Banking premises" means the interior of that portion of any building occupied by a banking institution or similar safe depository.
2. "Counterfeit money" means an imitation of "money" that is intended to deceive and to be taken as genuine.
3. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
4. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.  
  
"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party

under circumstances which, if true, would constitute a loss under this insurance.

**5. "Employee":**

**a. "Employee" means:**

**(1) Any natural person:**

**(a)** While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";

**(b)** Who you compensate directly by salary, wages or commissions; and

**(c)** Who you have the right to direct and control while performing services for you;

**(2) Any natural person who is furnished temporarily to you:**

**(a)** To substitute for a permanent "employee" as defined in Paragraph **a.(1)**, who is on leave; or

**(b)** To meet seasonal or short-term work load conditions;

while that person is subject to your direction and control and performing services for you, excluding, however, any such person while having care and custody of property outside the "premises";

**(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **a.(2)**;**

**(4) Any natural person who is:**

**(a)** A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; and

**(b)** A director or trustee of yours while that person is engaged in handling "funds" or "other property" of any "employee benefit plan";

**(5)** Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained as a consultant while performing services for you;

**(6)** Any natural person who is a guest student or intern pursuing studies or duties, excluding, however, any such person while having care and custody of property outside the "premises";

**(7)** Any "employee" of an entity merged or consolidated with you prior to the effective date of this insurance; or

**(8)** Any of your "managers", directors or trustees while:

**(a)** Performing acts within the scope of the usual duties of an "employee"; or

**(b)** Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.

**b.** "Employee" does not mean any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **5.a.**

**6.** "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and which is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.

**7.** "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

**8.** "Fraudulent instruction" means:

**a.** An electronic, telegraphic, cable, teletype, telefacsimile or telephone instruction which purports to have been transmitted by you, but which was in fact fraudulently transmitted by someone else without your knowledge or consent;

**b.** A written instruction (other than those described in Insuring Agree-

ment **A.2.**) issued by you, which was forged or altered by someone other than you without your knowledge or consent, or which purports to have been issued by you, but was in fact fraudulently issued without your knowledge or consent; or

- c. An electronic, telegraphic, cable, teletype, telefacsimile, telephone or written instruction initially received by you which purports to have been transmitted by an "employee" but which was in fact fraudulently transmitted by someone else without your or the "employee's" knowledge or consent.

- 9. "Funds" means "money" and "securities".
- 10. "Manager" means a person serving in a directorial capacity for a limited liability company.
- 11. "Member" means an owner of a limited liability company represented by its membership interest, who also may serve as a "manager".
- 12. "Messenger" means you, or a relative of yours, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
- 13. "Money" means:
  - a. Currency, coins and bank notes in current use and having a face value; and
  - b. Travelers checks, register checks and money orders held for sale to the public.
- 14. "Occurrence" means:
  - a. Under Insuring Agreement **A.1.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.
  - b. Under Insuring Agreement **A.2.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or

- (3) A series of acts whether or not related;

committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, before such Policy Period or both.

- c. Under All Other Insuring Agreements:
  - (1) An individual act or event;
  - (2) The combined total of all separate acts or events whether or not related; or
  - (3) A series of acts or events whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, before such Policy Period or both.
- 15. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include computer programs, electronic data or any property specifically excluded under this insurance.
- 16. "Premises" means the interior of that portion of any building you occupy in conducting your business.
- 17. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
  - a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
- 18. "Safe burglary" means the unlawful taking of:
  - a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the "premises".
- 19. "Securities" means negotiable and non-negotiable instruments or contracts representing either "money" or property and includes:
  - a. Tokens, tickets, revenue and other stamps (whether represented by

actual stamps or unused value in a meter) in current use; and

- b.** Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;

but does not include "money".

**20.** "Theft" means the unlawful taking of property to the deprivation of the Insured.

**21.** "Transfer account" means an account maintained by you at a financial institution from which you can initiate the transfer, payment or delivery of "funds":

- a.** By means of electronic, telegraphic, cable, teletype, telefacsimile or tele-

phone instructions communicated directly through an electronic funds transfer system; or

- b.** By means of written instructions (other than those described in Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such financial institution through an electronic funds transfer system.

**22.** "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.



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

**CinciPak™**

**MEDICAL/DENTAL OFFICE COMMERCIAL CRIME  
AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL CRIME COVERAGE PART**

- I. Section **D. Exclusions**, Paragraph **3.** is modified by deleting in its entirety subparagraph **d. Money Operated Devices**.
- II. Section **E. Conditions, 1. Conditions Applicable to All Insuring Agreements, f. Employee Benefit Plans, (1)** is deleted in its entirety and replaced by the following:
  - (1) "Employee benefit plans" (hereafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**
- III. Section **F. Definitions** is amended by deleting definition **6.** "Employee benefit plan" in its entirety and replacing it with the following:
  6. "Employee benefit plan" means any welfare or pension benefit plan that you sponsor and which is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.

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

## **COMMERCIAL CRIME COVERAGE FORM AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL CRIME COVERAGE FORM**

**A.** It is agreed that **E. Conditions, 1. Conditions Applicable to all Insuring Agreements, j. Liberalization** is deleted in its entirety and replaced by the following:

#### **j. Liberalization**

If, within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a.** The date we implemented the change in your state; or
- b.** The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

**B.** It is agreed that **D. Exclusions, 1. i. Pollution** is deleted in its entirety and replaced by the following:

#### **i. Pollutants**

Loss or damage caused by or resulting from pollutants. Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum and petroleum by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. Pollutants include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property, or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:

- a.** You are regularly or otherwise engaged in activities which taint or degrade the environment; or
- b.** You use, generate or produce the pollutant.

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

## **OHIO CHANGES - LEGAL ACTION AGAINST US**

This endorsement modifies insurance provided under the following:

**COMMERCIAL CRIME COVERAGE FORM  
GOVERNMENT CRIME COVERAGE FORM  
CRIME EXPANDED COVERAGE (XC<sup>®</sup>) COVERAGE FORM (DISCOVERY FORM)  
HOTEL CRIME EXPANDED COVERAGE COVERAGE FORM (DISCOVERY FORM)**

The **Legal Action Against Us** Condition is replaced by the following:

### **Legal Action Against Us**

You may not bring any legal action against us involving loss unless:

- A.** You have complied with all the terms of this insurance; and
- B.** The action is brought within two years from the date it accrues.

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

## **CRIME AND FIDELITY SCHEDULE OF LOCATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY  
GOVERNMENT CRIME COVERAGE FORM  
GOVERNMENT CRIME POLICY**

**LOC. STREET ADDRESS CITY STATE ZIP CODE**

1 755 BOARDMAN CANFIELD RD STE C1  
BOARDMAN, OH 44512-4387

2 4300 BELMONT AVE  
YOUNGSTOWN, OH 44505-1084

# THE CINCINNATI INSURANCE COMPANY

CINCINNATI, OHIO

## BUSINESS AUTO COVERAGE PART DECLARATIONS

**ITEM ONE**

Attached to and forming part of POLICY NUMBER: EBA 055 17 19

Named Insured is the same as it appears in the Common Policy Declarations.

**ITEM TWO**

**SCHEDULE OF COVERAGES AND COVERED AUTOS**

This coverage part provides only those coverages where a premium or "incl" is shown in the premium column below. The limit of Insurance for each coverage listed is subject to all applicable policy provisions. Each of these coverages will apply only to those "autos" shown as covered "autos". "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more of the symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the COVERED AUTOS Section of the Business Auto Coverage Form shows which autos are covered autos)	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS	PREMIUM
LIABILITY	8, 9	\$ 1,000,000	INCL
PERSONAL INJURY PROTECTION (or equivalent No-fault coverage)		Separately stated in each P.I.P. endorsement minus \$	Ded.
ADDED PERSONAL INJURY PROTECTION (or equivalent added No-fault coverage)		Separately stated in each added P.I.P. endorsement	
PROPERTY PROTECTION INSURANCE (Michigan only)		Separately stated in each P. P.I. endorsement minus \$	Ded
AUTO. MEDICAL PAYMENTS		\$	
UNINSURED MOTORISTS		\$	
UNDERINSURED MOTORISTS (When not included in Uninsured Motorists Coverage)		\$	
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE		Actual cash value or cost of repair, Whichever is less minus \$ Ded. For each covered auto. But no Deductible applies to loss caused by Fire or lightning. See Item Three for hired or borrowed "autos"	
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE		Actual cash value or cost of repair, Whichever is less minus \$ Ded. For Each covered auto. For loss caused by mischief or vandalism. See Item Three for hired or borrowed "autos"	
PHYSICAL DAMAGE COLLISION COVERAGE		Actual cash value or cost of repair, Whichever is less minus \$ Ded for each covered auto. See Item Three for hired or borrowed "autos".	
PHYSICAL DAMAGE INSURANCE TOWING AND LABOR		\$ for each disablement of a private passenger auto	
PREMIUM FOR ENDORSEMENTS			INCL
*ESTIMATED TOTAL PREMIUM			

FORMS AND ENDORSEMENTS CONTAINED IN THIS COVERAGE PART AT ITS INCEPTION:

- AA4183 02/06 AUTOMOBILE SCHEDULE
- AA101 03/06 BUSINESS AUTO COVERAGE FORM
- AA2009 01/17 CHANGES - TOWING AND LABOR
- AA296 07/12 CHANGES - AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE

FORMS AND ENDORSEMENTS CONTAINED IN THIS COVERAGE PART AT ITS INCEPTION:

AA4263 04/10 OFFICE OF FOREIGN ASSETS CONTROL (OFAC) COMPLIANCE ENDORSEMENT

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\* This policy may be subject to final audit

**QUICK REFERENCE**  
**COMMERCIAL AUTO COVERAGE PART**  
**BUSINESS AUTO COVERAGE FORM**  
**READ YOUR POLICY CAREFULLY**

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# AUTOMOBILE SCHEDULE

## ITEM THREE

Attached to and forming a part of Policy Number EBA 055 17 19 , effective 09-14-2019

The insurance afforded for any automobile is only with respects to such and so many of the coverages as are indicated by specific premium charge or charges indicated.

### POLICY LIMITS

State: OH

Bodily Injury: 1,000,000 CSL

Property Damage: INCLUDED

Veh.

No. Vehicle Information

HIRED AND NON-OWNED						Class:	Territory
OTC-COMP DED: N/A						Coll Ded: N/A	
BI	PD	MP	OTC	COLL	UM	TOTAL	
74	INCL	N/A				74	

**SYMBOLS:**

- |  |                                   |
|--|-----------------------------------|
| BI -- Bodily Injury  | SPEC -- Specified Perils          |
| PD -- Property Damage  | COLL -- Collision                 |
| MP -- Medical Payments   | UM -- Uninsured Motorists         |
| OTC -- Other Than Collision (ACV Coverage applies unless Stated Amount Value is indicated) | UIM -- Underinsured Motorists     |
| CAC -- Combined Additional Coverage  | PIP -- Personal Injury Protection |
| FT&S -- Fire, Theft, and Supplemental  | T&L -- Towing and Labor Costs     |
|  | RR -- Rental Reimbursement        |



## BUSINESS AUTO 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. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V - DEFINITIONS**.

### SECTION I - COVERED AUTOS

ITEM TWO of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description of Covered Auto Designation Symbols**

- | SYMBOL | DESCRIPTION   |
|--------|---|
| 1 =    | ANY "AUTO".   |
| 2 =    | OWNED "AUTOS" ONLY. Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.   |
| 3 =    | OWNED PRIVATE PASSENGER "AUTOS" ONLY. Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.   |
| 4 =    | OWNED "AUTOS" OTHER THAN PRIVATE PASSENGER "AUTOS" ONLY. Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.                       |
| 5 =    | OWNED "AUTOS" SUBJECT TO NO-FAULT. Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged. |
| 6 =    | OWNED "AUTOS" SUBJECT TO A COMPULSORY UNINSURED MOTORISTS LAW. Only those "autos" you own that because of the law in the state where  |

they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.

- 7 = SPECIFICALLY DESCRIBED "AUTOS". Only those "autos" described in ITEM THREE of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to a power unit described in ITEM THREE).
- 8 = HIRED "AUTOS" ONLY. Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees" or partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
- 9 = NONOWNED "AUTOS" ONLY. Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

**B. Owned Autos You Acquire After the Policy Begins**

- 1. If Symbols 1, 2, 3, 4, 5, or 6 are entered next to a coverage in ITEM TWO of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
- 2. But, if Symbol 7 is entered next to a coverage in ITEM TWO of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces

an "auto" you previously owned that had that coverage; and

- b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment and Temporary Substitute Autos**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

- 1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.

- 2. "Mobile equipment" while being carried or towed by a covered "auto".
- 3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II - LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who is an Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a cov-

ered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".
- (5) A partner (if you are a partnership), or a member (if you are a limited liability company), for a covered "auto" owned by him or her or a member of his or her household.

- c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

**2. Coverage Extensions**

**a. Supplementary Payments**

We will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for the cost of bail bonds (including bonds for related traffic law violations) re-

quired because of an "accident" we cover. We do not have to furnish these bonds.

- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend, but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

#### **b. Out-of-State Coverage Extensions**

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

#### **B. Exclusions**

This insurance does not apply to any of the following:

#### **1. Expected or Intended Injury**

"Bodily injury" or "property damage" which may reasonably be expected to result from the intentional or criminal acts of the "insured" or which is in fact expected or intended by the "insured", even if the injury or damage is of a different degree or type than actually expected or intended. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

#### **2. Contractual**

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. 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; or
- b. That the "insured" would have in the absence of the contract or agreement.

#### **3. Workers' Compensation**

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### **4. Employee Indemnification and Employer's Liability**

"Bodily injury" to:

- a. An "employee" of the "insured" sustained in the "workplace";
- b. An "employee" of the "insured" arising out of the performance of duties related to the conduct of the "insured's" business; or
- c. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **a.** or **b.** 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.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract" other than a contract or agreement with a labor leasing firm. For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### 5. Fellow Employee

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

#### 6. Care, Custody or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

#### 7. Handling of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

#### 8. Movement of Property by Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

#### 9. Operations

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

- a. Any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of "mobile equipment"; or
- b. Machinery or equipment that is on, attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor ve-

hicle insurance law where it is licensed or principally garaged.

#### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, 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 warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraphs **a.** or **b.** above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
- (3) 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.

#### 11. Pollutant

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or

- (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** of this exclusion does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **6.b.** and **6.c.** of the definition of "mobile equipment".

However, this exception to Paragraph **a.** does not apply if the fuels, lubricants, fluids, exhaust gases or other similar "pollutants" are intentionally discharged, dispersed or released.

Paragraphs **b.** and **c.** of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release, emission or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- 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:

- (1) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such "insured", contractor or subcontractor; or
- (2) 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".

Subparagraph **d.(1)** does not apply to "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 fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such "insured", contractor or subcontractor.

## 12. War

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

- a. War, including undeclared or civil war;
- b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

## 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This

insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

**C. Limit of Insurance**

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage endorsement, Uninsured Motorists Coverage endorsement or Underinsured Motorists Coverage endorsement attached to this Coverage Part.

**D. Mobile Equipment Subject to Motor Vehicle Insurance Laws**

As respects **SECTION II - LIABILITY COVERAGE** any land vehicle, which would qualify as "mobile equipment", except that it is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged, is considered a covered "auto" under **SECTION II - LIABILITY COVERAGE**, irrespective of the Auto Designation Symbols shown for **SECTION II - LIABILITY COVERAGE** in the Declarations.

**SECTION III - PHYSICAL DAMAGE COVERAGE**

**A. Coverage**

1. We will pay for "loss" to a covered "auto" or its equipment under:

**a. Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

**b. Specified Causes of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

**c. Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

**2. Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs

incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

**3. Glass Breakage - Hitting a Bird or Animal - Falling Objects or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

**4. Coverage Extensions**

**a. Transportation Expenses**

We will also pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered

"auto" is returned to use or we pay for its "loss".

in hindering or defending against any of these.

**b. Loss of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";
- (2) Specified Causes of Loss only if the Declarations indicate that Specified Causes of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. Exclusions**

1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War or Military Action**

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority

2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- a. Wear and tear, freezing, mechanical or electrical breakdown; or
- b. Blowouts, punctures or other road damage to tires.

4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
- d. Any accessories used with the electronic equipment described in Paragraph c. above.

Exclusions 4.c. and 4.d. do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or
- b. Any other electronic equipment that is:

- (1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or
- (2) An integral part of the same unit housing any sound reproducing equipment described in Paragraph a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

### C. Limit of Insurance

1. The most we will pay for "loss" in any one "accident" is the lesser of:
  - a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or

- b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.
2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".
3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

## SECTION IV - BUSINESS AUTO CONDITIONS

The following conditions apply in addition to the Common Policy Conditions:

### A. Loss Conditions

#### 1. Appraisal for Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

#### 2. Duties in the Event of Accident, Claim, Suit or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

- a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:

- (1) How, when and where the "accident" or "loss" occurred;
  - (2) The "insured's" name and address; and
  - (3) To the extent possible, the names and addresses of any injured persons and witnesses.
- b. Additionally, you and any other involved "insured" must:
    - (1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.
    - (2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".
    - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
    - (4) Authorize us to obtain medical records or other pertinent information.
    - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.



c. If there is "loss" to a covered "auto" or its equipment you must also do the following:

- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
- (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
- (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
- (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of this Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment - Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;
- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

### 5. Transfer of Rights of Recovery Against Others to Us

If any person or organization to or for whom we make payment under this Cov-

erage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If within 60 days prior to the beginning of this Coverage Part or during the policy period, we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part as of the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current policy period. We will make no additional premium charge for this additional coverage during the interim.

### 4. No Benefit to Bailee - Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

## 5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

- (1) Excess while it is connected to a motor vehicle you do not own.
- (2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

## 6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures. The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

## 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the Policy Period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico;
- d. Canada; and
- e. Anywhere in the world if:

(1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and

(2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

## 8. Two or More Coverage Forms or Policies Issued by Us

If this Coverage Form and any other Coverage Form or policy issued to you by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

**SECTION V - DEFINITIONS**

- A.** "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B.** "Auto" means:
- 1.** A land motor vehicle, "trailer" or semi-trailer designed for travel on public roads; or
  - 2.** Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- C.** "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D.** "Covered pollution cost or expense" means any cost or expense arising out of:
- 1.** Any request, demand, order or statutory or regulatory requirement that the "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.** Any 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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, escape or emission of "pollutants":

- a.** That are, or that are contained in any property that is:
  - (1)** Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
  - (2)** Otherwise in the course of transit by or on behalf of the "insured";
  - (3)** Being stored, disposed of, treated or processed in or upon the covered "auto"; or
- b.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place

where they are accepted by the "insured" for movement into or onto the covered "auto"; or

- c.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph **a.** above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1)** The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2)** The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs **6.b.** or **6.c.** of the definition of "mobile equipment".

Paragraphs **b.** and **c.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1)** The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2)** The discharge, dispersal, seepage, migration, release, escape or emission of the "pollutants" is caused directly by such upset, overturn or damage.

- E.** "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F.** "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G.** "Insured" means any person or organization qualifying as an insured in the Who is an Insured provision of the applicable coverage.

Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

**H. "Insured contract":**

**1. Means:**

- a.** A lease of premises;
- b.** A sidetrack agreement;
- c.** An 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.** 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 to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
- f.** That part of any other contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

**2. Does not include that part of any contract or agreement:**

- a.** 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; or
- b.** That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or

**c.** That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

**I.** "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" includes supervisors furnished to you by the labor leasing firm. "Leased worker" does not include a "temporary worker".

**J.** "Loss" means direct and accidental loss or damage.

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

- 1.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- 2.** Vehicles maintained for use solely on or next to premises you own or rent;
- 3.** Vehicles that travel on crawler treads;
- 4.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a.** Power cranes, shovels, loaders, diggers or drills; or
  - b.** Road construction or resurfacing equipment such as graders, scrapers or rollers.
- 5.** Vehicles not described in Paragraphs **1.**, **2.**, **3.**, or **4.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a.** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - b.** Cherry pickers and similar devices used to raise or lower workers.
- 6.** Vehicles not described in Paragraphs **1.**, **2.**, **3.**, or **4.** 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":
  - a.** Equipment designed primarily for:

**a.** Equipment designed primarily for:

- (1) Snow removal;
  - (2) Road maintenance, but not construction or resurfacing; or
  - (3) Street cleaning;
  - b. Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
  - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting or well servicing equipment.
- However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".
- L. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, petroleum, petroleum products and their by-products, and waste. Waste includes materials to be recycled, reconditioned or reclaimed. "Pollutants" include but are not limited to substances which are generally recognized in industry or government to be harmful or toxic to persons, property or the environment regardless of whether injury or damage is caused directly or indirectly by the "pollutants" and whether:
    - 1. The "insured" is regularly or otherwise engaged in activities which taint or degrade the environment; or
  - M. The "insured" uses, generates or produces the "pollutant".
  - M. "Property damage" means damage to or loss of use of tangible property.
  - N. "Suit" means a civil proceeding in which:
    - 1. Damages because of "bodily injury" or "property damage"; or
    - 2. A "covered pollution cost or expense", to which this insurance applies, are alleged.

"Suit" includes:

    - a. An arbitration proceeding in which such damages or "covered pollution costs or expenses" 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 or "covered pollution costs or expenses" are claimed and to which the insured submits with our consent.
  - O. "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.
  - P. "Trailer" includes semitrailer.
  - Q. "Workplace" means that place and during such hours to which the "employee" sustaining "bodily injury" was assigned by you, or any other person or entity acting on your behalf, to work on the date of the "accident".

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(Broad Form)**

- 1. The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (1) With respect to which an "insured" under the policy is also an "insured" under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an "insured" under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazard-

ous properties" of "nuclear facility" by any person or organization.

C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from the "hazardous properties" of "nuclear material", if:

- (1) The "nuclear material" **(a)** is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or **(b)** has been discharged or dispersed therefrom;
- (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or
- (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this Exclusion **(3)** applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "byproduct material";

"Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been

used or exposed to radiation in a "nuclear reactor";

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

"Nuclear facility" means:

- (a)** Any "nuclear reactor";
- (b)** Any equipment or device designed or used for **(1)** separating the isotopes of uranium or plutonium, **(2)** processing or utilizing "spent fuel", or **(3)** handling, processing or packaging "waste";
- (c)** Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d)** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

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

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

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

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

## **CHANGES - TOWING AND LABOR**

This endorsement modifies insurance provided by the following:

### **BUSINESS AUTO COVERAGE FORM**

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

- 1. SECTION III - PHYSICAL DAMAGE COVERAGE, A. Coverage, 2. Towing** is deleted in its entirety and replaced with:

- 2. Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs incurred each time a covered "auto" is disabled. However, the labor must be performed at the place of disablement.

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

## **CHANGES - AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE**

This endorsement modifies insurance provided by the following:

### **BUSINESS AUTO COVERAGE FORM**

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

- 1. SECTION III - PHYSICAL DAMAGE COVERAGE, B. Exclusions, 4.** is deleted in its entirety and replaced with:
  - 4.** We will not pay for "loss" to any of the following:
    - a.** Tapes, records, discs or similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
    - b.** Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors, and any jamming apparatus intended to elude or disrupt speed-measuring equipment.
    - c.** Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
    - d.** Any accessories used with the electronic equipment described in Paragraph **c.** above.

Exclusions **4.c.** and **4.d.** do not apply to equipment designed to be operated solely by use of the power from the "auto's" electrical system that, at the time of "loss", is:

    - a.** Permanently installed in or upon the covered "auto";
    - b.** Removable from a housing unit which is permanently installed in or upon the covered "auto";
    - c.** An integral part of the same unit housing any electronic equipment described in Paragraphs **a.** and **b.** above; or
    - d.** Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system.
- 2. SECTION III - PHYSICAL DAMAGE COVERAGE, C. Limits of Insurance, 1.** is deleted in its entirety and replaced with:
  - 1.** The most we will pay for:
    - a.** "Loss" to any covered "auto" is the lesser of;
      - (1)** The actual cash value of the damaged or stolen property as of the time of the "loss"; or
      - (2)** The cost of repairing or replacing the damaged or stolen property with other property of like kind or quality.
    - b.** All electronic equipment that reproduces, receives or transmits audio, visual or data signals in any one "loss", is up to \$1,000, if, at the time of "loss", such electronic equipment is:
      - (1)** Permanently installed in or upon the covered "auto" in a housing, opening or other location that is not normally used by the "auto" manufacturer for the installation of such equipment;
      - (2)** Removable from a permanently installed housing unit as described in Paragraph **b.1.** above; or
      - (3)** An integral part of such equipment as described in Paragraphs **b.(1)** and **b.(2)** above.
- 3. AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS**

The sub-limit in Paragraph **1.b.** above is in addition to the Limit of Insurance shown in the Schedule of the Audio, Visual and Data Equipment Coverage endorsement, if purchased.



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

**OFFICE OF FOREIGN ASSETS CONTROL (OFAC)  
COMPLIANCE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM**

**SECTION IV - BUSINESS AUTO CONDITIONS, B. General Conditions** of the **BUSINESS AUTO COVERAGE FORM** and **SECTION V - GARAGE CONDITIONS, B. General Conditions** of the **GARAGE COVERAGE FORM** are amended to include the following:

**Office of Foreign Assets Control (OFAC) Compliance**

Whenever insurance coverage provided by this policy would be in violation of any United States economic or trade sanctions, such insurance coverage shall be null and void.

**THE CINCINNATI INSURANCE COMPANY**

A Stock Insurance Company

**CINCINNATI DATA DEFENDER™ COVERAGE PART  
DECLARATIONS**

**THIS COVERAGE PART PROVIDES CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD" OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF INSURANCE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE DEDUCTIBLE. IN NO EVENT WILL WE BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE LIMIT OF INSURANCE. READ THE ENTIRE POLICY CAREFULLY.**

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Attached to and forming part of POLICY NUMBER: ECP 055 17 19      Effective Date 09-14-2019

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Named Insured is the same as it appears in the Common Policy Declarations unless another entry is made here.

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**Retroactive Date:** 09-14-2019

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**Limits of Insurance and Deductible**

<b>Insuring Agreement</b>	<b>Annual Aggregate</b>	<b>Sublimit</b>	<b>Deductible</b>
<b>A</b> Response Expenses	\$100,000		\$1,000
		Forensic IT Review	\$50,000
		Legal Review	\$50,000
		PR Services	\$50,000
<b>B</b> Defense and Liability	\$100,000		\$1,000
		Regulatory Fines and Penalties	\$50,000
		PCI Fines and Penalties	\$50,000
<b>C</b> Identity Recovery	\$25,000		\$250
		Lost Wages and Child and Elder Care	\$5,000
		Mental Health Counseling	\$1,000
		Miscellaneous Unnamed Costs	\$1,000

**TOTAL ANNUAL PREMIUM**

\$285

<b>Optional Supplemental Extended Reporting Period - Term:</b>	<b>Optional Supplemental Extended Reporting Period - Premium:</b>
1 YEAR	57
2 YEAR	114
3 YEAR	152
4 YEAR	190
5 YEAR	209
6 YEAR	228

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FORMS AND/OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

HC102 01/18 CINCINNATI DATA DEFENDER™ COVERAGE FORM

HC4270H 01/16 OHIO CHANGES - LOSS INFORMATION



# CINCINNATI DATA DEFENDER™ COVERAGE FORM

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## CINCINNATI DATA DEFENDER™ COVERAGE FORM

**THIS COVERAGE PART PROVIDES CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD" OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF INSURANCE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE DEDUCTIBLE. IN NO EVENT WILL WE BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE LIMIT OF INSURANCE. READ THE ENTIRE POLICY CAREFULLY.**

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

Throughout this Coverage Part the words "you" and "your" refer to the "named insured" shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **VI - Definitions**.

### SECTION I - COVERAGES

#### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which an Aggregate Limit of Insurance is shown in the Declarations:

##### 1. Insuring Agreement A - Response Expenses

a. Coverage under Insuring Agreement **A - Response Expenses** applies only if all of the following conditions are met:

- (1) There has been a "personal data compromise"; and
- (2) Such "personal data compromise" is first discovered by you during the "coverage term"; and
- (3) Such "personal data compromise" took place in the "coverage territory"; and
- (4) Such "personal data compromise" is reported to us within 60 days after the date it is first discovered by you.

b. If the conditions listed in **a.** above have been met, then we will provide coverage for the following expenses when they arise directly from the "personal data compromise" described in **a.** above and are necessary and reasonable. Coverages **(4)** and **(5)** apply only if there has been a notification of the "personal data

compromise" to "affected individuals" as covered under coverage **(3)**.

##### (1) Forensic IT Review

Professional information technologies review if needed to determine, within the constraints of what is possible and reasonable, the nature and extent of the "personal data compromise" and the number and identities of the "affected individuals".

This does not include costs to analyze, research or determine any of the following:

- (a) Vulnerabilities in systems, procedures or physical security;
- (b) Compliance with PCI or other industry security standards; or
- (c) The nature or extent of loss or damage to data that is not "personally identifying information" or "personally sensitive information".

If there is reasonable cause to suspect that a covered "personal data compromise" may have occurred, we will pay for costs covered under Forensic IT Review, even if it is eventually determined that there was no covered "personal data compromise". However, once it is determined that there was no covered "personal data compromise", we will not pay for any further costs.

##### (2) Legal Review

Professional legal counsel review of the "personal data compromise" and how you should best respond to it. If there is reasonable cause to suspect that a covered "personal data compromise" may have occurred, we will pay for costs covered under

Legal Review, even if it is eventually determined that there was no covered "personal data compromise". However, once it is determined that there was no covered "personal data compromise", we will not pay for any further costs.

**(3) Notification to Affected Individuals**

We will pay your necessary and reasonable costs to provide notification of the "personal data compromise" to "affected individuals".

**(4) Services to Affected Individuals**

We will pay your necessary and reasonable costs to provide the following services to "affected individuals":

**(a)** The following services apply to any "personal data compromise".

**1) Informational Materials**

A packet of loss prevention and customer support information.

**2) Help Line**

A toll-free telephone line for "affected individuals" with questions about the "personal data compromise". Where applicable, the line can also be used to request additional services as listed in **(b)1)** and **2)** below.

Note, calls by "affected individuals" or their representatives to the Help Line do not constitute the making of a "claim" under Insuring Agreement **B** - Defense and Liability.

**(b)** The following additional services apply to "personal data compromise" events involving "personally identifying information".

**1) Credit Report and Monitoring**

A credit report and an electronic service automatically monitoring for activities affecting an individual's credit records. This service is subject to the "affected individual" enrolling for this service with the designated service provider.

**2) Identity Restoration Case Management**

As respects any "affected individual" who is or appears to be a victim of "identity theft" that may reasonably have arisen from the "personal data compromise", the services of an identity restoration professional who will assist that "affected individual" through the process of correcting credit and other records and, within the constraints of what is possible and reasonable, restoring control over his or her personal identity.

**(5) PR Services**

We will pay the necessary and reasonable fees and expenses you incur, with our prior written consent, for a professional public relations firm review of and response to the potential impact of the "personal data compromise" on your business relationships. We will only pay for such fees and expenses when such a public relations firm review and response is reasonably necessary to avert or mitigate material damage to your business relationships from the "personal data compromise".

Such fees and expenses include costs to implement public relations recommendations of such public relations firm. However, when such recommendations include advertising and special promotions designed to retain your relationship with "affected individuals", we will not pay for promotions:

- (a) Provided to any of your "executives" or "employees"; or
- (b) Costing more than \$25 per "affected individual".

**2. Insuring Agreement B - Defense and Liability**

a. Coverage under Insuring Agreement B - Defense and Liability applies only if all of the following conditions are met:

(1) During the "coverage term" or any applicable Extended Reporting Period, you first receive notice of a "claim" or "regulatory proceeding" which arises from a "personal data compromise" that:

- (a) Took place on or after the Retroactive Date shown in the Declarations and before the end of the "policy period";
- (b) Took place in the "coverage territory"; and
- (c) Was submitted to us and covered under Insuring Agreement A - Response Expenses; and

(2) Such "claim" or "regulatory proceeding" is reported to us as soon as practicable, but in no event more than 60 days after the date it is first received by you.

b. If the conditions listed in a. above have been met, then we will pay on behalf of the "insured" "defense costs" and "data compromise liability" directly arising from the "claim" or "regulatory proceeding".

c. All "claims" or "regulatory proceedings" caused by a single "personal data compromise" will be deemed to have been made at the time that notice of the first of those "claims" or "regulatory proceedings" is received by you.

**3. Insuring Agreement C - Identity Recovery**

a. Coverage under Insuring Agreement C - Identity Recovery applies only if all of the following conditions are met:

(1) There has been an "identity theft" involving the personal identity of an "identity recovery insured" under this Coverage Part; and

(2) Such "identity theft" is first discovered by the "identity recovery insured" during the "coverage term"; and

(3) Such "identity theft" took place in the "coverage territory"; and

(4) Such "identity theft" is reported to us within 60 days after it is first discovered by the "identity recovery insured".

b. If the conditions listed in a. above have been met, then we will provide the following to the "identity recovery insured":

(1) Services of an "identity recovery case manager" as needed to respond to the "identity theft"; and

(2) Reimbursement of necessary and reasonable "identity recovery expenses" incurred as a direct result of the "identity theft".

**B. Exclusions**

1. Applicable to Insuring Agreements A and B only:

This insurance does not apply to "loss" or "claims" based upon, attributable to or arising out of:

**a. Contractual Liability**

An "insured's" assumption of liability by contract or agreement, whether oral or written. However, this exclusion shall not apply to:

(1) Any liability that an "insured" would have incurred in the absence of such contract or agreement; or

(2) Any PCI fines or penalties explicitly covered under Insuring Agreement B – Defense and Liability.

**b. Criminal Investigations or Proceedings**

Any criminal investigations or proceedings.

**c. Deficiency Correction**

Costs to research or correct any deficiency. This includes, but is not limited to, any deficiency in your sys-



tems, procedures or physical security that may have contributed to a "personal data compromise".

**d. Extortion**

Any extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.

**e. Fraudulent, Dishonest or Criminal Acts**

Any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by the "insured".

**f. Non-monetary Relief**

That part of any "claim" seeking any non-monetary relief.

**g. Previously Reported Data Compromises**

The same facts alleged or contained in any "claim" which has been reported, or in any circumstances of which notice has been given, under any insurance policy of which this Coverage Part is a renewal or replacement.

**h. Prior Data Compromises**

Any "personal data compromise" first occurring before the Retroactive Date shown in the Declarations, or any "claim" arising from a "personal data compromise" that first occurred prior to the Retroactive Date shown in the Declarations.

**i. Prior or Pending Litigation**

Any "claim" or other proceeding against an "insured" which was pending or existed prior to the "coverage term", or arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or other proceeding.

**j. Reckless Disregard**

Your reckless disregard for the security of "personally identifying information" or "personally sensitive information" in your care, custody or control.

**k. Uninsurable**

Any amount not insurable under applicable law.

**I. Willful Complicity**

The "insured's" intentional or willful complicity in a "personal data compromise".

**2. Applicable to Insuring Agreement C only:**

This insurance does not apply to:

**a. Fraudulent, Dishonest or Criminal Acts**

Any fraudulent, dishonest or criminal act by an "identity recovery insured" or any person aiding or abetting an "identity recovery insured", or by any "authorized representative" of an "identity recovery insured", whether acting alone or in collusion with others. However, this exclusion shall not apply to the interests of an "identity recovery insured" who has no knowledge of or involvement in such fraud, dishonesty or criminal act.

**b. Professional or Business Identity**

The theft of a professional or business identity.

**c. Unreported Identity Theft**

An "identity theft" that is not reported in writing to the police.

**3. Applicable to Insuring Agreements A, B and C:**

This insurance does not apply to "loss" or "claims" based upon, attributable to or arising out of:

**a. Nuclear**

Nuclear reaction or radiation or radioactive contamination, however caused.

**b. War**

(1) War, including undeclared or civil war or civil unrest;

(2) Warlike action by military force, including action hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

## SECTION II - LIMITS OF INSURANCE AND DEDUCTIBLE

### A. Insuring Agreement A - Response Expenses:

1. The most we will pay under Insuring Agreement A - Response Expenses is the Response Expenses Limit of Insurance stated in the Declarations.
2. The Response Expenses Limit of Insurance is an annual aggregate limit. This amount is the most we will pay for the total of all "loss" covered under Insuring Agreement A - Response Expenses arising out of all "personal data compromise" events which are first discovered by you during the "coverage term". This limit applies regardless of the number of "personal data compromise" events discovered by you during that period.
3. A "personal data compromise" may be first discovered by you in one "coverage term" but cause covered "loss" in one or more subsequent "coverage terms". If so, all covered "loss" arising from such "personal data compromise" will be subject to the Response Expenses Limit of Insurance applicable to the "coverage term" when the "personal data compromise" was first discovered by you.
4. The most we will pay under Insuring Agreement A - Response Expenses for Forensic IT Review, Legal Review and PR Services coverages for "loss" arising from any one "personal data compromise" is the applicable sublimit for each of those coverages stated in the Declarations. These sublimits are part of, and not in addition to, the Aggregate Limit of Insurance referenced in Paragraph 2. PR Services coverage is also subject to a limit per "affected individual" as described in Section I., A1.b.(5) PR Services.
5. Coverage for Services to "affected individuals" is limited to costs to provide such services for a period of up to one year from the date of the notification to the "affected individuals" or the period required by law, whichever is longer. Notwithstanding the foregoing, coverage for Identity Restoration Case Management services initiated within such period may continue for a period of up to one year from the date such Identity Restoration Case Management services are initiated.
6. Response Expenses coverage is subject to the Response Expenses Deductible stated in the Declarations. You shall be responsible for such deductible amount as respects each "personal data compromise" covered under this Coverage

Part. We may, at our option, pay any part or all of the deductible amount in order to respond effectively to a "personal data compromise" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

### B. Insuring Agreement B - Defense and Liability:

1. The most we will pay under Insuring Agreement B - Defense and Liability (other than post-judgment interest) is the Limit of Insurance stated in the Declarations.
2. The Insuring Agreement B - Defense and Liability Limit of Insurance is an annual aggregate limit. This amount is the most we will pay for all "loss" covered under Insuring Agreement B - Defense and Liability (other than post-judgment interest) arising out of all "claims".
3. The most we will pay under Insuring Agreement B - Defense and Liability for "data compromise liability" and "defense costs" related to Regulatory Fines and Penalties and PCI Fines and Penalties coverages arising from any one "claim" or "regulatory proceeding" is the applicable sublimit for each of those coverages stated in the Declarations. These sublimits are part of, and not in addition to, the Aggregate Limit of Insurance referenced in Paragraph 2.
4. The Defense and Liability Limit of Insurance for the Extended Reporting Periods (if applicable) shall be part of, and not in addition to, the Defense and Liability Limit for the immediately preceding "coverage term".
5. The Insuring Agreement B - Defense and Liability coverage is subject to the Deductible stated in the Declarations. You shall be responsible for such deductible amount as respects each "claim" or "regulatory proceeding" covered under this Coverage Part. We may, at our option, pay any part or all of the deductible amount to defend or effect settlement of any "claim", "loss" or "regulatory proceeding" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

### C. Insuring Agreement C - Identity Recovery:

1. Case Management Service is available as needed for any one "identity theft" for up to 12 consecutive months from the inception of the service. Expenses we incur to provide Case Management Service do not reduce the Limit of Insurance available for "identity recovery expenses".

2. Coverage under Insuring Agreement **C** - Identity Recovery is subject to the Annual Aggregate Limit of Insurance stated in the Declarations per "identity recovery insured". Regardless of the number of "identity theft" incidents, this limit is the most we will pay for the total of all "loss" arising out of all "identity thefts" suffered by one "identity recovery insured" which are first discovered by the "identity recovery insured" during the "coverage term". If an "identity theft" is first discovered in one "coverage term" and continues into other "coverage terms", all "loss" arising from such "identity theft" will be subject to the aggregate Limit of Insurance applicable to the "coverage term" when the "identity theft" was first discovered.
3. Legal costs as provided under Item **d.** of the definition of "identity recovery expenses" are part of, and not in addition to, the aggregate limit described in Paragraph **2.**
4. Item **e.** (Lost Wages) and Item **f.** (Child and Elder Care Expenses) of the definition of "identity recovery expenses" are jointly subject to the sublimit stated in the Declarations. This sublimit is part of, and not in addition to, the aggregate Limit of Insurance described in Paragraph **2.** Coverage is limited to wages lost and expenses incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".
5. Item **g.** (Mental Health Counseling) of the definition of "identity recovery expenses" is subject to the sublimit stated in the Declarations. This sublimit is part of, and not in addition to, the aggregate limit described in Paragraph **2.** Coverage is limited to counseling that takes place within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".
6. Item **h.** (Miscellaneous Unnamed Costs) of the definition of "identity recovery expenses" is subject to the sublimit stated in the Declarations. This sublimit is part of, and not in addition to, the aggregate Limit of Insurance described in Paragraph **2.** Coverage is limited to costs incurred within 12 months after the first discovery of the "identity theft" by the "identity recovery insured".
7. Coverage under Insuring Agreement **C** - Identity Recovery is subject to the Identity Recovery Deductible stated in the Declarations. Each "identity recovery insured" shall be responsible for such deductible amount only once during each "coverage term". This deductible applies only to "identity recovery expenses".

The Limits of Insurance apply separately to each "coverage term".

### SECTION III - DEFENSE AND SETTLEMENT

The provisions contained within this Section apply only to Insuring Agreement **B** - Defense and Liability.

1. We will have the right and duty to select counsel and defend the "insured" against any "claim" or "regulatory proceeding" covered by Insuring Agreement **B** - Defense and Liability, regardless of whether the allegations of such "claim" or "regulatory proceeding" are groundless, false or fraudulent. However, we shall have no duty to defend the "insured" against any "claim" or "regulatory proceeding" seeking damages or other relief not insured by Insuring Agreement **B** - Defense and Liability.
2. We may, with your written consent, make any settlement of a "claim" or "regulatory proceeding" which we deem reasonable. If you withhold consent to such settlement, our liability for all "loss" resulting from such "claim" will not exceed the amount for which we could have settled such "claim" or "regulatory proceeding" plus "defense costs" incurred as of the date we proposed such settlement in writing to you.
3. We shall not be obligated to pay any "loss", or to defend or continue to defend any "claim" or "regulatory proceeding", after the Insuring Agreement **B** - Defense and Liability Limit of Insurance has been exhausted.
4. We shall pay all interest on that amount of any judgment within the Insuring Agreement **B** - Defense and Liability Limit of Insurance which accrues:
  - a. After entry of judgment; and
  - b. Before we pay, offer to pay or deposit in court that part of the judgment within the Insuring Agreement **B** - Defense and Liability Limit of Insurance or, in any case, before we pay or offer to pay the entire Insuring Agreement **B** - Defense and Liability Limit of Insurance.

These interest payments shall be in addition to and not part of the Defense and Liability Limit.

### SECTION IV - CONDITIONS

1. **Bankruptcy**

Your bankruptcy, or the bankruptcy of your estate if you are a sole proprietor, will not relieve us of our obligations under this Coverage Part.
2. **Due Diligence**

You agree to use due diligence to prevent and mitigate "loss" covered under this Coverage Part. This includes, but is not limited to, complying with, and requiring your vendors to

comply with, reasonable and industry-accepted protocols for:

- a. Providing and maintaining appropriate physical security for your premises, computer systems and hard copy files;
- b. Providing and maintaining appropriate computer and Internet security;
- c. Maintaining and updating at appropriate intervals backups of computer data;
- d. Protecting transactions, such as processing credit card, debit card and check payments; and
- e. Appropriate disposal of files containing "personally identifying information" or "personally sensitive information", including shredding hard copy files and destroying physical media used to store electronic data.

### 3. Duties in the Event of a Claim, Regulatory Proceeding or Loss

- a. If, during the "coverage term", the "insured" first becomes aware of any circumstance that could reasonably be expected to give rise to a "claim" or "regulatory proceeding", the "insured" may give written notice to us. The notice must be made as soon as practicable, but in no event more than 60 days after the date the circumstance is first discovered by the "insured", must be made during the "coverage term" and must include:

- (1) The specific details, including the date, of the circumstance;
- (2) The alleged injuries or damage sustained or which may be sustained;
- (3) The names of potential claimants; and
- (4) The manner in which the "insured" first became aware of the circumstance.

Any subsequent "claim" or "regulatory proceeding" arising out of any circumstance which is the subject of such a written notice will be deemed to have been made at the time written notice in compliance with these requirements was first received by us.

- b. If a "claim" or "regulatory proceeding" is brought against any "insured", you must:
  - (1) Immediately record the specifics of the "claim" or "regulatory proceeding" and the date received; and
  - (2) Provide us with written notice, as soon as practicable, but in no event

more than 60 days after the date the "claim" or "regulatory proceeding" is first received by you.

- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or "regulatory proceeding";
  - (4) Authorize us to obtain records and other information;
  - (5) Cooperate with us in the investigation, settlement or defense of the "claim" or "regulatory proceeding";
  - (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of "loss" or "defense costs" to which this insurance may also apply; and
  - (7) Not take any action, or fail to take any required action, that prejudices your rights or our rights with respect to such "claim" or "regulatory proceeding".
- c. In the event of a "personal data compromise" covered under Insuring Agreement **A** - Response Expenses, you must see that the following are done:
    - (1) Notify the police if a law may have been broken.
    - (2) Notify us as soon as practicable, but in no event more than 60 days after the "personal data compromise". Include a description of any property involved.
    - (3) As soon as possible, give us a description of how, when and where the "personal data compromise" occurred.
    - (4) As often as may be reasonably required, permit us to:
      - (a) Inspect the property proving the "personal data compromise";
      - (b) Examine your books, records, electronic media and records and hardware;
      - (c) Take samples of damaged and undamaged property for inspection, testing and analysis; and
      - (d) Make copies from your books, records, electronic media and records and hardware.
    - (5) Send us signed, sworn proof of loss containing the information we request

to investigate the "personal data compromise". You must do this within 60 days after our request. We will supply you with the necessary forms.

- (6) Cooperate with us in the investigation of the "personal data compromise" or settlement of the "loss".
- (7) If you intend to continue your business, you must resume all or part of your operations as quickly as possible.
- (8) Make no statement that will assume any obligation or admit any liability, for any loss for which we may be liable, without our prior written consent.
- (9) Promptly send us any legal papers or notices received concerning the "personal data compromise" or "loss".

- d. We may examine any "insured" under oath, while not in the presence of any other "insured" and at such times as may be reasonably required, about any matter relating to this insurance or the "claim" or "loss", including an "insured's" books and records. In the event of an examination, an "insured's" answers must be signed.
- e. No "insured" may, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our prior written consent.

#### 4. Help Line

For assistance, the "identity recovery insured" should call the **Identity Recovery Help Line** at **1-866-219-9831**. The **Identity Recovery Help Line** can provide the "identity recovery insured" with:

- a. Information and advice for how to respond to a possible "identity theft"; and
- b. Instructions for how to submit a service request for Case Management Service and/or a claim form for Expense Reimbursement Coverage.

In some cases, we may provide Case Management services at our expense to an "identity recovery insured" prior to a determination that a covered "identity theft" has occurred. Our provision of such services is not an admission of liability under the policy. We reserve the right to deny further coverage or service if, after investigation, we determine that a covered "identity theft" has not occurred.

As respects Expense Reimbursement Coverage, the "identity recovery insured" must send to us, within 60 days after our request, receipts, bills or other records

that support his or her claim for "identity recovery expenses".

#### 5. Legal Action Against Us

- a. No person or organization has a right:
  - (1) To join us as a party or otherwise bring us into a suit asking for damages from an "insured"; or
  - (2) To sue us under this Coverage Part unless all of its terms have been fully complied with.

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

- b. You may not bring any legal action against us involving "loss":
  - (1) Unless you have complied with all the terms of this insurance;
  - (2) Until 90 days after you have filed proof of "loss" with us; and
  - (3) Unless brought within 2 years from the date you reported the "claim" or "loss" to us.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

#### 6. Legal Advice

We are not your legal advisor. Our determination of what is or is not covered under this Coverage Part does not represent advice or counsel from us about what you should or should not do.

#### 7. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the "policy period", we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part at the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current "policy period". We will make no additional premium charge for this additional coverage during the interim.

#### **8. Office of Foreign Assets Control (OFAC) Compliance**

Whenever insurance coverage provided by this policy would be in violation of any United States economic or trade sanctions, such insurance coverage shall be null and void.

#### **9. Other Insurance**

a. If any covered "loss" is covered by any other valid policy, then this Coverage Part shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Coverage Part by reference in such other policy to this policy's policy number.

b. When this insurance is excess, we will have no duty to defend the "insured" against any "claim" if any other insurer has a duty to defend the "insured" against that "claim". But we will have the right to associate in the defense and control of any "claim" that we reasonably believe is likely to involve the insurance provided under this Coverage Part. 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.

#### **10. Pre-Notification Consultation**

You agree to consult with us prior to the issuance of notification to "affected individuals". We assume no responsibility under this Coverage Part for any services promised to "affected individuals" without our prior agreement. If possible, this pre-notification consultation will also include the designated service provider(s) as agreed to under Condition 12. Service Providers. You must provide the following at our pre-notification consultation with you:

- a. The exact list of "affected individuals" to be notified, including contact information.
- b. Information about the "personal data compromise" that may appropriately be communicated with "affected individuals".
- c. The scope of services that you desire for the "affected individuals". For example, coverage may be structured to provide fewer services in order to make those services available to more "affected indi-

viduals" without exceeding the available Response Expenses Limit.

#### **11. Representations**

You represent that all information and statements contained in any application or questionnaire submitted in connection with this Coverage Part are true, accurate and complete. All such information and statements are the basis for our issuing this Coverage Part and shall be considered as incorporated into and shall constitute a part of this Coverage Part. Misrepresentation or omission of any material fact may be grounds for the rescission of this Coverage Part.

#### **12. Separation of Insureds**

Except with respect to the applicable Limit of Insurance, and any rights or duties specifically assigned in this Coverage Part or the policy to which it is attached, to the first "named insured", this insurance applies separately to each "insured" against whom a "claim" is made.

#### **13. Service Providers**

a. We will only pay under this Coverage Part for services that are provided by service providers approved by us. You must obtain our prior approval for any service provider whose expenses you want covered under this Coverage Part. We will not unreasonably withhold such approval.

b. Prior to the Pre-Notification Consultation described in the Pre-Notification Consultation Condition above, you must come to agreement with us regarding the service provider(s) to be used for the Notification to Affected Individuals and Services to Affected Individuals. We will suggest a service provider. If you prefer to use an alternate service provider, our coverage is subject to the following limitations:

- (1) Such alternate service provider must be approved by us;
- (2) Such alternate service provider must provide services that are reasonably equivalent or superior in both kind and quality to the services that would have been provided by the service provider we had suggested; and
- (3) Our payment for services provided by any alternate service provider will not exceed the amount that we would have paid using the service provider we had suggested.

#### **14. Services**

The following conditions apply as respects any services provided to you or any "affected indi-

vidual" or "identity recovery insured" by us, our designees or any service firm paid for in whole or in part under this Coverage Part:

- a. The effectiveness of such services depends on the cooperation and assistance of you, "affected individuals" and "identity recovery insureds".
- b. All services may not be available or applicable to all individuals. For example, "affected individuals" and "identity recovery insureds" who are minors or foreign nationals may not have credit records that can be provided or monitored. Service in Canada will be different from service in the United States and Puerto Rico in accordance with local conditions.
- c. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events.
- d. Except for the services of an "identity recovery case manager" under Insuring Agreement **C** - Identity Recovery, which we will provide directly, you will have a direct relationship with the professional service firms paid for in whole or in part under this Coverage Part. Those firms work for you.

#### 15. Subrogation

With respect to any payment under this Coverage Part on behalf of any "insured", we shall be subrogated to the "insured's" rights of recovery to the extent of such payment. The "insured" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to bring suit in the "insured's" name. Any recoveries, less the cost of obtaining them, will be distributed as follows:

- a. To you, until you are reimbursed for any "loss" you sustain that exceeds the sum of the applicable Aggregate Limit of Insurance and the Deductible Amount, if any;
- b. Then to us, until we are reimbursed for the payment under this Coverage Part;
- c. Then to you, until you are reimbursed for that part of the payment equal to the Deductible Amount, if any.

#### 16. Valuation - Settlement

All premiums, Limits of Insurance, Deductible Amounts, "loss" and any other monetary amounts under this Coverage Part are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is agreed to or another component of "loss" under this Coverage Part is expressed in any currency other than United

States of America dollars, payment under this Coverage Part shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is entered, settlement amount is agreed upon, or the other component of "loss" is due, respectively.

#### 17. 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 - EXTENDED REPORTING PERIODS

The provisions contained within this Section apply only to Insuring Agreement **B** - Defense and Liability.

1. You shall have the right to the Extended Reporting Periods described in this section, in the event that:
  - a. You or we cancel this Coverage Part;
  - b. You or we refuse to renew this Coverage Part; or
  - c. We renew this Coverage Part on other than a claims-made basis or with a retroactive date later than the Retroactive Date shown in the Declarations.
2. If an event as specified in Paragraph 1. has occurred, you shall have the right to the following:
  - a. An Automatic Extended Reporting Period of 90 days after the effective date of cancellation or nonrenewal at no additional premium in which to give to us written notice of a "claim" or "regulatory proceeding" of which you first receive notice during said Automatic Extended Reporting Period for any "personal data compromise" occurring on or after the Retroactive Date shown on the Declarations and before the end of the "policy period" and which is otherwise covered by this Coverage Part; and
  - b. Upon payment of the additional premium stated in the Declarations, a Supplemental Extended Reporting Period for the term stated in the Supplemental Extended Reporting Period Endorsement will be provided immediately following the effective date of cancellation or nonrenewal in which to give to us written notice of a "claim" or "regulatory proceeding" of which you first receive notice during said Supplemental Extended Reporting Period

for any "personal data compromise" occurring on or after the Retroactive Date shown in the Declarations and before the end of the "policy period" and which is otherwise covered by this Coverage Part.

To obtain the Supplemental Extended Reporting Period, you must request it in writing and pay the additional premium due, within 60 days of the effective date of cancellation or nonrenewal. The additional premium for the Supplemental Extended Reporting Period shall be fully earned at the inception of the Supplemental Extended Reporting Period. If we do not receive the written request as required, you may not exercise this right at a later date.

- c. The Defense and Liability Limit of Insurance for the Extended Reporting Periods shall be part of, and not in addition to, the Defense and Liability Limit of Insurance for the immediately preceding "coverage term".

## SECTION VI - DEFINITIONS

- 1. "Affected individual" means any person whose "personally identifying information" or "personally sensitive information" is lost, stolen, accidentally released or accidentally published by a "personal data compromise" covered under this Coverage Part. This definition is subject to the following provisions:

- a. "Affected individual" does not include any business or organization. Only an individual person may be an "affected individual".
- b. An "affected individual" may reside anywhere in the world.

- 2. "Authorized representative" means a person or entity authorized by law or contract to act on behalf of an "identity recovery insured".

- 3. "Claim":

- a. Means:

- (1) A civil proceeding in which it is alleged that the claimant suffered damages arising from:

- (a) A "personal data compromise" that was covered under Insuring Agreement **A** - Response Expenses section of this Coverage Part and in connection with which you submitted a claim to us and provided notifications and services to "affected individuals" in consultation with us pursuant to Insuring Agreement **A** - Response Expenses; or

- (b) The violation of a governmental statute or regulation arising from a "personal data compromise" that was covered under Insuring Agreement **A** - Response Expenses and in connection with which you submitted a claim to us and provided notifications and services to "affected individuals" in consultation with us pursuant to Insuring Agreement **A** - Response Expenses.

- (2) "Claim" includes:

- (a) An arbitration proceeding in which such damages are claimed and to which the "insured" must submit or does submit with our consent;

- (b) Any other alternative dispute resolution proceeding in which such damages are claimed and to which the "insured" must submit or does submit with our consent; or

- (c) A written demand for money, when such demand could reasonably result in a civil proceeding as described in this definition.

- b. Does not include any demand or action brought by or on behalf of someone who is:

- (1) Your "executive";

- (2) Your owner or part-owner; or

- (3) A holder of your securities;

in their capacity as such, whether directly, derivatively, or by class action. "Claim" will include proceedings brought by such individuals in their capacity as "affected individuals", but only to the extent that the damages claimed are the same as would apply to any other "affected individual".

- 4. "Coverage term" means the following individual increment, or if a multi-year "policy period", increments, of time, which comprise the "policy period" of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year "policy period", each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing



address shown in the Declarations on the earlier of:

- (1) The day the "policy period" shown in the Declarations ends; or
- (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.

b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".

5. "Coverage territory" means:

- a. With respect to Insuring Agreement **A** - Response Expenses, anywhere in the world.
- b. With respect to Insuring Agreement **B** - Defense and Liability, anywhere in the world, however, "claims" must be brought in the United States (including its territories and possessions), Puerto Rico or Canada.
- c. With respect to Insuring Agreement **C** - Identity Recovery, anywhere in the world

6. "Data compromise liability":

- a. Means the following, when they arise from a "claim" or "regulatory proceeding":
  - (1) Damages (including punitive and exemplary damages and the multiple portion of any multiplied damage award), judgments or settlements;
  - (2) Attorney's fees and other litigation costs added to that part of any judgment paid by us, when such fees and costs are awarded by law or court order; and
  - (3) Pre-judgment interest on that part of any judgment paid by us.
- b. Also includes any Payment Card Industry (PCI) fine or penalty imposed under a contract to which you are a party when such fine or penalty arises from a "claim". PCI Fines and Penalties do not include any increased transaction costs.
- c. Also includes any fine or penalty imposed by law, to the extent such fine or penalty is legally insurable under the law of the applicable jurisdiction when such fine or penalty arises from a "regulatory proceeding".
- d. Does not include:

- (1) Civil or criminal fines or penalties imposed by law, except for civil fines and penalties expressly covered under paragraphs **b.** and **c.** above;
- (2) Taxes; or
- (3) Matters which may be deemed uninsurable under the applicable law.

e. With respect to fines and penalties and punitive, exemplary and multiplied damages, the law of the jurisdiction most favorable to the insurability of those fines, penalties or damages shall control for the purpose of resolving any dispute between us and any "insured" regarding whether the fines, penalties or damages specified in this definition above are insurable under this Coverage Part, provided that such jurisdiction:

- (1) Is where those fines, penalties or damages were awarded or imposed;
- (2) Is where any "personal data compromise" took place for which such fines, penalties or damages were awarded or imposed;
- (3) Is where you are incorporated or you have your principal place of business; or
- (4) Is where we are incorporated or have our principal place of business.

7. "Defense costs":

- a. Means reasonable and necessary expenses resulting solely from the investigation, defense and appeal of any "claim" or "regulatory proceeding" against an "insured". Such expenses may be incurred by us. Such expenses may include premiums for any appeal bond, attachment bond or similar bond. However, we have no obligation to apply for or furnish such bond.
- b. Does not include the salaries or wages of your "employees" or "executives", or your loss of earnings.

8. "Employee" means any natural person, other than an "executive", who was, now is or will be:

- a. Employed on a full- or part-time basis by you;
- b. Furnished temporarily to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions;
- c. Leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties relat-

- ed to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **8.b.**; or
- d.** Your volunteer worker, which includes unpaid interns.
- 9.** "Executive" means any natural person who was, now is or will be:
- a.** The owner of a sole proprietorship that is a "named insured"; or
- b.** A duly elected or appointed:
- (1)** Director;
  - (2)** Officer;
  - (3)** Managing Partner;
  - (4)** General Partner;
  - (5)** Member (if a limited liability company);
  - (6)** Manager (if a limited liability company); or
  - (7)** Trustee,  
of a "named insured".
- 10.** "Identity recovery case manager" means one or more individuals assigned by us to assist an "identity recovery insured" with communications we deem necessary for re-establishing the integrity of the personal identity of the "identity recovery insured". This includes, with the permission and cooperation of the "identity recovery insured", written and telephone communications with law enforcement authorities, governmental agencies, credit agencies and individual creditors and businesses.
- 11.** "Identity recovery expenses" means the following when they are reasonable and necessary expenses that are incurred as a direct result of an "identity theft" suffered by an "identity recovery insured":
- a.** Costs for re-filing applications for loans, grants or other credit instruments that are rejected solely as a result of an "identity theft".
- b.** Costs for notarizing affidavits or other similar documents, long distance telephone calls and postage solely as a result of your efforts to report an "identity theft" or amend or rectify records as to your true name or identity as a result of an "identity theft".
- c.** Costs for credit reports from established credit bureaus.
- d.** Fees and expenses for an attorney approved by us for the following:
- (1)** The defense of any civil suit brought against an "identity recovery insured".
  - (2)** The removal of any civil judgment wrongfully entered against an "identity recovery insured".
  - (3)** Legal assistance for an "identity recovery insured" at an audit or hearing by a governmental agency.
  - (4)** Legal assistance in challenging the accuracy of the "identity recovery insured's" consumer credit report.
  - (5)** The defense of any criminal charges brought against an "identity recovery insured" arising from the actions of a third party using the personal identity of the "identity recovery insured".
- e.** Actual lost wages of the "identity recovery insured" for time reasonably and necessarily taken away from work and away from the work premises. Time away from work includes partial or whole work days. Actual lost wages may include payment for vacation days, discretionary days, floating holidays and paid personal days. Actual lost wages does not include sick days or any loss arising from time taken away from self-employment. Necessary time off does not include time off to do tasks that could reasonably have been done during non-working hours.
- f.** Actual costs for supervision of children or elderly or infirm relatives or dependents of the "identity recovery insured" during time reasonably and necessarily taken away from such supervision. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured".
- g.** Actual costs for counseling from a licensed mental health professional. Such care must be provided by a professional care provider who is not a relative of the "identity recovery insured".
- h.** Any other reasonable costs necessarily incurred by an "identity recovery insured" as a direct result of the "identity theft".
- (1)** Such costs include:
    - (a)** Costs by the "identity recovery insured" to recover control over his or her personal identity.
    - (b)** Deductibles or service fees from financial institutions.
  - (2)** Such costs do not include:
    - (a)** Costs to avoid, prevent or detect "identity theft" or other loss.

(b) Money lost or stolen.

(c) Costs that are restricted or excluded elsewhere in this Coverage Part or policy.

12. "Identity recovery insured" means the following:

a. When the entity insured under this Coverage Part is a sole proprietorship, the "identity recovery insured" is the individual person who is the sole proprietor of the "named insured".

b. When the "named insured" under this Coverage Part is a partnership, the "identity recovery insureds" are the current partners.

c. When the "named insured" under this Coverage Part is a corporation or other form of organization, other than those described in a. or b. above, the "identity recovery insureds" are all individuals having an ownership position of 20% or more of the insured entity. However, if and only if there is no one who has such an ownership position, then the "identity recovery insured" shall be:

(1) The chief executive of the insured entity; or

(2) As respects a religious institution, the senior ministerial employee.

d. The legally recognized spouse of any individual described in a., b. or c. above.

An "identity recovery insured" must always be an individual person. The "named insured" under this Coverage Part is not an "identity recovery insured".

13. "Identity theft" means the fraudulent use of "personally identifying information". This includes fraudulently using such information to establish credit accounts, secure loans, enter into contracts or commit crimes.

"Identity theft" does not include the fraudulent use of a business name, d/b/a or any other method of identifying a business activity.

14. "Insured" means:

a. With respect to Insuring Agreement A - Response Expenses any "named insured".

b. With respect to Insuring Agreement B - Defense and Liability:

(1) Any "named insured"; and

(2) Any "employee" or "executive" of a "named insured", but:

(a) Only for the conduct of the "named insured's" business within the scope of his or her employment or duties as an "executive"; and

(b) Such "employee" or "executive" shall not be an "insured" to the extent his or her actions or omissions are criminal, fraudulent, dishonest or constitute an intentional or knowing violation of the law.

c. With respect to Insuring Agreement C - Identity Recovery any "named insured".

15. "Loss" means:

a. With respect to Insuring Agreement A - Response Expenses:

Those expenses enumerated in Section I, A, Paragraph 1.b.

b. With respect to Insuring Agreement B - Defense and Liability:

(1) "Defense costs"; and

(2) "Data compromise liability".

c. With respect to Insuring Agreement C - Identity Recovery, "identity recovery expenses".

16. "Named insured" means the entity or entities shown in the Declarations as a Named Insured.

17. "Personal data compromise" means the loss, theft, accidental release or accidental publication of "personally identifying information" or "personally sensitive information" as respects one or more "affected individuals". If the loss, theft, accidental release or accidental publication involves "personally identifying information", such loss, theft, accidental release or accidental publication must result in or have the reasonable possibility of resulting in the fraudulent use of such information. This definition is subject to the following provisions:

a. At the time of the loss, theft, accidental release or accidental publication, the "personally identifying information" or "personally sensitive information" need not be at the insured premises but must be in the direct care, custody or control of:

(1) You; or

(2) A professional entity with which you have a direct relationship and to which you (or an "affected individual" at your direction) have turned over (directly or via a professional transmission or transportation provider) such information for storage, pro-

cessing, transmission or transportation of such information.

- b. "Personal data compromise" includes disposal or abandonment of "personally identifying information" or "personally sensitive information" without appropriate safeguards such as shredding or destruction, subject to the following provisions:
    - (1) The failure to use appropriate safeguards must be accidental and not reckless or deliberate; and
    - (2) Such disposal or abandonment must take place during the time period for which this Coverage Part is effective.
  - c. "Personal data compromise" includes situations where there is a reasonable cause to suspect that such "personally identifying information" or "personally sensitive information" has been lost, stolen, accidentally released or accidentally published, even if there is no firm proof.
  - d. All incidents of "personal data compromise" that are discovered at the same time or arise from the same cause will be considered one "personal data compromise".
18. "Personally identifying information" means information, including health information, that could be used to commit fraud or other illegal activity involving the credit, access to health

care or identity of an "affected individual" or "identity recovery insured". This includes, but is not limited to, Social Security numbers or account numbers.

"Personally identifying information" does not mean or include information that is otherwise available to the public, such as names and addresses.

19. "Personally sensitive information" means private information specific to an individual the release of which requires notification of "affected individuals" under any applicable law.

"Personally sensitive information" does not mean or include "personally identifying information".

20. "Policy period" means the cumulative total of each individual "coverage term" comprising the period of time from the inception date of this Coverage Part shown in the Declarations to the expiration date shown in the Declarations, or its earlier cancellation or termination date.

21. "Regulatory proceeding" means an investigation, demand or proceeding alleging a violation of law or regulation brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other administrative or regulatory agency, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

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

## **OHIO CHANGES - LOSS INFORMATION**

This endorsement modifies insurance provided under the following:

**CINCINNATI CYBER DEFENSE™ COVERAGE PART  
CINCINNATI DATA DEFENDER™ COVERAGE PART  
CINCINNATI NETWORK DEFENDER™ COVERAGE PART**

The following is added to **SECTION IV - CONDITIONS** (**SECTION V - CONDITIONS** of the Cincinnati Cyber Defense™ Coverage Part):

### **Loss Information**

We shall, on request, provide to the first "named insured" loss information within 45 days of the first "named insured's" request or at the same time as any notice of cancellation or nonrenewal.

# THE CINCINNATI INSURANCE COMPANY

A Stock Insurance Company

## CINCINNATI NETWORK DEFENDER™ COVERAGE PART DECLARATIONS

**THIS COVERAGE PART PROVIDES CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD" OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF INSURANCE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE DEDUCTIBLE. IN NO EVENT WILL WE BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE LIMIT OF INSURANCE. READ THE ENTIRE POLICY CAREFULLY.**

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Attached to and forming part of POLICY NUMBER: **ECP 055 17 19** Effective Date **09-14-2019**

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Named Insured is the same as it appears in the Common Policy Declarations unless another entry is made here.

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**Retroactive Date:** 09-14-2019

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### Limits of Insurance and Deductible

Insuring Agreement	Annual Aggregate	Sublimit	Deductible
<b>A</b> Computer Attack	\$100,000		\$1,000 <sup>1</sup>
		Cyber Extortion	\$10,000
		Loss of Business	\$50,000
		Public Relations	\$50,000
<b>B</b> Network Security and Electronic Media Liability	\$100,000		\$1,000

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### TOTAL ANNUAL PREMIUM

\$242

Optional Supplemental Extended Reporting Period - Term:	Optional Supplemental Extended Reporting Period - Premium:
1 YEAR	76
2 YEAR	152
3 YEAR	202
4 YEAR	253
5 YEAR	278
6 YEAR	303

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FORMS AND/OR ENDORSEMENTS APPLICABLE TO THIS COVERAGE PART:

HC103 01/18 CINCINNATI NETWORK DEFENDER™ COVERAGE FORM  
 HC4270H 01/16 OHIO CHANGES - LOSS INFORMATION

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<sup>1</sup> Computer Attack Deductible other than Cyber Extortion

<sup>2</sup> Cyber Extortion Deductible

# CINCINNATI NETWORK DEFENDER™ COVERAGE FORM

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## CINCINNATI NETWORK DEFENDER™ COVERAGE FORM

**THIS COVERAGE PART PROVIDES CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD" OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF INSURANCE TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE DEDUCTIBLE. IN NO EVENT WILL WE BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE LIMIT OF INSURANCE. READ THE ENTIRE POLICY CAREFULLY.**

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

Throughout this Coverage Part the words "you" and "your" refer to the "named insured" shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

### SECTION I - COVERAGES

#### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which an Aggregate Limit of Insurance is shown in the Declarations:

##### 1. Insuring Agreement A - Computer Attack

a. Coverage under Insuring Agreement A - Computer Attack applies only if all of the following conditions are met:

- (1) There has been a "computer attack"; and
- (2) Such "computer attack" is first discovered by you during the "policy period"; and
- (3) Such "computer attack" occurred in the "coverage territory"; and
- (4) Such "computer attack" is reported to us as soon as practicable, but in no event more than 60 days after the date it is first discovered by you.

b. If all of the conditions in a. above have been met, then we will provide you the following coverages for "loss" directly arising from such "computer attack".

##### (1) Cyber Extortion

We will pay your necessary and reasonable "cyber extortion expenses".

##### (2) Data Restoration

We will pay your necessary and reasonable "data restoration costs".

##### (3) Data Re-creation

We will pay your necessary and reasonable "data re-creation costs".

##### (4) System Restoration

We will pay your necessary and reasonable "system restoration costs".

##### (5) Loss of Business

We will pay your actual "business income loss" and your necessary and reasonable "extra expenses".

##### (6) Public Relations

If you suffer covered "business income loss", we will pay the necessary and reasonable fees and expenses you incur, with our prior written consent, for a professional public relations firm review of and response to the potential impact of the "computer attack" on your business relationships. We will only pay for such fees and expenses when such a public relations firm review and response is reasonably necessary to avert or mitigate material damage to your business relationships from the "computer attack".

##### 2. Insuring Agreement B - Network Security and Electronic Media Liability

a. Coverage under Insuring Agreement B - Network Security and Electronic Media Liability applies only if all of the following conditions are met:

- (1) During the "coverage term" or any applicable Extended Reporting Period, you first receive no-

tice of a "claim" which arises from a "wrongful act" that:

- (a) Took place on or after the Retroactive Date shown in the Declarations and before the end of the "policy period"; and
  - (b) Took place in the "coverage territory"; and
- (2) Such "claim" is reported to us as soon as practicable, but in no event more than 60 days after the date it is first received by you.
- b. If the conditions listed in a. above have been met, then we will pay on behalf of the "insured" the "insured's" necessary and reasonable "defense costs" and "settlement costs" directly arising from the "claim".
  - c. All "claims" caused by a single "wrongful act" or series of "interrelated" "wrongful acts" will be deemed to have been made at the time that notice of the first of those "claims" is received by you.

## B. Exclusions

This insurance does not apply to "loss" or "claims" based upon, attributable to or arising out of:

### 1. Contractual Liability

An "insured's" assumption of liability by contract or agreement, whether oral or written. However, this exclusion shall not apply to any liability that an "insured" would have incurred in the absence of such contract or agreement.

### 2. Criminal Investigations or Proceedings

Any criminal investigations or proceedings.

### 3. Deficiency Correction

Costs to research or correct any deficiency.

### 4. Extortion

Any threat, extortion or blackmail. This includes, but is not limited to, ransom payments and private security assistance.

This exclusion does not apply to the extent that insurance coverage is provided under **SECTION I - COVERAGES**, Paragraph **A.1.b.(1) Cyber Extortion**.

## 5. Fines or Penalties

Any fines or penalties.

## 6. Fraudulent, Dishonest or Criminal Acts

Any criminal, fraudulent or dishonest act, error or omission, or any intentional or knowing violation of the law by the "insured".

## 7. Information Technology Products

The propagation or forwarding of malware, including viruses, worms, Trojans, spyware and keyloggers in connection with hardware or software created, produced or modified by you for sale, lease or license to third parties.

## 8. Infrastructure Failure

Failure or interruption of or damage to any electrical power supply network or telecommunication network not owned and operated by the "insured" including, but not limited to, the internet, internet service providers, DNS service providers, cable and wireless providers, internet exchange providers, search engine providers, tier 1 internet protocol networks and other providers of telecommunications or internet infrastructure.

## 9. Knowledge of Falsity

Any oral or written publication of material, if done by the "insured" or at the "insured's" direction with knowledge of its falsity.

## 10. Non-monetary Relief

That part of any "claim" seeking any non-monetary relief.

## 11. Nuclear

Nuclear reaction or radiation or radioactive contamination, however caused.

## 12. Patent or Trade Secret Infringement

Any actual or alleged patent or trade secret violation including any actual or alleged violation of the Patent Act, the Economic Espionage Act of 1996, or the Uniform Trade Secrets Act and their amendments.

## 13. Previously Reported Claims

The same facts alleged or contained in any "claim" which has been reported, or in any circumstances of which notice has been given, under any insurance policy of which this Coverage Part is a renewal or replacement.

#### 14. Prior Wrongful Acts

Any "wrongful act" first occurring before the Retroactive Date shown in the Declarations or any "claim" arising from a "wrongful act" that first occurred prior to the Retroactive Date shown in the Declarations.

#### 15. Prior or Pending Litigation

Any "claim" or other proceeding against an "insured" which was pending or existed prior to the "coverage term", or arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or other proceeding.

#### 16. Property Damage or Bodily Injury

"Property damage" or "bodily injury" other than "bodily injury" arising from an "electronic media incident".

#### 17. War

- a. War, including undeclared or civil war or civil unrest;
- b. Warlike action by military force, including action hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- c. Insurrection, rebellion, revolution, usurped power, or action taken by government authority in hindering or defending against any of these.

#### 18. Willful Complicity

The "insured's" intentional or willful complicity in a covered "loss" event or your reckless disregard for the security of your "computer system" or data.

### SECTION II - LIMITS OF INSURANCE AND DEDUCTIBLE

#### A. Insuring Agreement A - Computer Attack

1. The most we will pay under Insuring Agreement **A** - Computer Attack for Cyber Extortion coverage for "loss" arising from any one "computer attack" is the Cyber Extortion Sublimit stated in the Declarations. This Limit of Insurance is part of, and not in addition to, the Computer Attack Aggregate Limit of Insurance stated in Paragraph **4**. below.
2. The most we will pay under Insuring Agreement **A** - Computer Attack for Loss of Business coverage for "loss" arising from any one "computer attack" is the Loss of Business Sublimit stated in the

Declarations. This sublimit is part of, and not in addition to, the Computer Attack Aggregate Limit of Insurance stated in Paragraph **4**. below.

3. The most we will pay under Insuring Agreement **A** - Computer Attack for Public Relations coverage for "loss" arising from any one "computer attack" is the Public Relations Sublimit stated in the Declarations. This sublimit is part of, and not in addition to, the Computer Attack Aggregate Limit of Insurance stated in Paragraph **4**. below.
4. The Computer Attack Aggregate Limit of Insurance is an annual aggregate limit. This amount is the most we will pay for the total of all "loss" covered under Insuring Agreement **A** - Computer Attack arising out of all "computer attack" events which are first discovered by you during the "coverage term". This limit applies regardless of the number of "computer attack" events first discovered during the "coverage term".
5. A "computer attack" may be first discovered by you in one "coverage term" but it may cause covered "loss" in one or more subsequent "coverage terms". If so, all covered "loss" arising from such "computer attack" will be subject to the Computer Attack Aggregate Limit of Insurance applicable to the "coverage term" when the "computer attack" was first discovered by you.
6. The Computer Attack coverage is subject to the:
  - a. Computer Attack other than Cyber Extortion; and
  - b. Cyber Extortion;

deductibles stated in the Declarations. In the event that elements of "loss" from the same "computer attack" include "cyber extortion expenses" as well as other insured expenses or costs, then only the single highest deductible will apply. You shall be responsible for the applicable deductible amount as respects "loss" arising from each "computer attack" covered under this Coverage Part.

#### B. Insuring Agreement B - Network Security and Electronic Media Liability

1. Except for post-judgment interest, the most we will pay under Insuring Agreement **B** - Network Security and Electronic Media Liability is the Network Security and Electronic Media Liability Aggregate Limit of Insurance stated in the Declarations.

2. The Network Security and Electronic Media Liability Aggregate Limit of Insurance is an annual aggregate limit. This amount is the most we will pay for the total of all "loss" covered under Insuring Agreement **B** - Network Security and Electronic Media Liability (other than post-judgment interest) arising out of all "claims".
3. The Network Security and Electronic Media Liability Aggregate Limit of Insurance for the Extended Reporting Periods (if applicable) shall be part of, and not in addition to, the Network Security and Electronic Media Liability Aggregate Limit of Insurance for the immediately preceding "coverage term".
4. The Insuring Agreement **B** - Network Security and Electronic Media Liability coverage is subject to the Network Security and Electronic Media Liability Deductible stated in the Declarations. You shall be responsible for the applicable deductible amount as respects "loss" arising from each "claim" covered under this Coverage Part. We may, at our option, pay any part or all of the deductible amount to defend or effect settlement of any "claim" or "loss" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

The Limits of Insurance apply separately to each "coverage term".

### SECTION III - DEFENSE AND SETTLEMENT

The provisions contained within this Section apply only to Insuring Agreement **B** - Network Security and Electronic Media Liability.

1. We will have the right and duty to select counsel and defend the "insured" against any "claim" covered by Insuring Agreement **B** - Network Security and Electronic Media Liability, regardless of whether the allegations of such "claim" are groundless, false or fraudulent. However, we shall have no duty to defend the "insured" against any "claim" seeking damages or other relief not insured by Insuring Agreement **B** - Network Security and Electronic Media Liability.
2. We may, with your written consent, make any settlement of a "claim" which we deem reasonable. If you withhold consent to such settlement, our liability for all "loss" resulting from such "claim" will not exceed the amount for which we could have settled such "claim" plus "defense costs" incurred as of the date we proposed such settlement in writing to you.
3. We shall not be obligated to pay any "loss", or to defend or continue to defend any "claim", after the Insuring Agreement **B** - Network Security

and Electronic Media Liability Limit of Insurance has been exhausted.

4. We shall pay all interest on that amount of any judgment within the Insuring Agreement **B** - Network Security and Electronic Media Liability Limit of Insurance which accrues:
  - a. After entry of judgment; and
  - b. Before we pay, offer to pay or deposit in court that part of the judgment within the Insuring Agreement **B** - Network Security and Electronic Media Liability Limit of Insurance or, in any case, before we pay or offer to pay the entire Insuring Agreement **B** - Network Security and Electronic Media Liability Limit of Insurance.

These interest payments shall be in addition to and not part of the Network Security and Electronic Media Liability Limit of Insurance.

### SECTION IV - CONDITIONS

#### 1. Bankruptcy

Your bankruptcy, or the bankruptcy of your estate if you are a sole proprietor, will not relieve us of our obligations under this Coverage Part.

#### 2. Due Diligence

You agree to use due diligence to prevent and mitigate "loss" covered under this Coverage Part. This includes, but is not limited to, complying with, and requiring your vendors to comply with, reasonable and industry-accepted protocols for:

- a. Providing and maintaining appropriate physical security for your premises, "computer systems" and hard copy files;
- b. Providing and maintaining appropriate computer and Internet security; and
- c. Maintaining and updating at appropriate intervals backups of computer data.

#### 3. Duties in the Event of a Claim or Loss

- a. If, during the "coverage term", the "insured" first becomes aware of any circumstance that could reasonably be expected to give rise to a "claim", the "insured" may give written notice to us. The notice must be made as soon as practicable, but in no event more than 60 days after the date the circumstance is first discovered by the "insured", must be made during the "coverage term" and must include:

- (1) The specific details, including the date, of the circumstance;
- (2) The alleged injuries or damage sustained or which may be sustained;

- (3) The names of potential claimants; and
- (4) The manner in which the "insured" first became aware of the circumstance.

Any subsequent "claim" arising out of any circumstance which is the subject of such a written notice will be deemed to have been made at the time written notice in compliance with these requirements was first received by us.

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

- (1) Immediately record the specifics of the "claim" and the date received; and
- (2) Provide us with written notice, as soon as practicable, but in no event more than 60 days after the date the "claim" is first received by you.
- (3) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
- (4) Authorize us to obtain records and other information;
- (5) Cooperate with us in the investigation, settlement or defense of the "claim";
- (6) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of "loss" to which this insurance may also apply; and
- (7) Not take any action, or fail to take any required action, that prejudices your rights or our rights with respect to such "claim".

c. In the event of a "computer attack" covered under Insuring Agreement A - Computer Attack, you must see that the following are done:

- (1) Notify the police if a law may have been broken.
- (2) Notify us as soon as practicable, but in no event more than 60 days after the "computer attack". Include a description of any property involved.
- (3) As soon as possible, give us a description of how, when and where the "computer attack" occurred.
- (4) As often as may be reasonably required, permit us to:

- (a) Inspect the property proving the "computer attack";
- (b) Examine your books, records, electronic media and records and hardware;
- (c) Take samples of damaged and undamaged property for inspection, testing and analysis; and
- (d) Make copies from your books, records, electronic media and records and hardware.

- (5) Send us signed, sworn proof of loss containing the information we request to investigate the "computer attack". You must do this within 60 days after our request. We will supply you with the necessary forms.
- (6) Cooperate with us in the investigation or settlement of the "computer attack".
- (7) If you intend to continue your business, you must resume all or part of your operations as quickly as possible.
- (8) Make no statement that will assume any obligation or admit any liability, for any "loss" for which we may be liable, without our prior written consent.
- (9) Promptly send us any legal papers or notices received concerning the "computer attack" or "loss".

d. We may examine any "insured" under oath, while not in the presence of any other "insured" and at such times as may be reasonably required, about any matter relating to this insurance or the "claim" or "loss", including an "insured's" books and records. In the event of an examination, an "insured's" answers must be signed.

e. No "insured" may, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our prior written consent.

#### 4. Legal Action Against Us

- a. No person or organization has a right:
  - (1) To join us as a party or otherwise bring us into a suit asking for damages from an "insured"; or
  - (2) To sue us under this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a

final judgment against an "insured"; but we will not be liable for damages that are not payable under this Coverage Part, or that are in excess of the applicable Aggregate Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the first "named insured" and the claimant or the claimant's legal representative.

- b. You may not bring any legal action against us involving "loss":
  - (1) Unless you have complied with all the terms of this insurance;
  - (2) Until 90 days after you have filed proof of "loss" with us; and
  - (3) Unless brought within 2 years from the date you reported the "claim" or "loss" to us.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

## 5. Liberalization

If, within 60 days prior to the beginning of this Coverage Part or during the "policy period", we make any changes to any forms or endorsements of this Coverage Part for which there is currently no separate premium charge, and that change provides more coverage than this Coverage Part, the change will automatically apply to this Coverage Part at the latter of:

- a. The date we implemented the change in your state; or
- b. The date this Coverage Part became effective; and

will be considered as included until the end of the current "policy period". We will make no additional premium charge for this additional coverage during the interim.

## 6. Office of Foreign Assets Control (OFAC) Compliance

Whenever insurance coverage provided by this policy would be in violation of any United States economic or trade sanctions, such insurance coverage shall be null and void.

## 7. Other Insurance

- a. If any covered "loss" is covered by any other valid policy, then this Coverage Part shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Coverage Part

by reference in such other policy to this policy's policy number.

- b. When this insurance is excess, we will have no duty to defend the "insured" against any "claim" if any other insurer has a duty to defend the "insured" against that "claim". But we will have the right to associate in the defense and control of any "claim" that we reasonably believe is likely to involve the insurance provided under this Coverage Part. 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.

## 8. Representations

You represent that all information and statements contained in any application or questionnaire submitted in connection with this Coverage Part are true, accurate and complete. All such information and statements are the basis for our issuing this Coverage Part and shall be considered as incorporated into and shall constitute a part of this Coverage Part. Misrepresentation or omission of any material fact may be grounds for the rescission of this Coverage Part.

## 9. Separation of Insureds

Except with respect to the applicable Limit of Insurance, and any rights or duties specifically assigned in this Coverage Part or the policy to which it is attached, to the first "named insured", this insurance applies separately to each "insured" against whom "claim" is made.

## 10. Services

The following conditions apply as respects any services provided to you by any service firm provided or paid for in whole or in part under this Coverage Part:

- a. The effectiveness of such services depends on your cooperation and assistance.
- b. We do not warrant or guarantee that the services will end or eliminate all problems associated with the covered events.

## 11. Subrogation

With respect to any payment under this Coverage Part on behalf of any "insured", we shall be subrogated to the "insured's" rights of recovery to the extent of such payment. The "insured" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to bring suit in the "insured's" name. Any recoveries, less the cost of obtaining them, will be distributed as follows:

- a. To you, until you are reimbursed for any "loss" you sustain that exceeds the sum of the applicable Aggregate Limit of Insurance and the Deductible Amount, if any;
- b. Then to us, until we are reimbursed for the payment under this Coverage Part;
- c. Then to you, until you are reimbursed for that part of the payment equal to the Deductible Amount, if any.

## 12. Valuation - Settlement

All premiums, Limits of Insurance, Deductible Amounts, "loss" and any other monetary amounts under this Coverage Part are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is agreed to or another component of "loss" under this Coverage Part is expressed in any currency other than United States of America dollars, payment under this Coverage Part shall be made in United States dollars at the rate of exchange published in *The Wall Street Journal* on the date the final judgment is entered, settlement amount is agreed upon, or the other component of "loss" is due, respectively.

## 13. 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 - EXTENDED REPORTING PERIODS

The provisions contained within this Section apply only to Insuring Agreement **B** - Network Security and Electronic Media Liability.

1. You shall have the right to the Extended Reporting Periods described in this section, in the event that:
  - a. You or we cancel this Coverage Part;
  - b. You or we refuse to renew this Coverage Part; or
  - c. We renew this Coverage Part on other than a claims-made basis or with a retroactive date later than the Retroactive Date shown in the Declarations.
2. If an event as specified in Paragraph 1. has occurred, you shall have the right to the following:
  - a. An Automatic Extended Reporting Period of 90 days after the effective date of cancellation or nonrenewal at no additional premium in which to give to us written no-

tice of a "claim" of which you first receive notice during said Automatic Extended Reporting Period for any "wrongful act" occurring on or after the Retroactive Date shown in the Declarations and before the end of the "policy period" and which is otherwise covered by this Coverage Part; and

- b. Upon payment of the additional premium stated in the Declarations, a Supplemental Extended Reporting Period for the term stated in the Supplemental Extended Reporting Period Endorsement will be provided immediately following the effective date of cancellation or nonrenewal in which to give to us written notice of a "claim" of which you first receive notice during said Supplemental Extended Reporting Period for any "wrongful act" occurring on or after the Retroactive Date shown in the Declarations and before the end of the "policy period" and which is otherwise covered by this Coverage Part.

To obtain the Supplemental Extended Reporting Period, you must request it in writing and pay the additional premium due, within 60 days of the effective date of cancellation or nonrenewal. The additional premium for the Supplemental Extended Reporting Period shall be fully earned at the inception of the Supplemental Extended Reporting Period. If we do not receive the written request as required, you may not exercise this right at a later date.

- c. The Network Security and Electronic Media Liability Limit for the Extended Reporting Periods shall be part of, and not in addition to, the Network Security and Electronic Media Liability Limit for the immediately preceding "coverage term".

## SECTION VI - DEFINITIONS

1. "Actual cash value" means replacement cost less a deduction that reflects depreciation, age, condition and obsolescence.
2. "Bodily injury" means bodily harm or injury, sickness, disease, disability, humiliation, shock, fright, mental anguish or mental injury, including care, loss of services or death resulting from any of these at any time.
3. "Business income loss" means the sum of the:
  - a. Net income (net profit or loss before income taxes) that would have been earned or incurred; and
  - b. Continuing normal and necessary operating expenses incurred, including "employee" and "executive" payroll,

actually lost by you during the "period of restoration".

4. "Claim":
  - a. Means a civil proceeding against an "insured" in which damages are alleged arising from a "wrongful act" or a series of "interrelated" "wrongful acts" allegedly committed by an "insured", including any appeal therefrom.
  - b. "Claim" includes:
    - (1) An arbitration or alternative dispute resolution proceeding that the "insured" is required to submit to or does submit to with our consent; or
    - (2) A written demand for money, when such demand could reasonably result in a civil proceeding as described in this definition.
  - c. Does not include any demand or action brought by or on behalf of someone who is:
    - (1) Your "executive";
    - (2) Your owner or part-owner; or
    - (3) A holder of your securities;
 in their capacity as such, whether directly, derivatively, or by class action.
5. "Computer attack" means one of the following involving the "computer system":
  - a. An "unauthorized access incident";
  - b. A "malware attack";
  - c. A "denial of service attack" against a "computer system"; or
  - d. A "cyber extortion threat".
6. "Computer system" means a computer or other electronic hardware that:
  - a. Is owned or leased by you and operated under your control; or
  - b. Is operated by a third party service provider and used for the purpose of providing hosted computer application services to you or for processing, maintaining, hosting or storing your electronic data, pursuant to a written contract with you for such services, but such computer or other electronic hardware operated by such third party shall only be considered to be a "computer system" with respect to the specific services provided by such third party to you under such contract.
7. "Coverage term" means the following individual increment, or if a multi-year "policy period",

increments, of time, which comprise the "policy period" of this Coverage Part:

- a. The year commencing on the Effective Date of this Coverage Part at 12:01 AM standard time at your mailing address shown in the Declarations, and if a multi-year "policy period", each consecutive annual period thereafter, or portion thereof if any period is for a period of less than 12 months, constitute individual "coverage terms". The last "coverage term" ends at 12:00 AM standard time at your mailing address shown in the Declarations on the earlier of:
    - (1) The day the "policy period" shown in the Declarations ends; or
    - (2) The day the policy to which this Coverage Part is attached is terminated or cancelled.
  - b. However, if after the issuance of this Coverage Part, any "coverage term" is extended for an additional period of less than 12 months, that additional period of time will be deemed to be part of the last preceding "coverage term".
8. "Coverage territory" means:
    - a. With respect to Insuring Agreement **A** - Computer Attack:
 

Anywhere in the world, but "loss" must involve a "computer system" within the United States (including its territories and possessions), Puerto Rico or Canada.
    - b. With respect to Insuring Agreement **B** - Network Security and Electronic Media Liability:
 

Anywhere in the world, however, "claims" must be brought in the United States (including its territories and possessions), Puerto Rico or Canada.
  9. "Cyber extortion expenses" means:
    - a. The cost of a negotiator or investigator retained by you in connection with a "cyber extortion threat"; and
    - b. Any amount paid by you in response to a "cyber extortion threat" to the party that made the "cyber extortion threat" for the purposes of eliminating the "cyber extortion threat";

when such expenses are necessary and reasonable and arise directly from a "cyber extortion threat". The payment of "cyber extortion expenses" must be approved in advance by us. We will not pay for "cyber extortion expenses" that have not been approved in ad-



vance by us. We will not unreasonably withhold our approval.

10. "Cyber extortion threat" means a demand for money from you based on a credible threat, or series of related credible threats, to:
  - a. Launch a "denial of service attack" against the "computer system";
  - b. Gain access to a "computer system" and use that access to steal, release or publish "personally identifying information", "personally sensitive information" or "third party corporate data";
  - c. Alter, damage or destroy electronic data or software while such electronic data or software is stored within a "computer system";
  - d. Launch a "computer attack" against a "computer system" in order to alter, damage or destroy electronic data or software while such electronic data or software is stored within a "computer system";
  - e. Cause the "insured" to transfer, pay or deliver any funds or property using a "computer system" without your authorization; or
  - f. Inflict "ransomware" on a "computer system".

"Cyber extortion threat" does not include any threat made in connection with a legitimate commercial dispute.

11. "Data re-creation costs":
  - a. "Data re-creation costs" means the costs of an outside professional firm hired by you to research, re-create and replace data that has been lost or corrupted and for which there is no electronic source available or where the electronic source does not have the same or similar functionality to the data that has been lost or corrupted.
  - b. "Data re-creation costs" also means your actual "business income loss" and your necessary and reasonable "extra expenses" arising from the lack of the lost or corrupted data during the time required to research, re-create and replace such data.
  - c. "Data re-creation costs" does not mean costs to research, re-create or replace:
    - (1) Software programs or operating systems that are not commercially available; or
    - (2) Data that is obsolete, unnecessary or useless to you.

12. "Data restoration costs":

- a. Means the costs of an outside professional firm hired by you to replace electronic data that has been lost or corrupted. In order to be considered "data restoration costs", such replacement must be from one or more electronic sources with the same or similar functionality to the data that has been lost or corrupted.
- b. Does not include costs to research, restore or replace:
  - (1) Software programs or operating systems that are not commercially available; or
  - (2) Data that is obsolete, unnecessary or useless to you.

13. "Defense costs":

- a. Means reasonable and necessary expenses resulting solely from the investigation, defense and appeal of any "claim" against an "insured". Such expenses may be incurred by us. Such expenses may include premiums for any appeal bond, attachment bond or similar bond. However, we have no obligation to apply for or furnish such bond.
- b. Does not include the salaries or wages of your "employees" or "executives", or your loss of earnings.

14. "Denial of service attack" means an intentional attack against a target computer or network of computers designed to overwhelm the capacity of the target computer or network in order to deny or impede authorized users from gaining access to the target computer or network through the internet.

15. "Electronic media incident" means the display of information in electronic form by you on a website or in an "insured's" email that resulted in an allegation of:

- a. Infringement of another's copyright, title, slogan, trademark, trade name, trade dress, service mark or service name;
- b. Defamation against a person or organization that is unintended;
- c. A violation of a person's right of privacy, including false light and public disclosure of private facts; or
- d. Interference with a person's right of publicity.

16. "Employee" means any natural person, other than an "executive", who was, now is or will be:
- a. Employed on a full- or part-time basis by you;
  - b. Furnished temporarily to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions;
  - c. 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, but does not mean a temporary employee as defined in Paragraph **b.**; or
  - d. Your volunteer worker, which includes unpaid interns.
17. "Executive" means any natural person who was, now is or will be:
- a. The owner of a sole proprietorship that is a "named insured"; or
  - b. A duly elected or appointed:
    - (1) Director;
    - (2) Officer;
    - (3) Managing Partner;
    - (4) General Partner;
    - (5) Member (if a limited liability company);
    - (6) Manager (if a limited liability company); or
    - (7) Trustee, of a "named insured".
18. "Extra expense" means the additional cost you incur to operate your business during the "period of restoration" over and above the cost that you normally would have incurred to operate your business during the same period had no "computer attack" occurred.
19. "Insured" means:
- a. With respect to Insuring Agreement **A** - Computer Attack any "named insured".
  - b. With respect to Insuring Agreement **B** - Network Security and Electronic Media Liability:
    - (1) Any "named insured"; and
    - (2) Any "employee" or "executive" of a "named insured", but:
      - (a) Only for the conduct of the "named insured's" business with-
- in the scope of his or her employment or duties as an "executive"; and
- (b) Such "employee" or "executive" shall not be an "insured" to the extent his or her actions or omissions are criminal, fraudulent, dishonest or constitute an intentional or knowing violation of the law.
20. "Interrelated" means all events or incidents that have as a common nexus any:
- a. Fact, circumstance, situation, event, transaction, cause; or
  - b. Series of causally connected facts, circumstances, situations, events, transactions or causes.
21. "Loss" means:
- a. With respect to Insuring Agreement **A** - Computer Attack:
 

Those expenses enumerated in Section **I**, **A**, Paragraph **1.b**.
  - b. With respect to Insuring Agreement **B** - Network Security and Electronic Media Liability:
    - (1) "Defense costs"; and
    - (2) "Settlement costs".
22. "Malware attack" means an attack that damages a "computer system" or data contained therein arising from malicious code, including viruses, worms, Trojans, spyware and keyloggers. This does not mean damage from shortcomings or mistakes in legitimate electronic code or damage from code installed on your "computer system" during the manufacturing process or normal maintenance.
23. "Named insured" means the entity or entities shown in the Declarations as a Named Insured.
24. "Network security incident" means a negligent security failure or weakness with respect to a "computer system" which allowed one or more of the following to happen:
- a. The unintended propagation or forwarding of malware, including viruses, worms, Trojans, spyware and keyloggers. Malware does not include shortcomings or mistakes in legitimate electronic code.
  - b. The unintended abetting of a "denial of service attack" against one or more other systems.
  - c. The unintended loss, release or disclosure of "third party corporate data".

**25.** "Period of restoration" means the period of time that begins at the time that the "computer attack" is discovered by you and continues until the earlier of:

- a. The date that all data restoration, data re-creation and system restoration directly related to the "computer attack" has been completed; or
- b. The date on which such data restoration, data re-creation and system restoration could have been completed with the exercise of due diligence and dispatch.

**26.** "Personally identifying information" means information, including health information, that could be used to commit fraud or other illegal activity involving the credit, access to health care or identity of an individual. This includes, but is not limited to, Social Security numbers or account numbers.

"Personally identifying information" does not mean or include information that is otherwise available to the public, such as names and addresses.

**27.** "Personally sensitive information" means private information specific to an individual the release of which requires notification of affected individuals under any applicable law.

"Personally sensitive information" does not mean or include "personally identifying information".

**28.** "Policy period" means the cumulative total of each individual "coverage term" comprising the period of time from the inception date of this Coverage Part shown in the Declarations to the expiration date shown in the Declarations, or its earlier cancellation or termination date.

**29.** "Property damage" means:

- a. Physical injury to or destruction of tangible property including all resulting loss of use; or
- b. Loss of use of tangible property that is not physically injured.

**30.** "Ransomware" means any software that is used to demand a ransom payment by:

- a. Restricting access to a "computer system"; or
- b. Encrypting data held within a "computer system".

**31.** "Settlement costs":

- a. Means the following, when they arise from a "claim":

- (1) Damages (including punitive and exemplary damages and the multiple portion of any multiplied damage award), judgments or settlements;
- (2) Attorney's fees and other litigation costs added to that part of any judgment paid by us, when such fees and costs are awarded by law or court order; and
- (3) Pre-judgment interest on that part of any judgment paid by us.

b. Does not include:

- (1) Civil or criminal fines or penalties imposed by law;
- (2) Taxes; or
- (3) Matters which may be deemed uninsurable under the applicable law.

c. With respect to punitive, exemplary and multiplied damages, the law of the jurisdiction most favorable to the insurability of those fines, penalties or damages shall control for the purpose of resolving any dispute between us and any "insured" regarding whether the fines, penalties or damages specified in this definition above are insurable under this Coverage Part, provided that such jurisdiction:

- (1) Is where those fines, penalties or damages were awarded or imposed;
- (2) Is where any "personal data compromise" took place for which such fines, penalties or damages were awarded or imposed;
- (3) Is where you are incorporated or you have your principal place of business; or
- (4) Is where we are incorporated or have our principal place of business.

**32.** "System restoration costs":

a. Means the costs of an outside professional firm hired by you to do any of the following in order to restore your "computer system" to its pre- "computer attack" level of functionality:

- (1) Replace or reinstall computer software programs;
- (2) Remove any malicious code; and
- (3) Configure or correct the configuration of your "computer system".

b. Does not include:

- (1) Costs to increase the speed, capacity or utility of your "computer system";

- (2) Labor of your "employees" or "executives";
  - (3) Any costs in excess of the "actual cash value" of your "computer system"; or
  - (4) Costs to repair or replace hardware.
- 33.** "Third party corporate data" means any trade secret, data, design, interpretation, forecast, formula, method, practice, credit or debit card magnetic strip information, process, record, report or other item of information of a third party not an "insured" under this Coverage Part which is not available to the general public and is provided to the "named insured" subject to a mutually executed written confidentiality agreement or which the "named insured" is legally required to maintain in confidence; however, "third party corporate data" shall not include "personally identifiable information" or "personally sensitive information".
- 34.** "Unauthorized access incident" means the gaining of access to a "computer system" by:
- a. An unauthorized person or persons; or
  - b. An authorized person or persons for unauthorized purposes.
- 35.** "Wrongful act" means:
- a. An "electronic media incident"; or
  - b. A "network security incident".

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

## **OHIO CHANGES - LOSS INFORMATION**

This endorsement modifies insurance provided under the following:

**CINCINNATI CYBER DEFENSE™ COVERAGE PART  
CINCINNATI DATA DEFENDER™ COVERAGE PART  
CINCINNATI NETWORK DEFENDER™ COVERAGE PART**

The following is added to **SECTION IV - CONDITIONS** (**SECTION V - CONDITIONS** of the Cincinnati Cyber Defense™ Coverage Part):

### **Loss Information**

We shall, on request, provide to the first "named insured" loss information within 45 days of the first "named insured's" request or at the same time as any notice of cancellation or nonrenewal.

# EXHIBIT B



The Cincinnati Insurance Company ■ The Cincinnati Indemnity Company  
The Cincinnati Casualty Company ■ The Cincinnati Specialty Underwriters Insurance Company  
The Cincinnati Life Insurance Company

Kyle Crispin, AIC  
Field Claims Superintendent

May 28, 2020

**VIA EMAIL AND U.S. MAIL**

Neuro-Communications Service DBA Hearing Innovations  
Attn: Dr. Audra Branham  
755 Boardman Canfield Rd Ste C  
Boardman, OH 44512-4387  
Audrabranham1@yahoo.com

**Re: Insured:** Neuro-Communications Service DBA Hearing Innovations  
**Policy No.:** ECP0551719  
**Claim No.:** 3548228  
**Date of Loss:** March 23, 2020

Dear Dr. Audra Branham:

This letter provides Cincinnati Insurance Company's ("Cincinnati") coverage decision for the above-referenced claim made by Neuro-Communications Service DBA Hearing Innovations ("you" or "Dr. Audra Branham"). As submitted, the claim involves the Novel Coronavirus known as SARS-CoV-2, which causes the viral infection known as COVID-19 ("Coronavirus"). The claim asserts business income loss due to mandatory shutdown due to COVID-19. Cincinnati has determined that coverage is unavailable for the claimed loss. Cincinnati regrets that this decision is necessary and wants to describe the basis for its decision. Should you have any disagreement with the basis for this decision, Cincinnati invites you to state the reasons for your disagreement in writing, including by submitting any additional information or documentation. Cincinnati will consider any further information or documents you may supply.

**I. SUMMARY**

The Cincinnati policy provides coverage for direct physical loss or damage to Covered Property at the premises. This direct physical loss or direct physical damage must be to property at the covered premises. Cincinnati's investigation has found no evidence of direct physical loss or damage at your premises. Similarly, there is no evidence of damage to property at other locations, precluding coverage for orders of civil authority.

Nothing in this letter is a waiver of any rights available to Cincinnati under the policy or applicable law. Cincinnati reserves the right to rely on additional rights and/or language in the policy whether or not discussed in this letter.

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## **II. THE CINCINNATI POLICY**

Cincinnati issued policy number ECP0551719 to Neuro-Communications Service DBA Hearing Innovations (the "Policy"). The Policy's effective dates are from 09/14/2019 to 09/14/2022. The Commercial Property Coverage provides limits of insurance for Business Income with Extra Expense up to twelve (12) months for Actual Loss Sustained (ALS).

## **III. BACKGROUND**

On March 23, 2020, Neuro-Communications Service DBA Hearing Innovations reported that it had closed due to Coronavirus issues. On May 5, 2020, Cincinnati received an electronic message from you relaying the following information:

- (1) There was most likely a physical loss or damage due to your patients contracting the virus and possibly bringing it to Neuro-Communications Service DBA Hearing Innovations premises.
- (2) Based on the information received from Neuro-Communications Service DBA Hearing Innovations none of the staff were infected with the Coronavirus.
- (3) Neuro-Communications Service DBA Hearing Innovations was ordered to close down and no operations were permitted by the Executive Order issued by the state of Ohio. This was a public announcement.
- (4) There were other properties along with Neuro-Communications Service DBA Hearing Innovations that may have had Covid-19 at their locations.

## **IV. NO COVERAGE UNDER THE POLICY FOR LOSS OF INCOME DUE TO CORONAVIRUS**

### **A. No Direct Physical Loss**

The Policy's insuring agreement at Section A. Coverage provides the following coverage:

We will pay for direct "loss" to Covered Property at the "premises" caused by or resulting from any Covered Cause of Loss.

(FM 101 05 16 at p. 3.) The Policy defines "loss" as "accidental physical loss or accidental physical damage." (FM 101 05 16 at p. 38.) The Policy defines "premises" as "the Locations and Buildings described in the Declarations." (FM 101 05 16 at p. 39.)



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This claim does not satisfy the Policy's insuring agreement. The claim does not involve direct, physical loss to property at your premises caused by a Covered Cause of Loss.

Although you have indicated that a few patients have tested positive for Coronavirus, this does not establish direct physical loss to property. You have not shown direct physical loss to property, as required by the Policy.

Accordingly, the Policy's insuring agreement is not met and coverage is unavailable under the Policy.

## **B. No Business Income and Extra Expense Coverage**

The Policy's Coverage Extensions section contains provisions for Business Income and Extra Expense coverage, included in Form FM 101 05 16:

### **(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,800 feet of the building or 1,800 feet of the "premises", whichever is greater.<sup>1</sup>

With respect to the requirements of the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purpose of this Coverage Extension only, your "premises" is the portion of the building that you rent, lease or occupy, including:

- (a)** Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the "premises"; and
- (b)** Your personal property in the open (or in a vehicle or portable storage unit) within 1,800 feet of the building or 1,800 feet of the "premises", whichever is greater.

### **(2) Extra Expense**

- (a)** We will pay Extra Expense you sustain during the "period of restoration". Extra Expense means necessary expenses you sustain (as described in Paragraphs **(2)(b)**, **(c)** and **(d)**) during

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<sup>1</sup> FA 286 05 16 changes references in FM 101 05 16 from 1,000 feet to 1,800 feet.

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the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.

(b) If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **(2)(c)**) to:

1) Avoid or minimize the "suspension" of business and to continue "operations" either:

a) At the "premises"; or

b) At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or

2) Minimize the "suspension" of business if you cannot continue "operations".

(c) We will also pay expenses to:

1) Repair or replace property; or

2) Research, replace or restore the lost information on damaged "valuable papers and records";

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage will be reduced by the salvage value of that property.

(d) Extra Expense does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM**.

(Form FM 101 05 16 at pp. 18-19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Business Income and Extra Expense coverage provisions:

### **1. Business Income**

a. We will pay for the actual loss of "Business Income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at "premises" which are described in the Declarations and

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for which a "Business Income" Limit of Insurance is shown in the Declarations. The "loss" must be caused by or result from a Covered Cause of Loss. With respect to "loss" to personal property in the open (or personal property in a vehicle or portable storage unit), the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

- b.** With respect to the requirements set forth in the preceding paragraph, if you are a tenant and occupy only part of the site at which the "premises" are located, for the purposes of this Coverage Part only, your "premises" is the portion of the building which you rent, lease or occupy, including:
  - (1)** Any area within the building or on the site at which the "premises" are located if that area services or is used to gain access to the described "premises".
  - (2)** Your personal property in the open (or in a vehicle or portable storage unit) within 1,000 feet of the building or 1,000 feet of the "premises", whichever distance is greater.

## **2. Extra Expense**

- a.** Extra Expense coverage is provided at the "premises" described in the Declarations only if the Declarations show that "Business Income" coverage applies at that "premises".
- b.** Extra Expense means necessary expenses you sustain (as described in Paragraphs **2.c.**, **d.** and **e.**) during the "period of restoration" that you would not have sustained if there had been no direct "loss" to property caused by or resulting from a Covered Cause of Loss.
- c.** If these expenses reduce the otherwise payable "Business Income" "loss", we will pay expenses (other than the expense to repair or replace property as described in Paragraph **2.d.**) to:
  - (1)** Avoid or minimize the "suspension" of business and to continue "operations" either:
    - (a)** At the "premises"; or
    - (b)** At replacement "premises" or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location; or
  - (2)** Minimize the "suspension" of business if you cannot continue "operations".
- d.** We will also pay expenses to:

PO Box 888 – Clear Lake, IA 50428

[kyle\\_crispin@cinfin.com](mailto:kyle_crispin@cinfin.com) ■ Ph: 641-512-8480 ■ Fx: 888-857-6870

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- (1) Repair or replace property; or
- (2) Research, replace or restore the lost information on damaged "valuable papers and records"

but only to the extent this payment reduces the otherwise payable "Business Income" "loss". If any property obtained for temporary use during the "period of restoration" remains after the resumption of normal "operations", the amount we will pay under this Coverage Form will be reduced by the salvage value of that property.

- e. Extra Expense as described in Paragraphs **2.a.** thru **2.d.** does not apply to "loss" to Covered Property as described in the **BUILDING AND PERSONAL PROPERTY COVERAGE FORM.**

(FA 213 05 16 at pp.1-2.)

Like the Policy's insuring agreement, the Business Income and Extra Expense coverages require that there be direct physical loss or damage to Covered Property at the premises or within at most 1,800 feet of those premises. There is no evidence of any such physical loss or damage. Accordingly, the Business Income and Extra Expense requirements are not satisfied and coverage is unavailable under the Policy.

### **C. No Civil Authority Coverage**

The Policy's Coverage Extensions section contains provisions for Civil Authority coverage, included in Form FM 101 05 16:

When a Covered Cause of Loss causes damage to property other than Covered Property at a "premises", we will pay for the actual loss of "Business Income" and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (a) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

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This Civil Authority coverage for "Business Income" will begin immediately after the time of that action and will apply for a period of up to 30 days from the date of that action.

This Civil Authority coverage for Extra Expense will begin immediately after the time of that action and will end:

- 1) 30 consecutive days after the time of that action; or
  - 2) When your "Business Income" coverage ends;
- whichever is later.

(Form FM 101 05 16 at pp. 19, 21.)

Additionally, the Policy at Form FA 213 05 16 provides separate Civil Authority coverage provisions:

When a Covered Cause of Loss causes direct damage to property other than Covered Property at the "premises", we will pay for the actual loss of "Business Income" you sustain and necessary Extra Expense you sustain caused by action of civil authority that prohibits access to the "premises", provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority coverage for "Business Income" will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will apply for a period of up to 30 consecutive days from the date on which such coverage began.

Civil Authority coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the "premises" and will end 30 consecutive days after the date of that action; or when your Civil Authority coverage for "Business income" coverage ends, whichever is later.

(FA 213 05 16 at p. 2.)

Although you closed your business in response to a governmental order, there is no evidence that the order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations. Moreover, the order does not restrict access to the area immediately surrounding your premises. Because these

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requisite elements of the Civil Authority coverage are not present here, coverage is unavailable under the Policy.

#### **D. Pollutant Clean-Up Coverage**

Form FCP 238 09 15 modifies the Policy to provide the following additional coverage for Medical or Dental Office Pollutant Clean-Up:

We will pay your expenses to extract "pollutants" from Covered Property and land or water at the "premises" if the discharge, dispersal, seepage, migration, release, escape or emission of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the "coverage term". The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each "premises" is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss during each "coverage term". This is in addition to the Limits of Insurance shown in the Declarations.

(FCP 238 09 15.)

The Policy defines "Covered Causes of Loss" to mean "direct 'loss' unless the 'loss' is excluded or limited in this Coverage Part." (FM 101 05 16 at p. 5.) "Loss" is defined as "accidental physical loss or accidental physical damage." (FM 101 05 16 at p. 38.) Thus, a covered cause of loss must be a direct, accidental, physical loss or damage.

As discussed above, the presence of the Coronavirus does not qualify as direct physical loss and there is no coverage. To the extent this coverage applied, it would not apply to expenses incurred to test for or establish the existence of Coronavirus at your premises. Furthermore, the most that is available under this additional coverage is \$10,000 for covered expenses.

#### **V. CONCLUSION**

For the reasons discussed above, Cincinnati has concluded that the Policy provides no coverage for your claim. Cincinnati therefore cannot Neuro-Communications Service DBA Hearing Innovations for any loss of business income from Coronavirus.

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You should note that the U.S. Small Business Administration (“SBA”) may be providing assistance for citizens in your circumstances. I understand that the SBA’s contact information is:

Website: <https://www.sba.gov/funding-programs/disaster-assistance>  
Phone: 1-800-659-2955

This letter is not intended to be a limitation or waiver of any rights available to Cincinnati. Cincinnati’s position is based on the information available to date. Cincinnati reserves all of its rights under the Policy and the applicable law. Cincinnati reserves the right to rely on any and all provisions of the Policy whether or not addressed in this letter.

If you have any information that you believe may impact any of the issues raised in this letter, please forward it to us as soon as possible. If you believe that we have misunderstood the facts or are in error regarding any of the statements set forth above, please notify us as soon as possible.

Please feel free to contact me if you have any questions or would like to discuss this matter.

Sincerely,



Kyle Crispin, AIC

cc: Mayflower Wollam Insurance Group – [john.palmer@mayflowerwollam.com](mailto:john.palmer@mayflowerwollam.com)

# Exhibit C



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO**

NEURO-COMMUNICATION SERVICES,  
INC. d/b/a HEARING INNOVATIONS,  
individually and  
on behalf of all others similarly situated,

Plaintiff,

v.

THE CINCINNATI INSURANCE  
COMPANY; THE CINCINNATI CASUALTY  
COMPANY; AND THE CINCINNATI  
INDEMNITY COMPANY,

Defendants.

Judge Benita Y. Pearson

Case No.: 4:20-cv-1275

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

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Plaintiff Neuro-Communication Services, Inc. d/b/a Hearing Innovation (“Plaintiff”) was forced to suspend its audiology operations because of COVID-19 and the related Ohio civil authority orders. Plaintiff’s suspension of operations was expressly covered under the terms of its insurance policy purchased from Defendants The Cincinnati Insurance Company, The Cincinnati Casualty Company, and The Cincinnati Indemnity Company, which provided coverage for loss of Business Income and related coverages. Significantly, unlike most similar insurance policies in this country, Defendants do not exclude coverage for a virus. Nonetheless, Plaintiff filed a claim and was denied. *See* Dkt. 1 (“Compl.”). This case ensued and Defendants moved to dismiss.

Defendants put forth three primary arguments in support of their motion to dismiss. None of these arguments require dismissal. First, Defendants inappropriately attempt to circumscribe the triggering language for coverage, stating on multiple occasions that the triggering term “loss” means a “direct physical loss” only. *See, e.g.*, Dkt. 9-1 (“Def. Mem.”) at 1-2, 4-5, 7-8. The policy, however, defines loss as “accidental physical loss *or* accidental physical damage.” Dkt. 1-1 (the “Policy”) at PageID #: 89 (emphasis added). Second, Defendants misconstrue Plaintiff’s allegations. Defendants assert that “Plaintiff alleges that it was impacted by measures to limit the spread of Coronavirus among humans.” Def. Mem. at 2. That is an incomplete description of Plaintiff’s allegations. Plaintiff alleges that its business operations were suspended because of “accidental physical loss or accidental physical damage” in the form of both a loss of access to the property for business purposes *caused by COVID-19*, and the Ohio Civil Authority Orders *and the actual damage in the form of the likely physical presence of COVID-19 on or within the property.*” Dkt. 1 (“Compl.”) at ¶ 30 (emphasis added). Plaintiff’s allegations regarding the imminent or actual presence of COVID-19 are supported by the pervasive nature of COVID-19 in Ohio and Mahoning County at the time Plaintiff closed. *Id.* ¶ 22. Further, at least two patients of

Plaintiff had COVID-19, one who sadly died shortly after being seen on the premises. *Id.* ¶ 31. Plaintiff also alleges that COVID-19 has a physical presence that “remains stable and transmittable for up to three hours in aerosols, up to four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel.” *Id.* 23 (citation omitted).

Third, Defendant’s contend that it is settled law that “direct physical loss requires actual, tangible, permanent, physical alteration of property.” Def. Mem. 10. This is also wrong. There is no such settled law. Indeed, the Honorable Judge Stephen R. Bough rejected the exact arguments Defendants are making here. There (like here) Defendants argued that “direct physical loss requires actual, tangible, permanent, physical alteration of property.” *Studio 417, Inc. v. Cincinnati Ins. Co.*, 2020 WL 4692385, at \*4 (W.D. Mo. Aug. 12, 2020). The Court rebuffed this argument. Noting that “physical loss” is not defined in the policies, the Court turned to dictionaries to figure out the plain and ordinary meaning of the term. It remarked:

The Merriam-Webster dictionary defines ‘direct’ in part as ‘characterized by close logical, causal, or consequential relationship.’ Merriam-Webster, [www.merriam-webster.com/dictionary/direct](http://www.merriam-webster.com/dictionary/direct) (last visited August 12, 2020). ‘Physical’ is defined as ‘having material existence: perceptible especially through the senses and subject to the laws of nature.’ Merriam-Webster, [www.merriam-webster.com/dictionary/physical](http://www.merriam-webster.com/dictionary/physical) (last visited August 12, 2020). ‘Loss’ is ‘the act of losing possession’ and ‘deprivation.’ Merriam-Webster, [www.merriam-webster.com/dictionary/loss](http://www.merriam-webster.com/dictionary/loss) (last visited August 12, 2020).

*Id.* Judge Bough found that “[a]pplying these definitions, Plaintiffs have adequately alleged a direct physical loss. Plaintiffs allege a causal relationship between COVID-19 and their alleged losses. Plaintiffs further allege that COVID-19 ‘is a physical substance,’ that it ‘live[s] on’ and is ‘active on inert physical surfaces,’ and is also ‘emitted into the air.’...COVID-19 allegedly attached to and deprived Plaintiffs of their property, making it ‘unsafe and unusable, resulting in direct physical loss to the premises and property.’” *Id.* The Court should do the same here.

Defendants' other arguments are built largely on this same mistake that physical loss *or* physical damage requires physical alteration. *See* Def. Mem. at 15-16 (making the same argument regarding Civil Authority coverage); *Id.* at 17-18 (making the same argument regarding Extra Expense and Extended Business Income). This faulty premise fares no better in those contexts.

At the very least, because the contract is at best ambiguous, discovery is necessary to inform the application of the contract to the facts of this case. *See Schwebel Baking Co. v. FirstEnergy Sols. Corp.*, 2018 WL 1419477, at \*4 (N.D. Ohio Mar. 21, 2018) (“When parties offer alternative constructions of a contract, dismissal is only proper if the interpretation of the party seeking dismissal is the only reasonable construction under the applicable law...A court should not choose between reasonable interpretations of ambiguous contract provisions when considering a motion to dismiss under Rule 12(b)(6).”) (citations omitted). Defendants' motion should be denied.

### **FACTUAL BACKGROUND**

Plaintiff is a local audiology practice with offices in Boardman and Youngstown, Ohio. Compl. ¶¶ 1, 7. *See also* <https://hearinginnovations.com>. Hearing Innovations purchased an all-risk insurance Policy # ECP 055 17 19 from Defendants covering its property and operations at both its locations in Boardman and its location in Youngstown. *Id.* ¶11. *See also*, 10A Couch on Ins. § 148:50 (describing all-risk insurance policies). The insurance coverage provided by Defendants includes Business Income, Extra Expense, Extended Business Income, and Civil Authority coverages. *Id.* ¶¶15-19

The Business Income coverage provided by Defendants as part of its “Coverage Extensions” provides:



**(1) Business Income**

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises", whichever is greater.

Policy at PageID #: 69.

- A "Covered Cause of Loss" is defined as a "direct 'loss' unless the 'loss' is excluded or limited in this Coverage Part. *Id.* at PageID #: 56.
- "[L]oss" is defined "accidental physical loss or accidental physical damage." *Id.* at PageID #: 89.
- "Business Income" means "Net Income (net profit or loss before income taxes) that would have been earned or incurred; [and] Continuing normal operating expenses sustained, including payroll." *Id.*
- "Operations" as is relevant to this Motion means: the insureds "business activities occurring at the 'premises' [.]" *Id.*
- "Period of restoration" as is relevant here "Begins at the time of direct 'loss' [and ends] [t]he date when the property at the 'premises' should be repaired, rebuilt or replaced with reasonable speed and similar quality[.]" *Id.* at 89-90.
- "Premises" means the "Locations and Buildings described in the Declarations." *Id.* at 90.
- "Suspension" means: "The slowdown or cessation of [the insured] business activities[.]" *Id.* at 91.

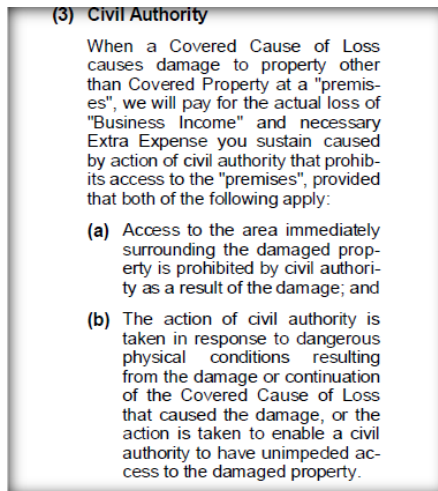
The Building and Personal Property Coverage Form further includes additional coverages related to Business Income including:

1) Extra Expense coverage covering "necessary expenses you sustain . . . during the 'period of restoration' that you would not have sustained if there had been no direct 'loss' to property caused by or resulting from a Covered Cause of Loss." Compl. ¶ 16, Policy at PageID #: 70;

2) Extended Business Income covering actual loss of “Business Income” sustained and Extra Expense incurred after “operations” resume. Compl. ¶ 18, Policy at PageID #: 71; and

3) Civil Authority coverage, under which Defendants agreed to pay for the actual loss of Business Income sustained when access to the scheduled premises is prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area. *Id.* ¶17.

As the policy sets it out:



Policy at PageID #: 70. In addition, these same coverages are also provided by way of an additional “Business Income (And Extra Expense) Coverage Form”, Form FA213 05 16. *Id.* at PageID #: 135-143.

On March 23, 2020, like many businesses across Ohio, Plaintiff ceased almost all its operations. The presence of the virus itself, as well as orders issued in response by Ohio civil authority (connected to COVID-19), caused Plaintiff to reduce or cease operations altogether, resulting in covered Business Income (and related coverages) losses. *See* Compl. ¶ 20-31. As stated in the Complaint, “the suspension of Plaintiff’s operation was caused by ‘accidental physical loss or accidental physical damage’ in the form of both a loss of access to the property for business

purposes caused by COVID-19, and the Ohio Civil Authority Orders and the actual damage in the form of the likely physical presence of COVID-19 on or within the property.” *Id.* at 30.

Having suffered a necessary suspension of operations implicating coverage, on or about March 23, 2020, Plaintiff submitted a claim to Defendants under its policy. Compl. ¶ 34. Defendants denied the claims because Plaintiff had not “shown direct physical loss to property, as required by the Policy.” Dkt. 1-2 Page ID#: 296. Moreover, Defendants denied the Civil Authority coverage claim, because: [a]lthough you closed your business in response to a governmental order, there is no evidence that the order was entered because of direct damage to property at other locations or dangerous physical conditions at other locations. Moreover, the order does not restrict access to the area immediately surrounding your premises.” *Id.* Page ID#: 300.

**I. Legal Standard**

Under Federal Rule of Civil Procedure 8(a)(2), a pleading is sufficient if it provides a “short and plain statement of the claim showing that the pleader is entitled to relief.” The allegations in the complaint must “state a claim to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). On a motion to dismiss, the court will “construe the complaint in the light most favorable to the plaintiff, accept its allegations as true, and draw all reasonable inferences in favor of the plaintiff.” *Watson Carpet & Floor Covering, Inc. v. Mohawk Indus.*, 648 F.3d 452, 456-57 (6th Cir. 2011) (internal quotations and citations omitted). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plaintiff is not required to provide evidence to support its claims at this stage. *See Thompson v. City of Memphis*, 491 F. App’x 616, 620 (6th Cir. 2012) (“Specific facts are not necessary; the statement need only give the defendant fair notice of what the ... claim is and the grounds upon which it rests.”) (citation omitted). The Court “may consider materials in

addition to the complaint if such materials are public records or are otherwise appropriate for the taking of judicial notice.” *New England Health Care Employees Pension Fund v. Ernst & Young, LLP*, 336 F.3d 495, 501 (6th Cir. 2003).

**II. Physical Alteration is Not Required for Coverage.**

**A. Defendants Ignore the Actual Language In Its Own Policy and Ohio Guidance On Contract Interpretation.**

Defendants’ motion asks the Court to find that the term “accidental physical loss or accidental physical damage” is limited to “actual, tangible, permanent, physical alteration of property.” *See* Def. Mem. at *e.g.*, 8-10. Ohio law does not support such a conclusion.

Under Ohio law, a court must first “examine the insurance contract as a whole and presume that the intent of the parties is reflected in the language used in the policy . . . [and] look to the *plain and ordinary meaning of the language used in the policy* unless another meaning is clearly apparent from the contents of the policy.” *Westfield Ins. Co. v. Galatis*, 100 Ohio St. 3d 216, 219 (2003) (emphasis added). *See also Bondex Intern., Inc. v. Hartford Acc. and Indem. Co.*, 667 F.3d 669, 677 (6th Cir. 2011) (If insurance policy “language sets forth the relevant coverages and exclusions in unambiguous terms, [the court] must apply the terms as written, according to their ‘plain and ordinary meaning.’”). “To ascertain the common meanings of terms or phrases not defined in the language of contracts, Ohio courts routinely turn to dictionaries.” *Great-W. Life & Annuity Ins. Co. v. Riser Foods, Inc.*, No. 1:18-CV-01330, 2020 WL 1531165, at \*7 (N.D. Ohio Mar. 31, 2020) (citation omitted).

Defendants do not explain how in plain and ordinary English the phrase “physical loss” *or* “physical damage” can only be satisfied with actual, tangible, permanent, and physical alteration of property. They offer no exegesis over how in plain English these disjunctive terms could be boiled down to that single requirement, nor would any *post hoc* explanation suffice.

Here, using the plain and ordinary meaning of the terms, “physical loss” *or* “physical damage” include both loss of access to property and loss due to the physical presence of COVID-19 even absent physical alteration. The Merriam-Webster dictionary defines “physical” as “having material existence: perceptible especially through the senses and subject to the laws of nature.”<sup>1</sup> *See also* <https://www.collinsdictionary.com/us/dictionary/english/physical> (defining physical to include “real things that be touched and seen, rather than ideas or spoken words”).

Further Merriam-Webster defines “Loss” as not only, “destruction” and “ruin”, but also the “act of losing possession” or “deprivation.”<sup>2</sup> *See also* *Jurenovich v. Trumbull Mem’l Hosp.*, 2020-Ohio-2667, ¶ 30 (“Loss means ‘[t]he failure to maintain possession of a thing.’”) (citation omitted); <https://www.collinsdictionary.com/us/dictionary/english/loss> (defining loss as “no longer having something or having less of it than before”). Synonyms for “loss” include “deprivation,” “dispossession,” and “impairment.” *Loss*, thesaurus.com (September 15, 2020).

Applying these definitions to the facts here, Hearing Innovation alleges a “physical loss” in two ways. First, Plaintiff has alleged that it has been deprived of and impaired in use of its property both by the actual or imminent presence of COVID-19, and by the connected Ohio civil authority orders. Second, Plaintiff has plausibly pled that it has suffered a physical (or measurable) impairment by the likely or imminent presence of COVID-19 at its premises. *See* above at 1-2; Compl. ¶ 30.

Moreover, the term “Damage” does not “plainly” require physical alteration. Definitions of “Damage” include “expense”, “cost”, “stop[ping] [something from] working properly”, or “to

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<sup>1</sup> [www.merriam-webster.com/dictionary/physical](http://www.merriam-webster.com/dictionary/physical) (last visited September 15, 2020).

<sup>2</sup> [www.merriam-webster.com/dictionary/loss](http://www.merriam-webster.com/dictionary/loss) (last visited September 15, 2020).

cause [something] to become less good”.<sup>3</sup> None of these definitions require actual, tangible, permanent, physical alteration of property. As one Court noted:

One dictionary defines “damage” as “injury or harm that reduces value or usefulness.” *Random House Dictionary of the English Language*, 504 (2<sup>nd</sup> ed.1987). Another defines it as “injury or harm to a person or thing, resulting in a loss in soundness, value, etc.” *Webster’s New World Dictionary*, 356 (2<sup>nd</sup> ed.1980). A legal dictionary defines “damage” in part as “every loss or diminution” of a person’s property. *Black’s Law Dictionary* 389 (6th ed.1990). Clearly, without qualification, the term “damage” encompasses more than physical or tangible damage.

*Dundee Mut. Ins. Co. v. Marifjeren*, 587 N.W.2d 191, 194 (N.D. 1998).

Even if “physical damage” does imply structural alteration is required, the policy covers “accidental physical loss *or* accidental physical damage.” “Physical loss” thus means something different than “physical damage.” Ohio insurance law requires contracts be read to give meaning to each word and phrase used in the contract. Thus “physical loss” must have a meaning and provide coverage that is different and separate from “physical damage.” See *Ford Motor Co. v. John L. Frazier & Sons Co.*, 8 Ohio App. 2d 158, 161, 196 N.E.2d 335, 337 (Ohio Ct. App. 1964) (“If possible, every provision in a contract should be held to have been inserted for some purpose and to perform some office[.]”); *Wohl v. Swinney*, 118 Ohio St. 3d 277, 280 (2008) (“When interpreting a contract, we will presume that words are used for a specific purpose and will avoid interpretations that render portions meaningless or unnecessary.”); *Sherwin-Williams Co. v. Travelers Cas. & Sur. Co.*, 2003-Ohio-6039, ¶ 30 (“Insurance contracts should be interpreted in a way that renders all the provisions meaningful and not mere surplusage.”). Judge Bough reached this same conclusion when construing a substantively identical policy and rejected the defendant’s

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<sup>3</sup> <https://www.merriam-webster.com/dictionary/damage>;  
<https://www.collinsdictionary.com/us/dictionary/english/damage>

attempt to “conflate[] loss and damage.” *Studio 417, Inc.*, 2020 WL 4692385, at \*5 (quotations and citations omitted).

Likewise, other Courts have found that the disjunctive nature of physical loss and physical damage must imply two separate insuring provisions. *See Nautilus Grp., Inc. v. Allianz Glob. Risks US*, 2012 WL 760940, at \*7 (W.D. Wash. Mar. 8, 2012) (“[I]f ‘physical loss’ was interpreted to mean ‘damage,’ then one or the other would be superfluous. The fact that they are both included in the grant of coverage evidences an understanding that physical loss means something other than damage.”); *Total Intermodal Servs. Inc. v. Travelers Prop. Cas. Co. of Am.*, 2018 WL 3829767, at \*3 (C.D. Cal. July 11, 2018) (“[T]o interpret ‘physical loss of’ as requiring ‘damage to’ would render meaningless the ‘or damage to’ portion of the same clause, thereby violating a black-letter canon of contract interpretation—that every word be given a meaning.”).<sup>4</sup>

At the very least, and especially at the motion to dismiss stage, the phrase “accidental physical loss or accidental physical damage” is “reasonably susceptible of more than one interpretation” and therefore must be “construed in favor of the insured.” *ACE European Grp., Ltd. v. Abercrombie & Fitch Co.*, 621 F. App’x 338, 340 (6th Cir. 2015) (citation omitted). As the Sixth Circuit recently articulated under Ohio law:

Under Ohio law, if an insurance policy is ambiguous, the policy is construed strictly against the insurer...[I]t will not suffice for [the insurer] to

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<sup>4</sup> Defendants’ arguments that COVID-19 does not cause physical loss because contaminated areas can be sanitized fall flat for the same reasons. Physical loss is not limited to actual, tangible, permanent, physical alteration of property. *See also Studio 417, Inc.*, 2020 WL 4692385, at \*6 n. <sup>6</sup> (“[A] physical loss has been adequately alleged insofar as the presence of COVID-19 and the Closure Orders prohibited or significantly restricted access to Plaintiffs’ premises.”) And Ohio courts have had no trouble finding physical loss or damage in situations where a contaminant can be removed or cleaned without affecting the structural integrity of the property. *See, e.g., Midwest Specialties, Inc. v. Westfield Ins. Co.*, 1994 WL 107192 (Ohio Ct. App. Mar. 30, 1994) (rust caused by vapor from an accidental chemical reaction); *Libbey Inc. v. Factory Mut. Ins. Co.*, 2007 WL 9757792 (N.D. Ohio, June 21, 2007) (calcium deposits in machines from bad oil). Further, Defendants’ “sanitized” argument raises factual issues that may not be resolved at this stage.

demonstrate that its interpretation is more reasonable than the policyholder's...Instead, in order to defeat coverage, the insurer must establish not merely that the policy is capable of the construction it favors, but rather that such an interpretation is the only one that can fairly be placed on the language in question....If the policy is ambiguous, and the insured's interpretation is reasonable, the insured prevails.

*Perry v. Allstate Indem. Co.*, 953 F.3d 417, 421 (6th Cir. 2020) (quotations and citations omitted).

See also *Bluemile, Inc. v. Atlas Indus. Contractors, Ltd.*, 2017-Ohio-9196, ¶ 16, 102 N.E.3d 579, 584 (“The test to be applied in determining whether there is an ambiguity is not what the insurer intended it to mean, but what a reasonably prudent person applying for insurance would have understood.”). Because the provision is at best ambiguous, the motion to dismiss should be denied and discovery should proceed.

Once again, Defendants drafted the insurance policies at issue here. If Defendants wanted to exclude viruses or required structural alteration for coverage, they could have done so. Indeed, the Insurance Services Offices, Inc. (“ISO”) developed a virus exclusion in the wake of the outbreak of Severe Acute Respiratory Syndrome or “SARS” in the early 2000s. Compl. ¶ 39. Defendants chose not to include such exclusion into their coverage, while most insurers did. *Id.* Defendants’ attempt to paint this as a “red-herring.” Def. Mem. 13-14. They also try to argue that the ISO Circular language supports that there never was coverage and the exclusion was just an unneeded “belt and suspenders” *Id.* But Defendants miss the point. If it were unambiguous that virus-related losses could never constitute physical losses (as Defendants maintain), the ISO would not have had to create the exclusion in the first place and insurers would not have had to adopt it. The very need for a virus exclusion in the first instance indicates that all-risk insurance policies otherwise can be understood by a reasonably prudent person to cover losses from viruses.



**B. There Is No Established Ohio Law Requiring Alteration To Structural Integrity.**

Defendants argue that it is settled Ohio law that here there must be actual, tangible, permanent, physical alteration of property for coverage to apply and cite to *Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App.3d 23 (Ohio Ct. App. 2008). *See* Def. Mem. 8-10. Ohio law is not so settled.

*Mastellone* does not control the outcome here. *Mastellone* was not decided at the pleading stage, but instead after discovery on motions for a directed verdict and judgment notwithstanding the verdict. *Mastellone*, 175 Ohio App.3d at 40-42. Further, the facts are far different. There, homeowners sued their insurer alleging that it had breached the policy by refusing to provide coverage for mold found both on the exterior and interior of the house. *Id.* at 27. The trial court directed a verdict in favor of the insurer on the plaintiff's interior mold claim, finding no "physical loss" because undisputed evidence showed that mold levels did not "rise to dangerous levels." *Id.* at 36. *See also id.* at 29 (plaintiff's own experts agreed that mold was "not at dangerous levels"). The exterior mold claim went to the jury, which awarded damages to the plaintiffs. *Id.* at 29. The court of appeals did not reach the "physical loss" issue with regard to the interior mold claim, because it found the claim was untimely. *Id.* at 36-39. However, it reversed judgment with regard to the exterior mold, finding the plaintiffs failed to prove "physical injury," which the court interpreted to mean "harm to the property that adversely affects the structural integrity of the house." *Id.* at 40-41.

More importantly, the insuring language in *Mastellone* does not align with the language here. The *Mastellone* court began its analysis by stating that the insurer "agreed to insure against direct loss to property 'only if that loss is a physical loss to property.'" *Id.* at 40. But a few sentences later, the court stated that "'physical injury' is undefined by the policy, so we give that term its

usual meaning.” *Id.* (emphasis added). Citing unspecified “context with the other terms used in the definition of ‘property damage,’” the *Mastellone* court construed “physical injury” to mean “harm to the property that affects the structural integrity of the house.” *Id.* The *Mastellone* court concluded by finding that the plaintiff presented no evidence that the mold “constituted ‘physical damage’ as that term is used in the policy.” *Id.* at 42 (emphasis added). As such the language of the policy there is not clear, and it is certainly implied that it directly in writing required “physical injury”, a requirement not found here.

Even if the *Mastellone* policy utilized the same language as the policy here it offers no explanation how the plain understanding of “physical loss” requires harm to the structural integrity of the property. Rather the Court supported its findings by pointing to the “context” of other terms there (but it is not clear from the opinion what it was referring to), and by asserting that requiring alteration of structural integrity was “consistent” with a leading treatise on insurance. *Id.* at 40-41 (citing 10A Couch on Insurance § 148:46 (3d ed. 1998) (“The requirement that the loss be ‘physical,’ given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.”)). However, the Court in *Mastellone* went well beyond requiring a physical alteration that is “tangible” and “corporeal”, imposing a “structural integrity” requirement. Also the same provision in *Couch* cited by the *Mastellone* for the requirement that there be “distinct, demonstrable, physical alteration” recognizes that courts have found coverage despite the lack of “physical alteration” where a contaminant renders the property unreasonably dangerous, uninhabitable, or unusable for its intended purpose. 10A Couch on Insurance § 148:46.

Moreover, another Ohio court of appeals decision rejected *Mastellone* noting that it was not the “only possible definition applicable.” *Cincinnati Ins. Cos. v. Motorists Mut. Ins. Co.*, 18 N.E.3d 875, 882 (2014). That court instead explained that “[g]enerally, physical injury to tangible property contemplates damage to property that is either real or personal; the only requirement being that the property is ‘corporeal.’” *Id.*

In short, there is no controlling Ohio decisional law that favors Defendants’ policy interpretation. Because *Mastellone* is not an opinion of the Ohio Supreme Court, and because *Mastellone*’s lack of clarity deprives it of persuasive value, this Court should instead “predict how the Ohio Supreme Court would decide the issue” and look to “Ohio’s general rules of contract interpretation and insurance law.” *Fujitec Am., Inc. v. AXIS Surplus Ins. Co.*, 2020 WL 2112165, at \*5 (S.D. Ohio May 4, 2020) (citations omitted); *see also Perry v. Allstate Indem. Co.*, 953 F.3d 417, 421 (6th Cir. 2020) (citation omitted). As discussed above, ordinary principles of contract interpretation demonstrate the Defendants’ denial of coverage was contrary to the policy.

### **III. Courts from Around the Country Confirm There Is Coverage Here.**

Cincinnati argues that “[n]o case, in Ohio or elsewhere, has held that the presence of a virus constitutes direct physical loss.” Def. Mem. at 10. First, this is no longer true. As discussed above a federal district court has already considered and rejected Cincinnati’s precise arguments in a case currently pending against Cincinnati, holding that the plaintiffs adequately alleged a “physical loss” under the same exact policy language at issue here. *See Studio 417, Inc.*, 2020 WL 4692385, at \*1. Second, many courts have found that tangible substances like viruses satisfy physical loss requirements. For example, in *Studio 417, Inc.*, Judge Bough listed cases as follows:

[o]ther courts have similarly recognized that even absent a physical alteration, a physical loss may occur when the property is uninhabitable or unusable for its intended purpose. *See Port Auth. of New York and New Jersey v. Affiliated FM Ins. Co.*, 311 F.3d 226, 236 (3d Cir. 2002) (affirming denial of coverage but recognizing that “[w]hen the presence of large quantities of

asbestos in the air of a building is such as to make the structure uninhabitable and unusable, then there has been a distinct [physical] loss to its owner”); *Prudential Prop. & Cas. Ins. Co. v. Lilliard-Roberts*, CV–01–1362–ST, 2002 WL 31495830, at \* 9 (D. Or. June 18, 2002) (citing case law for the proposition that “the inability to inhabit a building [is] a ‘direct, physical loss’ covered by insurance”); *General Mills, Inc. v. Gold Medal Ins. Co.*, 622 N.W.2d 147, 152 (Minn. Ct. App. 2001) (“We have previously held that direct physical loss can exist without actual destruction of property or structural damage to property; it is sufficient to show that insured property is injured in some way.”).

*Studio 417, Inc.*, 2020 WL 4692385, at \*5. Other Courts are in accord that the loss of access to a property, including loss of its essential functionality, constitutes a physical loss of property. *See, e.g., TRAVCO Ins. Co. v. Ward*, 715 F. Supp. 2d 699, 702 (E.D. Va. 2010), *aff’d*, 504 F. App’x 251 (4th Cir. 2013) (rejecting the insurer’s argument that physical damage requires some “physical alteration or injury to the property’s structure” and finding direct physical loss because “the building in question had been rendered unusable by physical forces”); *Universal Sav. Bank v. Bankers Standard Ins. Co.*, No. B159239, 2004 WL 515952, at \*6 (Cal. Ct. App. Mar. 17, 2004) (“The plain meaning of ‘direct physical loss’ encompasses physical displacement or loss of physical possession. That the loss must be ‘physical’ distinguishes the loss from some other, incorporeal loss.”), *vacated on other grounds*, No. B159239, 2004 WL 3016644 (Cal. Ct. App. Dec. 30, 2004); *Murray v. State Farm Fire & Cas. Co.*, 509 S.E.2d 1, 17 (W.Va. 1998) (holding that losses that rendered insured property “unusable or uninhabitable, may exist in the absence of structural damage to the insured property.”); *Gregory Packaging Inc. v. Travelers Prop. Cas. Co. of Am.*, No. 2:12-cv-04418 (WHW)(CLW), 2014 WL 6675934, at \*5 (D.N.J. Nov. 25, 2014) (“[P]roperty can be physically damaged, without undergoing structural alteration, when it loses its essential functionality.”); *W. Fire Ins. Co. v. First Presbyterian Church*, 165 Colo.

34, 38-39, 437 P.2d 52, 55 (1968) (holding that gasoline saturation under and around a church rendering occupancy unsafe constituted a “direct physical loss within the meaning of that phrase.”).

Defendants cite several cases that they claim support their position, but these cases are distinguishable. Def. Mem. at 10-12. As explained by the Court in *Studio 417 Inc.*, “these cases were decided at the summary judgment stage, are factually dissimilar, and/or are not binding.” 2020 WL 4692385, at \*5

For example, *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834 (8th Cir. 2006); *Pentair Inc. v. Am. Guar. & Liab. Ins. Co.*, 400 F.3d 613 (8th Cir. 2005); *City of Burlington v. Indem. Ins. Co. of N. Am.*, 332 F.3d 38 (2d Cir. 2003); *N.E. Ga. Heart Ctr., P.C. v. Phoenix Ins. Co.*, 2014 WL 12480022 (N.D. Ga. May 23, 2014); *MRI Healthcare Ctr. Of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766 (2010); *Mama Jo's Inc. v. Sparta Ins. Co.*, 2020 WL 4782369 (11th Cir. Aug. 18, 2020); and *Universal Image Prods., Inc. v. Fed. Ins. Co.*, 475 Fed. App'x 569 (6th Cir. 2012) were all decided at the summary judgment stage of litigation after discovery.

Other cases involve instances where the plaintiffs specifically disclaimed that there was any virus present on the property. See *Gavrilides Mgm't Co., LLC v. Michigan Ins. Co.*, No. 20-258-CB-C30 (Mich. Cir. Ct. July 1, 2020); *Turek Enterprises, Inc. v. State Farm Mut. Auto. Ins. Co.*, No. 20-11655, 2020 WL 5258484, at \*4 (E.D. Mich. Sept. 3, 2020). Here, Plaintiff explicitly alleged the presence of COVID-19 on the premises.

And other cases are easily distinguishable. For example, in *Philadelphia Parking Auth. v. Fed. Ins. Co.*, 385 F. Supp. 2d 280, 289 (S.D.N.Y. 2005) the plaintiff did not allege any kind of contamination or external force rendering the property dangerous or unfit for its intended use, but

instead was seeking a claim based on the closure of an airport after terror attacks. In *Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834, 838 (8th Cir. 2006) there was no ubiquitous contamination present at all; rather the claims were about beef subject to an import ban. *Pentair, Inc. v. Am. Guar. & Liab. Ins. Co.*, 400 F.3d 613 (8th Cir. 2005) was about the inability of a supplier to function after a power failure. The list goes on, *Crestview Country Club, Inc. v. St. Paul Guardian Ins. Co.*, 321 F. Supp. 2d 260, 264 (D. Mass. 2004), was about a fallen tree that did not affect any buildings or impair the operation of the golf course for the owners or players.

Also, noteworthy, the policy language in many of the cases cited by Defendants is not the same as here. For example, the clause in *Source Food Tech., Inc.*, 465 F.3d at 837 referred to “physical loss to property” and not “accidental physical loss or accidental physical damage”); *see also MRI Healthcare Ctr. Of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766 (2010) (interpreting “accidental direct physical loss,” not “accidental physical loss or accidental physical damage”.) As shown above, the language of the policy matters greatly to policy interpretation.

In short, Plaintiff has alleged a harm “tethered to their alleged physical loss caused by COVID-19 and the Closure Orders.” *Studio 417, Inc.*, 2020 WL 4692385, at \*6. That is sufficient for coverage under the policy, and Defendants’ motion to dismiss should be denied.

#### **IV. Plaintiff has Sufficiently Alleged the Remaining Coverages Are Implicated.**

##### **A. The Civil Authority Coverage Provision Are Met.**

Defendants argue first that Plaintiff’s civil authority coverage claim fails because it requires “direct physical loss to property other than the Plaintiffs’ property,” and that “[j]ust as the Coronavirus is not causing direct physical loss to Plaintiffs’ premises, it is not causing direct physical loss to other property.” Def. Mem. at 15-16. Defendant is simply echoing its earlier argument that physical loss requires physical alteration and that COVID-19 is not physically (or

likely physically present). The only difference is that now Defendants are making this argument about property nearby to Plaintiff's and not Plaintiff's property. However, as shown above physical loss does not require physical alteration. And for the same reasons that Plaintiff plausibly alleged COVID-19 caused physical loss or damage to its property, COVID-19 also plausibly caused physical loss or damage to all establishments located in the area immediately surrounding it. Plaintiff should be allowed to proceed to discovery prove its allegation. *Studio 417, Inc.*, 2020 WL 4692385, at \*7 (“This argument is rejected for substantially the same reasons as discussed above. Plaintiffs adequately allege that they suffered a physical loss, and such loss is applicable to other property.”).

Second, Defendants argue that, in order Civil Authority coverage to apply, access to the premises must be completely prohibited, not just limited, and that confinement of people to their homes does not constitute prohibition of access to property. Def. Mem. at 16-17. But under a plain reading, if the business on the premises is ordered closed and the activity of that business is largely banned (as it was here), customers are “prohibited” from “accessing” the “premises.”

Nothing in the policy suggests that every individual must be expressly barred from access to a business that has been closed by civil authority. Just the opposite. While the policy requires that access be “prohibited,” the term “prohibit” does not only mean “forbid,” but can also mean “hinder.” Prohibit, Dictionary.com (September 16, 2020). “Hinder,” in turn, means “to cause delay, interruption, or difficulty in” and “to be an obstacle or impediment.” See Hinder, Dictionary.com (September 16, 2020). The Ohio civil authority orders, which impacted business activities, plainly caused “interruption,” “difficulty,” or presented an “obstacle” for access. At the

very least, the term “prohibition” is ambiguous and must be construed against the insurer.<sup>5</sup> Again rejecting Defendants’ arguments, the Court in *Studio 417, Inc.* agreed that all access need not be prohibited to plausibly trigger Civil Authority coverage. 2020 WL 4692385, at \*7 (“This is particularly true insofar as the Policies require that the ‘civil authority prohibits access,’ but does not specify ‘all access’ or ‘any access’ to the premises.”).<sup>6</sup>

**B. Because There Is A Physical Loss, Extra Expense Coverage and Extended Business Income Coverage Apply.**

Defendants’ entire argument related to Extra Expense and Extended Business Income coverage is that for either to apply there needs to be a direct physical Loss. Def. Mem. 17-19. This argument recognizes that the same initial coverage requirement as applies to Business Income coverage applies to these additional coverages. *Id.* As such this argument fails, because as shown above here there was accidental physical loss or accidental physical damage triggering the coverages under this policy.

**V. At This Stage it is Premature to Dismiss the Cincinnati Casualty Company and the Cincinnati Indemnity Company.**

Defendants argue that the policy shows that the company issuing the policy is The Cincinnati Insurance Company, and that the other named defendants are not parties to that agreement. Def. Mem. 19. However, this is far from clear. The policy itself in multiple places refers not only to The Cincinnati Insurance Company, but also to Cincinnati Casualty Company and the Cincinnati Indemnity Company. For example, at the outset the policy lists all three

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<sup>5</sup> The cases cited by Cincinnati are distinguishable for example in *Ski Shawnee, Inc. v. Commonwealth Ins. Co.*, 2010 WL 2696782, at \*5 (M.D. Pa. July 6, 2010) the main road to a ski resort was closed forcing skiers to use alternative route, but resort remained open and skiing continued.

<sup>6</sup> Moreover, the supposed “requirement” of *complete* prohibition is undermined by the inclusion in Civil Authority coverage of coverage for Extra Expense, which applies to expenses incurred to minimize the suspension of business and to continue operations. Compl. ¶ 82. Clearly Civil Authority coverages does not require complete cessation.



companies and says “[t]hank you for trusting The Cincinnati Insurance Companies with your commercial insurance coverage.” Dkt 1-1 at PageID #:32 (Emphasis added). The face of the contract is simply not clear that the contracting Party is limited to The Cincinnati Insurance Company. Discovery is needed.

Dated: September 16, 2020

Respectfully submitted,

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**CERTIFICATION**

Pursuant to Local Rule 7.1(f), Plaintiff certifies that this case has not been assigned to a track and that the Memorandum Opposition adheres to the twenty (20) page limit set forth in the Local Rule.

*/s/ Greg Coleman* \_\_\_\_\_  
Attorney for Plaintiff and the  
putative classes

**CERTIFICATE OF SERVICE**

A copy of the foregoing has been electronically filed with the Court this 16<sup>th</sup> day of September 2020, and will be served upon counsel of record via the Court's electronic filing system.

/s/ Greg Coleman  
Attorney for Plaintiff and the  
putative classes

# Exhibit D

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

NEURO-COMMUNICATION  
SERVICES, INC. d/b/a HEARING  
INNOVATIONS, individually and  
on behalf of all others similarly  
situated,

Plaintiff,

v.

THE CINCINNATI INSURANCE  
COMPANY; THE CINCINNATI  
CASUALTY COMPANY; AND THE  
CINCINNATI INDEMNITY COMPANY,

Defendants.

Judge Benita Y. Pearson

Case No.: 4:20-cv-1275

**DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO DISMISS**

Pursuant to Federal Rule of Civil Procedure 12(b)(6), Defendants, The Cincinnati Insurance Company The Cincinnati Casualty Company; and The Cincinnati Indemnity Company, (collectively "Cincinnati"), move to dismiss this case because the Plaintiff fails to state a claim for which relief may be granted. Based on the allegations of the Class Action Complaint ("Complaint") and the language of Cincinnati's policy ("the Policy"), Plaintiff cannot prove its claim.

The insurance policy supplies property insurance coverage. It is designed to indemnify loss or damage to property, or loss of income related to damage to property, such as in the case of a fire or storm. Plaintiff alleges that the policy's Business Income and Civil Authority insurance coverages apply to income losses due to the pandemic. But, because they are part of a property insurance policy, these coverages protect Plaintiff only for income losses tied to direct physical loss to property, not for economic loss caused by efforts to protect the public from disease. Yet,

Plaintiff's allegations establish that it has not sustained any direct physical loss. Rather, Plaintiff alleges that it was impacted by measures to limit the spread of Coronavirus among humans. Well-established Ohio law shows that Plaintiff does not allege the required direct physical loss. *See Mastellone v. Lightning Rod Mut. Ins. Co.*, 175 Ohio App. 3d 23, 2008-Ohio-311, 884 N.E.2d 1130 (2008) (Stewart, J.).<sup>1</sup>

In addition to the requirement that there be direct physical loss to property, the Civil Authority coverage requires a government order *prohibiting access* to Plaintiff's premises. The orders Plaintiff cites do not do this. Rather, those orders are directed to the need to minimize person to person interaction and to keep people apart by keeping them at home.

For all of these reasons, and for the other reasons established below, Plaintiff's Complaint should be dismissed.

## **STATEMENT OF FACTS**

### **I. Allegations of the Complaint**

The Complaint includes the following allegations:

- Plaintiff Hearing Innovations is a corporation registered in Ohio with its principal places of business in Boardman, Ohio and Youngstown, Ohio. Hearing Innovations provides audiology and related hearing and balance services to its patients, many of which are elderly or are at high risk of severe illness from COVID-19. (Compl., ECF Doc. # 1, PAGEID # 3, ¶ 7.)
- Published research suggests that the virus that causes COVID-19 remains stable and transmittable for up to three hours in aerosols, up to four hours on copper, up to twenty-four hours on cardboard, and up to two to three days on plastic and stainless steel. (Compl., ECF Doc. # 1, PAGEID # 8, ¶ 23.)
- These Ohio Civil Authority Orders include:
  - a) On March 9, 2020, Ohio Governor Mike DeWine issued Executive Order No. 2020-01D, "Declaring A State of Emergency." The March 9 Order declared a "state of

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<sup>1</sup> *Mastellone* was written by then Judge Melody J. Stewart, now Ohio Supreme Court Justice Melody Stewart.

emergency ... for the entire State to protect the well-being of the citizens of the Ohio from the dangerous effects of COVID-19.”

- b) On March 17, 2020, Director of Ohio Department of Health Amy Acton issued the “Director’s Order for the Management of Non-essential Surgeries and Procedures throughout Ohio.” The March 17 Order stated that “all non-essential or elective surgeries and procedures that utilized PPE should be concluded.”
  - c) On March 22, 2020, Director of Ohio Department of Health Amy Acton issued the “Director’s Stay Safe Ohio Order.” Under the March 22 Order “all individuals currently living within the State of Ohio are ordered to stay at home” unless an exception applies, and “[a]ll persons may leave their homes or place of residence only to participate in activities, businesses or operations as permitted in this Order.” (Compl., ECF Doc. # 1, PAGEID # 8-9, ¶ 25.)
- In addition, on March 22, 2020, the American Academy of Audiology’s Executive Committee stating that “[a]udiology practices are ‘non-essential’” recommending “[t]he most important thing we can do to protect our patients right now is to shut our physical doors.” In addition, the Centers for Disease Control and Prevention (“CDC”) have made similar recommendations to postpone elective and non-urgent visits (Compl., ECF Doc. # 1, PAGEID # 9, ¶ 26.)
  - As a result of COVID-19, the Ohio Civil Authority Orders, the direction from the American Academy of Audiology, as well as information from other sources, including the Ohio Department of Health, Plaintiff ceased almost all its operations on March 23, 2020 and only resumed some operations on May 4, 2020. (Compl., ECF Doc. # 1, PAGEID # 9, ¶ 27.)
  - The presence of COVID-19 and the Ohio Civil Authority Orders (and similar civil authority orders) constitute a Covered Cause of Loss, as they constitute “accidental physical loss or accidental physical damage.” (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 29.)
  - Moreover, the suspension of Plaintiff’s operation was caused by “accidental physical loss or accidental physical damage” in the form of both a loss of access to the property for business purposes caused by COVID-19, and the Ohio Civil Authority Orders and the actual damage in the form of the likely physical presence of COVID-19 on or within the property. (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 30.)
  - Hearing Innovations is aware that at least one of its patients died as a result of COVID-19 shortly after being seen at the premises. Another patient had COVID-19 and had to be treated at the hospital. Plaintiff’s main patient population is over the age of 70 and is in a high-risk category for death due to COVID-19. (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 31.)

- Plaintiff reopened on May 4, 2020. Plaintiff has incurred expenses such as purchasing masks, gloves, and plexiglass in order to reopen. After reopening, Plaintiff had less than half its normal revenue. (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 32.)
- The Ohio Civil Authority Orders restricted (business) access to Plaintiff's premises. (Compl., ECF Doc. # 1, PAGEID # 12, ¶ 37.)
- Plaintiff seeks Class Action certification. (Compl., ECF Doc. # 1, PAGEID #13, ¶¶ 42-43.)

The Complaint contains five counts, all based on breaches of the policy: 1) Breach of Contract – Business Income Coverage; 2) Breach of Contract – Extra Expense Coverage; 3) Breach of Contract – Civil Authority Coverage; 4) Breach of Contract – Extended Business Income Coverage; and 5) Declaratory Judgment. (Compl., ECF Doc. # 1, PAGEID # 6-10, ¶¶ 18-29.)

## **II. Plaintiff's Policy**

Cincinnati issued Policy No. ECP 055 17 19 to NEURO-COMMUNICATION SERVICE DBA HEARING INNOVATIONS, for the policy period September 14, 2019 to September 14, 2022. The pertinent forms in the Policy for purposes of Plaintiff's claim and Complaint, and thus for this Motion, are forms FM 101 05 16 and FA 213 05 16. (Compl., ECF Doc. # 1, PAGEID # 4-6, ¶¶ 13-19.)

The requirement of "direct physical loss" is a core element in property insurance policies like Plaintiff's. For example, direct physical loss to the Plaintiff's property is a requirement for Business Income coverage:

We will pay for the actual loss of "Business Income" and "Rental Value" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss. With respect to "loss" to personal property in the open or personal property in a vehicle or portable storage unit, the "premises" include the area within 1,000 feet of the building or 1,000 feet of the "premises," whichever is greater.



(Compl., ECF Doc. # 1, PAGEID # 5, ¶ 15.). The term “loss” is defined to mean *physical* loss or damage. (Compl., ECF Doc. # 1, PAGEID # 4, ¶ 13.) Accordingly, direct physical loss is required for Business Income coverage.

The requirement of direct physical loss additionally appears in the threshold requirement that there be a Covered Cause of Loss for *any* coverage to be available. (Compl., ECF Doc. # 1, PAGEID # 4, ¶ 13.) Covered Cause of Loss is defined as “direct ‘loss’ unless the ‘loss’ is excluded or limited in this Coverage Part.” (Compl., ECF Doc. # 1, PAGEID # 4, ¶ 13.) Accordingly, direct physical loss is a necessary element of Covered Cause of Loss. (Compl., ECF Doc. # 1, PAGEID # 4, ¶ 13). Because it is an element of Covered Cause of Loss, direct physical loss is an integral part of the Civil Authority coverage. (Compl., ECF Doc. # 1, PAGEID # 5-6, ¶ 17).

The definition of Covered Cause of Loss refers to exclusions. But, exclusions do not come into play unless there is first direct physical loss. “It is elementary in insurance law that a claimant under an insurance policy has the initial burden of proving that he comes within the terms of the policy. Conversely, the insurer carries the burden if it claims that one of the policy exclusions applies to the claimant and prevents recovery.” *Farmers Bank & Tr. Co. of Winchester v. Transam. Ins. Co.*, 674 F.2d 548, 550 (6th Cir. 1982), citing J. Appleman, 21 *Insurance Law and Practice* § 12091 (1980), 46 *C.J.S. Ins.* § 1316 (1946); see *HoneyBaked Foods, Inc. v. Affiliated FM Ins. Co.*, 757 F. Supp. 2d 738, 744 (N.D. Ohio 2010) (“The party seeking to recover under an insurance policy generally bears the burden of demonstrating coverage under the policy as well as proving a loss.”). If an insured demonstrates direct physical loss is present, then exclusions may nevertheless apply. See *Murray v. Auto-Owners Ins. Co.*, 2019-Ohio-3816, ¶ 17 (Ohio Ct. App. Sept. 19, 2019), *appeal not allowed*, 157 Ohio St. 3d 1538, ¶ 17 (2020) (recognizing that the insured has the burden

to prove coverage under the policies and its loss, and then the insurer has the burden to prove an exclusion to coverage applies).

If there is no direct physical loss, the exclusions need not be consulted because there is no coverage to begin with. *See, e.g., Mastellone*, 175 Ohio App. 3d 23, at ¶¶ 61-69; *Zinser v. Auto-Owners Ins. Co.*, 2017 WL 2838393, at \*7 (Ohio Ct. App. July 3, 2017) (Powell, J., concurring and dissenting in part) (“[S]ince I would find the AC units are not covered property under the policy, any further analysis of the policy’s exclusions and limitations is unnecessary.”).

In addition to the direct physical loss requirement that forms part of the covered cause of loss requirement, Civil Authority coverage requires a prohibition of access to the insured’s premises by the civil authority order. Moreover:

- (a) ***Access*** to the area immediately surrounding the damaged property ***is prohibited*** by civil authority as a result of the damage; and
- (b) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the ***Covered Cause of Loss*** that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

(Compl., ECF Doc. # 1, PAGEID # 5-6, ¶ 17) (emphasis added). Accordingly, Civil Authority coverage’s requirements include direct physical loss to property other than the insured’s property and prohibition of access to the insured’s property.

## **LAW AND ARGUMENT**

### **I. Motion to Dismiss Standard**

A motion to dismiss for failure to state a claim should be granted if, after the complaint’s allegations are taken as true and all reasonable inferences are made in favor of the nonmoving party, a claim to relief is not plausible on its face. “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl.*

*Corp. v. Twombly*, 550 U.S. 544, 570 (2007); *Cook v. Ohio Nat'l Life Ins. Co.*, 2020 WL 3056228, at \*3 (6th Cir. June 9, 2020); *In re Nat'l Prescription Opiate Litig.*, 2020 WL 1669655, at \*2 (N.D. Ohio Apr. 3, 2020); *Windsor-Laurelwood Ctr. Behavioral Med. v. Waller Lansden Dortch & Davis*, 2015 WL 1859005, at \*3 (N.D. Ohio Apr. 22, 2015).

Importantly, legal conclusions and other unsupported conclusions stated in the complaint may not be considered in determining a motion to dismiss. “In construing the complaint in the light most favorable to the non-moving party, ‘the court does not accept the bare assertion of legal conclusions as enough, nor does it accept as true unwarranted factual inferences.’” *Lipman v. Budish*, 383 F. Supp. 3d 764, 769 (N.D. Ohio 2019) (quoting *Gritton v. Disponett*, 332 F. App'x. 232 (6th Cir. 2009)); *see also Doe v. Coll. of Wooster*, 243 F. Supp. 3d 875, 887 (N.D. Ohio 2017) (“The Court, however, ‘need not accept as true legal conclusions or unwarranted factual inferences.’”); *Stolmayer v. McCarthy*, 171 F. Supp. 3d 690, 693 (N.D. Ohio) (“A court need not, however, credit bald assertions, legal conclusions, or unwarranted inferences.”).

It is proper for the Court to consider the insurance Policy attached to the Complaint. *See, e.g., Rondigo, LLC v. Twp. of Richmond*, 641 F.3d 673, 680–81 (6th Cir. 2011); *Bassett v. Nat'l Collegiate Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008); *Rettig v. Henry Cty. Bd. of Commissioners*, 2020 WL 2839421, at \*3 (N.D. Ohio May 31, 2020). The Policy is part of the Complaint's allegations. Where the Policy terms and the Complaint's allegations are in conflict, the terms of the Policy control. *See, e.g., Langford v. Koskela*, 2017 WL 6803554, at \*3 (6th Cir. Jan. 24, 2017); *Thomas v. Equifax Info. Servs., LLC*, 2020 WL 1987949, at \*5 (S.D. Ohio Apr. 27, 2020).

## **II. There Is No Direct Physical Loss and Accordingly No Business Income Coverage**

As shown, the Policy states that it only provides coverage where there is direct physical

loss. But, the Complaint does not allege facts showing any direct physical loss. Accordingly, Plaintiff cannot possibly prove its claim. *See Mastellone*, 175 Ohio App. 3d 23, at ¶ 68.

**A. *Mastellone* Establishes That There Is No Direct Physical Loss To Plaintiff's Premises**

*Mastellone* is directly on point. The relevant policy language in *Mastellone* was the same as that in the Cincinnati Policy; it required “direct physical loss.” *Mastellone*, 175 Ohio App. 3d 23, at ¶¶ 61–62. *Mastellone* holds that mold on exterior building siding did not constitute direct physical injury because it did not adversely affect the building’s structural integrity. In this context, *Mastellone* rejects an argument that dark staining on the siding was physical injury, because the staining was “only temporary and did not affect the structure of the wood.” The mold could be removed via cleaning, and its presence “did not alter or otherwise affect the structural integrity of the siding.” *Id.* at ¶¶ 61–69. *Mastellone* relied on a leading insurance law treatise, which states, “[t]he requirement that the loss be ‘physical,’ given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.” 10A *Couch on Ins.* § 148:46 (3d Ed.1998). There was no coverage in *Mastellone*.

Similarly here, the alleged presence of the Coronavirus did not cause direct physical loss to property. The loss Plaintiff alleges is caused by the presence of the virus in our world, not by any physical damage or effect on Plaintiff’s building or someone else’s property. Indeed, premises where the virus has been confirmed to be present, such as hospitals, nursing homes and grocery stores, have remained open. This is because those properties are themselves undamaged. Moreover, even if Coronavirus could cause direct physical loss to the premises, which it cannot, Plaintiff does not allege that the Coronavirus was ever present on any of its premises. Rather,

Plaintiff speculates as to “the likely physical presence of COVID-19 on or within the property.” (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 30.).

Moreover, even if present on Plaintiff’s premises, the Coronavirus did not affect the structural integrity of the buildings, and it could be removed by cleaning. The Centers for Disease Control and Prevention (CDC) has instructed that the Coronavirus can be wiped off surfaces by cleaning. “The virus that causes COVID-19 can be killed if you use the right products. EPA has compiled a list of disinfectant products that can be used against COVID-19, including ready-to-use sprays, concentrates, and wipes.” (See CDC Reopening Guidance for Cleaning and Disinfecting (4/28/2020), attached as Ex. A; see also CDC, *Cleaning and Disinfection for Households*, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cleaning-disinfection.html> (accessed July 27, 2020)).<sup>2</sup> Thus, as in *Mastellone*, even if there is actual presence of the Coronavirus, there is no direct physical loss because the virus either dies naturally in days, or it can be wiped away.

Plaintiff uses the word “physical” from time to time to insinuate direct physical loss happened. (See Compl., ECF Doc. # 1, PAGEID # 8-10, ¶¶ 24, 26, 30). But, as shown, Plaintiff recites bare, conclusory allegations of “the likely physical presence of COVID-19 on or within the property.” (Compl., ECF Doc. # 1, PAGEID # 10, ¶ 30.). In essence, Plaintiff asserts generally that the Coronavirus is a physical thing, present in Ohio, and measures were taken to stop its spread

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<sup>2</sup> Federal courts may take judicial notice of information published on the CDC’s website or websites of other government agencies. See *Reeves v. PharmaJet, Inc.*, 846 F. Supp. 2d 791, 794 n.1 (N.D. Ohio 2012) (taking judicial notice of FDA and CDC as matters of public record); *Black v. Columbus Pub. Sch.*, 2007 WL 2713873, at \*12 (S.D. Ohio Sept. 17, 2007) (taking judicial notice of information published on CDC’s website); see also *Gent v. CUNA Mut. Ins. Soc’y*, 611 F.3d 79, at \*84 n.5 (1st Cir. 2010) (taking judicial notice of CDC website); *Loucka v. Lincoln Nat’l Life Ins. Co.*, 334 F. Supp. 3d 1, at 8-9 (D.D.C. 2018) (taking judicial notice of CDC testing criteria published on website and collecting cases). This judicial notice does not convert a motion to dismiss into one for summary judgment. *Reeves*, 846 F. Supp. 2d at 794 n.5.

from person to person. In this regard, Plaintiff conflates the virus' presence and the orders addressing it with structural, physical damage. (Compl., ECF Doc. # 1, PAGEID # 8, 10, ¶¶ 24, 30). Plaintiff's legal characterizations and arguments are not facts and thus do not stand in the way of dismissal. *See, e.g., Lipman*, 383 F. Supp. 3d at 769; *Coll. of Wooster*, 243 F. Supp. 3d at 887; *Stolmayer*, 171 F. Supp. 3d at 693.

The Coronavirus, like the mold in *Mastellone*, does not physically alter the structure of property. This includes the type of property that would be in Plaintiff's premises, such as drywall or counters. Plaintiff does not allege that the virus physically altered the structure of its property. Accordingly, there was no direct physical loss, and thus no Business Income or Extra Expense coverage.

**B. American Case Law Is Overwhelmingly Consistent With *Mastellone***

No case, in Ohio or elsewhere, has held that the presence of a virus constitutes direct physical loss. By contrast, numerous court decisions nationwide support *Mastellone*, holding that direct physical loss requires actual, tangible, permanent, physical alteration of property. *See, e.g., 10A Couch on Ins.* § 148:46 ("The requirement that the loss be 'physical,' given the ordinary definition of that term, *is widely held* to exclude alleged losses that are intangible or incorporeal and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property." (emphasis added)). *See also Source Food Technology, Inc. v. U.S. Fidelity & Guarantee Co.*, 465 F.3d 834, 838 (8th Cir. 2006); *Pentair, Inc. v. Am. Guar. & Liab. Ins. Co.*, 400 F.3d 613, 616 (8th Cir. 2005); *City of Burlington v. Indem. Ins. Co. of N. Am.*, 332 F.3d 38, 44 (2d Cir. 2003); *Social Life Magazine, Inc. v. Sentinel Ins. Co., Ltd.*, 1:20-cv-03311-VEC (S.D.N.Y.), ECF No. 24-1 at p. 15; *N.E. Ga. Heart Ctr., P.C. v. Phoenix Ins. Co.*, 2014 WL

12480022, at \*7 (N.D. Ga. May 23, 2014); *Phila. Parking Auth. v. Fed. Ins. Co.*, 385 F. Supp. 2d 280, 289 (S.D.N.Y. 2005); *MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 780 (2010); *Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, Case No. 20-000258-CB (Ingham County, Mich., Jul. 1, 2020).

The recent case of *Gavrilides Management Co., LLC v. Michigan Insurance Co.*, Case No. 20-258-CB-C30 (Mich. Cir. Ct., Ingham Cty.) is instructive. There, two restaurants in Lansing, Michigan alleged loss of business income resulting from Coronavirus and sought business interruption, extra expense and civil authority coverage under a policy issued by Michigan Insurance Company. On July 1, 2020, the court rejected the insureds' claims and granted summary disposition to the insurer. Specifically, the court held that direct physical loss requires that Coronavirus physically alter the integrity of the property or create tangible physical damage, ***which the insureds failed to demonstrate.***<sup>3</sup>

Another case reaching the same conclusion as *Mastellone* is *Source Food*. There, the U.S. government imposed an embargo on the import of Canadian beef following the detection of Mad Cow Disease in Canadian cattle. Despite no evidence that *its* beef was contaminated, Source Food could not import it into the U.S. because of the embargo. It claimed lost business income under its insurance policy. That policy, like Plaintiff's, provided coverage if the suspension of business operations was "caused by ***direct physical loss to Property.***" 465 F.3d at 835. The insured argued "that the closing of the border caused direct physical loss to its beef product because the beef

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<sup>3</sup> *Gavrilides Management Co. v. Michigan Insurance Co.* appears to be the first U.S. court decision addressing whether the presence of the virus is direct physical loss. A copy of the Order and transcript of the motion for summary disposition proceedings are attached as Exhibit B. The Court also uploaded a video recording of the oral argument, available at <https://www.youtube.com/watch?v=Dsy4pA5NoPw&feature=youtu.be>. The court's decision begins at the 23:13 mark of the recording.

product was treated as though it were physically contaminated by mad cow disease and lost its function.” *Id.* at 836. The court rejected this argument: “To characterize Source Food’s inability to transport its truckload of beef product across the border and sell the beef product in the United States as direct physical loss to property would render the word ‘physical’ meaningless.” *Id.* at 838. Similarly, *Philadelphia Parking Authority* holds that there was no direct physical loss to an airport parking facility that had to close on September 11, 2001 due to the terrorist attacks.

Furthermore, *Social Life Magazine* addresses the direct physical loss issue in a Coronavirus coverage case. *Social Life* denies a motion for preliminary injunction.<sup>4</sup> The principal basis for that decision is the conclusion that virus does not cause direct physical loss to property. The virus damages lungs; not printing presses. *Social Life*, 1:20-cv-03311-VEC (S.D.N.Y.), ECF No. 24-1 at p. 5. *Social Life* holds that “this kind of business interruption needs some damage to the property to prohibit you from going.” 1:20-cv-03311-VEC (S.D.N.Y.), ECF No. 24-1 at p. at p. 15.

Additionally, as demonstrated, the CDC has instructed that the Coronavirus can be removed via cleaning. *Mastellone* recognizes that there is no direct physical loss when a substance can be removed via cleaning. In this regard, *Mastellone* is again consistent with U.S. law generally. *See, e.g., Mama Jo’s, Inc. v. Sparta Ins. Co.*, 2018 WL 3412974, at \*9 (S.D. Fla. June 11, 2018) (“[C]leaning is not considered direct physical loss.”); *Universal Image Prods., Inc. v. Chubb Corp.*, 703 F. Supp. 2d 705, 710 (E.D. Mich. 2010) (a complete cleaning of a ventilation system was not a direct physical loss), *aff’d*, 475 Fed. App’x. 569 (6th Cir. 2012).

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<sup>4</sup> No written opinion was issued in *Social Life*, but a copy of the hearing transcript is available through the Federal Court’s filing system, PACER. A file-stamped copy of the preliminary injunction hearing transcript reflecting the Court’s ruling and rationale is attached as Exhibit C. Federal courts may take judicial notice of “proceedings in other courts of record.” *Walburn v. Lockheed Martin Corp.*, 431 F.3d 966, 972 n.5 (6th Cir. 2005) (quoting *Rodic v. Thistledown Racing Club, Inc.*, 615 F.3d 736, 738 (6th Cir. 1980); *see also Landt v. Farley*, 2012 WL 4473209, at \*1 n.2 (N.D. Ohio Sept. 26, 2012) (taking notice of filings on PACER in a different lawsuit).



**C. The Lack of a Virus Exclusion Is Irrelevant Because There Is No Direct Physical Loss**

Plaintiff alleges that there is coverage because the Policy does not contain a virus exclusion. (Compl., ECF Doc. # 1, PAGEID # 2 and 12, ¶¶ 5, 38-39.) That assertion is a red-herring, irrelevant and legally incorrect. An exclusion can become relevant only if it is first determined that there is direct physical loss. *Murray*, 2019-Ohio-3816, at ¶ 17. Thus, if there is no direct physical loss in the first place, the existence or absence of a virus exclusion is irrelevant. For example, in *Ward General Insurance Services., Inc. v. Employers Fire Insurance Co.*, 114 Cal. App. 4th 548, 555 (2003), a computer database crashed. Because there was no direct physical loss, it was “unnecessary to analyze the various exclusions and their application to this case.” Similarly, in *Newman Myers Kreines Gross Harris, P.C. v. Great N. Ins. Co.*, 17 F. Supp. 3d 323, 333 (S.D.N.Y. 2014), a law firm closed because of a power outage. The loss of power was not a direct physical loss. Accordingly, it was unnecessary to decide whether a flood exclusion applied. *See also Zinser*, 2017-Ohio-5668, at ¶ 33, 2017 WL 2838393, at \*7; *Roundabout Theatre Co. v. Cont’l Cas. Co.*, 302 A.D.2d 1, 9, 751 N.Y.S.2d 4, 10 (2002).

Plaintiff raises an Insurance Services Office (ISO) 2006 Virus Exclusion. (Compl., ECF Doc. # 1, PAGEID # 12, ¶ 39). Because the Policy’s direct physical loss language is clear and unambiguous, that ISO exclusion is unneeded extrinsic evidence and should not be considered. The Policy language controls the coverage determination, not the ISO exclusion. *See, e.g., Gerrish Corp. v. Universal Underwriters Ins. Co.*, 947 F.2d 1023, 1027 (2d Cir. 1991); *Monsanto Co. v. Aetna Cas. & Sur. Co.*, 1993 WL 542399, at \*5 (Del. Super. Ct., Dec. 9, 1993), *aff’d*, 653 A.2d 305 (Del. 1994).

Nonetheless, the ISO Circular regarding that exclusion strongly supports Cincinnati here. In it, ISO specifically mentioned SARS and the risk of the spread of disease by the presence of

disease-causing agents on interior building surfaces.<sup>5</sup> (See Ex. D at pp.13-14 of 21 (“Introduction” and “Current Concerns” sections)). ISO stated that there was no coverage in the absence of a virus exclusion: “While *property policies have not been a source of recovery for losses involving contamination by disease-causing agents . . .*” (See Ex. D at p.14 of 21 (“Current Concerns” section)). In this context, ISO foresaw that policyholders might try to do exactly what Plaintiff is attempting here, which is to assert coverage where there is none: “the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are *efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.*” (See Ex. D at p.14 of 21 (“Current Concerns” section)) (Emphasis added). So, on filing the virus exclusion, ISO recognized that virus was not covered to begin with. But, it presented the virus exclusion as a “belt and suspenders” approach to the issue. This stated intent is the exact opposite of Plaintiff’s interpretation of the role of the virus exclusion in commercial property policies.

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<sup>5</sup> A true and correct copy of the ISO Circular regarding the exclusion referenced by Plaintiff (Compl., ECF Doc. # 1, PAGEID # 12, ¶ 39) and filed with the Ohio Department of Insurance is attached as Exhibit D. This Court can take judicial notice of the ISO Circular on two distinct bases. First, Plaintiff selectively describes the ISO exclusion in its Complaint. Second, the ISO Circular is an agency filing with the Ohio Department of Insurance. See *Commercial Money Ctr., Inc. v. Ill. Union Ins. Co.*, 508 F.3d 327, 335-36 (6th Cir. 2007) (“when a document is referred to in the pleadings and is integral to the claims, it may be considered without converting a motion to dismiss into one for summary judgment.”); *Kinman v. U.S.*, 2016 WL 7165986, at \*4 (S.D. Ohio Dec. 7, 2016) (recognizing that on a 12(b)(6) motion to dismiss, the court “consider[s] the complaint in its entirety, as well as . . . documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.”) (citing *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007)); *Oliver v. Gallagher*, 2006 WL 517640, at \*3 (N.D. Ohio Mar. 2, 2006) (“Defendants correctly note that this Court may take judicial notice of the agency filings and decisions without converting Defendants’ motion into one for summary judgment. . . . This Court also takes judicial notice of the affidavit attached to Plaintiff’s response brief. Defendants refer to this affidavit in their reply brief, and there is no reason to believe Plaintiff would object to the taking of judicial notice of this material as he himself attached the document in support of his claim.”) (internal citation omitted).

In sum, there is no coverage here because there is no direct physical loss. For that reason, no exclusion is needed.

### **III. There Is No Civil Authority Coverage**

#### **A. There Is No Direct Physical Loss To Other Property**

Cincinnati has demonstrated that the plain language of the policy states that direct physical loss to property other than the Plaintiff's property is necessary. Courts nationwide agree. *See United Air Lines, Inc. v. Ins. Co. of State of PA*, 439 F.3d 128, 131 (2d Cir. 2006); *Kelagher, Connell & Conner, P.C. v. Auto-Owners Ins. Co.*, 2020 WL 886120, at \*8 (D.S.C. Feb. 24, 2020); *Not Home Alone, Inc. v. Phila. Indem. Ins. Co.*, 2011 WL 13214381, at \*6 (E.D. Tex. Mar. 30, 2011); *S. Tex. Med. Clinics, P.A. v. CNA Fin. Corp.*, 2008 WL 450012, at \*10 (S.D. Tex. Feb. 15, 2008). *Mastellone* is the bellwether case regarding direct physical loss. It holds that there must be structural alteration of property for the coverage to apply.

Just as the Coronavirus is not causing direct physical loss to Plaintiff's premises, it is not causing direct physical loss to other property. The Complaint fails to identify any direct physical loss, anywhere. Rather, it alleges that the State of Ohio ordered non-essential businesses to close. (Compl., ECF Doc. # 1, PAGEID # 8-9, ¶ 25.) This was done to keep people separated and thus to retard the spread of the virus. No facts are alleged that demonstrate that these things happened because of direct physical loss to anybody's property. Instead, the closings protected the public from human to human transmission of the virus.

After properly disregarding Plaintiff's repeated legal conclusions, there are no alleged facts asserting any direct physical loss. There are no alleged facts showing any change or alteration of anybody's physical property by the Coronavirus. There are, however, facts showing that the Coronavirus can be removed via cleaning. As established, this is the marker of something that is

*not* direct physical loss. Accordingly, there is no direct physical loss to any other property as is required for Civil Authority coverage.

**B. The Requisite Prohibition of Access Is Lacking**

The Civil Authority coverage requires that access to Plaintiff's premises be prohibited by an order of Civil Authority. But, no government order issued in Ohio prohibits access to Plaintiff's premises. Plaintiff alleges that access to its premises was not actually prohibited, only that access was reduced for "business purposes." (Compl., ECF Doc. # 1, PAGEID # 10-11, ¶¶ 30, 33(b) & 33(d).) Based on the lack of such a prohibition here, there is no Civil Authority coverage.

This legal mandate is established by the law nationally. There is no Civil Authority coverage when a government order keeps people confined to their homes. For example, "losses due to curfew and other such restrictions are not generally recoverable. . . . If a policy provides for business interruption coverage where access to an insured's property is denied by order of civil authority, access to the property must actually be specifically prohibited by civil order, not just made more difficult or less desirable." 11A *Couch on Ins.* § 167:15. *See also Syufy Enterprises v. Home Ins. Co. of Ind.*, 1995 WL 129229, at \*2 (N.D. Cal. Mar. 21, 1995); *Bros., Inc. v. Liberty Mut. Fire Ins. Co.*, 268 A.2d 611, 614 (D.C. 1970). In *Syufy*, there was a curfew to prevent rioting. Still, there was no civil authority coverage because access to the insured premises, a movie theater, was not prohibited. In *Brothers*, a curfew was ordered because of riots. However, although the curfew prevented a restaurant's customers from being out and about, it did not prohibit access to the restaurant's premises.

Furthermore, access to premises must be prohibited, not just limited. *See Schultz Furriers, Inc. v Travelers Cas. Ins. Co. of Am.*, 2015 WL 13547667, at \*6 (N.J. Super. L. July 24, 2015); *Ski Shawnee, Inc. v. Commonwealth Ins. Co.*, 2010 WL 2696782, at \*4 (M.D. Pa. July 6, 2010).

In *Schultz*, there were serious traffic issues in lower Manhattan following Superstorm Sandy. Nevertheless, there was no civil authority coverage because it was not completely impossible for the public to access the insured store. In *Ski Shawnee*, a bridge repair hindered or dissuaded the majority of customers from visiting a ski resort. *Ski Shawnee* holds that did not constitute prohibition of access to the premises. *See also Goldstein v Trumbull Ins. Co.*, 2016 WL 1324197, at \*12 (N.Y. Sup. Ct. Apr. 05, 2016); *TMC Stores, Inc. v. Federated Mut. Ins. Co.*, 2005 WL 1331700, at \*4 (Minn. Ct. App. June 7, 2005).

Because the Complaint's allegations establish access was not prohibited, the Civil Authority coverage does not apply.

#### **IV. There Is No Extra Expense Coverage and No Extended Business Income Coverage**

Counts two and four seek Extra Expense coverage and Extended Business Income coverage. As with Business Income coverage discussed above, those two coverages require that there be direct physical loss. As demonstrated above, Plaintiff cannot establish that there was any direct physical loss. Accordingly, these two coverages do not apply and the complaint should be dismissed.

Courts in Ohio and nationwide have consistently held that Extra Expense coverage does not exist if there is no direct physical loss. *See, e.g., Fed. Ins. Co. v. Hartford Steam Boiler Inspection & Ins. Co.*, 415 F.3d 487, 491–92 (6th Cir. 2005) (“The Federal policy provided coverage for ‘Business Income And Extra Expense’ . . . . Per the terms of the policy, the actual or potential impairment must be caused by or result from ‘direct physical loss or damage’”); *Schmidt v. Travelers Indem. Co. of Am.*, 101 F. Supp. 3d 768, 782 (S.D. Ohio 2015) (“Further, the coverage provided for an insured’s Extra Expense does not cover Plaintiffs’ loss because the expenses incurred did not follow a ‘direct physical loss of or damage to property caused by or resulting from

a Covered Cause of Loss.”); *see also Cincinnati Ins. Co. v. Washer & Refrigeration Supply Co.*, 2008 WL 4600560, 10 (S.D. Ala. Aug. 22, 2008) (“In the instant case, the court finds that the provisions at issue are not ambiguous. The business income and extra expense coverage form clearly states that to be covered a ‘suspension’ must be caused by direct physical loss of or damage to property.”); *The Phoenix Ins. Co. v. Infogroup, Inc.*, 147 F. Supp. 3d 815, 823 (S.D. Iowa 2015) (“Reading the policy language as a whole, the policy is unambiguous in its requirement that an insured suffer ‘direct physical loss or damage’ to trigger the Extra Expense Clause.”); *Newman Myers*, 17 F. Supp. 3d at 331 (“The critical policy language here—‘direct physical loss or damage’—similarly, and unambiguously, requires some form of actual, physical damage to the insured premises to trigger loss of business income and extra expense coverage.”).

Likewise, courts in Ohio and nationwide have consistently held that Extended Business Income coverage does not exist if there is no direct physical loss. *See, e.g., Bluemile, Inc. v. Atlas Indus. Contractors, Ltd.*, 102 N.E.3d 579, 585 (Ohio Ct. App. 2017) (“a reasonably prudent person applying for EBI coverage would have understood the policy to mean that EBI coverage would end on the date the insured could restore its operations with reasonable speed, to the condition that would have existed if no direct physical loss or physical damage occurred.”); *see also Washer & Refrigeration Supply*, 2008 WL 4600560, at \*6 (“The policy states that this ‘Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions . . . . The policy further states that the loss of business income ‘must be caused by direct physical loss or damage’”); *Lava Trading Inc. v. Hartford Fire Ins. Co.*, 365 F. Supp. 2d 434, 443 (S.D.N.Y. 2005) (“the provision for Extended Business Income Coverage, which explicitly provides coverage for the potentially longer—i.e., ‘extended’—period, up to 30 days, that it may take to ‘restore [the insured’s] Operations . . . to the condition that would have existed if no direct

physical loss or damage occurred.”); *Optical Works & Logistics, LLC v. Sentinel Ins. Co., Ltd.*, 2020 WL 1480723, at \*4 (D.R.I. Mar. 26, 2020) (“The policy provides business interruption coverage during the so-called period of restoration, which is defined in the policy as beginning with the date of the direct physical loss or physical damage . . . . In this case, this period is a period of up to twelve months plus an extra 120 days by applying Extended Business Income coverage under the policy.”).

**V. The Cincinnati Casualty Company and The Cincinnati Indemnity Company Should Be Dismissed**

As shown in the Policy, the Policy is a contract between Plaintiff and defendant The Cincinnati Insurance Company. Plaintiff names other, affiliated companies as defendants. But, the Policy is attached to the complaint. It shows that the company issuing the Policy is The Cincinnati Insurance Company. (Compl., ECF Doc. # 1-1, PAGEID # 50.) The other named defendants are not parties to that agreement. “It is axiomatic that the plaintiff must show that the defendant was a party to the contract before proceeding on a breach of contract theory.” *Ohio Nat’l Life Assur. Corp. v. Crescent Fin. & Ins. Agency, Inc.*, 2016 WL 659153, at \*2 (S.D. Ohio Feb. 18, 2016) (granting motion to dismiss breach of contract claim where defendant was “not a party to the Agreement, so Plaintiffs’ breach of contract claim against him fails as a matter of law”); *see also Rorig v. Thiemann*, 2007 WL 2071909, at \*9-11 (S.D. Ohio July 17, 2007) (dismissing claims for breach of contract and breach of duty of good faith and fair dealing where defendant was not a party to the contract). Accordingly, defendants The Cincinnati Casualty Company and The Cincinnati Indemnity Company should be dismissed.

**CONCLUSION**

There is no possible coverage because the coronavirus does not cause direct physical loss and the Plaintiff does not allege otherwise. The Plaintiff has not alleged a claim on which relief can be granted. Accordingly, Cincinnati's Motion to Dismiss should be granted.

Dated: August 3, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was filed electronically and will be served by operation of the Court's electronic filing system.

/s/Michael K. Farrell  
Attorney for Defendants

**EXHIBIT A**

# GUIDANCE FOR CLEANING AND DISINFECTING

## PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES



SCAN HERE  
FOR MORE  
INFORMATION

This guidance is intended for all Americans, whether you own a business, run a school, or want to ensure the cleanliness and safety of your home. Reopening America requires all of us to move forward together by practicing social distancing and other [daily habits](#) to reduce our risk of exposure to the virus that causes COVID-19. Reopening the country also strongly relies on public health strategies, including increased testing of people for the virus, social distancing, isolation, and keeping track of how someone infected might have infected other people. This plan is part of the larger [United States Government plan](#) and focuses on cleaning and disinfecting public spaces, workplaces, businesses, schools, and can also be applied to your home.

### **Cleaning and disinfecting public spaces including your workplace, school, home, and business will require you to:**

- Develop your plan
- Implement your plan
- Maintain and revise your plan

Reducing the risk of exposure to COVID-19 by cleaning and disinfection is an important part of reopening public spaces that will require careful planning. Every American has been called upon to slow the spread of the virus through social distancing and prevention hygiene, such as frequently washing your hands and wearing face coverings. Everyone also has a role in making sure our communities are as safe as possible to reopen and remain open.

The virus that causes COVID-19 can be killed if you use the right products. EPA has compiled a list of disinfectant products that can be used against COVID-19, including ready-to-use sprays, concentrates, and wipes. Each product has been shown to be effective against viruses that are harder to kill than viruses like the one that causes COVID-19.

For more information, please visit **CORONAVIRUS.GOV**



## GUIDANCE FOR CLEANING AND DISINFECTING PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

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This document provides a general framework for cleaning and disinfection practices. The framework is based on doing the following:

1. Normal routine cleaning with soap and water will decrease how much of the virus is on surfaces and objects, which reduces the risk of exposure.
2. Disinfection using [EPA-approved disinfectants against COVID-19](#) can also help reduce the risk. Frequent disinfection of surfaces and objects touched by multiple people is important.
3. When [EPA-approved disinfectants](#) are not available, alternative disinfectants can be used (for example, 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions). Do not mix bleach or other cleaning and disinfection products together--this can cause fumes that may be very dangerous to breathe in. Keep all disinfectants out of the reach of children.

Links to specific recommendations for many public spaces that use this framework, can be found at the end of this document.

***It's important to continue to follow federal, state, tribal, territorial, and local guidance for reopening America.***

### **A Few Important Reminders about Coronaviruses and Reducing the Risk of Exposure:**

- Coronaviruses on surfaces and objects naturally die within hours to days. Warmer temperatures and exposure to sunlight will reduce the time the virus survives on surfaces and objects.
- Normal routine cleaning with soap and water removes germs and dirt from surfaces. It lowers the risk of spreading COVID-19 infection.
- Disinfectants kill germs on surfaces. By killing germs on a surface after cleaning, you can further lower the risk of spreading infection. [EPA-approved disinfectants](#) are an important part of reducing the risk of exposure to COVID-19. If disinfectants on this list are in short supply, alternative disinfectants can be used (for example, 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions).
- Store and use disinfectants in a responsible and appropriate manner according to the label. Do not mix bleach or other cleaning and disinfection products together--this can cause fumes that may be very dangerous to breathe in. Keep all disinfectants out of the reach of children.
- Do not overuse or stockpile disinfectants or other supplies. This can result in shortages of appropriate products for others to use in critical situations.
- Always wear gloves appropriate for the chemicals being used when you are cleaning and disinfecting. Additional personal protective equipment (PPE) may be needed based on setting and product. For more information, see [CDC's website on Cleaning and Disinfection for Community Facilities](#).
- Practice social distancing, wear facial coverings, and follow proper prevention hygiene, such as washing your hands frequently and using alcohol-based (at least 60% alcohol) hand sanitizer when soap and water are not available.

If you oversee staff in a workplace, your plan should include considerations about the safety of custodial staff and other people who are carrying out the cleaning or disinfecting. These people are at increased risk of being exposed to the virus and to any toxic effects of the cleaning chemicals. These staff should wear appropriate PPE for cleaning and disinfecting. To protect your staff and to ensure that the products are used effectively, staff should be instructed on how to apply the disinfectants according to the label. For more information on concerns related to cleaning staff, visit the Occupational Safety and Health Administration's website on [Control and Prevention](#).

## DEVELOP YOUR PLAN

Evaluate your workplace, school, home, or business to determine what kinds of surfaces and materials make up that area. Most surfaces and objects will just need normal routine cleaning. Frequently touched surfaces and objects like light switches and doorknobs will need to be cleaned and then disinfected to further reduce the risk of germs on surfaces and objects.

- First, clean the surface or object with soap and water.
- Then, disinfect using an [EPA-approved disinfectant](#).
- If an EPA-approved disinfectant is unavailable, you can use 1/3 cup of bleach added to 1 gallon of water, or 70% alcohol solutions to disinfect. Do not mix bleach or other cleaning and disinfection products together. Find additional information at [CDC's website on Cleaning and Disinfecting Your Facility](#).

You should also consider what items can be moved or removed completely to reduce frequent handling or contact from multiple people. Soft and porous materials, such as area rugs and seating, may be removed or stored to reduce the challenges with cleaning and disinfecting them. Find additional reopening guidance for cleaning and disinfecting in the [Reopening Decision Tool](#).

It is critical that your plan includes how to maintain a cleaning and disinfecting strategy after reopening. Develop a flexible plan with your staff or family, adjusting the plan as federal, state, tribal, territorial, or local guidance is updated and if your specific circumstances change.

### Determine what needs to be cleaned

Some surfaces only need to be cleaned with soap and water. For example, surfaces and objects that are not frequently touched should be cleaned and do not require additional disinfection. Additionally, disinfectants should typically not be applied on items used by children, especially any items that children might put in their mouths. Many disinfectants are toxic when swallowed. In a household setting, cleaning toys and other items used by children with soap and water is usually sufficient. Find more information on cleaning and disinfection toys and other surfaces in the childcare program setting at [CDC's Guidance for Childcare Programs that Remain Open](#).

These questions will help you decide which surfaces and objects will need normal routine cleaning.

#### Is the area outdoors?

Outdoor areas generally require normal routine cleaning and do not require disinfection. Spraying disinfectant on sidewalks and in parks is not an efficient use of disinfectant supplies and has not been proven to reduce the risk of COVID-19 to the public. You should maintain existing cleaning and hygiene practices for outdoor areas.

The targeted use of disinfectants can be done effectively, efficiently and safely on outdoor hard surfaces and objects frequently touched by multiple people. Certain outdoor areas and facilities, such as bars and restaurants, may have additional requirements. More information can be found on CDC's website on [Food Safety and the Coronavirus Disease 2019 \(COVID-19\)](#).

There is no evidence that the virus that causes COVID-19 can spread directly to humans from water in pools, hot tubs or spas, or water play areas. Proper operation, maintenance, and disinfection (for example, with chlorine or bromine) of pools, hot tubs or spas, and water playgrounds should kill the virus that causes COVID-19. However, there are additional concerns with outdoor areas that may be maintained less frequently, including playgrounds, or other facilities located within local, state, or national parks. For more information, visit CDC's website on [Visiting Parks & Recreational Facilities](#).

### **Has the area been unoccupied for the last 7 days?**

If your workplace, school, or business has been unoccupied for 7 days or more, it will only need your normal routine cleaning to reopen the area. This is because the virus that causes COVID-19 has not been shown to survive on surfaces longer than this time.

There are many public health considerations, not just COVID-19 related, when reopening public buildings and spaces that have been closed for extended periods. For example, take measures to ensure the [safety of your building water system](#). It is not necessary to clean ventilation systems, other than routine maintenance, as part of reducing risk of coronaviruses. For healthcare facilities, additional guidance is provided on [CDC's Guidelines for Environmental Infection Control in Health-Care Facilities](#).

### **Determine what needs to be disinfected**

Following your normal routine cleaning, you can disinfect frequently touched surfaces and objects using a product from [EPA's list of approved products that are effective against COVID-19](#).

These questions will help you choose appropriate disinfectants.

### **Are you cleaning or disinfecting a hard and non-porous material or item like glass, metal, or plastic?**

Consult [EPA's list of approved products for use against COVID-19](#). This list will help you determine the most appropriate disinfectant for the surface or object. You can use diluted household bleach solutions if appropriate for the surface. Pay special attention to the personal protective equipment (PPE) that may be needed to safely apply the disinfectant and the manufacturer's recommendations concerning any additional hazards. Keep all disinfectants out of the reach of children. Please visit CDC's website on [How to Clean and Disinfect](#) for additional details and warnings.

Examples of frequently touched surfaces and objects that will need routine disinfection following reopening are:

- tables,
- doorknobs,
- light switches,
- countertops,
- handles,
- desks,
- phones,
- keyboards,
- toilets,
- faucets and sinks,
- gas pump handles,
- touch screens, and
- ATM machines.

Each business or facility will have different surfaces and objects that are frequently touched by multiple people. Appropriately disinfect these surfaces and objects. For example, transit stations have [specific guidance](#) for application of cleaning and disinfection.

### **Are you cleaning or disinfecting a soft and porous material or items like carpet, rugs, or seating in areas?**

Soft and porous materials are generally not as easy to disinfect as hard and non-porous surfaces. [EPA has listed a limited number of products approved for disinfection for use on soft and porous materials](#). Soft and porous materials that are not frequently touched should only be cleaned or laundered, following the directions on the item's label, using the warmest appropriate water setting. Find more information on [CDC's website on Cleaning and Disinfecting Your Facility](#) for developing strategies for dealing with soft and porous materials.

## Consider the resources and equipment needed

Keep in mind the availability of cleaning and disinfection products and appropriate PPE. Always wear gloves appropriate for the chemicals being used for routine cleaning and disinfecting. Follow the directions on the disinfectant label for additional PPE needs. In specific instances, personnel with specialized training and equipment may be required to apply certain disinfectants such as fumigants or fogs. For more information on appropriate PPE for cleaning and disinfection, see [CDC's website on Cleaning and Disinfection for Community Facilities](#).

## IMPLEMENT YOUR PLAN

Once you have a plan, it's time to take action. Read all manufacturer's instructions for the cleaning and disinfection products you will use. Put on your gloves and other required personal protective equipment (PPE) to begin the process of cleaning and disinfecting.

### Clean visibly dirty surfaces with soap and water

Clean surfaces and objects using soap and water prior to disinfection. Always wear gloves appropriate for the chemicals being used for routine cleaning and disinfecting. Follow the directions on the disinfectant label for additional PPE needs. When you finish cleaning, remember to wash hands thoroughly with soap and water.

Clean or launder soft and porous materials like seating in an office or coffee shop, area rugs, and carpets. Launder items according to the manufacturer's instructions, using the warmest temperature setting possible and dry items completely.

### Use the appropriate cleaning or disinfectant product

[EPA approved disinfectants](#), when applied according to the manufacturer's label, are effective for use against COVID-19. Follow the instructions on the label for all cleaning and disinfection products for concentration, dilution, application method, contact time and any other special considerations when applying.

### Always follow the directions on the label

Follow the instructions on the label to ensure safe and effective use of the product. Many product labels recommend keeping the surface wet for a specific amount of time. The label will also list precautions such as wearing gloves and making sure you have good ventilation during use of the product. Keep all disinfectants out of the reach of children.

## MAINTAIN AND REVISE YOUR PLAN

Take steps to reduce your risk of exposure to the virus that causes COVID-19 during daily activities. [CDC provides tips](#) to reduce your exposure and risk of acquiring COVID-19. Reducing exposure to yourself and others is a shared responsibility. Continue to update your plan based on updated guidance and your current circumstances.

### Continue routine cleaning and disinfecting

Routine cleaning and disinfecting are an important part of reducing the risk of exposure to COVID-19. Normal routine cleaning with soap and water alone can reduce risk of exposure and is a necessary step before you disinfect dirty surfaces.

## GUIDANCE FOR CLEANING AND DISINFECTING PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

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Surfaces frequently touched by multiple people, such as door handles, desks, phones, light switches, and faucets, should be cleaned and disinfected at least daily. More frequent cleaning and disinfection may be required based on level of use. For example, certain surfaces and objects in public spaces, such as shopping carts and point of sale keypads, should be cleaned and disinfected before each use.

Consider choosing a different disinfectant if your first choice is in short supply. Make sure there is enough supply of gloves and appropriate personal protective equipment (PPE) based on the label, the amount of product you will need to apply, and the size of the surface you are treating.

### Maintain safe behavioral practices

We have all had to make significant behavioral changes to reduce the spread of COVID-19. To reopen America, we will need to continue these practices:

- social distancing (specifically, staying 6 feet away from others when you must go into a shared space)
- frequently washing hands or use alcohol-based (at least 60% alcohol) hand sanitizer when soap and water are not available
- wearing cloth face coverings
- avoiding touching eyes, nose, and mouth
- staying home when sick
- cleaning and disinfecting frequently touched objects and surfaces

It's important to continue to follow federal, state, tribal, territorial, and local guidance for reopening America. Check this resource for [updates on COVID-19](#). This will help you change your plan when situations are updated.

### Consider practices that reduce the potential for exposure

It is also essential to change the ways we use public spaces to work, live, and play. We should continue thinking about our safety and the safety of others.

To reduce your exposure to or the risk of spreading COVID-19 after reopening your business or facility, consider whether you need to touch certain surfaces or materials. Consider wiping public surfaces before and after you touch them. These types of behavioral adjustments can help reduce the spread of COVID-19. There are other resources for more information on [COVID-19](#) and how to [Prevent Getting Sick](#).

Another way to reduce the risk of exposure is to make long-term changes to practices and procedures. These could include reducing the use of porous materials used for seating, leaving some doors open to reduce touching by multiple people, opening windows to improve ventilation, or removing objects in your common areas, like coffee creamer containers. There are many other steps that businesses and institutions can put into place to help reduce the spread of COVID-19 and protect their staff and the public. More information can be found at [CDC's Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission](#).

## CONCLUSION

Reopening America requires all of us to move forward together using recommended best practices and maintaining safe daily habits in order to reduce our risk of exposure to COVID-19. Remember: We're all in this together!

### Additional resources with more specific recommendations.

<b>HEALTHCARE SETTINGS</b>	<b>Long-term Care Facilities, Nursing Homes</b>	<a href="#">Infection Control in Healthcare Settings</a>
		<a href="#">Using Personal Protective Equipment</a>
		<a href="#">Hand Hygiene</a>
		<a href="#">Interim Guidance for Infection Prevention</a>
		<a href="#">Preparedness Checklist</a>
		<a href="#">Things Facilities Should Do Now to Prepare for COVID-19</a>
		<a href="#">When there are Cases in the Facility</a>
	<b>Dialysis Facilities</b>	<a href="#">Infection Control in Healthcare Settings</a>
		<a href="#">Using Personal Protective Equipment</a>
		<a href="#">Hand Hygiene</a>
<a href="#">Interim guidance for Outpatient Hemodialysis Facilities</a>		
<a href="#">Patient Screening</a>		
<b>Blood and Plasma Facilities</b>	<a href="#">Infection control in Healthcare Settings</a>	
	<a href="#">Infection Control and Environmental Management</a>	
	<a href="#">Using Personal Protective Equipment</a>	
	<a href="#">Hand Hygiene</a>	
	<a href="#">Interim Guidance for Blood and Plasma Collection Facilities</a>	
<b>Alternate Care Sites</b>	<a href="#">Infection Prevention and Control</a>	
<b>Dental Settings</b>	<a href="#">Infection Control in Healthcare Settings</a>	
	<a href="#">Using Personal Protective Equipment</a>	
	<a href="#">Hand Hygiene</a>	
	<a href="#">Interim Guidance for Dental Settings</a>	
<b>Pharmacies</b>	<a href="#">Infection Control in Healthcare Settings</a>	
	<a href="#">Using Personal Protective Equipment</a>	
	<a href="#">Hand Hygiene</a>	
	<a href="#">Interim Guidance for Pharmacies</a>	
	<a href="#">Risk-Reduction During Close-Contact Services</a>	
<b>Outpatient and ambulatory care facilities</b>	<a href="#">Infection Control in Healthcare Settings</a>	
	<a href="#">Using Personal Protective Equipment</a>	
	<a href="#">Hand Hygiene</a>	
	<a href="#">Interim Guidance for Outpatient &amp; Ambulatory Care Settings</a>	
<b>Postmortem Care</b>	<a href="#">Using Personal Protective Equipment</a>	
	<a href="#">Hand Hygiene</a>	
	<a href="#">Collection and Submission of Postmortem Samples</a>	
	<a href="#">Cleaning and Waste Disposal</a>	
	<a href="#">Transportation of Human Remains</a>	



## GUIDANCE FOR CLEANING AND DISINFECTING PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

<b>COMMUNITY LOCATIONS</b>	<b>Critical Infrastructure Employees</b>	<a href="#">Interim Guidance for Critical Infrastructure Employees</a>
		<a href="#">Cleaning and Disinfecting your Facility</a>
	<b>Schools and childcare programs</b>	<a href="#">K-12 and Childcare Interim Guidance</a>
		<a href="#">Cleaning and Disinfecting your Facility</a>
		<a href="#">FAQ for Administrators</a>
		<a href="#">Parent and Teacher Checklist</a>
	<b>Colleges and universities</b>	<a href="#">Interim Guidance for Colleges &amp; Universities</a>
		<a href="#">Cleaning and Disinfecting your Facility</a>
		<a href="#">Guidance for Student Foreign Travel</a>
		<a href="#">FAQ for Administrators</a>
	<b>Gatherings and community events</b>	<a href="#">Interim Guidance for Mass Gatherings and Events</a>
		<a href="#">Election Polling Location Guidance</a>
		<a href="#">Events FAQ</a>
	<b>Community- and faith-based organizations</b>	<a href="#">Interim Guidance for Organizations</a>
		<a href="#">Cleaning and Disinfecting your Facility</a>
	<b>Businesses</b>	<a href="#">Interim Guidance for Businesses</a>
	<b>Parks &amp; Rec Facilities</b>	<a href="#">Guidance for Administrators of Parks</a>
	<b>Law Enforcement</b>	<a href="#">What Law Enforcement Personnel Need to Know about COVID-19</a>
	<b>Homeless Service Providers</b>	<a href="#">Interim Guidance for Homeless Service Providers</a>
	<b>Retirement Homes</b>	<a href="#">Interim Guidance for Retirement Communities</a>
	<a href="#">FAQ for Administrators</a>	
<b>Correction &amp; Detention Facilities</b>	<a href="#">Interim Guidance for Correction &amp; Detention Facilities</a>	
	<a href="#">FAQ for Administrators</a>	
<b>HOME SETTING</b>	<b>Preventing Getting Sick</b>	<a href="#">How to Protect Yourself and Others</a>
		<a href="#">How to Safely Sterilize/Clean a Cloth Face Covering</a>
		<a href="#">Cleaning and Disinfecting your Home</a>
		<a href="#">Tribal - How to Prevent the Spread of Coronavirus (COVID-19) in Your Home</a>
		<a href="#">Tribal - How to Care for Yourself at Home During Covid-19</a>
	<b>Running Errands</b>	<a href="#">Shopping for Food and Other Essential Items</a>
		<a href="#">Accepting Deliveries and Takeout</a>
		<a href="#">Banking</a>
		<a href="#">Getting Gasoline</a>
		<a href="#">Going to the Doctor and Pharmacy</a>
<b>If you are sick</b>	<a href="#">Steps to Help Prevent the Spread of COVID19 if You are Sick</a>	

GUIDANCE FOR CLEANING AND DISINFECTING PUBLIC SPACES, WORKPLACES, BUSINESSES, SCHOOLS, AND HOMES

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<b>TRANSPORTATION</b>	<b>Ships</b>	<a href="#">Interim Guidance for Ships on Managing Suspected COVID-19</a>
	<b>Airlines</b>	<a href="#">Cleaning Aircraft Carriers</a>
		<a href="#">Airline Agents Interim Guidance</a>
	<b>Buses</b>	<a href="#">Bus Transit Operator</a>
	<b>Rail</b>	<a href="#">Rail Transit Operators</a>
		<a href="#">Transit Station Workers</a>
	<b>EMS Transport Vehicles</b>	<a href="#">Interim Guidance for EMS</a>
	<b>Taxis and Rideshares</b>	<a href="#">Keeping Commercial Establishments Safe</a>
<b>RESTAURANTS &amp; BARS</b>		<a href="#">Best Practices from FDA</a>

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GAVRILIDES MANAGEMENT COMPANY  
LLC, GAVRILIDES PROPERTY  
MANAGEMENT LLC, & GAVRILIDES  
MANAGEMENT WILLIAMSTON LLC,

Case No. 20-258-CB

HON. JOYCE DRAGANCHUK

Plaintiffs,

v

MICHIGAN INSURANCE COMPANY,

Defendant.

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hemrich@secretwardle.com

**ORDER GRANTING DEFENDANT MICHIGAN INSURANCE COMPANY'S  
MOTION FOR SUMMARY DISPOSITION**

At a session of said Court, held in the  
City of Mason, County of Ingham,  
State of Michigan, on July 21, 2020

PRESENT: Hon. JOYCE DRAGANCHUK  
CIRCUIT COURT JUDGE

This matter having come before the Court on Defendant Michigan Insurance Company's Motion for Summary Disposition, and the Court having reviewed the briefs from both parties and heard oral argument from both parties in open court, and the Court being otherwise fully advised in the premises:

Defendant Michigan Insurance Company's Motion for Summary Disposition has been GRANTED for the reasons stated from the bench on the record.

SECRET WARDLE

**IT IS SO ORDERED** that the judgment in favor of Defendant is entered as a matter of law pursuant to MCR 2.116(c)(8), and that this matter is dismissed with full prejudice.

This Order resolves the last pending claim and closes the case.



Hon. JOYCE DRAGANCHUK  
CIRCUIT COURT JUDGE P-39417

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

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GAVRILIDES MANAGEMENT COMPANY,  
Plaintiff,

vs.

File No. 20-258-CB

MICHIGAN INSURANCE COMPANY,  
Defendant.

\_\_\_\_\_/

DEFENDANTS MOTION FOR SUMMARY DISPOSITION  
BEFORE THE HONORABLE JOYCE DRAGANCHUK, CIRCUIT COURT JUDGE  
LANSING, MICHIGAN - WEDNESDAY, JULY 01, 2020

APPEARANCES:

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WITNESSES PAGE

None .

EXHIBITS

None admitted.

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Lansing, Michigan

Wednesday, July 01, 2020

2:58:57 PM

THE COURT: This is, pardon me if I massacre this, Gavri--, Gavrilides Management Company, et al versus Michigan Insurance Company, docket number 20-258-CB. And this is the time set for Defendant Michigan Insurance Company's Motion for Summary Disposition. And just for the record, could I have your appearances, please?

MR. HEOS: Yes, your Honor. Matthew Heos and Nick Gavrilides is here in the courtroom also with me. He is the owner of the immediate plaintiff company's.

MR EMRICH: Henry Emrich on behalf of Michigan Insurance Company, your Honor and my assistant Cheney Ward.

THE COURT: Okay, thank you. And your motion, Mr. Emrich, if you wish to go ahead.

MR. EMRICH: Thank you, your Honor. I am going to assume that the Court has read all of the pleadings in this case, so I'll try not to belabor some of the points. I think the, the key fact that we need to focus on is that as we've argued is that there's no question here but the policies that insure Mr. Gavrilides properties against, against direct physical loss or damage to the property and contrary, any claim with the policy benefits in question

1 this business income coverage is illusory, the policy in  
2 question here clearly provides that for the business  
3 coverage, the business income coverage to apply and, and  
4 most of the other primary coverages under their policy,  
5 there must be a direct physical loss of or damage to the  
6 insured property in order for it to apply.

7 And I think it's important as we'll discuss  
8 later in our argument depending on what Mr. Heos has to  
9 say, why this is important, we must focus on the fact that  
10 there must be direct physical loss or damage to the  
11 insured property and not direct physical loss of use of or  
12 damage to the property as has been suggested by Mr.  
13 Gavrilides and his attorney in order for the coverage at  
14 issue to apply.

15 While I acknowledge, your Honor, that this is a  
16 somewhat unique, extraordinary if you will, matter to be  
17 filing at this point in the proceedings as our initial  
18 pleading; I think it's important to understand that when  
19 we look at Mr. Gavrilides complaint, it does not contain  
20 one single allegation that this insured property has in  
21 any way been damaged or lost. To the contrary, the  
22 allegations in the complaint affirmatively allege that the  
23 plaintiff business interruption claim is based on the  
24 "Stay at Home" orders of Governor Whitmer. There is no  
25 allegation of any kind that the property in question has



1 in any way been damaged, lost or anything of the sort.

2 Given that this motion has been brought under  
3 2.116(c)(10), plaintiff must produce some evidence to  
4 contradict the uncontroverted facts that have been alleged  
5 not only in the complaint, but in the affidavit submitted  
6 Mr. Gavrilides and in any of the other materials that Mr.  
7 Heos has attached to his response as, as indicated, most  
8 importantly, the affidavit of Mr. Gavrilides that  
9 reiterates the admissions in the complaint that there has  
10 not been any loss of or damage to either of the properties  
11 for which they seek coverage.

12 The insureds property today exists in the very  
13 same condition as it existed the day prior to the  
14 effective date of the "Stay at Home" order. They have not  
15 been lost, they have not been damaged, they have not  
16 required any repairs because of any damage to those  
17 properties. The business operation, its, its operation as  
18 a restaurant today is, is the same as the day prior to the  
19 effective date of the order, albeit with some modifi-  
20 cations that had been required to avoid grouping and to  
21 maintain social distancing in, in a sense improvements to  
22 the real estate. Not repairs, you know, and, and it's  
23 been maintained as a take-out, take-out operation at least  
24 until recently when they resumed the dining operation.  
25 There has been no loss of or damage to either building

1 that has prevented the plaintiff from operating as a  
2 restaurant or entering it for that matter if--, as they  
3 have. If plaintiffs wanted to sell either building today,  
4 they could do so. And while plaintiffs have provided some  
5 speculative evidence about the decreased value of that  
6 property, although, as I read Mr.--, as I read the  
7 materials that Mr. Heos kindly attached to his response,  
8 the fact of the matter is it pointed out in that article  
9 was that while they operation of a commercial property may  
10 get harder, it's not impossible to operate it in the  
11 future under our new normal.

12 Because plaintiffs complaint, the affidavit, the  
13 other information that has been provided to your Honor  
14 provides no evidence of any damage to that property.  
15 Plaintiffs could never prove that either property suffered  
16 any direct physical loss from the imposition of Governor  
17 Whitmer's emergency order. And thus, could never recover  
18 business interruption coverage under this policy based on  
19 the facts that have been presented to the Court. The same  
20 holds true under the business cover, income coverage, if a  
21 civil authority prevents or prohibits access to either  
22 property because of direct physical damage to an adjacent  
23 or nearby property for the very same reason. There has  
24 been no direct physical loss or damage to any adjacent  
25 property that has been alleged, that has been provided to

1 the Court in Mr. Heos response. And frankly, when you look  
2 at the order that they have, that is at issue in this  
3 case, there's nothing there that prevents access to Mr.  
4 Gavrilides properties whatsoever.

5 In summary, your Honor, there are no facts  
6 alleged in the complaint or in any of the materials that  
7 I've looked at, including Mr. Gavrilides affidavit, that  
8 shows there has been direct physical loss of or damage to  
9 the insured property. And for those reasons, your Honor,  
10 we believe that our motion--, for those reasons alone, we  
11 believe our motion for summary disposition should be  
12 granted.

13 I'd just like to make a couple of additional  
14 points before I shut up. I really believe summary  
15 disposition is warranted on this basis alone and I would  
16 turn the Court to the case that we've discussed in our, in  
17 our brief, your Honor, that's referred to Universal  
18 Insurance Production versus Chubb. And that's the decision  
19 of the Eastern District of Michigan involving a claim that  
20 involved insured property. It was damaged by a pervasive  
21 odor that developed in the property as a result of mold  
22 that grew in the property because of some water seepage.  
23 And why that case is important is because it discusses the  
24 Michigan Rules of Contract Interpretation, that still  
25 apply today, policy language is clear and unambiguous on

1 its face, which we believe is clearly the case here that  
2 states that the words and the terms of the policy should  
3 be enforced utilizing plain and commonly understood  
4 meanings.

5 And when I said earlier that that's important  
6 when we talk about what direct physical loss of or damage  
7 to property means, it means we look at those words. We  
8 don't add words such as loss of use, that Mr. Heos and Mr.  
9 Gavrilides have added in order to understand what we're  
10 talking about here. We look at the language in the policy.  
11 Every case that Mr. Heos produced your Honor, says the  
12 very same thing. In Univer--, Universal, like here, the  
13 policy was an 'all-risk' policy that required, like here,  
14 direct physical loss or damage to the insured property in  
15 order to trigger coverage unless that coverage was  
16 excluded.

17 As Universal pointed out, applying a dictionary  
18 meaning of direct and physical as meaning something  
19 immediate or proximate as a premise to something that is  
20 distant or incidental and physical meaning something that  
21 has a material existence meant in the context of a loss  
22 involving a contaminant that, unlike here, per the uncon-  
23 troverted allegations of the complaint and other evidence  
24 produced by plaintiff in response to this motion. That in  
25 order for direct physical loss of the property in this

1 context, the contaminant must actually alter the structure  
2 integrity of the property in order to trigger coverage  
3 under language that is at issue in this case. And it  
4 didn't happen in Universal, as the Court denied coverage  
5 there, granted affirmed summary disposition. And  
6 importantly your Honor, it hasn't even been alleged in  
7 this case. Regardless of any authority to the contrary,  
8 anywhere else in the country, this remains the law in our  
9 courts when interpreting policy terms at issue. There is a  
10 requirement that there be direct physical loss of or  
11 damage to property. And the allegations produced here in  
12 the complaint and the evidence that's been attached have  
13 specifically acknowledged no such contamination and no  
14 such damage to the property as a result of that contami-  
15 nation.

16 As in Universal, your Honor, the mere presence  
17 of odor or even mold was not any evidence of structural or  
18 tangible damage to the insured property. And as such, no  
19 direct physical loss or damage to the property had-, was  
20 occurred. Here, your Honor, we have the very same thing  
21 except that we have not even had any allegations of any  
22 damage to the property caused by this unfortunate, this  
23 horrible virus.

24 Finally, and although we do not believe the  
25 Court even has to get to this point, even if we assume for

1 purposes of this motion that contamination occurred on  
2 each premises and that somehow effected the structural  
3 integrity of either building, again, neither scenario is  
4 alleged. And even if it were, we do not believe under the  
5 circumstances and the science that exists that it would  
6 necessarily constitute direct physical loss over damage to  
7 the property. The buyer's exclusion of the policy, which  
8 clearly and unequivocally states that it applies to all  
9 coverages and endorsement and that the company will not  
10 pay for loss or damages caused by or resulting from any  
11 virus, bacteria or other microorganism that induces or is,  
12 is capable of inducing physical distress, illness or  
13 disease. And Lord knows, that that has certainly been the  
14 case with what's happened with Covid-19 throughout our  
15 country.

16           Clearly, your Honor, that exclusion, again, I  
17 don't believe you even have to get there, but that  
18 exclusion would clearly exclude any claim here even if  
19 plaintiff's could prove direct physical loss of or damage  
20 to the insured property or any nearby property that  
21 resulted in a civil authority issuing an order prohibiting  
22 access to the property. As of eight days ago, your Honor,  
23 they have only been few jurisdictions in this country,  
24 Florida and Pennsylvania, that have discussed and applied  
25 this, a similar exclusion as at issue in this case and in

1 every one of those cases, the Court has enforced that  
2 exclusion as written because it's clear and unambiguous.  
3 Again, your Honor, for all the reasons that we've set  
4 forth here today and the brief that we filed and our  
5 reply, we request that the Court grant our Motion for  
6 Summary Disposition at this time. Thank you.

7 THE COURT: Thank you. Mr. Heos?

8 MR. HEOS: Thank you, your Honor and may it  
9 please the Court. And obviously Mr. Emrich and I have a  
10 different interpretation of direct physical loss of or  
11 damage to covered properties because here the loss comes  
12 from the issue of the executive order restricting use of  
13 property. Physically you cannot use for, for dine-in  
14 services any of the interior of the building for a period  
15 of time. And a complete prohibition isn't contemplated by  
16 the language of the contract, I think a limited  
17 restriction also falls within the coverage. And I think  
18 that if you're gonna accept the defendants argument you  
19 would have to limit the meaning to destruction of the  
20 physical building itself, but we know that the coverage  
21 extends to non-destructive loss, civil authority being  
22 one.

23 I put in example in the brief subterranean  
24 pollution, you can look at asbestos or a computer virus is  
25 something that would occur that there would be no physical

1           destruction to the property itself. The fact of the matter  
2           is that Mr. Gavrilides can't use the covered properties  
3           because of or he's lost rather the use of those properties  
4           because of the order and it looks like that will continue  
5           in some form for a while. So, I think that counsel is  
6           wrong in trying to limit the scope even with the case law  
7           he cited, most of which is persuasive and not binding.  
8           That's number one, Judge.

9                         And as for the virus exclusion itself, the only  
10           case law we have relates to person to person transmission  
11           of a virus at the covered property. And I think that fits  
12           more with what's going on. We see in the news that Harpers  
13           in East Lansing and even the Hotcat in Kalamazoo is making  
14           headlines of people contracting Covid there. But, the  
15           impetus of the order was to protect public health and  
16           welfare, which is the governor's duty. It's not caused by  
17           a virus. It would be the same order as with the damn in  
18           Midland being issued to protect public health and welfare.  
19           It wasn't caused by a flood. It was caused by the  
20           Governor's duty to act and protect the people she's  
21           charged with protecting and I think that's what happening.

22                         Or it's distinguishable from the case and I  
23           think it's Bowler, the case cited regarding the virus. And  
24           I think that if you go further in accepting defendant's  
25           position, then we get into the illusory promise of well if



1 the government issues an order, we're not gonna cover it  
2 because any decision of a government body or group of  
3 people is excluded. And so then, you get into the circle  
4 in the contract where if you're going to buy into counsels  
5 logic, it would make that provision illusory. And for  
6 those reasons, I think that the motion should actually  
7 roll back on the defendants because the language to  
8 support the claim, to the extent that the Court thinks  
9 there's a deficiency in my pleading and is gonna grant  
10 defendants motion, I'd like Leave to Amend the Complaint.  
11 But, I don't think that's the case here. And with that,  
12 I'll leave it, if the Court would like to ask any  
13 questions, I'm happy to take them.

14 THE COURT: I don't have any. Thank you. I'll  
15 give Mr. Emrich rebuttal time.

16 MR. EMRICH: Thank you, your Honor. Your Honor,  
17 what I would say is that when we talk about these cases  
18 that Mr. Heos has mentioned that might provide coverage in  
19 certain situations, I read those cases a little while ago  
20 and I'm kind of tired reading some of these cases about  
21 insurance coverage. But, the point in every one of those  
22 cases is that the condition she referred to actually  
23 caused damage to the property.

24 In this case, there has not been any such  
25 damage. And if we look at what the coverage for business

1           loss or business--, the business income loss that they're  
2           seeking says, it says that if the business, the coverage  
3           would apply if the business operation is suspended  
4           provided the suspension must be caused by the direct  
5           physical loss of or damage to property. In this case, that  
6           hasn't occurred. Nothing prevents Mr. Gavrilides from  
7           using that property. It has been used as such. The fact  
8           that there may be other coverages that may provide some  
9           limited coverage, they're against what Mr. Heos is arguing  
10          because clearly, if those coverages were covered under  
11          this language, then why have a special coverage that  
12          provides certain conditions for its application.

13                        The point is, in each of those civil authority  
14          cases that he talked about, the property actually  
15          sustained damage. Here it didn't sustain damage. As to his  
16          claim in this case, that he wants an opportunity to amend  
17          his complaint if the Court feels compelled to grant my  
18          motion, what is that going to accomplish? He's already  
19          alleged in his complaint and his client has already signed  
20          an affidavit where he no doubt put his hand up and swore  
21          to the contents of that affidavit in which he said there  
22          has been no damage to that property.

23                        We don't create coverage by-, because somebody  
24          thinks they ought to have coverage. But, that, that, that  
25          whole line of cases Roy versus Continental Insurance and

1 some of the other cases in our, in our brief that we  
2 cited, clearly supports the notion that the reasonable  
3 expectation concept doesn't apply in Michigan. It just  
4 doesn't cut it. There is no coverage here, your Honor.  
5 That exclusion is clear. If the Court feels that there may  
6 be or that there may be a situation that would give rise  
7 to, but again, you have to come forward at the time that  
8 you, that you respond to this motion with some evidence  
9 that suggests that. That hasn't happened here. I mean even  
10 when you look at the response that he's filed, he talks  
11 about scenario's that have absolutely no bearing to this  
12 case.

13 And you know, I'll just make one last point,  
14 your Honor, you know, when I was a young Prosecutor, I had  
15 the benefit of being able to argue a number of cases to  
16 juries that required me to prove the defendant's guilt  
17 beyond a reasonable doubt. And in those cases, I was  
18 trained to listen closely to the defendant's argument and  
19 had been the case where the facts were particularly  
20 egregious, a defense attorney would often not even talk  
21 about those facts and talk about the law. And he talked  
22 about how that law was somehow created this reasonable  
23 doubt in hopes of creating some confusion on the part of  
24 one juror who might then find in his clients favor because  
25 reasonable doubt existed. And, and in those cases, I would

1 make sure that when I got up in rebuttal, just as I have  
2 been given the opportunity to here, I would point that out  
3 to the jury and indicate to them that there's a reason for  
4 that. And that's because they didn't want you to talk  
5 about the facts that clearly supported conviction.

6 On the other hand, if it was a case where the  
7 law, you know, or the facts may have been murky, but the  
8 law was clear, the defense attorney would only focus on,  
9 you know, on those facts and not talk about the law. And  
10 again, I point that out to the jury there. But, in this  
11 case, you know, and there were cases back then to, like  
12 our case here that were neither supported by the facts or  
13 the law. Which I believe is clearly the case in this case.  
14 And the defense attorney would get up and argue something  
15 that to the jury that had absolutely nothing to do with  
16 the case in hopes of confusing them. Just like Mr. Heos  
17 has suggested by talking about these asbestos cases or  
18 some of these other cases that have nothing to do with  
19 this.

20 Well in this case, when you look at his  
21 responsive pleading, he talks about an accident situation  
22 that has absolutely no application here. Nothing to do  
23 with this case. While in his argument, he starts out  
24 talking about a discussion of the virus of racism and as  
25 there, as there, we would point out, if we were in front

1 of a jury, just like I'd point out to them and I'm  
2 pointing out to you, it hasn't got anything to do with  
3 this case. Your Honor, the reason for that and the reason  
4 for the topic of that is that he knows that neither the  
5 facts or the law support his claim and nothing he could  
6 file as an amendment would change that.

7 He is hoping to somehow create this little bit  
8 of possibility, some scintilla that some evidence is gonna  
9 pop up that shows that the property has been damaged in  
10 hopes that he could trigger coverage. And as this Court  
11 knows under the cases we've discussed in our brief, that  
12 is not sufficient to deny summary disposition in a case  
13 that clearly warrants it even at this early stage.

14 Thank you your Honor for your patience. Thank  
15 you Mr. Heos, we've never met. I've heard a lot of good  
16 things about you. Mr. Gavrilides, nice to have met you,  
17 very sorry for the situation you're in. It's just crazy  
18 all the way around. And just like having to argue this  
19 case on TV is really just disconcerting for me. But, in  
20 any event, thank you your Honor for your patience.

21 THE COURT: Thank you. You're on Youtube not TV.  
22 But--

23 MR. EMRICH: I meant screen. Yeah, whatever.

24 THE COURT: Right.

25 MR. EMRICH: The screen.

1           THE COURT: I, I did read the briefs. I studied  
2           them very carefully and I've listened to the argument of  
3           counsel today. And taking all the-, that together I, I  
4           note that the plaintiff speaks of and focuses on arguments  
5           about access to the property, use of the property and  
6           definitions of loss and damage. But, the first inquiry has  
7           to start with a full look, not just isolating some words  
8           or phrases from the policy. But, a full look at the  
9           coverage that's provided under the policy.

10           Coverage is provided for actual loss of business  
11           income sustained during a suspension of operations. The  
12           policy goes on to provide the 'suspension must be caused  
13           by direct physical loss of or damage to property.' And it  
14           also provides 'the loss or damage must be caused by or  
15           result from a covered cause of loss. The causes of loss  
16           special form provides that a covered cause of loss means  
17           risks of direct physical loss.'

18           So, whether we're talking about the cause for  
19           the suspension of the business or the cause for the loss  
20           or the damage, it is clear from the policy coverage  
21           provision only direct physical loss is covered. Under  
22           their common meanings and under federal case law as well,  
23           that the plaintiff has cited that interprets this standard  
24           form of insurance, direct physical loss of or damage to  
25           the property has to be something with material existence.

1           Something that is tangible. Something according to the one  
2           case that the plaintiff has cited from the Eastern  
3           District, that alters the physical integrity of the  
4           property. The complaint here does not allege any physical  
5           loss of or damage to the property. The complaint alleges a  
6           loss of business due to executive orders shutting down the  
7           restaurants for dining, for dining in the restaurant due  
8           to the Covid-19 threat.

9                         But, the complaint also states that a no time  
10           has Covid-19 entered the Soup Spoon or the Bistro through  
11           any employee or customer and in fact, states that it has  
12           never been present in either location. So, there simply  
13           are no allegations of direct physical loss of or damage to  
14           either property. The plaintiff seems to make in the  
15           briefing, at least, two arguments about the language in  
16           the coverage provision and what it means.

17                         The first argument is that the plaintiff says  
18           coverage applies to "direct physical loss or damage to  
19           property." Even if that were the wording of the coverage  
20           provision, it wouldn't save the plaintiff from the  
21           requirement that the loss or damage must be physical and  
22           the analysis could end right there. But, I have to go on  
23           to say that this is not even the wording of the coverage  
24           provision. Coverage according to the policy applies to a  
25           suspension caused by "direct physical loss of or damage to

1 property." So, I'm not going to get into a detailed  
2 analysis of the rules of grammar. But, common rules of  
3 grammar would apply to make that phrase a short-cut way of  
4 saying "direct physical loss of property or direct  
5 physical damage to property." So, again, the plaintiff  
6 just can't avoid the requirement that there has to be  
7 something that physically alters the integrity of the  
8 property. There has to be some tangible, i.e., physical  
9 damage to the property.

10 Then the plaintiff in the briefing, at least,  
11 seems to make a second argument that and this is not 100%  
12 clear, but, it seems like the plaintiff is saying that the  
13 physical requirement is met because people were physically  
14 restricted from dine-in services. But, that argument is  
15 just simply nonsense. And it comes nowhere close to  
16 meeting the requirement that there's some, there has to be  
17 some physical alteration to or physical damage or tangible  
18 damage to the integrity of the building.

19 So, the next argument that the plaintiff makes  
20 is that the virus and bacteria exclusion is vague and  
21 can't apply here. The plaintiff has not adequately  
22 explained how the term virus is vague. And in fact,  
23 supplies a completely workable, understandable, usable  
24 definition of the word virus. The argument in this regard  
25 really seems to be more that the virus exclusion doesn't



1 apply. And it goes something like this as far as I can  
2 tell, first, a virus can't cause physical loss or damage  
3 to property because virus' harm people, not property.  
4 Second, the damage caused here was really caused by  
5 actions of the civil authority to protect public health.  
6 And then third, therefore, coverage for acts of any  
7 person, group, organization or governmental body applies.  
8 But, that argument bring us right back to the direct  
9 physical loss or damage requirement. Again, going back to  
10 the cause of loss special form B, as in boy, exclusions  
11 provides that acts of government are only covered when  
12 they result in a covered cause of loss. A covered cause  
13 of loss, again, is direct physical loss. So, even if the  
14 virus exclusion did not apply, which the plaintiff has not  
15 supported that it doesn't apply, I only argue that it's  
16 vague, which I reject. But, even if it did not apply, it  
17 could only be coverage for governmental actions that  
18 resulted in direct physical loss or damage.

19 And then, finally, the plaintiff argues that the  
20 policy has a contradiction in it that renders it illusory.  
21 So, the plaintiff says that the policy extends coverage  
22 for governmental acts. But, then, it takes it away in the  
23 causes of loss special form. But, that's simply not true.  
24 Coverage is provided for actual loss of business income  
25 sustained during the suspension of operations. However,

1 according to the coverage provision, the suspension must  
2 be caused by direct physical loss of or damage to  
3 property. And governmental acts are likewise covered if  
4 it results in a covered cause of loss, which is again, a  
5 direct physical loss. There is no granting of coverage  
6 and then excluding the same coverage in the policy. As a  
7 matter of fact, the policy is consistent throughout and  
8 consistent with federal law cited by the plaintiff. It  
9 requires physical loss or damage.

10 There is a virus exclusion even if plaintiff was  
11 alleging, was alleging, even if there were allegations in  
12 the complaint alleging actual physical loss or damage,  
13 which the complaint does not do. But, there is a virus  
14 exclusion that would also apply. And governmental action  
15 that results in direct physical loss is covered. But  
16 again, there is no direct physical loss alleged here.

17 Now, I have to address a little bit this, that  
18 it was brought as a (c)(10) motion. The actually the  
19 defendant hasn't provided any support by way of factual  
20 support, depositions, affidavits, et cetera, for a (c)(10)  
21 motion. So, if the defendant doesn't do that, then the  
22 plaintiff has no burden under Maiden versus Rosewood. So,  
23 there's no shifting burden until the moving party first  
24 does it. But, I don't think it properly is labeled a  
25 (c)(10) motion. I think it's a (c)(8) motion. Because this

1 is the motion that can be decided as a matter of law. Take  
2 all the allegations in the complaint as true and examine  
3 nothing more than the contract upon which the complaint is  
4 based, the policy of insurance and as a matter of law, the  
5 plaintiffs complaint cannot be sustained. And although the  
6 plaintiff has requested a chance to amend without any  
7 indication of how they would do that, there actually is no  
8 factual development that could change the fact that the  
9 complaint is complaining about the loss of access or use  
10 of the premises due to executive orders and the Covid-19  
11 virus crisis. So, there's no factual development that  
12 could possibly change that or amendment to the complaint  
13 that could possibly change that those things do not  
14 constitute the direct physical damage or injury that's  
15 required under the policy as I've outlined.

16 So, for those reasons, I am granting the  
17 Defendant's Motion for Summary Disposition. I'm doing it  
18 under MCR 2.116 (c)(8). And Mr.—

19 MR. EMRICH: Thank you, your Honor.

20 THE COURT: Mr. Emrich, will you submit an order?

21 MR. EMRICH: Certainly will, your Honor.

22 THE COURT: Okay.

23 MR. EMRICH: Thank you.

24 THE COURT: Thank you.

25 MR. HEOS: Thank you very much.



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**EXHIBIT B**

1 UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

2 -----x

3 SOCIAL LIFE MAGAZINE, INC.,

4 Plaintiff,

New York, N.Y.

5 v.

20 Civ. 3311(VEC)

6 SENTINEL INSURANCE COMPANY  
LIMITED,

7 Defendant.

8 -----x

Teleconference  
Order to Show Cause

9  
10 May 14, 2020  
11 10:00 a.m.

12 Before:

13 HON. VALERIE E. CAPRONI,

14 District Judge

15  
16 APPEARANCES

17  
18 GABRIEL J. FISCHBARG  
Attorney for Plaintiff

19  
20 STEPTOE & JOHNSON, LLP  
Attorneys for Defendant

21 BY: CHARLES A. MICHAEL  
SARAH D. GORDON

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1 THE COURT: Good morning, everybody.

2 Do I have a court reporter on the line?

3 THE COURT REPORTER: Good morning, your Honor.

4 Kristen Carannante.

5 THE COURT: Good morning.

6 Okay. Do I have Mr. Fischbarg for the plaintiff?

7 MR. FISCHBARG: Yes, Judge. Hi.

8 THE COURT: Mr. Fischbarg, is anyone else on the line  
9 for the plaintiff?

10 MR. FISCHBARG: Yes. The plaintiff is on a separate  
11 phone available if you need evidence or --

12 THE COURT: The principal of Social Life?

13 MR. FISCHBARG: Yes. He is in my office, you know,  
14 more than six feet away, and --

15 THE COURT: Okay.

16 And who do I have for the defendant?

17 MR. MICHAEL: Good morning, your Honor. This is  
18 Charles Michael, from Steptoe & Johnson, for the defendant.  
19 With me is my partner Sarah Gordon, who was just admitted *pro*  
20 *hac vice*, and who will be doing the presentation today.

21 THE COURT: Terrific.

22 All right --

23 MS. GORDON: Good morning, your Honor.

24 THE COURT: Good morning.

25 Only people who are speaking need to note their

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1 appearances, and I have got those, Mr. Fischbarg and  
2 Ms. Gordon. Everybody else, please mute your telephone.

3 Also, if you hear that sound that sounds like someone  
4 has dropped off the line once we get started, I need you to  
5 stop talking so that I can make sure that I have still got the  
6 court reporter and your adversary on the line.

7 So, Mr. Fischbarg, this is your motion, so you get to  
8 go first.

9 MR. FISCHBARG: Yes. So I submitted a reply  
10 memorandum, you know, in the afternoon yesterday. I was just  
11 wondering if --

12 THE COURT: Yes. I saw that. Thank you.

13 MR. FISCHBARG: Okay, so you were also able to read  
14 it, I suppose?

15 THE COURT: Yes, yes.

16 MR. FISCHBARG: Okay.

17 So I guess the only other thing I want to add that's  
18 not in the papers, and then I don't know if your Honor has any  
19 issues that you want to talk about, is I mentioned that Liberty  
20 Mutual had this exclusion for viruses and it is also evident  
21 that other insurance companies have the same exclusion,  
22 including Travelers Insurance Company, and they filed the --  
23 they actually filed a federal lawsuit for declaratory judgment  
24 in California, Docket No. 20 Civ. 3619, to preempt such claims,  
25 I guess to enforce their exclusion for viruses. So to the

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1 extent that the defendant is claiming some kind of overreach by  
2 the plaintiff here, I don't think it is proper. There are  
3 several insurance companies who are capable of putting in a  
4 virus exclusion in their policies, and in this case there is  
5 none. So --

6 THE COURT: Let me ask you something. First off, I  
7 want to start with basics. Do you agree that New York law  
8 applies?

9 MR. FISCHBARG: Yes.

10 THE COURT: All right. So the -- is it the *Roundabout*  
11 *Theatre* case?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: First Department case?

14 MS. GORDON: Yes, your Honor. This is Ms. Gordon on  
15 behalf of Sentinel.

16 THE COURT: Thank you.

17 Mr. Fischbarg, it would seem to me that the *Roundabout*  
18 case is a real problem for your position.

19 Would you like to explain to me why it doesn't  
20 preclude your claim?

21 MR. FISCHBARG: Yes. That case applies to off-site  
22 property damage rendering the premises at issue inaccessible.  
23 So in this case, you don't have off-site property damage. You  
24 have on-site property damage.

25 THE COURT: What is the damage? There is no damage to



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1 your property.

2 MR. FISCHBARG: Well, the virus exists everywhere.

3 THE COURT: It damages lungs. It doesn't damage  
4 printing presses.

5 MR. FISCHBARG: Right. Well, that's a different  
6 issue, whether or not -- that's a different issue than the  
7 *Roundabout* case that had to do with accessibility. Now we are  
8 jumping to the topic of whether a virus can cause physical  
9 damage to a printing press, as your Honor mentioned. So that's  
10 a separate issue, and there are a lot of cases that we have  
11 cited where this type of material, a virus, does cause physical  
12 damage.

13 THE COURT: What's your best case? What do you think  
14 is your best case under New York law?

15 MR. FISCHBARG: Well, the problem is, under New York  
16 law, there isn't much law. The New Jersey federal court, in  
17 *TRAVCO*, citing other cases, including from other circuits,  
18 where physical damage had a broader interpretation that  
19 includes loss of use and not just, you know, something where  
20 you take a hammer and break an item.

21 THE COURT: With loss of use, I mean, loss of use from  
22 things like mold is different from you not being able to,  
23 quote, use your premises because there is a virus that is  
24 running amuck in the community.

25 MR. FISCHBARG: Okay. I would disagree with that. I

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1 would say virus and mold are equivalent. They are both  
2 physical items which, if they land on a surface or are on a  
3 surface, just like spores that are also listed in the policy,  
4 mold is also listed in the policy. I would say that the virus,  
5 mold spores --

6 THE COURT: Hang on --

7 MR. FISCHBARG: -- anything --

8 THE COURT: A second.

9 Do I still have the court reporter?

10 THE COURT REPORTER: Yes, your Honor.

11 THE COURT: Do I have I still have, Ms. Gordon?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: All right. Go ahead.

14 MR. FISCHBARG: Mold spores, bacteria, virus, all  
15 those are physical items which damage whatever they are on,  
16 whatever they land on. And in this case, the virus, when it  
17 lands on something and you touch it, you could die from it.  
18 So --

19 THE COURT: That damages you. It doesn't damage the  
20 property.

21 MR. FISCHBARG: But you are not able to use the  
22 property because it damages you. So it's a corollary. In  
23 other words, this policy, by the way, mentions the word "virus"  
24 and "bacteria" in it in two places.

25 THE COURT: Where does it mention it?

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1 MR. FISCHBARG: It mentions it in the PDF as well as  
2 Exhibit 9, page 36 and 37, which is page 7 of 25 of the special  
3 property coverage form under additional coverages, section  
4 5(j), where the insured would cover certain law enforcement  
5 orders requiring you to -- requiring remediation. But it  
6 contains an exclusion for bacteria and viruses, and it uses the  
7 word "bacteria" and it uses the word "virus."

8 So what this is really referring to is the *Legionella*  
9 bacteria, which is causes Legionnaires' disease typically.  
10 That's the bacteria. Virus is obviously something else. So  
11 this is obviously referring to when there is a Legionnaires'  
12 outbreak in a building, which could happen in New York pretty  
13 often, every few years, and then the building gets shut down  
14 and they have to do remediation. Either they -- at least as a  
15 bacteria, *Legionella* bacteria only occurs in water or pipes or  
16 in mist. So the building is shut down, and then you might have  
17 to -- and now there is a new code where the buildings have to  
18 test their cooling systems for *Legionella* bacteria. So that's  
19 an example where a bacteria causes property loss, or loss of  
20 use, or damage, physical damage to property. And I would say  
21 the virus is equivalent to that bacteria. So --

22 THE COURT: But it's not. This is different. The  
23 virus is not specifically in your property that is causing  
24 damage. It is everywhere. The Legionnaire example is very  
25 different. Because it's not like Legionnaire is running

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1 rampant throughout the city, and therefore your office building  
2 can get closed. It is that the Legionnaire bacteria is in that  
3 building causing --

4 MR. FISCHBARG: Yes.

5 THE COURT: -- that building to be shut down.

6 MR. FISCHBARG: Yes. Yes.

7 So this virus is everywhere, including this office in  
8 particular, this office. In other words, they just did a  
9 random survey of people going into a grocery store in New York,  
10 and 20 percent tested positive. So, Judge, that's just a  
11 one-sample test. So if the infection rate in New York City is  
12 20 percent, then the virus is literally everywhere. So if  
13 it --

14 THE COURT: That's what --

15 MR. FISCHBARG: -- is --

16 THE COURT: That is what has caused the damage is that  
17 the governor has said you need to stay home. It is not that  
18 there is any particular damage to your specific property.

19 MR. FISCHBARG: Well, okay, that's --

20 THE COURT: You may not even have the virus in your  
21 property.

22 MR. FISCHBARG: Well, okay, that's -- I would  
23 disagree. The virus not just causes -- it lands on equipment,  
24 it lands everywhere. That's why all of these -- all of the  
25 health guidelines from the World Health Organization and

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1 elsewhere talk about wearing gloves, talk about wiping things  
2 down, because it lands on surfaces. It doesn't just get  
3 transmitted through the air. Another way of getting it is  
4 through contact --

5 THE COURT: Right, but what --

6 MR. FISCHBARG: -- when it touches your --

7 THE COURT: What evidence do you have that your  
8 premises are infected with the COVID bug.

9 MR. FISCHBARG: Well, the plaintiff is here. He got  
10 COVID. So that's evidence there.

11 THE COURT: Well, it's not evidence that he got it in  
12 his office.

13 MR. FISCHBARG: Yes, but, okay, it's not -- we're  
14 not -- I don't know what burden of proof we are looking at,  
15 whether it is beyond a reasonable doubt --

16 THE COURT: No, it's --

17 MR. FISCHBARG: -- or more likely than not, more  
18 likely than not, he can testify where he was and more likely  
19 than not he either got it from his office or he got it from his  
20 home. So that's a different burden of proof. If you are  
21 looking for some kind of burden of proof to show that he got it  
22 from his office, I mean, that's an evidentiary question, and we  
23 can get an epidemiologist to testify and get an expert to  
24 testify on that, which I understand is going to happen in the  
25 other lawsuits that have been filed across the country

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1 regarding --

2 THE COURT: Okay.

3 MR. FISCHBARG: -- this issue.

4 THE COURT: Okay.

5 MR. FISCHBARG: So . . .

6 THE COURT: Anything further, Mr. Fischbarg?

7 MR. FISCHBARG: No, I guess that's all for now. Thank  
8 you.

9 THE COURT: Okay. Thanks.

10 Ms. Gordon.

11 MS. GORDON: Thank you, your Honor. This is Sarah  
12 Gordon on behalf of Sentinel, and we agree with your Honor's  
13 thoughts here.

14 The property policy has two distinct requirements  
15 here. There has to be direct physical loss or physical damage  
16 to the property and the cause of the business interruption  
17 damages they are seeking has to be direct physical loss or  
18 damage, and the cause here is not physical damage.

19 We think, you know, as your Honor rightly pointed out,  
20 *Roundabout* controls. It is under New York law. It's a First  
21 Department case from 2002. There are no subsequent decisions  
22 that have disagreed or overturned it here in New York; and, if  
23 anything, it has been confirmed by this . . .

24 THE COURT: Hang on. Did I lose my court reporter?

25 THE COURT REPORTER: No, Judge. I'm here.

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1 THE COURT: Did I lose Mr. Fischbarg?

2 MR. FISCHBARG: No, I'm here.

3 THE COURT: Okay.

4 MS. GORDON: This court, your Honor, in *Newman Myers*,  
5 adopted the exact same rationale for a law firm that was trying  
6 to assert damages where there were no -- business interruption  
7 damages, where there was no physical harm to the property.  
8 And, you know --

9 THE COURT: Let me interrupt you for a second.

10 So Judge Engelmayer in *Newman* went out of his way to  
11 talk about a case where there was a bunch of -- there was a  
12 rock slide which didn't actually hit the house or the premises,  
13 and yet they got coverage and coverage for the invasion of  
14 fumes.

15 MS. GORDON: Yes, your Honor.

16 So for most of the cases, there are a number of them,  
17 there is -- what has happened is something physically has  
18 happened to the property that prevents people from being on the  
19 property. So, for example, in *Gregory Packaging*, in New  
20 Jersey, there was ammonia leaked out and they couldn't be on  
21 the property, so something physically happened. You couldn't  
22 necessarily see it or touch it, but there were fumes and it was  
23 unsafe to be there. The same thing with *Motorists*, where there  
24 was *E. coli* in the well. You couldn't be in that house because  
25 you were exposed to other things that had the *E. coli*.

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1           The property has to be entirely unusable or  
2 uninhabitable for physical loss or damage to constitute a loss  
3 of use. We don't think that's the law in New York in any  
4 circumstance, but even in those other cases, there is nothing  
5 equivalent here. Mr. Fischbarg's client can go to his  
6 premises. There is no ammonia or mold or anything in the air  
7 that's not going to allow him on to the property. In fact, the  
8 governor's orders explicitly allow him to go to the property  
9 and get his mail or do routine business functions. The only  
10 rule is that he has to stay six feet apart from other people.  
11 So those cases are entirely distinguishable.

12           And when a business, a property is allowed to remain  
13 open or people can still occupy the premises, there is no  
14 direct physical loss or damage. That was the case -- that's  
15 what the court said in *Port Authority*, that's what happened in  
16 *Mama Jo's*, where the restaurant was allowed to be open. The  
17 cases where there is direct physical loss or damage, you  
18 literally cannot be on the premises because there is something  
19 there that is making it uninhabitable, and here that just isn't  
20 true.

21           THE COURT: Okay. Mr. Fischbarg I will give you the  
22 last word.

23           MR. FISCHBARG: All right. So I would disagree that  
24 he is allowed to go to the premises. In fact, the opposite is  
25 true. The executive order 202.8 says it requires 100 percent



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1 reduction. So he can't go there, and he is not allowed to go  
2 there, and that is a separate claim. It is the civil authority  
3 claim besides the breach of contract claim.

4 THE COURT: Doesn't the executive order say -- I'm  
5 sorry, which executive order are you talking about?

6 MR. FISCHBARG: It is . . .

7 It is Exhibit 3 of the declaration, and then on page  
8 2, "Each employer shall reduce the in-person workforce at any  
9 work locations by 100 percent no later than March 22 at 8p.m."  
10 And then it says --

11 THE COURT: Right, but that doesn't mean the boss  
12 can't go to the work location.

13 MR. FISCHBARG: I would say he is -- he is an employee  
14 and he can't go. I think it does. In my building here in New  
15 York, there is nobody here. I'm the only one. There is no  
16 bosses in any of the offices.

17 THE COURT: There is nothing about the governor's  
18 order that prohibits a small businessperson or a big  
19 businessperson from going into their office to pick up mail, to  
20 water the plants, to do anything like --

21 MR. FISCHBARG: Your Honor --

22 THE COURT: -- that, including employees that are  
23 working.

24 MR. FISCHBARG: Sorry.

25 MS. GORDON: Your Honor, this is Sarah Gordon. Oh, go

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1 ahead, Mr. Fischbarg.

2 MR. FISCHBARG: Okay.

3 Again, I would disagree. I think the order is pretty  
4 clear that 100 percent means that you are not supposed to go to  
5 work, and that's what people have been doing in New York. They  
6 are not going into the office. And to the extent they are  
7 getting mail, I mean, there is work-arounds where the workers  
8 in the building have been leaving it downstairs for people to  
9 pick up, but the way it's been implemented is that 100 percent  
10 means no one is going to any office.

11 THE COURT: You are in your office.

12 MR. FISCHBARG: Yeah, I'm not -- I'm considered, by  
13 the way -- lawyers are considered essential, and if you are a  
14 sole practitioner, you are considered essential. So I have the  
15 exclusion, and that's why I am here, but otherwise I wouldn't  
16 be here. So . . .

17 MS. GORDON: Your Honor, if I may? We submitted with  
18 Mr. Michael's affidavit, Exhibit D, a printout from the Empire  
19 State Development website. And on question 13, it addresses  
20 exactly this issue. It says, "What if my business is not  
21 essential but a person must pick up mail or perform a similar  
22 routine function each day?" And the answer provided by the  
23 Empire State is, "A single person attending a nonessential  
24 closed business temporarily to perform a specific task is  
25 permitted so long as they will not be in contact with other

k5e2Soch

1 people."

2 THE COURT: I thought I had read that somewhere.

3 MS. GORDON: Yes. It is in Mr. Michael's declaration,  
4 and I think it's ECF 18-4, page 304.

5 THE COURT: Okay.

6 MR. FISCHBARG: Right, but I think the executive order  
7 supersedes that is what I would argue.

8 THE COURT: Okay.

9 Mr. Fischbarg, you have got to demonstrate a  
10 probability of success on the merits. I feel bad for your  
11 client. I feel bad for every small business that is having  
12 difficulties during this period of time. But New York law is  
13 clear that this kind of business interruption needs some damage  
14 to the property to prohibit you from going. You get an A for  
15 effort, you get a gold star for creativity, but this is just  
16 not what's covered under these insurance policies.

17 So I will have a more complete order later, but your  
18 motion for preliminary injunction is going to be denied.

19 Anything further for the plaintiff?

20 MR. FISCHBARG: I guess just a housekeeping thing. We  
21 filed an amended complaint. Are we going to deem it served or  
22 does it have to be re-served?

23 THE COURT: Has the defendant -- does the defendant  
24 want to be reserved or will you take the amended complaint?

25 MR. MICHAEL: Your Honor, this is Charles Michael.

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1           We have entered a notice of appearance, and so I think  
2           once they filed it on ECF, that service, we are happy to  
3           consider it served. That's fine. And he does have one  
4           amendment as of right.

5           THE COURT: Correct.

6           MR. MICHAEL: That was within his right to file it.

7           THE COURT: Does defendant plan to move or answer?

8           MR. MICHAEL: Probably to move. We would have to  
9           discuss it with our client, but I believe so.

10          THE COURT: Okay. What are the parties' position on  
11          discovery while the motion to dismiss is pending?

12          MR. FISCHBARG: Well, I would say there are two  
13          motions filed -- there is one in the Eastern District of  
14          Pennsylvania and one in, I think, the Northern District of  
15          Illinois -- for an MDL, multi-district litigation, involving a  
16          lot of lawsuits combining, so I think this might be happening  
17          in each state until that motion is decided, and I think the  
18          briefing schedule is in June --

19          MS. GORDON: We -- your Honor --

20          MR. FISCHBARG: -- so I think --

21          MS. GORDON: Sorry, Mr. Fischbarg.

22          MR. FISCHBARG: So I would say that this case might be  
23          transferred to the multi-district panel at some point.

24          THE COURT: Okay. So, Mr. Fischbarg, what I am  
25          hearing you say is that you are perfectly happy to have the

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1 defendants not move until we find out whether or not your case  
2 is going to get scooped up into the MDL?

3 MR. FISCHBARG: Yes, correct.

4 THE COURT: All right. I presume that the defendants  
5 are perfectly happy to do nothing until you hear back from the  
6 MDL.

7 MS. GORDON: Your Honor, I need to consult with my  
8 client on that. I'm not sure that that's true. We don't think  
9 these cases are appropriate for consolidation in the MDL for  
10 many of the reasons which were evident today, given the  
11 different states' conclusions on these laws. So I need to  
12 consult with my client on the motion practice. We may intend  
13 to want to move in any event.

14 THE COURT: Okay. Well, you could move, but if there  
15 is a likely -- if there is some likelihood that they are going  
16 to get scooped into the MDL, I'm not likely to decide it until  
17 that decision is made. So it is entirely -- I guess from my  
18 perspective I don't really care, but from your client's  
19 perspective, they may be making a motion to dismiss that's  
20 unnecessary. If you are right, and you may well be right, that  
21 they are not going to MDL these kinds of cases, then all that's  
22 happening is this is just being delayed into the summer for you  
23 to incur fees making a motion to dismiss.

24 So why don't you talk to your client, figure out what  
25 you want to do. One way or the other, it does not seem to me

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1 to make sense to proceed with discovery in this matter,  
2 certainly under the circumstances that everyone is in, and  
3 particularly the plaintiff is in, strapped for revenue, until  
4 we figure out whether a lawsuit is going to go forward.

5 So talk to your client, figure out whether -- the  
6 defendant should talk to Sentinel. Figure out whether you are  
7 happy staying this case pending a decision on the MDL or not,  
8 and just write me a letter and let me know.

9 MS. GORDON: Yes, your Honor. Thank you.

10 MR. MICHAEL: Your Honor --

11 THE COURT: Anything further from the plaintiff?

12 MR. MICHAEL: Just one housekeeping matter. This is  
13 Charles Michael, again, for the defendant.

14 THE COURT: Okay.

15 MR. MICHAEL: I just wondered if there was any special  
16 procedures for ordering the transcript or if we go just through  
17 the normal Southern District website? I didn't know, under the  
18 COVID circumstances, if there is something different we should  
19 do.

20 THE COURT: I don't think there is anything different,  
21 but we have got the court reporter on.

22 So, Madam Court Reporter, is there anything different  
23 they need to do?

24 THE COURT REPORTER: At the end of this proceeding, I  
25 am going to email the parties with their instructions.

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1 THE COURT: Okay.

2 MR. MICHAEL: Terrific. Thank you so much.

3 THE COURT: Anything further from the plaintiff,  
4 Mr. Fischbarg?

5 MR. FISCHBARG: No. Thank you, Judge.

6 THE COURT: Anything further from the insurance  
7 company? Ms. Gordon?

8 MS. GORDON: No. Thank you, your Honor.

9 THE COURT: All right. Thank you, all.

10 MR. FISCHBARG: Okay. Bye, Judge.

11 MR. MICHAEL: Thank you, your Honor.

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Effective January 1, 2006

### Property & Casualty Transmittal Document---

<b>20.</b>	<b>This filing transmittal is part of Company Tracking #</b>	CF-2006-OVBEF
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<b>21.</b>	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]
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This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

<b>22.</b>	<b>Filing Fees</b> (Filer must provide check # and fee amount if applicable) [If a state requires you to show how you calculated your filing fees, place that calculation below]
------------	---

**Check #:**   
**Amount:**

**Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.**

**\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)**

Effective January 1, 2006

OHIO

**FORM FILING SCHEDULE**

(This form must be provided ONLY when making a filing that includes forms)

(Do not refer to the body of the filing for the forms listing, unless allowed by state.)

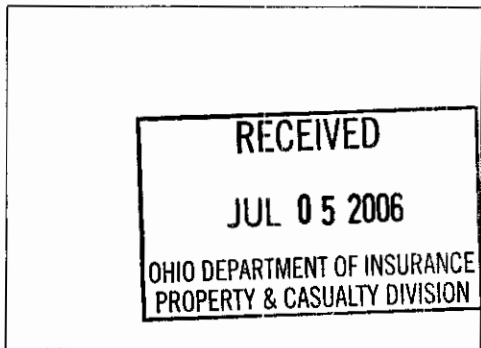
<b>1.</b>	<b>This filing transmittal is part of Company Tracking #</b>		CF-2006-OVBEP		
<b>2.</b>	<b>This filing corresponds to rate/rule filing number</b> (Company tracking number of rate/rule filing, if applicable)		CF-2006-OVBER		
<b>3.</b>	<b>Form Name /Description/Synopsis</b>	<b>Form # Include edition date</b>	<b>Replacement Or Withdrawn?</b>	<b>If replacement, give form # it replaces</b>	<b>Previous state filing number, if required by state</b>
01	Exclusion Of Loss Due To Virus Or Bacteria	CP 01 40 07 06	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
02			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
03			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
04			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
05			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
06			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
07			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
08			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
09			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
10			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		

*[Handwritten signatures]*  
OHIO

Effective January 1, 2006

**Property & Casualty Transmittal Document (Revised 1/1/06)**

**1. Reserved for Insurance Dept. Use Only**



**2. Insurance Department Use only**

a. Date the filing is received:	
b. Analyst:	
c. Disposition:	
d. Date of disposition of the filing:	
e. Effective date of filing:	
New Business	
Renewal Business	
f. State Filing #:	
g. SERFF Filing #:	
h. Subject Codes	

<b>3. Group Name</b>	<b>Group NAIC #</b>

4. Company Name(s)	Domicile	NAIC #	FEIN #
Insurance Services Office, Inc.	DE		13-3131412

<b>5. Company Tracking Number</b>	CF-2006-OVBER
-----------------------------------	---------------

**Contact Info of Filer(s) or Corporate Officer(s)** [include toll-free number]

6. Name and address	Title	Telephone #s	Fax #	e-mail
Tony Shannon Insurance Services Office, Inc. 2525 Cabot Drive, Ste. 105 Lisle, IL 60532-3627	Regional Manager	(630) 955-1080	(630) 955-1230	RSHANNON@iso.com
7. Signature of authorized filer		<i>Tony Shannon</i>		
8. Please print name of authorized filer		Tony Shannon		

**Filing information** (see General Instructions for descriptions of these fields)

9. Type of Insurance (TOI)	01.0
10. Sub-Type of Insurance (Sub-TOI)	01.0001
11. State Specific Product code(s)(if applicable)[See State Specific Requirements]	Not Applicable
12. Company Program Title (Marketing title)	Commercial Property Program
13. Filing Type	<input type="checkbox"/> Rate/Loss Cost <input checked="" type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input type="checkbox"/> Forms <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other
14. Effective Date(s) Requested	New: 1/1/2007      Renewal: 1/1/2007
15. Reference Filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16. Reference Organization (if applicable)	Not Applicable
17. Reference Organization # & Title	Not Applicable
18. Company's Date of Filing	6/29/06
19. Status of filing in domicile	<input type="checkbox"/> Not Filed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved

Effective January 1, 2006

### Property & Casualty Transmittal Document---

<b>20.</b>	<b>This filing transmittal is part of Company Tracking #</b>	CF-2006-OVBER
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<b>21.</b>	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]
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Introduction of an Additional Rule relating to new form CP 01 40 Exclusion Of Loss Due To Virus Or Bacteria

<b>22.</b>	<b>Filing Fees</b> (Filer must provide check # and fee amount if applicable) [If a state requires you to show how you calculated your filing fees, place that calculation below]
------------	---

Check #:   
Amount:

**Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.**

**\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)**

Effective January 1, 2006

OHIO

**RATE/RULE FILING SCHEDULE**

(This form must be provided ONLY when making a filing that includes rate-related items such as Rate; Rule; Rate & Rule; Reference; Loss Cost; Loss Cost & Rule or Rate, etc.)

(Do not refer to the body of the filing for the component/exhibit listing, unless allowed by state.)

<b>1.</b>	<b>This filing transmittal is part of Company Tracking #</b>	CF-2006-OVBER
<b>2.</b>	<b>This filing corresponds to form filing number</b> (Company tracking number of form filing, if applicable)	CF-2006-OVBEF

Rate Increase
  Rate Decrease
  Rate Neutral (0%)

<b>3.</b>	<b>Filing Method (Prior Approval, File &amp; Use, Flex Band, etc.)</b>	Prior Approval
-----------	--	----------------

4a. Rate Change by Company (As Proposed)						
Company Name	Overall % Rate Impact	Written premium change for this program	# of policyholders affected for this program	Written premium for this program	Maximum % Change (where required)	Minimum % Change (where required)
N/A	N/A	N/A	N/A	N/A	N/A	N/A

4b. Rate Change by Company (As Accepted) For State Use Only						
Company Name	Overall % Rate Impact	Written premium change for this program	# of policyholders affected for this program	Written premium for this program	Maximum % Change	Minimum % Change

Overall Rate Information (Complete for Multiple Company Filings only)			
		COMPANY USE	STATE USE
<b>5a.</b>	Overall percentage rate impact for this filing	N/A	
<b>5b.</b>	Effect of Rate Filing – Written premium change for this program	N/A	
<b>5c.</b>	Effect of Rate Filing – Number of policyholders affected	N/A	

<b>6.</b>	Overall percentage of last rate revision	N/A
<b>7.</b>	Effective Date of last rate revision	N/A
<b>8.</b>	Filing Method of Last filing (Prior Approval, File & Use, Flex Band, etc.)	N/A

9.	Rule # or Page # Submitted for Review	Replacement or Withdrawn?	Previous state filing number, if required by state
01	Additional Rule - Exclusion Of Loss Due To Virus Or Bacteria	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	N/A
02		<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	
03		<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	
04		<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	
05		<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn	



2525 CABOT DRIVE SUITE 105 LISLE, IL 60532 TEL: (630) 955-1080 FAX: (630) 955-1230

June 29, 2006

Honorable Ann Womer Benjamin  
Director of Insurance  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, OH 43215-1067

Attention: Office of Property & Casualty Svcs

Dear Director Womer Benjamin:

Insurance Services Office, Inc.  
Filing **CF-2006-OVBER**  
*Rule On Amendatory Endorsement –  
Exclusion Of Loss Due To Virus Or Bacteria*  
State of Ohio

On behalf of those participating insurers which have authorized Insurance Services Office, Inc., to do so, we are submitting the enclosed captioned filing.

It is proposed that this revision become effective in accordance with the following rule of application:

These changes are applicable to policies written on or after **January 1, 2007**.

Your early review and approval will be greatly appreciated.

For your convenience, an extra copy of this letter and a self addressed stamped envelope are enclosed for your use in responding.

Very truly yours,

A handwritten signature in cursive script that reads 'Tony Shannon'.

Tony Shannon, CPCU  
Regional Manager  
Government Relations  
[rshannon@iso.com](mailto:rshannon@iso.com)

Enclosures  
RES/gr



2525 CABOT DRIVE SUITE 105 LISLE, IL 60532 TEL: (630) 955-1080 FAX: (630) 955-1230

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Tony Shannon, CPCU  
Regional Manager  
Government Relations  
[rshannon@iso.com](mailto:rshannon@iso.com)

Enclosures  
RES/gr

COMMERCIAL FIRE AND ALLIED LINES  
RULES FILING CF-2006-OVBER

---

# Rule On Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

## About This Filing

---

This filing addresses use of an endorsement that excludes loss due to disease-causing agents such as viruses and bacteria.

## New Rule

We are introducing:

- **Additional Rule - Exclusion Of Loss Due To Virus Or Bacteria**

This rule, which is being filed on a multistate basis, will appear in the state exception pages in Commercial Lines Manual Division Five - Fire And Allied Lines, until the multistate general rules are updated in a future filing.

## Related Filing(s)

---

- Forms Filing CF-2006-OVBEF

## Background

---

In the related Forms Filing, we have submitted endorsement CP 01 40, containing an exclusion relating to a type of contamination, namely, losses caused by disease-causing viruses or bacteria or other disease-causing microorganisms. The exclusion makes it explicit that there is no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease. In accordance with the terms of endorsement CP 01 40, the exclusion applies to property damage, time element and all other coverages.

## Changes

---

The rule presented in this Rules Filing provides for attachment of Endorsement CP 01 40 to all policies.



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**Additional Rule # - Exclusion Of Loss Due To Virus Or Bacteria**

Attach Exclusion Of Loss Due To Virus Or Bacteria Endorsement **CP 01 40** to all policies.

# For each state, the Additional Rule number will be the next number in sequence, assigned at the time of publication based on the number of then-current Additional Rules.



2525 CABOT DRIVE SUITE 105 LISLE, IL 60532 TEL: (630) 955-1080 FAX: (630) 955-1230

June 29, 2006

Honorable Ann Womer Benjamin  
Director of Insurance  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, OH 43215-1067

Attention: Office of Property & Casualty Svcs

Dear Director Womer Benjamin:

Insurance Services Office, Inc.  
Filing **CF-2006-OVBEF**  
*Exclusion Of Loss Due To Disease Agents  
Such As Viruses Or Bacteria (Forms)*  
State of Ohio

On behalf of those participating insurers which have authorized Insurance Services Office, Inc., to do so, we are submitting the enclosed captioned filing.

It is proposed that this revision become effective in accordance with the following rule of application:

These changes are applicable to policies written on or after **January 1, 2007**.

Your early review and approval will be greatly appreciated.

For your convenience, an extra copy of this letter and a self addressed stamped envelope are enclosed for your use in responding.

Very truly yours,

A handwritten signature in cursive script that reads 'Tony Shannon'.

Tony Shannon, CPCU  
Regional Manager  
Government Relations  
[rshannon@iso.com](mailto:rshannon@iso.com)

Enclosures  
RES/gr

COMMERCIAL FIRE AND ALLIED LINES  
FORMS FILING CF-2006-OVBEF

---

# Amendatory Endorsement - Exclusion Of Loss Due To Virus Or Bacteria

## About This Filing

---

This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

## New Form

We are introducing:

- ◆ Endorsement CP 01 40 07 06 - Exclusion Of Loss Due To Virus Or Bacteria

## Related Filing(s)

---

Rules Filing CF-2006- OVBER

## Introduction

---

The current pollution exclusion in property policies encompasses contamination (in fact, uses the term *contaminant* in addition to other terminology). Although the pollution exclusion addresses contamination broadly, viral and bacterial contamination are specific types that appear to warrant particular attention at this point in time.

An example of bacterial contamination of a product is the growth of listeria bacteria in milk. In this example, bacteria develop and multiply due in part to inherent qualities in the property itself. Some other examples of viral and bacterial contaminants are rotavirus, SARS, influenza (such as avian flu), legionella and anthrax. The universe of disease-causing organisms is always in evolution.

Disease-causing agents may render a product impure (change its quality or substance), or enable the spread of disease by their presence on interior building surfaces or the surfaces of personal property. When disease-causing viral or bacterial contamination occurs, potential claims involve the cost of replacement of property (for example, the milk), cost of decontamination (for example, interior building surfaces), and business interruption (time element) losses.

## Current Concerns

---

Although building and personal property could arguably become contaminated (often temporarily) by such viruses and bacteria, the nature of the property itself would have a bearing on whether there is actual property damage. An allegation of property damage may be a point of disagreement in a particular case. In addition, pollution exclusions are at times narrowly applied by certain courts. In recent years, ISO has filed exclusions to address specific exposures relating to contaminating or harmful substances. Examples are the mold exclusion in property and liability policies and the liability exclusion addressing silica dust. Such exclusions enable elaboration of the specific exposure and thereby can reduce the likelihood of claim disputes and litigation.

While property policies have not been a source of recovery for losses involving contamination by disease-causing agents, the specter of pandemic or hitherto unorthodox transmission of infectious material raises the concern that insurers employing such policies may face claims in which there are efforts to expand coverage and to create sources of recovery for such losses, contrary to policy intent.

In light of these concerns, we are presenting an exclusion relating to contamination by disease-causing viruses or bacteria or other disease-causing microorganisms.

## Features Of New Amendatory Endorsement

---

The amendatory endorsement presented in this filing states that there is **no coverage for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.** The exclusion (which is set forth in Paragraph B of the endorsement) applies to property damage, time element and all other coverages; introductory Paragraph A prominently makes that point. Paragraphs C and D serve to avoid overlap with other exclusions, and Paragraph E emphasizes that other policy exclusions may still apply.

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

## **EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA**

This endorsement modifies insurance provided under the following:

### COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY

- A.** The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.
- B.** We will not pay for loss or damage caused by or resulting from any virus, bacterium or other micro-organism that induces or is capable of inducing physical distress, illness or disease.  
However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.
- C.** With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".
- D.** The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:
1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and
  2. Additional Coverage - Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.
- E.** The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

N

E

W

Effective January 1, 2006

OHIO

## Property &amp; Casualty Transmittal Document (Revised 1/1/06)

1. Reserved for Insurance  
Dept. Use Only

2. Insurance Department Use only

a. Date the filing is received:

b. Analyst:

c. Disposition:

d. Date of disposition of the filing:

e. Effective date of filing:

New Business

Renewal Business

f. State Filing #:

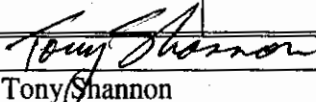
g. SERFF Filing #:

h. Subject Codes

3.	Group Name	Group NAIC #		
4.	Company Name(s)	Domicile	NAIC #	FEIN #
	Insurance Services Office, Inc.	DE		13-3131412

5.	Company Tracking Number	CF-2006-OVBEF
----	-------------------------	---------------

## Contact Info of Filer(s) or Corporate Officer(s) [include toll-free number]

6.	Name and address	Title	Telephone #s	Fax #	e-mail
	Tony Shannon Insurance Services Office, Inc. 2525 Cabot Drive, Ste. 105 Lisle, IL 60532-3627	Regional Manager	(630) 955-1080	(630) 955-1230	RSHANNON@iso.com
7.	Signature of authorized filer				
8.	Please print name of authorized filer		Tony Shannon		

## Filing information (see General Instructions for descriptions of these fields)

9.	Type of Insurance (TOI)	1.0000
10.	Sub-Type of Insurance (Sub-TOI)	1.0001
11.	State Specific Product code(s)(if applicable)(See State Specific Requirements)	
12.	Company Program Title (Marketing title)	
13.	Filing Type	<input type="checkbox"/> Rate/Loss Cost <input type="checkbox"/> Rules <input type="checkbox"/> Rates/Rules <input checked="" type="checkbox"/> Forms <input type="checkbox"/> Combination Rates/Rules/Forms <input type="checkbox"/> Withdrawal <input type="checkbox"/> Other
14.	Effective Date(s) Requested	New: 1/1/07   Renewal: 1/1/07
15.	Reference Filing?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
16.	Reference Organization (if applicable)	Not Applicable
17.	Reference Organization # & Title	Not Applicable
18.	Company's Date of Filing	6/29/06
19.	Status of filing in domicile	<input type="checkbox"/> Not Filed <input checked="" type="checkbox"/> Pending <input type="checkbox"/> Authorized <input type="checkbox"/> Disapproved



Effective January 1, 2006

### Property & Casualty Transmittal Document---

20.	This filing transmittal is part of Company Tracking #	CF-2006-OVBEP
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21.	<b>Filing Description</b> [This area can be used in lieu of a cover letter or filing memorandum and is free-form text]
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This filing addresses exclusion of loss due to disease-causing agents such as viruses and bacteria.

22.	<b>Filing Fees</b> (Filer must provide check # and fee amount if applicable) [If a state requires you to show how you calculated your filing fees, place that calculation below]
-----	---

Check #:   
Amount:

Refer to each state's checklist for additional state specific requirements or instructions on calculating fees.

\*\*\*Refer to each state's checklist for additional state specific requirements (i.e. # of additional copies required, other state specific forms, etc.)

Effective January 1, 2006

OHIO

**FORM FILING SCHEDULE**

(This form must be provided ONLY when making a filing that includes forms)

(Do not refer to the body of the filing for the forms listing, unless allowed by state.)

<b>1.</b>	<b>This filing transmittal is part of Company Tracking #</b>		CF-2006-OVBEB		
<b>2.</b>	<b>This filing corresponds to rate/rule filing number</b> (Company tracking number of rate/rule filing, if applicable)		CF-2006-OVBEB		
<b>3.</b>	<b>Form Name /Description/Synopsis</b>	<b>Form # Include edition date</b>	<b>Replacement Or Withdrawn?</b>	<b>If replacement, give form # it replaces</b>	<b>Previous state filing number, if required by state</b>
01	Exclusion Of Loss Due To Virus Or Bacteria	CP 01 40 07 06	<input checked="" type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
02			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
03			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
04			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
05			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
06			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
07			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
08			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
09			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		
10			<input type="checkbox"/> New <input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn		

PC FFS-1



2525 CABOT DRIVE SUITE 105 LISLE, IL 60532 TEL: (630) 955-1080 FAX: (630) 955-1230

June 29, 2006

Honorable Ann Womer Benjamin  
Director of Insurance  
Ohio Department of Insurance  
2100 Stella Court  
Columbus, OH 43215-1067

Attention: Office of Property & Casualty Svcs

Dear Director Womer Benjamin:

Insurance Services Office, Inc.  
Filing **CF-2006-OVBEF**  
*Exclusion Of Loss Due To Disease Agents  
Such As Viruses Or Bacteria (Forms)*  
State of Ohio

On behalf of those participating insurers which have authorized Insurance Services Office, Inc., to do so, we are submitting the enclosed captioned filing.

It is proposed that this revision become effective in accordance with the following rule of application:

These changes are applicable to policies written on or after **January 1, 2007**.

Your early review and approval will be greatly appreciated.

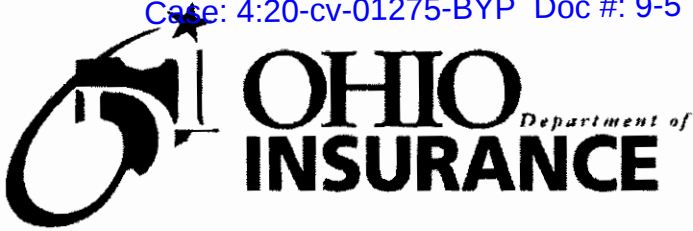
For your convenience, an extra copy of this letter and a self addressed stamped envelope are enclosed for your use in responding.

Very truly yours,

A handwritten signature in cursive script that reads 'Tony Shannon'.

Tony Shannon, CPCU  
Regional Manager  
Government Relations  
[rshannon@iso.com](mailto:rshannon@iso.com)

Enclosures  
RES/gr



Bob Taft, Governor  
Ann Womer Benjamin, Director

2100 Stella Court, Columbus, OH 43215-1067  
(614) 644-2658 www.ohioinsurance.gov

July 20, 2006

Company	PCD Number	Company Filing	
INSURANCE SERVICES OFFICE INC	173147	CF-2006-OVBEF	CF-2006-OVBER

ODI Group Number:

Received Date: 07/05/2006

Effective Date: 01/01/2007

Final Action Code: A

The Office of Property and Casualty Services of the Ohio Department of Insurance has completed its review of the above listed filing(s), and has entered it(them) in our records with the noted final action code. The final action code descriptions are as follows:

Final Action	Description
A	Approved under Chapter 3935, or accepted under Chapter 3937, of the Ohio Revised Code.
W	Withdrawn

**IMPORTANT NOTICE: Our records indicate the implementation of this filing on the Effective Date shown above. If this date is incorrect, notify the undersigned.**

This document will not be accompanied by any other notices, records, or return copies of your filing(s).  
If you have any questions, contact:

Sherri A. Copeland, CIC  
Contract Analyst  
(614)644-3959  
Fax: 614-728-1280  
sharon.copeland@ins.state.oh.us



# Exhibit E

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

NEURO-COMMUNICATION  
SERVICES, INC. d/b/a  
HEARING INNOVATIONS,  
individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

THE CINCINNATI INSURANCE  
COMPANY; THE CINCINNATI  
CASUALTY COMPANY; AND THE  
CINCINNATI INDEMNITY  
COMPANY,

Defendants.

Judge Benita Y. Pearson

Case No.: 4:20-cv-1275

**DEFENDANT’S REPLY IN  
SUPPORT OF ITS MOTION  
TO DIMSISS**

September 30, 2020

The Cincinnati Insurance Company (“Cincinnati”) for its Reply in support of its Motion to Dismiss states as follows:

**I. Plaintiff Misrepresents *Mastellone’s* Holding**

Plaintiff asserts that there is no settled law that direct physical loss requires actual, tangible, permanent, physical alteration of property. Opp. at p. 2, 10 n.4. Plaintiff’s assertion ignores *Mastellone v. Lightning Rod Mutual Insurance Co.*, 2008-Ohio-311, 175 Ohio App.3d 23, 884 N.E.2d 1130 (8th Dist)(Stewart, J.). *Mastellone* is a long-standing Ohio precedent and thus is, in fact, settled law.

Plaintiff criticizes *Mastellone* because it was not a ruling on a motion to dismiss. Opp. at 12, 16. The ruling is nevertheless a valid legal precedent. Whether a legal determination is issued on a motion to dismiss or on a motion for summary judgment is a distinction without a difference. Either one is authoritative on the law in Ohio. Under *Mastellone*, direct physical loss requires structural alteration to property. This legal decision should be determinative here.

Plaintiff also asserts that *Mastellone* involved different policy language. Opp. at 12-13. That is another distinction without a difference. The policy language described in *Mastellone* is not meaningfully different than the policy language presented in this case. *Mastellone* squarely addressed the direct physical loss to property issue that is dispositive here.

Plaintiff asserts that *Mastellone* involved both indoor and outdoor mold, and it misrepresents what the case said about the indoor mold. Opp. at 12. Here is what the court actually held about the indoor mold: “The undisputed facts show that Lightning Rod did not extend the limitation period for interior loss. The Mastellones did not file a claim for interior loss until 2004, well after the November 2002 cut-off date. As a matter of law, the claim for loss had not been made in conformity with the policy. The court did not err by directing a verdict on this basis.” *Mastellone*, 2008-Ohio-311, ¶ 55, 175 Ohio App. 3d 23, 39, 884 N.E.2d 1130, 1142. This ruling was on a different issue in *Mastellone* from that which speaks to the present case. It in no way changes the court’s explicit holding, addressing mold on building siding, that structural alteration is necessary in order for there to be direct physical loss to property.

Plaintiff asserts that the language of the policy at issue in *Mastellone* is unclear. Opp. at 13. This assertion ignores the fact that the decision states the policy language the court was construing: “It agreed to insure against direct loss to property ‘only if that loss is a physical loss to property.’” *Mastellone*, 2008-Ohio-311, ¶ 60, 175 Ohio App. 3d 23, 40, 884 N.E.2d 1130, 1143.

Plaintiff professes confusion as to *Mastellone*’s requirement of structural alteration to property. Opp. at 13. There can be no confusion: “Absent any specific alteration of the siding, the Mastellones failed to show that their house suffered any direct physical injury as required by the homeowners’ policy.” *Mastellone*, 2008-Ohio-311, ¶ 68, 175 Ohio App. 3d 23, 42, 884 N.E.2d 1130, 1144–45.

Surprisingly, Plaintiff quotes *Couch on Insurance*, the leading insurance treatise, and one on which *Mastellone* relies. *Couch* greatly supports the granting of Cincinnati's Motion to Dismiss. Opp. at 13, citing 10A *Couch on Insurance* § 148:46 (3d ed. 1998) ("The requirement that the loss be 'physical,' given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal, and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property." (Emphasis added.)).

Plaintiff misconstrues *Cincinnati Insurance Cos. v. Motorists Mutual Insurance Co.*, 18 N.E.3d 875, 882 (Ohio Ct. App. 2014). Opp. at 14. That decision actually applied *Mastellone* in the manner in which it should be applied here: "Thus, in accordance with that concept, 'the vast majority of jurisdictions hold that pure economic loss, such as loss of profits, loss of good will, or loss of benefits, is not damage or injury to tangible property.' *Motorists* cites to *Ohio Casualty Insurance Co. v. Hanna*, 2008-Ohio-3203, ¶ 10 (quoting *Mastellone*), for the definition of "physical injury to tangible property, as "a harm to the property that adversely affects the structural integrity of the house.'" 18 N.E.3d at 881–82 n.5 (quoting *Mastellone*, ¶ 61).

Plaintiff also cites favorably to a case that suggests that this court should look to *Mastellone* in making its ruling. Opp. at 14. "If the Ohio Supreme Court has not spoken on an issue, the Court looks 'to the decisions of Ohio's lower courts, to the extent they are persuasive, to predict how the Ohio Supreme Court would decide the issue.'" *Fujitec Am., Inc. v. AXIS Surplus Ins. Co.*, No. 1:18-CV-635, 2020 WL 2112165, at \*5 (S.D. Ohio May 4, 2020) (citations omitted). In this context, it is important to remember that *Mastellone* was written by Ohio Supreme Court Justice Melody Stewart when Justice Stewart was sitting on the Appellate Court. It is the only Ohio appellate authority directly on point. It should be followed here.



## II. A Virus Exclusion Is Not Relevant Here

Plaintiff asserts that it is entitled to coverage because the Cincinnati policy does not contain a virus exclusion. Opp. at 1, 11. That assertion is contrary to established law and is irrelevant. Here, an exclusion can become relevant only if it is first determined that there is direct physical loss or damage to property. Also, direct physical loss or damage to property is part of the threshold requirement that there be a Covered Cause of Loss, which means all risks of direct physical loss that are neither excluded nor limited. Thus, if there is no direct physical loss or damage in the first place, the existence of a virus exclusion is irrelevant. *See, e.g., Newman Myers Kreines Gross Harris, P.C. v. Great N. Ins. Co.*, 17 F.Supp.3d 323, 333 (S.D.N.Y. 2014) (holding that a power outage at a law firm closed was not a direct physical loss, so addressing flood exclusion was unnecessary); *Ward Gen. Ins. Svcs., Inc. v. Emps. Fire Ins. Co.*, 114 Cal. App. 4th 548, 555 (2003) (holding that a crashed database was not direct physical loss, so it was “unnecessary to analyze the various exclusions and their application to this case.”); *Roundabout Theatre Co. v. Cont’l Cas. Co.*, 302 A.D.2d 1, 9, 751 N.Y.S.2d 4, 10 (2002); *Zinser v. Auto-Owners Ins. Co.*, No. CA2016-08-144, 2017-Ohio-5668, ¶ 33 (Powell, J., concurring and dissenting in part).

Plaintiff raises the ISO Virus Exclusion’s filing with the Ohio Department of Insurance in 2006. Opp. at 11. However, ISO’s stated intent at that time includes an express recognition that virus was already not covered. The virus exclusion was offered as a belt and suspenders option in case policyholders sought coverage that was not afforded. Thus, the truth about ISO’s filing is the exact opposite of Plaintiff’s interpretation of the role of the virus exclusion in commercial property policies. *See* Memo. Supp. Cincinnati’s Mot. to Dismiss, ECF Doc. # 9-1, PAGEID # 351.

### III. Plaintiff's "Physical Loss Or Physical Damage" Argument Is Without Merit

Plaintiff asserts that because the Policy defines loss as "accidental physical loss or accidental physical damage", it covers purely financial loss in the absence of any tangible, demonstrable, structural harm to property. Opp. at 1, 7-11. Plaintiff's assertion is incorrect and once again flies in the face of established Ohio law. The word physical modifies both "loss" and "damage." In *10E, LLC v. Travelers Indem. Co. of Connecticut*, No. 2:20-CV-04418-SVW-AS, 2020 WL 5359653, at \*5 (C.D. Cal. Sept. 2, 2020), the court granted the insurer's motion to dismiss in a case in which Plaintiff sought business income coverage due to the alleged Coronavirus-related closure of its restaurant. The court noted that "Plaintiff attempts to circumvent the plain language of the Policy by emphasizing its disjunctive phrasing – 'direct physical loss of or damage to property, – and insisting that 'loss,' unlike 'damage,' encompasses temporary impaired use recognizing coverage for 'the permanent dispossession of something.'" The court went on to hold that even if direct physical loss included "permanent dispossession" there still was no coverage. The closure order did not cause permanent dispossession. *Id.*

Similarly, a District of Columbia court recently granted summary judgment to an insurer on the issue of business income coverage for the alleged Coronavirus-related closing of a restaurant. That court held: "Plaintiffs argue that by defining 'loss' in the policy as encompassing either 'loss' or 'damage,' Defendant must treat the term 'loss' as distinct from 'damage,' which connotes physical damage to the property . . . . But under a natural reading of the term 'direct physical loss,' the words 'direct' and 'physical' modify the word 'loss.'" *Rose's 1, LLC v. Erie Ins. Exchange*, No. 2020 CA 002424 B, 2020 WL 4589206, at \*3 (D.C. Super. Aug. 06, 2020); *see also Phila. Parking Auth. v. Federal Ins. Co.*, 385 F. Supp. 2d 280, 287-88 (S.D.N.Y. 2005) ("'direct physical' modifies both loss and damage," and therefore "the interruption in business

must be caused by some physical problem with the covered property ... which must be caused by a ‘covered cause of loss’”); *Bethel Vill. Condo. Assn. v. Republic-Franklin Ins. Co.*, 2007-Ohio-546, ¶ 18.

A string of new on-point decisions have rejected Plaintiff’s argument the word “physical” should be ignored because of the use of the word “or” in a phrase referring to loss or damage. For example, in *Mama Jo’s, Inc. v. Sparta Insurance Co.*, 2020 WL 4782369 (11th Cir. Aug.18, 2020) the Court held that the words “‘[d]irect’ and ‘physical’ modify loss and impose the requirement that the damage be actual.” *Mama Jo’s*, 2020 WL 4782369 at \*7, citing *Homeowners Choice Prop. & Cas. v. Maspons*, 211 So. 3d 1067, 1069 (Fla. 3d DCA 2017) (emphasis added). Like *Mastellone*, *Mama Jo’s* holds that there is no direct physical loss where a surface can simply be cleaned.

Plaintiff’s argument ignores the primary role of the word “physical.” Thus it is incorrect to say that purely financial losses are covered. The Policy requires a direct, **physical** loss or damage to property. It is because of the word “physical” that *Mastellone* requires physical injury to property causing structural damage to the property. *Mastellone*, 2008-Ohio-311, ¶¶40, 56, 61. The “physical” requirement is the gist of *Mastellone’s* holding. *Mastellone* states:

[The insurer] agreed to insure against direct loss to property ‘only if that loss is a physical loss to property’ . . . . We find that the Mastellones presented no evidence to show that the mold on the siding of their house constituted ‘physical damage’ as that term is used in the policy.

*Id.* at 884 N.E.2d at 1143-44. Based on Ohio law as set forth by *Mastellone*, no facts showing direct physical loss are pleaded in the Complaint.

Plaintiff asserts that it has alleged physical loss based on alleging “the actual or imminent presence of COVID-19, and by the connected Ohio civil authority orders.” Opp. at 8. The assertion is nothing more than Plaintiff repeating the speculative legal conclusions in its Complaint. In

addition, as established by *Mastellone*, the mere presence of the virus with no physical alteration is not physical loss to property. The civil authority orders are just that, orders, and not physical loss. Plaintiff asserts that “the term ‘Damage’ does not ‘plainly’ require physical alteration.” Opp. at 8. However, the phrase “physical damage” certainly does. *See Mastellone*, 884 N.E.2d at 1143-44.

#### **IV. American Law Overwhelmingly Supports Cincinnati Here**

In addition to those recent cases finding no coverage for Coronavirus claims cited above and in Cincinnati’s Memorandum in Support of its Motion to Dismiss, a growing number of new decisions nationwide similarly reject arguments like Plaintiff’s.

On September 21, 2020, the Northern District of Illinois granted Cincinnati’s Motion to Dismiss. *Sandy Point Dental, PC v. The Cincinnati Ins. Co.*, No. 20 CV 2160, 2020 WL 5630465 (N.D. Ill. Sept. 21, 2020). The opinion cited to other recent decisions for support in holding that there was no direct physical loss:

In essence, plaintiff seeks insurance coverage for financial losses as a result of the closure orders. The coronavirus does not physically alter the appearance, shape, color, structure, or other material dimension of the property. Consequently, plaintiff has failed to plead a direct physical loss—a prerequisite for coverage . . . .

Just as the coronavirus did not cause direct physical loss to plaintiff’s property, the complaint has not (and likely could not) allege that the coronavirus caused direct physical loss to other property. By the policy’s own terms, the civil authority coverage does not apply.

*Sandy Point Dental*, 2020 WL 5630465, at \*3; *see also Oral Surgeons, P.C. v. The Cincinnati Ins. Co.*, No. 4-20-CV-222-CRW-SBJ (S.D. Iowa, C.D. September 29, 2020) (Exhibit A hereto). The court in *Oral Surgeons* held, “OSPC does not allege any such ‘physical’ or ‘accidental’ loss, but instead contends its loss was caused by the COVID-19 coronavirus and the government actions to suspend temporarily non-emergency dental procedures. Recent cases cited by Cincinnati have held that virus-related closures of business do not amount to direct loss to property covered by the

Cincinnati policy of insurance. *The few contrary cases cited by OSPC are distinguishable on their facts and not as well analyzed as the many authorities cited by Cincinnati.* The Court grants the Cincinnati motion to dismiss”. Ex. A at 2 (emphasis added).

Similarly, the Middle District of Florida held the following on September 28, 2020:

Legal conclusions, though, “are not entitled to the assumption of truth.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009). In fact, “conclusory allegations, unwarranted factual deductions or legal conclusions masquerading as facts will not prevent dismissal.” *Davila v. Delta Air Lines, Inc.*, 326 F.3d 1183, 1185 (11th Cir. 2003) . . . Plaintiff argues that economic damage is synonymous with “physical loss” and is therefore covered under the Policies. Plaintiff’s argument is unpersuasive because . . . the plain language of the Policies reflect that actual, concrete damage is necessary . . . . Significantly, Plaintiff is not the first insured to seek coverage due to COVID-19 government shutdown orders under a policy that limits coverage to losses caused by direct physical loss or damage to the property. Courts across the country have held that such coverage does not exist where, as here, policyholders fail to plead facts showing physical property damage . . . . In sum, although the Court is sympathetic to Plaintiff and all insureds that experienced economic losses associated with COVID-19, there is simply no coverage under the policies if they require “direct physical loss of or damage” to property. Here, there is no business income coverage and no civil authority coverage because the Amended Complaint fails to allege facts describing how the Property suffered any actual physical loss or damage. It is also apparent that any amendment would be futile under these circumstances.

*Infinity Exhibits, Inc. v. Certain Underwriters at Lloyd’s London Known as Syndicate PEM 4000*, No. 8:20-CV-1605-T-30AEP, 2020 WL 5791583, at \*3-5 (M.D. Fla. Sept. 28, 2020); *see also Pappy’s Barber Shops, Inc. v. Farmers Group, Inc.*, No. 20-CV-907-CAB-BLM, 2020 WL 5500221, at \*4 (S.D. Cal. Sept. 11, 2020) (granting the insurer’s motion to dismiss: “Plaintiffs are not the first policyholders to argue in court that government orders forcing their businesses to stop operating as a result of the COVID-19 pandemic trigger insurance under provisions similar or identical to the ones in the Policy here. Most courts have rejected these claims, finding that the government orders did not constitute direct physical loss or damage to property.”), *citing Malaube, LLC v. Greenwich Ins. Co.*, No. 20-22615-CIV, 2020 WL 5051581 (S.D. Fla. Aug. 26, 2020) (“recommending dismissal of complaint seeking coverage for loss of business income as a result

of Florida COVID-19 Civil Authority Orders because the requirement that the plaintiff’s restaurant close indoor dining to mitigate the spread of COVID-19 was not a direct physical loss”). Ultimately, Plaintiff fails to explain why the new on-point authority cited in the Motion and herein, all of which is consistent with *Mastellone*, should not result in the granting of Cincinnati’s Motion.

Plaintiff cherry picks a few of the cases cited by Cincinnati and mischaracterizes their holdings in an attempt to distinguish them. Opp. at 16-17. In the process, Plaintiff ignores the large number of on-point cases cited by Cincinnati, apparently conceding that it is unable to distinguish them.

With regard to *Gavrilides Management Co. v. Michigan Insurance Co.*, Case No. 20-258, (Mich. Cir. Ct., July 1, 2020), Opp. at 16, it firmly supports Cincinnati’s position. See *Sandy Point Dental*, 2020 WL 5630465, at \*2 (stating that *Gavrilides* held, “that direct physical loss to property requires tangible alteration or damage that impacts the integrity of the property”).

Plaintiff attempts to distinguish the new on-point authority by asserting that Plaintiff “explicitly alleged the presence of COVID-19 on the premises.” Opp. at 16. Actually, Plaintiff only alleged a legal conclusion, which was solely based on speculation, that the virus was “likely” present. Compl. ¶ 30.

#### **V. *Studio 417* Should Be Disregarded**

Plaintiff relies heavily on *Studio 417, Inc. v. The Cincinnati Insurance Company*, Case No. D 6:20-cv-03127 (W.D. Mo. 2020). Opp. at 2, 9, 10, & 14-19. *Studio 417* was recently rejected by two federal courts as inapplicable or poorly reasoned. See *Sandy Point Dental*, 2020 WL 5630465, at \*2 (“Plaintiff heavily relies on *Studio 417 Inc. v. The Cincinnati Insurance Co.* . . . . The unambiguous language in the instant policy warrants a different conclusion—physical damage that demonstrably alters the property is necessary for coverage, and the coronavirus does not cause

physical damage.”); *Oral Surgeons*, No. 4-20-CV-222-CRW-SBJ, at 2 (“The few contrary cases cited by OSPC are distinguishable on their facts and not as well analyzed as the many authorities cited by Cincinnati.”).

Moreover, *Studio 417* is contrary to established Ohio law as set forth in *Mastellone*. Also, *Studio 417* and its companion case have no bearing here because they were decided under Missouri law. Moreover, they are distinguishable and wrongly decided for multiple reasons. *Studio 417* violated a controlling, applicable maxim of law by repeatedly and erroneously accepting summary allegations and legal conclusions. Those summary allegations and legal conclusions should not have been considered in determining the motion to dismiss. *See, e.g., Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S.Ct. 1937, 173 L.Ed.2d 868 (2009) and *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S.Ct. 1955, 167 L.Ed.2d 929 (2007). Moreover, *Studio 417* impermissibly deconstructed, and erroneously applied, the direct physical loss requirement in the policies at issue there. It wrongly concluded that the plaintiffs’ allegations satisfied the requirement because the virus has a physical aspect to it. Thus, *Studio 417* held that there was a connection between plaintiffs’ purely financial losses and the virus, “a physical substance.” *Studio 417*, Slip Op. at 8. But, under the plain language of the policies, it is the alleged loss or damage itself, *not* the damage-causing *agent* that must be physical. Here, there are no factual allegations to show that the virus caused a physical injury or alteration to Plaintiff’s property.

Additionally, *Studio 417* purported to follow Missouri law in two cases, *Hampton Foods, Inc. v. Aetna Cas. & Sur. Co.*, 787 F.2d 349 (8th Cir. 1986) and *Mehl v. The Travelers Home & Marine Ins. Co.*, Case No. 16-CV-1325-CDP (E.D. Mo. May 2, 2018). But, in *Hampton* there was physical alteration to property because of a collapse, *Hampton*, 787 F.2d at 349, and in *Mehl* the policy language expressly covered loss of use of property that was not physically damaged. *Mehl*,

Case No. 16-CV-1325-CDP. For this reason as well, *Studio 417* is poorly reasoned and should not be followed.

**VI. The Cases Plaintiff Cites Are Inapplicable, Distinguishable or Both**

Plaintiff cites three cases stating that all provisions of a policy should be given meaning. Opp. at 9. But, no one is asserting that the words loss and damage are superfluous. The point is that they are both modified by the word “physical”. Accordingly, both require physical alteration per *Mastellone*.

Plaintiff cites *Total Intermodal Services Inc. v. Travelers Property Casualty Co. of America*, 2018 WL 3829767, at \*3 (C.D. Cal.). Opp. at 10. A decision in a COVID-19 coverage case issued this month properly rejects *Total Intermodal*:

Even if the Policy covers “permanent dispossession” in addition to physical alteration, that does not benefit Plaintiff here. Plaintiff’s FAC does not allege that it was permanently dispossessed of any insured property. As far as the FAC reveals, while public health restrictions kept the restaurant’s “large groups” and “happy-hour goers” at home instead of in the dining room or at the bar, Plaintiff remained in possession of its dining room, bar, flatware, and all of the accoutrements of its “elegantly sophisticated surrounding.”

This analysis is persuasive and equally applicable here, as Plaintiffs make similar arguments for coverage under identical policy language and also rely on *Total Intermodal* to support their position. For all the same reasons, Plaintiffs have failed to plausibly allege any entitlement to coverage under the business income or extra expense provisions in their Policy with Truck Insurance Exchange.

*Pappy's Barber Shops, Inc. v. Farmers Grp., Inc.*, No. 20-CV-907-CAB-BLM, 2020 WL 5500221, at \*5 (S.D. Cal. Sept. 11, 2020), citing *10E, LLC v. Travelers Indem. Co. of Connecticut*, No. 2:20-CV-04418-SVW-AS, 2020 WL 5359653, at \*4–5 (C.D. Cal. Sept. 2, 2020).

Plaintiff cites to other inapposite cases to support its “loss or damage” argument. Opp. at 8-11 & n. 4. *Jurenovich v. Trumbull Memorial Hospital*, 2020-Ohio-2667, ¶ 3, is inapposite because it is not an insurance coverage case and it involved alleged unfair termination of an employee. *Nautilus Group, Inc. v. Allianz Global Risks US*, 2012 WL 760940, at \*7 (W.D. Wash.),



is inapposite because it is not an Ohio law case and because, unlike here, it involved theft of goods. Unlike here, there was physical alteration to property in *Midwest Specialties, Inc. v. Westfield Insurance Co.*, No. 14027, 1994 WL 107192, at \*11 (Ohio Ct. App. Mar. 30, 1994) (“In this case, it is undisputed that the hydrochloric acid-laden smoke or vapor which caused the rust damage . . . was generated by a hostile fire or an accidental chemical reaction”) and in *Libbey Inc. v. Factory Mutual Insurance Co.*, No. 3:06 CV 2412, 2007 WL 9757792, at \*1 (N.D. Ohio June 21, 2007). *ACE European Grp., Ltd. v. Abercrombie & Fitch Co.*, 621 F. App’x 338, 339 (6th Cir. 2015), is inapposite because it construed an “Advertisers and Internet Liability” policy rather than a property policy. The advertisers policy was expressly designed to cover economic loss, unlike the policy here. *Bluemile, Inc. v. Atlas Indus. Contractors, Ltd.*, 2017-Ohio-9196, ¶ 17, 102 N.E.3d 579, 584 and *Perry v. Allstate Indemnity Co.*, 953 F.3d 417 (6th Cir. 2020), are both inapposite, because they found different policy language to be ambiguous. The policy language here is not ambiguous. *Dundee Mutual Insurance Co. v. Marifjeren*, 1998 ND 222, ¶ 15, 587 N.W.2d 191, 194, is inapposite because it is not an Ohio case and it does not construe Ohio law.

Plaintiff cites numerous non-Ohio cases that are clearly distinguishable. Opp. at 14-17. *Port Auth. of New York & New Jersey v. Affiliated FM Insurance Co.*, 311 F.3d 226, 236 (3d Cir. 2002) applies New York and New Jersey law and thus does not apply here. But, even if it did, it actually supports Cincinnati’s position. *Port Authority* holds that the imminent threat of a release of asbestos fibers may constitute physical loss or damage, but *only* where the threatened release is in such a significant quantity as to render a structure useless or uninhabitable. It held: “The mere presence of asbestos or the general threat of its future release is not enough . . . to show a physical loss or damage to trigger coverage under a first-party ‘all risks’ policy.” *Id.*

Unlike here, *Prudential Property & Casualty Insurance Co. v. Lillard-Roberts*, No. CV-01-1362-ST, 2002 WL 31495830, at \*9 (D. Or. June 18, 2002), involved actual physical damage to an insured's personal property: "her porous personal property is sufficiently contaminated by mold to the point that it has become worthless to her." In *General Mills, Inc. v. Gold Medal Insurance Co.*, 622 N.W. 2d 146 (2001), the insured's oats were treated with a pesticide that was not approved by the FDA. The pesticide destroyed the oats and they could not be used. *Travco Insurance Co. v. Ward*, 715 F. Supp. 2d 699 (E.D. Va. 2010), *aff'd*, 504 Fed. Appx. 251 (4th Cir. 2013), is inapposite because it is based on a unique provision of Virginia law involving latent defects. *Universal Savings Bank v. Bankers Standard Insurance Co.*, No. B159239, 2004 WL 515952, at \*6 (Cal. Ct. App. Mar. 17, 2004) was vacated, and is an inapposite non-Ohio case involving a policy's Loss Payable provision. Unlike here, in *Murray v. State Farm Fire & Casualty Co.*, 203 W. Va. 477, 493, 509 S.E.2d 1, 4 (1998), there was physical damage: "The policyholders' homes were damaged by rocks falling from the highwall of a 40-year old abandoned rock quarry situated next to the homes." In addition, the homes were abandoned and completely un-useable. *Gregory Packaging, Inc. v. Travelers Property Casualty Co. of America*, No. 2:12-CV-04418 WHW, 2014 WL 6675934, at \*6 (D.N.J. Nov. 25, 2014), is inapposite because it is not an Ohio law case and the Travelers policy in that case contained different language than the Cincinnati policy in this case. Unlike here, in *Western Fire Insurance Co. v. First Presbyterian Church*, 165 Colo. 34, 437 P.2d 52, 54 (1968), there was in fact a physical alteration of the property; gasoline had permanently infiltrated the soil under the insured building and its fumes were permanently present in the structure.

## **VII. Plaintiff Misrepresents Ohio Law on Policy Language Interpretation**

Because the policy language is unambiguous, Plaintiff's contract construction section,

Opp. at 7-11, is irrelevant.

Plaintiff asserts that its Complaint's allegations must be accepted as true. Opp. at 6. However, those allegations cannot be accepted as true because they are legal conclusions. These cannot defeat the Motion to Dismiss. *See, e.g., Bearing Distributors, Inc. v. Rockwell Automation, Inc.*, No. 06-CV-831, 2006 WL 2709779, at \*9 (N.D. Ohio Sept. 20, 2006) ("A plaintiff cannot escape a motion to dismiss by simply pleading unsupported legal conclusions."), *citing Columbia Natural Resources v. Tatum*, 58 F.3d 1101, 1109 (6th Cir.1995); *Hart v. Hillsdale Cty., Mich.*, No. 18-1305, 2020 WL 5242425, at \*5 (6th Cir. Sept. 3, 2020) ("We are not required to accept these unadorned legal conclusions as true."); *Lashley v. Sloan*, No. 4:17CV1645, 2018 WL 4184724, at \*2 (N.D. Ohio Aug. 31, 2018) ("When ruling on a motion to dismiss, a court only construes the allegations in a petition in a light most favorable to the petitioner, not the legal conclusions.").

Plaintiff invokes the doctrine of *contra proferentem*. Opp. at 10. This doctrine only applies in cases of ambiguity. Here, the policy language is not ambiguous. *See, e.g., Donnelly v. Guarantee Life Ins. Corp.*, No. C-2-96-793, 2001 WL 242573, at \*8 (S.D. Ohio Mar. 8, 2001).

Plaintiff suggests that if its interpretation of the Policy is reasonable, then the Policy language is ambiguous. Opp. at 10. That assertion is legally incorrect. *Williamson v. W. & S. Life Ins. Co.*, 2008-Ohio-5575, ¶ 35 ("The fact that Jacobs discerned a different meaning from these provisions does not render the same ambiguous."), *citing Hagberg v. Cincinnati Ins. Co.*, Franklin App. No. 06AP-618, 2007-Ohio-2731, at ¶ 13 ("rejecting a claim of ambiguity based not on the language of the insurance policy, but on the plaintiff's belief that she was entitled to coverage").

Plaintiff quotes from *Schwebel Baking Co. v. FirstEnergy Sols. Corp.*, 2018 WL 1419477, at \*4 (N.D. Ohio Mar. 21, 2018). Opp. at 3. That quote is inapplicable here because the policy language here is not ambiguous. However, *Schwebel* does illustrate why Cincinnati's Motion to

Dismiss should be granted: “A pleading that offers ‘labels and conclusions’ or ‘a formulaic recitation of the elements of a cause of action will not do.’ Nor does a complaint suffice if it tenders ‘naked assertion[s]’ devoid of ‘further factual enhancement.’” *Schwebel*, 2018 WL 1419477, at \*4 (N.D. Ohio Mar. 21, 2018), *citing Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 557 (2007).

Plaintiff admits that its Complaint is based on speculative legal conclusion. Opp. at 1 (“the likely physical presence of Covid-19 . . . . the imminent or actual presence of COVID-19” (emphasis added)); Opp. at 2 (speculating that because former patients had died one should imply that the virus might have existed on Plaintiff’s premises); Opp. at 2 (speculating that the virus can remain on surfaces for up to a few days).

**VIII. Plaintiff Fails to Allege the Physical Damage and Prohibition of Access as Required for the Policy’s Civil Authority Coverage to Apply**

Plaintiff asserts that it is entitled to Civil Authority Coverage because it alleges that loss or damage occurred, and that the civil authority order resulted from the pandemic. Opp. at 17-18. As established Plaintiff makes no such allegations, but only asserts speculative legal conclusions. In addition, it fails to allege, as is required for Civil Authority Coverage, that the civil orders were issued because of property damage and that they prohibited access to Plaintiff’s premises. *See* Memo. Supp. Cincinnati’s Mot. to Dismiss, ECF Doc. # 9-1, PAGEID # 352-54.

Plaintiff asserts that the presence of the virus and the government orders caused it “to reduce or cease operations altogether”. Opp. at 5. The assertion is disingenuous because the Complaint states that Plaintiff only ceased “almost all” its operations. Compl. ¶ 27. Plaintiff does admit that it has no evidence of the virus on its property by asserting “the likely presence of Covid-19.” Opp. at 6.

Unable to establish Civil Authority Coverage, Plaintiff asserts new speculative legal conclusions. Opp. at 18 (“COVID-19 also **plausibly** caused physical loss or damage to all establishments located in the area immediately surrounding it.” (Emphasis added.)).

Also, Plaintiff seeks to re-write the Policy by adding language not contained in the Policy. Opp. at 18 (“if the business on the premises is ordered closed and the activity of that business is largely banned (as it was here), customers are ‘prohibited’ from ‘accessing’ the ‘premises.’”). Ohio law sensibly prohibits this revisionism. *See, e.g., Hybud Equip. Corp. v. Sphere Drake Ins. Co.*, 64 Ohio St. 3d 657, 665, 597 N.E.2d 1096, 1102 (1992) (“However, the rule of strict construction does not permit a court to change the obvious intent of a provision just to impose coverage.”); *Miller v. Fed. Ins. Co.*, No. 1:10CV02193, 2012 WL 12868303, at \*7 (N.D. Ohio May 31, 2012) (“Ohio law prohibits Mercer’s attempt to rewrite the PPLE”); *Wilke ex rel. Ries v. Montes*, 2003-Ohio-217, ¶ 13 (“Courts cannot rewrite contracts of insurance for either party”), *aff’d*, 2003-Ohio-5888, ¶ 13, 100 Ohio St. 3d 302, 798 N.E.2d 1077;.

Finally, Plaintiff says that the Extra Expense and Extended Business Income coverage it seeks are subject to Cincinnati’s insistence that there be a direct physical Loss. Opp. at 19. Plaintiff is correct. Because there is no direct physical loss to property, there is no Extra Expense or Extended Business Income coverage.

## **IX. Conclusion**

Cincinnati provided a policy of property insurance. Any coverage available under the Policy is triggered only if there has been some actual physical loss or damage to property. This requires physical alteration as determined under Ohio law. Plaintiff’s claim is one for purely economic losses – loss of revenue from selling hearing aids – in light of a global pandemic due to efforts to separate people from each other. Because the Coronavirus does not physically alter any

property, coverage is not available. For the reasons established in its initial brief, and those above, Cincinnati's Motion to Dismiss should be granted.

Respectfully submitted by:

**DEFENDANTS, THE CINCINNATI  
INSURANCE COMPANY, THE CINCINNATI  
CASUALTY COMPANY, AND THE  
CINCINNATI INDEMNITY COMPANY**

Respectfully submitted,

/s/ Paul G. Roche

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**CERTIFICATE OF SERVICE**

A copy of the foregoing was filed electronically on September 30, 2020. Service of this filing will be sent pursuant to Civ.R. 5(B)(2)(f) by operation of the Court's electronic filing system to all parties indicated on the system's email filing confirmation.

/s/Paul G. Roche (CT423912)

Paul G. Roche



## **Exhibit A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

ORAL SURGEONS, P.C.,

Plaintiff,

No. 4-20-CV-222-CRW-SBJ

vs.

ORDER

THE CINCINNATI INSURANCE  
COMPANY,

Defendant.

Background. In this lawsuit, removed from the Iowa District Court for Polk County, plaintiff Oral Surgeons, P.C. (OSPC) asserts the defendant Cincinnati Insurance Company (Cincinnati) issued OSPC insurance policy ECP 036 57 36 for the policy period January 1, 2019 to January 1, 2022. OSPC contends that in April 2020 it filed a claim with Cincinnati under the policy's business interruption/loss of income clause. OSPC asserts it suffered a loss of use of its property when, in an effort to slow the spread of the novel coronavirus COVID-19, the State of Iowa issued a proclamation and subsequent mandates that restricted OSPC from performing non-emergency dental procedures from approximately March 26, 2020 to May 8, 2020. OSPC asserts that Cincinnati subsequently denied coverage. OSPC's petition, now deemed a complaint in this Court, asserts claims for 1) declaratory relief that the policy provides coverage for OSPC's claim, 2) breach of the insurance contract, and 3) bad faith denial of the claim.

Motion to dismiss. On September 15, 2020, the Court held a hearing by telephone conference call on Cincinnati's resisted motion to dismiss (Docket # 3). The Court does not convert this motion to dismiss into a motion for summary judgment, considering that

the policy identified in the complaint is integral to and embraced by OSPC's claims. See Hughes v. City of Cedar Rapids, 840 F. 3d 987, 998 (8<sup>th</sup> Cir. 2016).

Cincinnati contends OSPC has failed to state a claim for which relief can be granted, arguing that the policy at issue insures only against physical loss to property, not the purely economic loss OSPC suffered.

Analysis. The policy language states:


We will pay for the actual loss of "Business Income" . . . you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct "loss" to property at a "premises" caused by or resulting from any Covered Cause of Loss.

Policy, p. 18. The term "loss" is defined to mean "accidental physical loss or accidental physical damage." Policy, p. 38. OSPC does not allege any such "physical" or "accidental" loss, but instead contends its loss was caused by the COVID-19 coronavirus and the government actions to suspend temporarily non-emergency dental procedures. Recent cases cited by Cincinnati have held that virus-related closures of business do not amount to direct loss to property covered by the Cincinnati policy of insurance. The few contrary cases cited by OSPC are distinguishable on their facts and not as well analyzed as the many authorities cited by Cincinnati.

The Court grants the Cincinnati motion to dismiss; this case is dismissed with prejudice at plaintiff's cost.

IT IS SO ORDERED.

Dated this 29<sup>th</sup> day of September, 2020.

  
CHARLES R. WOLLE, JUDGE  
U.S. DISTRICT COURT

# Exhibit F

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

FAMILY TACOS, LLC,	)	Case No. 5:20-CV-01922
	)	
Plaintiff,	)	Judge J. Philip Calabrese
	)	
v.	)	Magistrate Judge Kathleen B. Burke
	)	
AUTO OWNERS INSURANCE	)	
CO.,	)	
	)	
Defendant.	)	
	)	

**OPINION AND ORDER**

During the Covid-19 pandemic, hotels, restaurants, and other hospitality businesses have been particularly hard hit. Between State and local public health directives and consumer reluctance to travel and to dine out, especially in colder weather, many businesses in the hospitality industry have closed. Tragically, too many of these closures will be permanent. Those that have not closed have sustained deep and painful losses. Various governmental relief efforts have attempted to direct aid to those in the hospitality business, among others. This lawsuit presents another means by which some have, understandably, sought a financial lifeline to weather the difficulties and uncertainties in which the hospitality industry finds itself through no fault of its own or any particular actor in it.

Plaintiff Family Tacos, LLC, operates two restaurants in Portage County, Ohio. When it sustained losses due to the pandemic, Plaintiff filed claims for lost business income under its insurance policy with Defendant Auto Owners Insurance Co. Plaintiff seeks a declaratory judgment on its own and on behalf of a putative

class of other hospitality businesses that Defendant has coverage obligations under its policies due to the Covid-19 pandemic.

Defendant moved to dismiss the complaint or strike the class action allegations. ([ECF No. 5](#).) Because the policy at issue does not, as a matter of law, provide coverage for losses sustained due to Covid-19, as more fully explained below, the Court must **GRANT** Defendant's motion to dismiss. As a result, the Court **DENIES AS MOOT** Defendant's motion to strike the class allegations.

### **FACTUAL AND PROCEDURAL BACKGROUND**

Plaintiff is an Ohio company that operates two restaurants in Portage County. ([ECF No. 1-1](#), ¶ 1, PageID #16.) Defendant is a property and casualty insurer, which issued a commercial business insurance policy to Plaintiff. (*Id.*, ¶¶ 2, 7, PageID #16–17.)

Plaintiff claims it lost business income because of the Covid-19 pandemic and that its insurance policy covers the loss. (*Id.*, ¶¶ 8, 12–14, PageID #18–20.) Further, Plaintiff alleges that Defendant has or will wrongly deny insurance claims for losses caused by the Covid-19 pandemic. (*Id.*, ¶ 27, PageID #21–22.) On behalf of itself and putative class members, Plaintiff alleges three claims: (1) declaratory judgment; (2) breach of contract; and (3) breach of the covenant of good faith and fair dealing (bad faith). (*Id.*, ¶¶ 53–80, PageID #29–35.)

#### **A. Plaintiff's Insurance Policy**

Plaintiff's policy provides coverage for "direct physical loss of or damage to Covered Property at the premises . . . caused by or resulting from any Covered Cause

of Loss.” ([ECF No. 5-3](#), PageID #317.) “Covered Cause of Loss” is defined as “[d]irect physical loss,” subject to certain exclusions and limitations. ([ECF No. 5-4](#), PageID #331.) The policy provides “Business Income and Extra Expense” coverage and “Civil Authority” coverage. ([ECF No. 5-5](#), PageID #340–41.)

#### **A.1. Business Income and Extra Expense Coverage**

The policy covers the “actual loss of Business Income” sustained “due to the necessary ‘suspension’ of your ‘operations’ during the ‘period of restoration.’” ([ECF No. 5-5](#), PageID #340.) However, the “‘suspension’ must be caused by direct physical loss of or damage to property at the premises” and the “loss or damage must be caused by or result from a Covered Cause of Loss,” which also requires direct physical loss. (*Id.*) Also, the policy provides Extra Expense coverage, which includes “necessary expenses you incur during the ‘period of restoration’ that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.” (*Id.*)

Business Income and Extra Expense coverages are both limited by the “period of restoration,” which means the time between the “direct physical loss or damage . . . caused by or resulting from any Covered Cause of Loss at the premises” and “the date when the property . . . should be repaired, rebuilt or replaced” or “when new business is resumed at a new permanent location.” (*Id.*, PageID #347–48.)

#### **A.2. Civil Authority Coverage**

“When a Covered Cause of Loss causes damage to property other than property at the described premises,” the policy also provides coverage. (*Id.*, PageID #341.) The

loss must be “caused by action of civil authority that prohibits access to the described premises” where two conditions are met:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

*(Id.)*

### **A.3. Exclusions**

The policy also identifies various coverage exclusions, five of which the parties discuss. First, the “ordinance or law” exclusion precludes coverage resulting from the “enforcement of any ordinance or law” that “regulat[es] the construction, use or repair of any property” or requires “the tearing down of any property, including the cost of removing its debris. ([ECF No. 5-4](#), PageID #331.)

Second, the “governmental action” exclusion precludes coverage resulting from the “[s]eizure or destruction of property by order of governmental authority.” *(Id.)*

Third, the “acts or decisions” exclusion precludes coverage resulting from “[a]cts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.” *(Id., PageID #334.)* However, where an act or decision results in a Covered Cause of Loss, the policy provides coverage for “the loss or damage caused by that Covered Cause of Loss.” *(Id.)*



Fourth, the “loss of use or market” exclusion precludes coverage resulting from “[d]elay, loss of use or loss of market.” (*Id.*, PageID #333.)

Finally, the “virus or bacteria” exclusion precludes coverage for “loss or damage caused by or resulting from virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.” (*Id.*, PageID #332.)

These exclusions apply whether they are the direct or indirect cause of any loss or damage. (*Id.*, PageID #331.) Where an exclusion applies, the “loss or damage is excluded regardless of any other cause or event that contributed concurrently or in any sequence to the loss.” (*Id.*)

## **B. The Coverage Dispute**

Plaintiff alleges it suffered covered insurance losses related to the Covid-19 pandemic and that Defendant owes it and other policyholders coverage under the insurance policies issued. For purposes of resolving the parties’ coverage dispute, the Court takes the following factual allegations as true and construes them in Plaintiff’s favor at this stage of the proceedings.

Plaintiff owns and operates two restaurants in Portage County, Ohio. ([ECF No. 1-1](#), ¶ 1, PageID #16.) Defendant issued an insurance policy to Plaintiff, and the policy was in full force and effect during the relevant times. (*Id.*, ¶¶ 2, 7, 9, PageID #16–18.) In March 2020, the President of the United States declared the Covid-19 pandemic a national emergency. (*Id.*, ¶ 22, PageID #20.) The State of Ohio, and other states, issued mandatory Stay-At-Home Orders that required “businesses, such as

Plaintiff, to shut down, thus suffering a loss of use of their Properties, and resulting in substantial loss of business income.” (*Id.*, ¶ 23, PageID #20–21.)

Plaintiff alleges that the pandemic and closure orders caused “direct physical loss of Plaintiff’s and Class Members’ properties.” (*Id.*, ¶ 26, PageID #21.) Specifically, Plaintiff “ceased operations and shut its business by order of the State and Portage County.” (*Id.*, ¶27.) Plaintiff does not allege with certainty that the virus was present on its properties, but that “[b]ased on the prevalence of the virus . . . it is probable” that the virus caused “direct physical loss of or damage to [its properties] due to the presence of coronavirus.” (*Id.*, ¶ 29, PageID # 22.) Plaintiff further alleges it “has unquestionably sustained direct physical loss as the result of the pandemic and/or civil authority orders issued by the Governor of Ohio.” (*Id.*)

Plaintiff alleges Defendant intends to deny its claims based on an inapplicable “virus/bacteria exclusion” that does not expressly exclude coverage for a pandemic. (*Id.*, ¶¶ 31, 37, PageID #22–23.) Plaintiff otherwise maintains that the coverages and exclusions at issue are ambiguous and must be construed against Defendant. (*Id.*, ¶ 40, PageID #23.)

Based on these allegations, Plaintiff asserts three causes of action: (1) declaratory judgment; (2) breach of contract; and (3) insurance bad faith. (*Id.*, ¶¶ 53–80, PageID #29–35.) Defendant moves to dismiss each. ([ECF No. 5.](#))

### **GOVERNING LEGAL STANDARD**

At the motion to dismiss stage, a complaint must “contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

*Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint “states a claim for relief that is plausible, when measured against the elements” of the cause of action asserted. *Darby v. Childvine, Inc.*, 964 F.3d 440, 444 (6th Cir. 2020) (citing *Binno v. American Bar Ass’n*, 826 F.3d 338, 345–46 (6th Cir. 2016)). To meet Rule 8’s pleading standard, a complaint must plead “factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556). To state a claim, a complaint must “raise a right to relief above the speculative level” into the “realm of plausible liability.” *Twombly*, 550 U.S. at 555.

In assessing plausibility, the Court construes factual allegations in the complaint in the light most favorable to the plaintiff, accepts the factual allegations of the complaint as true, and draws all reasonable inferences in the plaintiff’s favor. *Wilburn v. United States*, 616 F. App’x 848, 852 (6th Cir. 2015). In reviewing a motion to dismiss, the Court distinguishes between “well-pled factual allegations,” which it must treat as true, and “naked assertions,” which it need not. *Iqbal*, 556 U.S. at 628. The Court will also not accept as true “[c]onclusory allegations or legal conclusions masquerading as factual allegations[.]” *Eidson v. Tennessee Dep’t of Children’s Servs.*, 510 F.3d 631, 634 (6th Cir. 2007).

## ANALYSIS

Auto Owners makes three main arguments for dismissal. First, Defendant maintains Plaintiff is not entitled to coverage because it has not suffered a Covered

Cause of Loss under the policy, which requires direct physical loss or damage. ([ECF No. 5-1](#), PageID #136–40.) Second, Plaintiff’s claimed losses also did not trigger Civil Authority Coverage because there was no damage to property other than its own and because access to the covered premises was not completely prohibited as a result of damage to another property. (*Id.*, PageID #140–42.) Third, that even if Plaintiff’s losses were covered under the policy, the exclusions bar recovery. (*Id.*, PageID #142–44.)

Plaintiff counters that the policy language is “classically ambiguous” and asks the Court to consider circumstances such as “the parties’ relationship, the Policy’s purpose, the pandemic’s novelty, the experts’ testimony, and the insureds’ expectation.” ([ECF No. 13](#), PageID #655.) Among other phrases, Plaintiff claims that “direct physical loss of or damage to property” is an ambiguous term. (*Id.*, PageID #656.) Plaintiff argues that “physical loss” encompasses loss of use and does not require a material or physical alteration to the property and that the civil shutdown orders barred them from conducting normal business operations at its properties. (*Id.*, PageID #659–65.) Finally, Plaintiff argues it is unclear whether the virus exclusion bars its claims because the alleged damage was caused by a pandemic. (*Id.*, PageID #657–58.)

#### **I. “Direct Physical Loss of Or Damage to” Property**

This case turns on the meaning of the language “physical loss of or damage to” property in the insurance policies Defendant wrote and issued. This is so because

Defendant agreed to pay for direct physical loss of or damage to property.

Specifically, the insurance policy at issue provide:

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

([ECF No. 5-3](#), PageID #317.) Although the policy requires physical loss of or damage to property to trigger Business Income and Extra Expense Coverage and Civil Authority Coverage, it does not define physical loss of or damage to property.

When interpreting this contractual language, the Court applies the substantive law of Ohio, which the parties agree governs the insurance policy at issue. (See, e.g., [ECF No. 5](#), PageID # 135; [ECF No. 13](#), PageID # 653.)

#### **I.A. Ordinary and Plain Meaning**

Under Ohio's rules for interpreting contracts and insurance policies, "[t]he court's role in interpreting a contract is to 'give effect to the intent of the parties.'" *Fujitec America, Inc. v. Axis Surplus Ins. Co.*, 458 F. Supp. 3d 736, 743 (S.D. Ohio 2020) (quoting *Goodyear Tire & Rubber Co. v. Lockheed Martin Corp.*, 622 F. App'x 494, 497 (6th Cir. 2015) (citing *Sunoco, Inc. (R&M) v. Toledo Edison Co.*, 129 Ohio St. 3d 397, 2011-Ohio-2720, 953 N.E.2d 285, ¶ 37)). To that end, "[c]ontract terms are generally to be given their ordinary meaning when the terms are clear on their face," and courts must "apply the plain language of the contract when the intent of the parties is evident from the clear and unambiguous language in a provision." *Coma Ins. Agency v. Safeco Ins. Co.*, 526 F. App'x 465, 468 (6th Cir. 2013) (citations omitted); see also *PI&I Motor Express, Inc. v. RLI Ins. Co.*, No. 4:19CV1008, 2019 WL 7282098,

at \*7, 30 (N.D. Ohio Dec. 27, 2019) (collecting Ohio cases). Courts must also read the insurance policy as a whole, giving meaning to each term and construing the provisions within the context of the entire policy. *Id.* (citing *Gomolka v. State Auto. Mut. Ins. Co.*, 70 Ohio St.2d 166, 172–73, 436 N.E.2d 1347, 1351 (1982)).

Where the policy language is clear, “[c]ourts may not re-write an insurance [p]olicy.” *PI&I*, 2019 WL 7282098, at \*10 (citing *Hybud Equip. Corp. v. Sphere Drake Ins. Co., Ltd.*, 64 Ohio St.3d 657, 665, 597 N.E.2d 1096, 1102 (1992)). Similarly, where the contract language is unambiguous, courts may not consider evidence beyond the four corners of the contract to interpret its meaning. *Eastham v. Chesapeake Appalachia, L.L.C.*, 754 F.3d 356, 361 (6th Cir. 2014) (citing *Shifrin v. Forest City Enters.*, 64 Ohio St. 3d 635, 638, 597 N.E.2d 499, 501 (1992)). Courts “presume that words are used for a specific purpose” and “avoid interpretations that render portions meaningless or unnecessary.” *Id.* (citing *Wohl v. Swinney*, 118 Ohio St.3d 277, 2008-Ohio-2334, 888 N.E.2d 1062, ¶ 22).

#### **I.A.1. “Physical Loss of Or Damage to” Property**

After repeated and careful study of these background interpretive principles and the policy at issue, the Court determines that the policy is not ambiguous. The phrase “physical loss of or damage to” property consists of common words that must “be given their ordinary meaning unless manifest absurdity results, or unless some other meaning is clearly evidenced from the face or overall contents of the instruments.” *In re Fifth Third Early Access Cash Advance Litig.*, 925 F.3d 265, 276

(6th Cir. 2019) (citing *Foster Wheeler Enviresponse, Inc. v. Franklin Cnty. Convention Facilities Auth.*, 78 Ohio St. 3d 353, 361, 678 N.E.2d 519, 526 (1997)).

“Physical” means “having material existence: perceptible especially through the senses and subject to the laws of nature.” *Merriam-Webster Online Dictionary*, <https://www.merriam-webster.com/dictionary/physical> (last visited Feb. 14, 2021).

“Loss” means “destruction, ruin” or “the act of losing possession: deprivation.” *Id.*, <https://www.merriam-webster.com/dictionary/loss> (last visited Feb. 14, 2021).

“Damage” means “loss or harm resulting from injury to person, property, or reputation.” *Id.*, <https://www.merriam-webster.com/dictionary/damage> (last visited Feb. 14, 2021).

Taking these words together according to their ordinary meanings, “physical loss of” property means material, perceptible destruction or deprivation of possession. “Physical damage to” property means material, perceptible harm. In other words, the phrase intends a tangible loss of or harm to the insured property, in whole or in part. As the trigger for coverage, this policy language excludes financial or monetary losses resulting from the novel coronavirus, SARS-CoV-2, which occasioned this dispute for the simple reason that the virus did not work any perceptible harm to the properties at issue, even if (construing the allegations in Plaintiff’s favor) the virus may be found on surfaces there.

#### **I.A.2 Other Textual Evidence**

This result is not manifestly absurd nor does the policy clearly evidence some other meaning when read as a whole. For example, the policy defines a “Period of

Restoration,” which governs when coverage for property loss or damage begins and ends. The Period of Restoration ends “on the date when the property should be repaired, rebuilt or replaced with reasonable speed and similar quality” or “when business is resumed at a new permanent location.” (ECF No. 5-5, PageID #347–48.) Reading “direct physical loss of or damage to” property to include loss of intended use, as Plaintiff urges, would render the Period of Restoration nonsensical or meaningless because no repair, rebuilding, or replacement of the covered property will occur. Under basic principles of contract interpretation, the Court may not give this language such a reading. A Period of Restoration ending with repair, rebuilding, or replacement makes sense following and contemplates a material (physical) loss, not a loss of use with no impact to the property’s structure.

Some of the exclusions to the definition of “Covered Causes of Loss” further reinforce this reading of the policy language, though not conclusively. A Covered Cause of Loss excludes losses caused by the “enforcement of any ordinance or law . . . regulating the construction, use, or repair of any property.” ([ECF No. 5-3](#), PageID #331.) Expressly excluding certain losses due to regulated construction, use, or repair of property ties the insurance to physical or material events. And where the loss arises from an ordinance or law—in other words, something non-physical or intangible—the policy does not provide coverage. Similarly, “[d]elay, loss of use or loss of market” are excluded causes of losses, again indicating that the policy requires something more than a mere loss of use or intangible trigger for coverage. ([ECF No. 5-4](#), PageID #333.)



### I.A.3. Plaintiff's Counter Readings

Plaintiff argues that “physical loss of” property means “property deficient or lacking in some quality rendering it unfit for its intended use.” ([ECF No. 13](#), PageID #660.) But the policy does not protect against the “physical loss of *use* or damage to” property. And the policy unambiguously means that losing the intended use of the property, without a material deprivation of or change to the property itself, is not a covered loss. Adopting Plaintiff’s reading would require the Court to overlook the plain meaning of the phrase or to add words to it. The Court may not do so.

In an attempt to overcome the plain meaning of “physical loss,” Plaintiff directs the Court to a policy definition for “property damage” in an endorsement titled “Employment Practices Liability Insurance Coverage Endorsement.” ([ECF No. 13](#), PageID # 661 (citing [ECF No. 5-2](#).) The first page of the endorsement provides, “The provisions of this EPL Coverage Endorsement apply only to this endorsement” and later defines “property damage” to mean “physical injury to, or destruction of, tangible property including the loss of use thereof, or loss of use of tangible property, which has not been physically injured or destroyed.” ([ECF No. 5-2](#), PageID #275, 282.) Plaintiff’s reliance on this endorsement is misplaced. On its face, the endorsement does not apply outside of it; therefore, it does not dictate the meaning of “physical loss” or “physical damage” as those phrases are used in the Business Income and Extra Expense Coverage Form ([ECF No. 5-5](#), PageID #340). That Defendant did not define “physical loss or damage” within the relevant endorsements to include loss of use means the Court must rely on the plain meaning of the words

and, by their plain meaning, “physical loss or damage” does not include mere loss of use.

Also, Plaintiff insists the terms “physical loss” and “physical damage” must mean something different so that one is not rendered superfluous. ([ECF No. 13](#), PageID #659–60.) The Court does not disagree, but the outcome is the same. Plaintiff was not physically, tangibly, materially deprived of their property, and therefore did not suffer a “physical loss.” Nor did they sustain material or physical harm from injury to their property that constitutes “physical damage.”

In making this argument, Plaintiff relies on *Studio 417 v. Cincinnati Ins. Co.*, 478 F.Supp.3d 794, (W.D. Mo. Aug. 12, 2020). The *Studio 417* Court concluded that the plaintiffs plausibly alleged a “direct physical loss” because the physical presence of Covid-19 at their properties rendered them “unsafe and unusable.” *Id.* at 800. The court referenced the dictionary definitions of “physical” and “loss,” but this Court disagrees that the phrase is ambiguous and cannot conclude that it encompasses the type of loss Plaintiff has alleged. *Id.* While Missouri case law apparently supports “that physical loss could be found without structure damage,” *id.* at 802, this conclusion does not reflect Ohio law, as discussed below (*see* Part I.B *infra*). Notably, the policies at issue in *Studio 417* also did not “exclude or limit losses from viruses, pandemics, or communicable diseases.” *Id.* at 798.

Plaintiff plausibly alleges that governmental shutdown orders and the possible or actual presence of the coronavirus itself interfered with their intended use of the restaurant properties. Even so, Plaintiff’s property was not materially or perceptibly

destroyed, ruined, or harmed, and it remains in Plaintiff's possession. For these reasons, Plaintiff's alleged loss falls outside the plain meaning of "direct physical loss of or damage to" the property. Accordingly, Plaintiff has not suffered a Covered Cause of Loss.

### **I.B. Ohio Case Law**

When exercising diversity jurisdiction, the Court applies Ohio substantive law according to the decisions of the Ohio Supreme Court. *Perry v. Allstate Indem. Co.*, 953 F.3d 417, 421 (6th Cir. 2020). Where the Ohio Supreme Court has not spoken on an issue, the Court must "look to the decisions of [Ohio's] lower courts, to the extent they are persuasive, to predict how the Ohio Supreme Court would decide the issue." *Id.* If Ohio courts do not provide a clear answer on the relevant issue, the Court must "turn to Ohio's general rules of contract interpretation and insurance law." *Id.*

Here, the Ohio Supreme Court has not defined "physical loss of or damage to" property. Therefore, the Court "look[s] to the decisions of [Ohio's] lower courts, to the extent they are persuasive, to predict how the Ohio Supreme Court would decide the issue." *Id.* (citations omitted). A few Ohio appellate court decisions shed some light on how the State's highest court would likely interpret the phrase. Although merely persuasive, the lower Ohio court decisions bolster the conclusion that "physical loss" and "physical damage" do not include loss of intended use.

Most notably, the Ohio Court of Appeals has ruled that the plain meaning of "physical injury" as applied to real property requires "harm to the property that adversely affects the structural integrity" of the property. *Mastellone v. Lightning*

*Rod Mut. Ins. Co.*, 175 Ohio App. 3d 23, 2008-Ohio-311, 884 N.E.2d 1130, ¶ 61 (8th Dist.). In *Mastellone*, Ohio’s Eighth District Court of Appeals held that mold that stained the exterior of a house did not constitute physical injury. *Id.* at ¶ 68. *Mastellone* has limitations that Plaintiff points out. For example, the decision involves homeowner’s insurance, not a business interruption policy. Nor does the decision provide key terms and provisions of the policy. Beyond that, Plaintiff’s attempts to distinguish the case are unpersuasive. Despite its limitations, and Plaintiff’s arguments notwithstanding, *Mastellone* suggests that Ohio courts understand that physical injury in an insurance policy requires actual harm to a structure, not superficial or intangible effects. Accordingly, *Mastellone* has some persuasive authority consistent with the plain meaning of the parties’ insurance contract.

The Sixth Circuit relied in part on the *Mastellone* Court’s definition of physical injury to conclude that a “physical loss” encompasses “tangible, physical losses, but [not] economic losses.” *Universal Image Prods. v. Federal Ins. Co.*, 475 F. App’x 569, 573 (6th Cir. 2012) (interpreting Michigan law). There, the Sixth Circuit reasoned that “physical loss” might occur “when real property becomes uninhabitable or substantially unusable.” *Id.* at 574 (citations and quotations omitted). For this reason, the court affirmed summary judgment in favor of an insurer on the insured’s claim for cleaning and moving expenses resulting from mold contamination where there was no proof the plaintiff was “unable to remain” in the building during remediation. *Id.* Here, notwithstanding Plaintiff’s “inability to fully rent its hotel

units and book catering events” ([ECF No. 1-2](#), ¶ 14, PageID #17), Plaintiff’s property has not been rendered uninhabitable or substantially unusable. In this way, the Sixth Circuit’s understanding of *Mastellone* aligns with the plain meaning of the policy language, to which Ohio law gives effect.

Additionally, Plaintiff relies on *Polk v. Landings of Walden Condominium Association*, 11th Dist. Portage No. 2004-P-0075, 2005-Ohio-4042, 2005 WL 1862126, at ¶ 79, to argue that Ohio law defines physical loss to include property rendered deficient for its intended use. ([ECF No. 13](#), PageID #659.) But that case makes clear that the court defined the term “loss” without the modifier “physical.” *Polk*, 2005-Ohio-4042, at ¶ 79. Further, the loss to which *Polk* refers is the event triggering the claim. For these reasons, the case fails to offer Plaintiff any support for its interpretation of the contract at issue.

Nor does a recent ruling of an Ohio trial court in Hamilton County. In *Queens Tower Restaurant Inc. v. Cincinnati Financial Corp.*, Hamilton C.P. No. A 2001747 (Jan. 7, 2021), an insurance company denied coverage under a business interruption policy for a claim relating to the pandemic, even though the policy at issue did not contain a virus exclusion. The insurer moved to dismiss claims the plaintiff brought on its own behalf and those similarly situated. The trial court denied a motion to dismiss on the basis that the coverage determination is a question of fact. In its entirety, the trial court reasoned as follows: “The Court finds that whether Covid-19 and/or Ohio’s orders caused property damage is a question of fact. As such, a reasonable jury could find that [the plaintiff] was entitled to coverage.” ([ECF](#)

[No. 14-1](#), PageID #676.) Aside from the ruling’s conclusory analysis, “[a]n insurance policy is a contract whose interpretation is a matter of law.” *Sharonville v. American Emps. Ins. Co.*, 109 Ohio St. 3d 186, 2006-Ohio-2180, 846 N.E.2d 833, ¶ 6 (2006) (citing *Alexander v. Buckeye Pipe Line Co.*, 53 Ohio St. 2d 241, 374 N.E.2d 146 (1978), paragraph one of the syllabus). Accordingly, this decision has little value on the question before the Court.

Nor does *Sylvester & Sylvester, Inc. v. State Automobile Mutual Insurance Co.*, Stark C.P. No. 2020 CV 00817 (Jan. 7, 2021) ([ECF No. 16-2](#)), on which Plaintiff relies. In that case, the court rested its ruling on an endorsement for food-borne illnesses not at issue in this case, or any others on which the parties rely to advance their respective positions. (See [ECF No. 16-2](#), PageID #734.)

Finally, Plaintiff cites numerous cases from outside Ohio apparently holding that “direct physical loss of or damage to property” includes loss of use and does not require “structural alteration of the property.” ([ECF No. 13](#), PageID #661–64; [ECF No. 12](#), PageID #673.) Because these cases do not directly speak to interpretation of the phrase under Ohio law, they have no impact on the Court’s decision.

\* \* \*

On balance, the Ohio cases support giving effect to the interpretation of the plain language of the term “physical loss of or damage to” property left undefined in the policy. Although the persuasive value of these lower-court opinions leaves room for debate, the Sixth Circuit has relied on them to interpret language in an insurance

contract (from Michigan) consistent with the meaning clear from the plain language of the policy. Certainly, these cases offer no reason to deviate from it.

### **I.C. Ambiguity**

Because Ohio courts do not provide a definitive meaning for the language at issue, Plaintiff “turn[s] to Ohio’s general rules of contract interpretation and insurance law” for support. *Perry*, 953 F.3d at 421. Specifically, Plaintiff is left to argue that the parties’ contracts are “classically ambiguous.” ([ECF No. 13](#), PageID #655.) Plaintiff does so to argue for construction of the insurance policy against the insurer. *Perry*, 953 F.3d at 421 (citing *Andersen v. Highland House Co.*, 93 Ohio St. 3d 547, 549–50, 757 N.E.2d 329, 332–33 (2001)).

Ambiguity means the contract language “cannot be determined from the four corners of the agreement” or “the language is susceptible of two or more reasonable interpretations.” *Coma Ins. Agency* 526 F. App’x at 468 (citing *United States Fid. & Guar. Co. v. St. Elizabeth Med. Ctr.*, 129 Ohio App. 3d 45, 55, 716 N.E.2d 1201, 1208 (2d Dist. 1998)). A contract is not ambiguous merely because the parties disagree over its meaning. *Tattletale Portable Alarm Sys. v. MAF Prods.*, No. 2:14-cv-00574, 2016 WL 5122545, at \*6 (S.D. Ohio Sep. 21, 2016) (citing *Shifrin*, 64 Ohio St. 3d at 637–38, 597 N.E.2d at 501). Significantly, Ohio law does not treat a phrase as ambiguous simply because it is not defined in the relevant policy. *Penton Media, Inc. v. Affiliated FM Ins. Co.*, No. 1:03 CV 2111, 2006 WL 2504907, at \*7 (N.D. Ohio Aug. 28, 2006) (citing *Chicago Title Ins. Co. v. Huntington Nat’l Bank*, 87 Ohio St. 3d 270, 719 N.E.2d 955, 959 (1999)).

Courts will construe insurance policies against the insurer only if the policy language is ambiguous. *Perry*, 953 F.3d at 421. As already explained, the ordinary and plain meaning of the phrase “physical loss of or damage to” property requires a tangible, material destruction or deprivation of possession. Moreover, Plaintiff undercuts any claims of ambiguity by directing the Court to persuasive Ohio law that defines “physical loss” to mean “material deprivation.” ([ECF No. 13](#), PageID #659.) From there, Plaintiff extrapolates that “material deprivation” includes property rendered “unfit for its intended use.” (*Id.*, PageID #660.) But that conjecture does not square with the Ohio law on which Plaintiff relies.

In addition to *Polk*, Plaintiff cites *Downwyn Farms v. Ohio Insurance Guaranty Association*, 9th Dist. Lorain No. 89CA004593, 1990 WL 7991, at \*3 (Ohio Ct. App. Jan. 30, 1990). There, an Ohio appellate court concluded that a farmer was “materially deprived” of personal property where the farm lost the farmer’s colt for over one year after the farmer delivered the colt for foaling. *Id.* at \*4. Here, Plaintiff has not been physically deprived of its property. The complaint does not allege that the virus or government orders caused any material deprivation of the properties. Plaintiff still possesses it. The properties exist in the same state as before the pandemic. The farmer in *Downwyn Farms* could not ride, brush, feed, or otherwise use his colt in any way while it was lost. He was, according to the court, “materially deprived” of his property. *Id.* at \*4. Plaintiff, in contrast, was not deprived of its property in the same way as the farmer. It did not lose the ability to use the property at all, but only its ability to use the property in the way it wished. In Plaintiff’s own



words, it was deprived “from making full use of the Property[.]” ([ECF No. 1-1](#), ¶ 12, PageID #18.) While the policy may cover a “material deprivation,” Plaintiff’s interpretation of “material deprivation” to include loss of the ability to make “full use” of its property exceeds the bounds of the meaning of those words on their terms and as the *Mastellone* and *Downwyn* Courts define them.

## II. Civil Authority Coverage

“When a Covered Cause of Loss causes damage to property other than property at the described premises,” the policy provides coverage for lost business income due to the action of civil authorities that prohibits access to the premises. ([ECF No. 5-5](#), PageID #341.) Specifically, the policy provides:

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises[.]

(*Id.*) Two additional conditions must also apply for this coverage to kick in. (*Id.*)

Under the policy, a Covered Causes of Loss means “[d]irect physical loss,” subject to certain exclusions or limitations. ([ECF No. 5-4](#), PageID #331.) In this way, the availability of the coverage under the civil authority provisions turns on the meaning of the undefined term “direct physical loss” already discussed. Because the ordinary and plain meaning of that term does not apply to the conditions Covid-19 and the governmental responses to it brought about, the insurance policy does not, as a matter of law, provide coverage.

Two additional points reinforce this conclusion and confirm the unavailability of coverage under the civil authority provision of the policy. First, the conditions for this coverage provide additional evidence that the policies cover material, physical, tangible damage to property. For example, the first condition applies only when civil authorities limit access to the area around “damaged property,” and the second requires a response of civil authorities to “dangerous physical conditions.” (*Id.*) The policy language of these conditions provides additional evidence that the policy only covers material, physical losses. Second, Plaintiff does not allege damage to “property other than property at the described premises.” (*Id.*) Finally, Plaintiff has not alleged it was completely “prohibited” from accessing the properties, but only that the virus and government orders limited its use of the property. For all these reasons, Plaintiff is not entitled to coverage under the civil authority provisions of the policy.

### **III. Virus Exclusion**

Plaintiff argues that the “invasion and presence” of the virus on its properties, as opposed to the civil shutdown order, was the cause of its claimed losses. ([ECF No. 13](#), PageID #663.) As discussed, the mere physical presence of the virus on its property does not constitute physical loss under the policy or Ohio law. Even if the policy otherwise provided coverage, it contains a virus exclusion the meaning and application of which the parties dispute. Specifically, the policy excludes coverage for any loss or damage, directly or indirectly, from “[a]ny virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or

disease.” ([ECF No. 5-4](#), PageID #332.) On its face, this language is not ambiguous and excludes coverage for the lost use of property Plaintiff claims.

Plaintiff attempts to read ambiguity into the virus exclusion by distinguishing the SARS-CoV-2 virus from the pandemic. But you cannot have one without the other, at least on these facts. Plaintiff defines “pandemic” as “any disease prevalent throughout an entire county, continent, or the world.” ([ECF No. 13](#), PageID #657 (quotation omitted).) Plaintiff’s argument proves too much. This pandemic arises from a virus. Without question, SARS-CoV-2 is a “virus . . . that induces or is capable of inducing physical distress, illness or disease.” That is a matter of common knowledge, pled in the complaint, and the rationale for the governmental orders and consumer behavior that occasioned much of the lost income prompting this suit. ([ECF No. 1-1](#), ¶¶ 19, 20 & 22, PageID #20.) Recently, an Ohio trial court in Franklin County read similar language in a different policy as excluding coverage for losses claimed for Covid-19 shutdowns and lost business income. *Eye Specialists of Delaware v. Harleysville Worcester Ins. Co.*, Franklin C.P. No. 20-cv-6386 (Feb. 1, 2021). For the foregoing reasons, the virus exclusion bars coverage in any event.

To the extent Plaintiff alleges that governmental orders caused its loss unrelated to the virus, the complaint directly links the government orders to the virus: “Coronavirus and the pandemic cause[d] direct physical loss and property damages. . . . The executive orders issued by the Governor of Ohio, and the majority of other State Governors, in response to the pandemic, have caused direct physical loss of Plaintiff [sic] and Class Members’ properties.” ([ECF No. 1-1](#), ¶ 26, PageID

#21.) Moreover, even assuming the government orders alone caused Plaintiff's loss, the policy excludes coverage resulting from the "[s]eizure or destruction of property by order of governmental authority," ([ECF No. 5-4](#), PageID #331), and from "[a]cts or decisions, including the failure to act or decide, of any . . . governmental body," (*id.*, PageID #335).

Even if Plaintiff's claimed losses arose from governmental action and not the virus itself, the virus exclusion applies to loss or damage caused "directly or indirectly" by a virus. ([ECF No. 5-4](#), PageID #331.) This policy language sweeps aside any issue of causation as to whether the virus or government orders caused Plaintiff's loss. Put another way, the reach of the exclusion to losses a virus indirectly causes does not require parsing the causal chain legally and obviates the need for factual development. To the extent there is any doubt on the matter, the policy applies the exclusion "regardless of any other cause or event that contributed concurrently or in any sequence to the loss." (*Id.*)

For these reasons, Defendant has carried its burden of showing that the losses Plaintiff alleges fall squarely within the policy language of the virus exclusion. In the Court's view, the language of the exclusion is plain and unambiguous and covers the losses Plaintiff alleges.

#### **IV. Other Authorities**

Three similar cases from other Judges in this Court also merit some brief discussion.

#### **IV.A. *Santo's Italian Café***

In *Santo's Italian Café LLC v. Acuity Insurance Co.*, No. 1:20-cv-01192, 2020 WL 7490095 (N.D. Ohio Dec. 21, 2020), Judge Barker dismissed the claims of a restaurant owner for coverage of losses due to Covid-19 under its business interruption insurance policy. That case, like this one, principally turned on the meaning of the phrase “direct physical loss of or damage to property.” In determining that the policy did not provide coverage, the *Santo's* Court exhaustively reviewed Ohio insurance law in conjunction with its reading of the policy language. *Id.* at \*6–12. That analysis supports the result the Court reaches in this case.

#### **IV.B. *Henderson Road Restaurant Systems***

Plaintiff relies on *Henderson Road Restaurant Systems, Inc. v. Zurich American Insurance Co.*, No. 1:20 CV 1239, 2021 WL 168422 (N.D. Ohio Jan. 19, 2021). (See [ECF No. 12.](#)) There, Judge Polster granted summary judgment to the insureds, owners and operators of restaurants who brought breach of contract and declaratory judgment claims following denial of insurance coverage relating to losses sustained as a result of the Covid-19 pandemic.

As here, the core issue in *Henderson Road* involves the meaning of the phrase “direct physical loss of or damage to property” in the insurance policy. Finding this language ambiguous, the *Henderson Road* Court construed it against the insurer. 2021 WL 168422, at \*10. Further, the court disagreed with the *Santo's* Court's reading of how Ohio courts would interpret and apply this language. *Id.* at \*10–11. After careful review of the plain and ordinary meaning of the policy language at issue

in this case, the Court is not persuaded by the reasoning in *Henderson Road* or that decision's determination that the policy language at issue is ambiguous.

Additionally, reading the policy as the *Henderson Road* Court does creates a host of potential practical and legal problems. For example, if insurance covers a loss for which the insured also receives governmental assistance through one of the many federal or State Covid relief programs, has the insured received a double recovery, or does the insurer have a subrogation interest? This is not an idle consideration. Indeed, the *Henderson Road* Court recognized that property may be lost, triggering coverage, then later returned to use or restored. *Id.* at \*12. If the policy language dictates such a result, so be it. But the potential follow-on issues and disputes advise caution. Because, in the Court's view, the policy language here determines the availability of coverage, these sorts of considerations ultimately play no role in the Court's decision.

One difference between the policy in *Henderson Road* and the policy here involves the virus exclusion. There, the exclusion pertained only to microorganisms. *Id.* at \*14. Although the parties there debated whether a virus counts as a microorganism, that issue does not arise in this case because the policy here expressly excludes coverage for loss arising, directly or indirectly, from a virus. ([ECF No. 5-4](#), PageID #332.)

Based on *Henderson Road*, one Ohio trial court recently concluded that a Westfield policy containing the phrase "direct physical loss or damage to property" was ambiguous. *See McKinley Dev. Leasing Co. v. Westfield Ins. Co.*, Stark C.P. No.

2020 CV 00815 (Feb. 9, 2021) ([ECF No. 16-1](#).) There, the court agreed that “[b]oth sides provided reasonable interpretations of the policy language.” ([ECF No. 16-1](#), PageID #722.) For that reason, the court thought the policy was ambiguous and construed the language against the insurer. (*Id.*) The court did the same with respect to the virus exclusion. (*Id.*, PageID #725.) But under Ohio law, a phrase is not ambiguous simply because the parties disagree over its meaning or offer reasonable, competing interpretations. *Tattletale Portable Alarm Sys.*, 2016 WL 5122545, at \*6 (citing *Shifrin*, 64 Ohio St. 3d at 637–38, 597 N.E.2d at 501). For this reason, the Court regards *McKinley Development Leasing* as resting on legal error and discounts its weight as persuasive authority accordingly.

In one important respect, the Court does agree with the *Henderson Road* Court: what matters in interpreting the insurance policy at issue is not picking and choosing among competing persuasive authorities or simply counting their numbers. Instead, “the Court must look to the plain meaning of the words, not persuasive authority from other courts.” *Henderson Road* at \*12. Although the Court reaches a different result than *Henderson Road*, the language of Plaintiff’s policy compels that result.

#### **IV.C. *Neuro-Communication Services***

In *Neuro-Communication Services, Inc. v. Cincinnati Insurance Company*, Case No. 4:20-cv-01275 (N.D. Ohio Jan. 19, 2021), Judge Pearson certified a question similar to the dispositive one in this case to the Ohio Supreme Court for review. There, the plaintiff filed suit on its behalf and a nationwide class of insureds with

similar policies who were denied coverage for losses relating to the pandemic. The policy at issue covers “direct ‘loss’ to Covered Property at the ‘premises’ caused by or resulting from any Covered Cause of Loss.” (Case No. 4:20-cv-01275, ECF No. 43, PageID #1008.) The specific question certified to the Ohio Supreme Court is:

Does the general presence in the community, or on surfaces at a premises, of the novel coronavirus known as SARS-CoV-2, constitute direct physical loss or damage to property; or does the presence on a premises of a person infected with COVID-19 constitute direct physical loss or damage to property at that premises?

(*Id.*)

Although the policy language at issue in *Neuro-Communication Services* differs from that in this case, the question certified does not. The Court declines to certify the question here because no party in this matter has requested it to do so. Additionally, because Judge Pearson already certified the question, there is no need to do so again or to wait many months for the resolution of this dispute to see whether the Ohio Supreme Court will weigh in on the matter.

## **V. Plaintiff’s Claims**

Plaintiff asserts three claims for relief: declaratory judgment (Count I); breach of contract (Count II); and insurance bad faith (Count III). Based on the foregoing analysis and discussion, the plain language of the policy precludes relief on each claim as a matter of law. No amount of discovery can change that conclusion.

### **V.A. Declaratory Relief**

No cognizable legal theory or set of facts would allow the Court to provide declaratory relief. To prevail on a declaratory-judgment claim in Ohio, a plaintiff



must show three elements: “(1) a real controversy exists between the parties, (2) the controversy is justiciable in character, and (3) speedy relief is necessary to preserve the rights of the parties.” *Wymyslo v. Bartec, Inc.*, 132 Ohio St.3d 167, 2012-Ohio-2187, 970 N.E.2d 898, ¶ 31. The Court cannot award Plaintiff the declaratory relief it seeks where it has failed to allege a Covered Cause of Loss according to the plain language of the policy. Accordingly, the Court dismisses Count I.

### **V.B. Breach of Contract**

“To establish a claim for breach of contract, a plaintiff must prove: (1) the existence of a contract, (2) performance by the plaintiff, (3) breach by the defendant, and (4) damages or loss resulting from the breach.” *In re Fifth Third Early Access Cash Advance Litig.*, 925 F.3d 265, 276 (6th Cir. 2019) (citing *Clariss, Ltd. v. Hotel Dev. Servs., LLC*, 2018-Ohio-2602, 104 N.E.3d 1076, ¶ 28 (10th Dist.)). Under the policy, reading the words in context according to their usual and ordinary meaning, Defendant did not breach the contracts by denying coverage for Plaintiff’s claimed losses because the claimed losses do not trigger coverage under the policy. Therefore, the Court dismisses Count II of Plaintiff’s complaint.

### **V.C. Insurance Bad Faith**

As discussed, the policy does not provide coverage for Plaintiff’s claimed losses. Accordingly, Defendant’s denial of coverage was reasonable, necessitating dismissal of Plaintiff’s bad faith claim. *Cleveland Freightliner, Inc. v. Federated Serv. Ins. Co.*, No. 1:09CV1108, 2010 WL 395626, at \*13 (N.D. Ohio Jan. 26, 2010) (“Ohio law clearly states if denial of coverage is appropriate there is no bad faith.”) (citing *Hahn’s Elec.*

*Co. v. Cochran*, 10th Dist. Franklin No. 01AP-1391, 01AP-1394, 2002-Ohio-5009, ¶ 42); *Pasco v. State Auto. Mut. Ins. Co.*, 10th Dist. Franklin No. 99AP-430, 1999 WL 1221633, at \*6 (Dec. 21, 1999) (“If a reason for coverage denial is correct, it is per se reasonable.” (quotation and citation omitted)). Because Defendant acted appropriately by denying coverage, the Court dismisses Plaintiff’s claim for insurance bad faith.

### CONCLUSION

In this ruling, the Court does not intend in any way to dismiss or minimize the pain or difficulties those in the hospitality business have endured since the outbreak of the pandemic. But the question before the Court is a narrow one, limited to interpretation of language in Plaintiff’s insurance policy. For all the foregoing reasons, the Court **GRANTS** Defendant’s motion to dismiss for failure to state a claim on which the Court may grant relief. ([ECF No. 5.](#)) As part of its motion to dismiss, Defendant moved to strike the class allegations, which is now moot and therefore **DENIED.** ([ECF No. 5.](#))

**SO ORDERED.**

Dated: February 17, 2021



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J. Philip Calabrese  
United States District Judge  
Northern District of Ohio

# Exhibit G

**LORAIN COUNTY COURT OF COMMON PLEAS  
LORAIN COUNTY, OHIO**

**TOM ORLANDO, Clerk  
JOURNAL ENTRY  
James L. Miraldi, Judge**

Date 09/29/20

Case No. 20CV201416

FRANCOIS INC  
Plaintiff

JEREMY A TOR  
Plaintiff's Attorney (216)696-3232

VS

THE CINCINNATI INSURANCE COMPANY  
Defendant

SCOTT STEPHENSON  
Defendant's Attorney (-)

This matter came before the Court upon the motion of Defendant Cincinnati Insurance Company to dismiss.

Based upon the briefs, the defendant's 12(b)(6) Motion is denied. Before a court may dismiss an action under Civ. R. 12 (B)(6) for failure to state a claim upon which relief can be granted, it must appear beyond doubt from the complaint that the plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union*, 42 Ohio St.2d 242, 327 N.E.2d 753 (1975), syllabus. To make this determination, the court is required to interpret all material allegations in the complaint as true and admitted. *Phung v. Waste Management, Inc*, 23 Ohio St.3d 100,102, 491 NE.2d 1114 (1986).

The complaint states claims which arguably fit the terms and conditions of the insurance policy and therefore the claims and defenses need to be developed with a record. The parties should proceed with discovery on liability/coverage while the damages issues are bifurcated. Discovery on damages is held in abeyance until a decision has been made on coverage as the court anticipates Summary Judgment motions will be filed at the conclusion of discovery on the liability/coverage issues. A telephone status call is set for October 27, 2020 at 11:30a.m. Plaintiff shall initiate the telephone conference to all other counsel and then to the court at (440) 328-2393 or (440) 328-2390 at which time the discovery framework and briefing schedule can be determined by agreement.



James L Miraldi, Judge