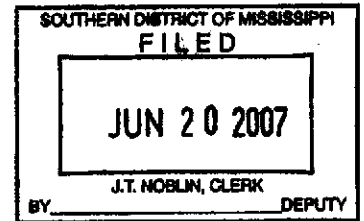


IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION



ELDRIDGE BOYD

PLAINTIFF

vs.

CIVIL ACTION NO.: 1:07CV02015RHW

STATE FARM FIRE AND CASUALTY COMPANY,
STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY, and JOHN DOES
1 THROUGH 10

DEFENDANTS

COMPLAINT
JURY TRIAL REQUESTED

COMES NOW, Eldridge Boyd ("Plaintiff"), by and through counsel, and files this Complaint against Defendants State Farm Fire and Casualty Company, State Farm Mutual Automobile Insurance Company (collectively "State Farm"), and John Does 1 through 10 and alleges as follows:

PREAMBLE

The Plaintiff in this case is a State Farm policyholder, who was wrongfully denied insurance benefits following Hurricane Katrina.

Today another case is being filed in this Court styled Glenda Shows, et al. v. State Farm Mutual Automobile Insurance Company, et al., on behalf of 22 other State Farm policyholders likewise denied insurance benefits following Katrina. For these Shows plaintiffs, enough investigation and discovery has been obtained to demonstrate that a RICO Act conspiracy and enterprise led by State Farm damaged them.

Also, approximately 206 individual cases substantially similar to this case are being filed today against State Farm and other entities. The investigation and discovery related to the

plaintiff herein and other individual plaintiffs filing today has not proceeded far enough for them at this time to be able to meet the rigorous requirements for pleading a RICO Act complaint, as set out in the Federal Rules of Civil Procedure and the local rules of this Court.

However, on information and well-founded belief, the plaintiff herein alleges that State Farm operated and directed not only the RICO Act enterprise which harmed the Shows plaintiffs, but in fact operated and directed numerous such enterprises with various engineering and adjusting firms for the same corrupt purpose as the RICO Act enterprise described in Shows, and that at least one of these enterprises caused harm to plaintiff herein, and the other individual plaintiffs filing today.

Plaintiff believes and alleges that if he/she is allowed to conduct coordinated discovery together with the other individual plaintiffs filing today, he/she will discover enough specific facts to be able to then file amended complaints alleging RICO counts with requisite factual specificity, re-grouping these plaintiffs according to similar fact patterns and according to which State Farm RICO enterprise damaged them.

Consolidating these cases through discovery and pretrial proceedings would promote the ends of justice, is allowable under FRCP 42, and makes practical sense.

I.
PARTIES

1. At all times material herein, Plaintiff was an adult resident citizen of Hancock County, Mississippi, who owned property located at 10090 E. Salmon Street, Bay St. Louis, MS 39520.

2. Defendant State Farm Fire and Casualty Company is a corporation organized and

existing under the laws of the State of Illinois, with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois, 71701-0001, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. §83-21-1.

3. Defendant State Farm Mutual Automobile Insurance Company is a corporation organized and existing under the laws of the State of Illinois, with its principal office and place of business located at One State Farm Plaza, Bloomington, Illinois, 71701-0001, and which may be served with process by service on its agent for service of process, Mr. William E. Penna, 1080 River Oaks Drive, Suite B-100, Flowood, Mississippi 39232-7644 or on the Mississippi Insurance Commissioner, P.O. Box 79, Jackson, Mississippi, 39205-0079, pursuant to Miss. Code Ann. §83-21-1.

4. Defendants John Does 1-10 are entities affiliated with Defendants and/or have acted in concert with Defendants and whose identities are currently unknown, including *inter alia* engineering companies, adjusting companies, contractors, insurance agents, and individuals employed by these entities. All allegations and claims asserted herein against Defendants are incorporated herein by reference against John Does 1-10. Said John Does, when their identities are known, will be identified by name and joined in this action, if necessary, pursuant to the Federal Rules of Civil Procedure.

II.
SUBJECT MATTER AND PERSONAL JURISDICTION

5. This Court has jurisdiction over the subject matter and Defendants in this case pursuant to 28 U.S.C. §1332 because there is complete diversity of citizenship between Plaintiff and Defendants and the amount in controversy exceeds \$75,000.00.

III.
VENUE

6. Venue in this cause is proper in this Court pursuant to 28 U.S.C. §1391, because this suit respects real and personal property which is completely within the district of the United States District Court for Southern District of Mississippi. This suit also respects conduct, acts and/or omissions of the Defendants which occurred completely within the United States District Court for the Southern District of Mississippi, Southern Division.

IV.
FACTS

7. Plaintiff purchased from State Farm a standard "Homeowner's Policy" ("subject policy"), naming him/her as the insured. The subject policy insured Plaintiff's: Dwelling and Dwelling Extension; Personal Property; and loss of use for actual loss sustained. The subject policy was in effect on August 29, 2005. A representative copy of the subject policy is attached hereto as Exhibit "A."

8. The State Farm policy expressly states on its cover: "Homeowners Policy This is one of the broadest forms available today and provides you with outstanding value for your insurance dollars." State Farm knew that Plaintiff, like many other residents on the Mississippi Gulf Coast, purchased the policy for protection from accidental direct physical loss from

hurricanes.

9. The subject policy provides “all risk” coverage for all “accidental direct physical loss” to Plaintiff’s “Dwelling” and “Dwelling Extension” unless the proximate and efficient cause of the loss is one that is expressly excluded by the policy, stating as follows:

SECTION I-LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

10. This broad “all risk” coverage includes coverage for loss proximately and efficiently caused by hurricane wind, including coverage for damage caused by *objects* driven by the hurricane wind as well as water borne objects, material, or debris.

11. The subject policy also provides coverage for “accidental direct physical loss” to Plaintiff’s “Personal Property” proximately and efficiently caused by hurricane wind, stating as follows:

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in **SECTION I - LOSSES NOT INSURED**:

2. **Windstorm or hail.** This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

12. In the late 1990's, State Farm informed the Plaintiff that a mandatory modification

of the policy raising the deductible for hurricane-caused losses was being imposed. State Farm subjected Plaintiff and other policyholders to more risk of loss from hurricanes through the "Hurricane Deductible Endorsement" ("Hurricane Deductible"), or, in the alternative, charged them an increased premium to ensure insurance coverage for any and all damage to their insured dwelling and other property caused by a hurricane.

13. During the time Plaintiff's policy was in effect, State Farm requested and received premium rate increases and/or retained risk (deductible) increases for Plaintiff's policy from the Mississippi Department of Insurance. Said increases were justified by State Farm by the hurricane risks associated with Coastal properties. Defendant utilized hurricane-specific experience ratings and computer model projections of hurricane losses to corroborate its demands for such rate increases.

14. For such coverage, Plaintiff agreed and paid State Farm an annual premium. Plaintiff also agreed to pay a deductible to ensure insurance coverage for any and all damage to the insured residence caused by a hurricane, including all damage proximately and efficiently caused by hurricane wind.

15. Plaintiff, whose residence was near the Gulf of Mexico, purchased the subject policy from State Farm for one of the primary purposes of insuring against any property damage that could proximately and efficiently result from hurricanes impacting the Mississippi Gulf Coast from the Gulf of Mexico.

16. On August 29, 2005, within the subject policy period, the insured "Dwelling," "Dwelling Extension," and the "Personal Property" therein were damaged by Hurricane Katrina, a Category (4) Hurricane with wind gusts in excess of 140 miles per hour. The area where the

insured property was located also sustained tornadoes, microbursts, mesocyclones, and other convective activity. These events caused an “accidental direct physical loss” covered under the subject policy.

17. The “accidental direct physical loss” sustained by Plaintiff to the insured property was proximately and efficiently caused by hurricane wind, tornadoes, microbursts, mesocyclones, and/or convective activity and occurred in the absence and/or independent of water, thereby triggering full coverage for all Plaintiff’s hurricane losses.

18. Hurricane Katrina’s devastating and catastrophic hurricane winds, tornadoes, microbursts, and mesocyclones occurred 4-6 hours before the peak hurricane storm surge, and destroyed Plaintiff’s property prior to the arrival of storm surge from Hurricane Katrina.

19. Almost immediately thereafter, and in accordance with the subject policy provisions, Plaintiff notified State Farm of his/her “accidental direct physical loss” and performed all obligations imposed on him/her by the policy.

20. However, State Farm failed to fairly, adequately, and sufficiently investigate and adjust Plaintiff’s “accidental direct physical loss” under the policy.

21. Instead, State Farm, along and in coordination with its retained adjusting and engineering firms, including, but not limited to, E.A. Renfroe, HAAG Engineering Company, and Forensic Analysis and Engineering Corporation, embarked on a calculated course of conduct designed to deny the covered losses of the Plaintiff and all its other policyholders on the Mississippi Gulf Coast who suffered loss from Hurricane Katrina.

22. On September 13, 2005, State Farm promulgated a so-called “Wind Water Claim Handling Protocol” for Katrina claims like Plaintiff’s on the Mississippi Gulf Coast. In this

document, State Farm directed its claims personnel and adjusters that "Where wind acts concurrently with flooding to cause damage to the insured property, coverage only exists under flood coverage, if available."

23. In adjusting Plaintiff's "accidental direct physical loss," State Farm failed to make any adequate good faith determination and/or distinction of which part of the loss was proximately and effectively caused by "water" or which damages were proximately and effectively caused by wind, objects driven by the wind, and/or wind borne or water borne objects, material or debris. State Farm also failed to unconditionally tender to Plaintiff the amount of damage that it could not prove by a preponderance of the evidence was caused by hurricane water. In essence, State Farm improperly shifted the burden of proving coverage for the "accidental direct physical loss" to Plaintiff.

24. State Farm, based on its inadequate claims investigation and adjustment that was speculative, inadequate, and inconclusive as to how much of Plaintiff's "accidental direct physical loss" was caused by "water," if any, hurricane wind, wind borne or water borne objects, material or debris, denied Plaintiff's claims for hurricane damage and failed to pay Plaintiff for the amount of his/her loss that it could not prove by a preponderance of evidence was caused by hurricane "water." In denying Plaintiff's claim, State Farm cited the policy's "flood" exclusion and the "anti-concurrent cause clause," which states as follows:

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or

occurs as a result of any combination of these:

c. **Water Damage**, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;

25. State Farm denied Plaintiff's total loss even though it failed as a matter of fact and Mississippi law to (1) sufficiently investigate the loss; (2) carry its affirmative burden of establishing by a preponderance of the evidence at the time of the denial that the proximate and efficient cause of Plaintiff's loss was proximately and effectively caused by "Water Damage" as defined and limited in the exclusion; (3) carry its affirmative burden of establishing by a preponderance of the evidence at the time of the denial the amount of Plaintiff's loss caused by water and the amount caused by wind and wind borne or water borne objects, material or debris; or (4) pay Plaintiff for the amount of his/her loss that it could not prove by a preponderance of the evidence was caused by "water." As a result of State Farm's failures, Mississippi law precludes reliance on the anti-concurrent causation exclusion or the "water damage" exclusion and raises a duty to pay Plaintiff for the entire loss. State Farm's failure to pay Plaintiff all insurance proceeds promptly upon completion of its alleged investigation is without legitimate or arguable reason in fact or law.

26. In denying Plaintiff's claim, State Farm improperly relied on a scientifically erroneous generic engineering report from Tim Marshall and HAAG Engineering Company which erroneously concluded that all of the damage to insured property on the Mississippi Gulf Coast, including that of the Plaintiff, was caused by water. State Farm instructed and expected all of its adjusters, including E.A. Renfroe, and engineers to utilize the HAAG Report in

adjusting and denying claims for Katrina damage under the State Farm policy. HAAG, at State Farm's direction, even conducted seminars in which it trained State Farm and E.A. Renfroe adjusters on how to adjust and deny claims under the subject policy's "water damage" and "anti-concurrent cause" provisions.

27. E-mails obtained from Forensic indicate that State Farm uniformly pressured and coerced its retained engineering firms, through threats of non-payment and withholding of future business, to: (1) conclude that all of the damage sustained by Plaintiff and other State Farm policyholders was caused by water; and (2) change any report that concluded the cause of the loss was wind.

28. State Farm's improper burden shifting and failure to satisfy its burden of proving an excluded cause in Plaintiff's case was part of a concerted course of conduct by State Farm to deny and/or underpay Katrina damage claims in order to force the Plaintiff and other State Farm policyholders to initiate years of protracted litigation just to recover the insurance payments that should have been paid to them unconditionally during the claims process and prior to denial. This business plan of purposefully denying all claims regardless of the merits in order to save money was first proposed to State Farm by its consulting company McKenzie and Company in the early 1990s. Since then, State Farm has adopted and implemented this fraudulent claims strategy in the handling of claims brought under both its Auto and Property Insurance lines with unprecedented success and savings.

29. State Farm's investigation, adjustment, and denial of Plaintiff's claim were negligent, grossly negligent, and reckless. State Farm's denial of coverage for Plaintiff's total loss breached the subject contract of insurance. Such conduct also constitutes bad faith and

tortious breach of contract and breach of the duty of good faith and fair dealing. State Farm has forced its customers to litigate in order to receive benefits that should have been paid immediately under the subject policy.

30. On May 24, 2006, in *Tuepker v. State Farm*, the United States District Court for the Southern District of Mississippi ruled that the same “anti-concurrent cause clause” utilized by State Farm to deny Plaintiff’s claims was ambiguous and unenforceable to damage proximately and efficiently caused by hurricane wind.

31. After this ruling, upon information and belief State Farm started adjusting and paying the few remaining “open” claims for hurricane damage in accordance with the Court’s rulings and without using the “anti-concurrent cause clause.” However, State Farm refused to reopen or readjust Plaintiff’s claim or the vast majority of other claims it had denied and “closed.”

V.

COUNT ONE

NEGLIGENCE/GROSS NEGLIGENCE/RECKLESS DISREGARD FOR RIGHTS OF PLAINTIFF

32. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

33. State Farm had a duty under Mississippi law to fully, fairly, adequately and correctly investigate and adjust Plaintiff’s claims for hurricane damage.

34. State Farm breached this duty by failing to adequately investigate and adjust Plaintiff’s “accidental direct physical loss” in the following ways:

35. State Farm breached its duty by denying Plaintiff’s claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the evidence that

Plaintiff's loss was proximately and efficiently caused by "water damage," a peril excluded by the policy.

36. State Farm breached its duty by denying Plaintiff's claim without meeting its affirmative burden of establishing at the time of the denial by a preponderance of the evidence, which amount of Plaintiff's loss was caused by "water" and which amount was caused by wind and wind borne or water borne objects, material or debris.

37. Similarly, State Farm breached its duty by failing to pay Plaintiff for the damage it could not prove by a preponderance of the evidence was caused by "water."

38. State Farm breached its duty by shifting to Plaintiff the burden of proving that his/her loss was not excluded by the policy.

39. State Farm breached its duty by dispatching an adjuster to investigate, adjust, and deny Plaintiff's loss who did not have the qualifications or training to determine the cause of Plaintiff's loss.

40. State Farm breached its duty by failing to properly train its adjuster on how to investigate and adjust Plaintiff's loss.

41. State Farm breached its duty by basing its denial of Plaintiff's claims for hurricane damage on the investigation and adjustment of an unqualified adjuster.

42. State Farm breached its duty by failing to adequately inspect, investigate or adjust the insured property prior to denying the claim.

43. State Farm breached its duty by denying Plaintiff's total loss without conducting a complete, full, fair, and adequate investigation and adjustment of Plaintiff's claim for damage under the policy.

44. State Farm breached its duty by failing to credit the statements from eyewitnesses in investigating and adjusting Plaintiff's claim.

45. State Farm breached its duty by failing to utilize an objective meteorologist or structural engineer to determine the cause of Plaintiff's loss prior to denying the claim.

46. State Farm breached its duty by pressuring and coercing its retained engineering firms to conclude that water caused all of the loss to Plaintiff's insured property and that of all other State Farm policyholders on the Mississippi Gulf Coast.

47. State Farm breached its duty by relying on unreliable meteorological data from HAAG Engineering and others and by mischaracterizing, perverting, and ignoring valid meteorological data and eyewitness accounts in denying the claim.

48. State Farm breached its duty by denying Plaintiff's claims without knowing what caused the loss or undertaking any effort to find out.

49. State Farm breached its duty by failing to pay Plaintiff for his/her loss.

50. State Farm breached its duty by arbitrarily denying Plaintiff's loss based on the "anti-concurrent cause clause."

51. State Farm breached its duty by failing to reopen or readjust Plaintiff's claims for hurricane damage after the Court's invalidation of the "anti-concurrent cause clause."

52. Such conduct as alleged above constitutes negligence, gross negligence, and/or reckless disregard for Plaintiff's rights as a State Farm insured.

53. State Farm's negligent, grossly negligent, and/or reckless adjustment proximately caused Plaintiff's economic and other damages.

COUNT TWO
BREACH OF CONTRACT AGAINST STATE FARM

54. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

55. Plaintiff entered into an insurance contract with State Farm in which he/she contracted for, purchased, and was entitled to receive full insurance coverage under the subject policy for all “accidental direct physical loss” or “collapse” to the insured Dwelling and other structures and additional living expense. Plaintiff similarly contracted for insurance coverage for all “accidental direct physical loss” to the personal contents proximately and efficiently caused by hurricane wind.

56. Plaintiff suffered an “accidental direct physical loss” under the subject policy.

57. Hurricane Katrina is considered to be a windstorm under the subject policy.

58. The overwhelming meteorological and physical evidence at the site of the insured property, surrounding area, and eyewitnesses established that insured property was proximately and efficiently destroyed by hurricane wind, tornadoes, microbursts, mesocyclone activity in the absence of and prior to the arrival and inundation of any storm surge.

59. Plaintiff satisfied his/her obligations under the subject policy by submitting a claim showing that he/she sustained an “accidental direct physical loss” as a result of Hurricane Katrina, a windstorm. However, State Farm breached the subject policy by unjustifiably denying insurance coverage for Plaintiff’s loss in the following ways:

60. State Farm breached the subject policy by denying Plaintiff’s claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the

evidence that Plaintiff's "accidental direct physical loss" was proximately and efficiently caused by "water damage," a peril excluded by the policy.

61. State Farm breached the subject policy by denying Plaintiff's claim without meeting its affirmative burden of establishing at the time of the denial by a preponderance of the evidence, which amount of Plaintiff's loss was caused by "water" and which amount was caused by wind and wind borne or water borne objects, material or debris.

62. Similarly, State Farm breached the subject policy by failing to pay Plaintiff for the damage it could not prove by a preponderance of the evidence was caused by "water."

63. State Farm breached the subject policy by shifting to Plaintiff the burden of proving that his/her loss was not excluded by the policy.

64. State Farm breached the subject policy by denying Plaintiff's claims for hurricane damage without being able to meet its burden of proving by a preponderance of the evidence that Plaintiff's loss was not caused by a covered hurricane wind, tornado, microburst, mesocyclone, or other convective activity.

65. State Farm breached the subject policy by failing to conclusively and objectively determine the proximate and efficient cause of the loss prior to its denial of Plaintiff's claims for hurricane damage.

66. State Farm breached the subject policy by denying Plaintiff's claims for hurricane damage without being able to conclusively and objectively determine the proximate and efficient cause of the loss.

67. State Farm breached the subject policy by intentionally relying on unreliable meteorological data from HAAG Engineering and others and by mischaracterizing, perverting,

and ignoring valid meteorological data and eyewitness accounts in denying the claim.

68. State Farm breached the subject policy by denying Plaintiff's claims for hurricane damage despite the overwhelming evidence from the insured property, surrounding area, and eyewitnesses that the loss was caused by hurricane wind, tornadoes, microbursts, and/or mesocyclones.

69. State Farm breached the subject policy by unjustifiably denying insurance coverage for Plaintiff's loss based on the "anti-concurrent cause clause" to the "water damage" exclusion.

70. Similarly, State Farm breached the subject policy by denying Plaintiff's insured loss in accordance with its post-Katrina corporate policy of denying all claims where hurricane wind acted "concurrently" with hurricane water, which is the category State Farm considered the Plaintiff's loss to fall under.

71. State Farm breached the subject policy by continuing to deny and failing to reopen or readjust Plaintiff's claims for hurricane damage after the Federal Court invalidated its "anti-concurrent cause clause" and ruled it ambiguous and unenforceable.

72. State Farm breached the subject policy by unfairly treating and adjusting Plaintiff's claims for hurricane damage differently than the few other similar claims for hurricane damage that it did provide coverage for and pay under the subject policy.

73. State Farm breached the subject policy by negligently, grossly negligently, and/or recklessly failing to conduct an adequate, proper, honest, and good faith inspection, adjustment and investigation of Plaintiff's loss prior to denying such loss.

74. State Farm breached the subject policy by denying Plaintiff's claims for hurricane

damage without conducting an adequate, proper, honest, and good faith adjustment, inspection and investigation of Plaintiff's loss.

75. State Farm breached the subject policy by basing its denial of Plaintiff's loss on an inadequate investigation, inspection, and adjustment of Plaintiff's loss.

76. State Farm breached the subject policy by basing its denial of Plaintiff's claims for hurricane damage on the investigation, inspection, and adjustment of an adjuster who was unqualified to determine the proximate cause of the loss.

77. State Farm breached the subject policy by failing to utilize an objective meteorologist or engineer to determine the proximate cause of the loss prior to denying Plaintiff's claims for hurricane damage.

78. State Farm breached the subject policy by pressuring and coercing its retained engineering firms to uniformly conclude that water caused all of the loss to Plaintiff's insured property and that of all other State Farm policyholders on the Mississippi Gulf Coast.

79. State Farm breached the subject policy by failing to construe the policy in favor of coverage for Plaintiff's loss.

80. State Farm breached the subject policy by predetermining, in conjunction with other property insurers, shortly before Hurricane Katrina made landfall that it would not cover the hurricane damage to insured properties on the Mississippi Gulf Coast, including damage incurred by Plaintiff, caused by Hurricane Katrina.

81. State Farm's breaches of contract have proximately caused Plaintiff's economic and other damages.

COUNT THREE
BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING AGAINST STATE FARM

82. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

83. State Farm breached its duty of good faith and fair dealing to Plaintiff by unjustifiably denying the insurance coverage for Plaintiff's insured loss through the following ways:

84. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the evidence that Plaintiff's "accidental direct physical loss" was proximately and efficiently caused by "water damage," a peril excluded by the policy.

85. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claim without meeting its affirmative burden of establishing at the time of the denial by a preponderance of the evidence which amount of Plaintiff's loss was caused by "water" and which amount was caused by wind and wind borne or water borne objects, material or debris.

86. Similarly, State Farm breached its duty of good faith and fair dealing by failing to pay Plaintiff for the damage it could not prove by a preponderance of the evidence was caused by "water."

87. State Farm breached its duty of good faith and fair dealing by shifting to Plaintiff the burden of proving that his/her loss was not excluded by the policy.

88. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claims for hurricane damages without being able to meet its burden of proving by a

preponderance of the evidence that Plaintiff's loss was not caused by a covered hurricane wind, tornado, microburst, mesocyclone, or other convective activity.

89. State Farm breached its duty of good faith and fair dealing by failing to conclusively and objectively determine the proximate and efficient cause of the loss prior to its denial of Plaintiff's claims for hurricane damage.

90. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claims for hurricane damage without being able to conclusively and objectively determine the proximate and efficient cause of the loss.

91. State Farm breached the subject policy by intentionally relying on unreliable meteorological data from HAAG Engineering and others and by mischaracterizing, perverting, and ignoring valid meteorological data and eyewitness accounts in denying the claim.

92. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claims for hurricane damage despite the overwhelming evidence from the insured property, surrounding area, and eyewitnesses that the loss was caused by hurricane wind, tornadoes, microbursts, and/or mesocyclones.

93. State Farm breached its duty of good faith and fair dealing by unjustifiably denying insurance coverage for Plaintiff's loss based on the "anti-concurrent cause clause" to the "water damage" exclusion. Similarly, State Farm breached its duty of good faith and fair dealing by denying Plaintiff's insured loss in accordance with its post-Katrina corporate policy of denying all claims where hurricane wind acted "concurrently" with hurricane water, which is the category State Farm considered the Plaintiff's loss to fall under.

94. State Farm breached its duty of good faith and fair dealing by continuing to deny

and failing to reopen or readjust Plaintiff's claims for hurricane damage after the Federal Court invalidated its "anti-concurrent cause clause" and ruled it ambiguous and unenforceable.

95. State Farm breached its duty of good faith and fair dealing by unfairly treating and adjusting Plaintiff's claims for hurricane damage differently than the few other similar claims for hurricane damage that it did provide coverage for and pay under the subject policy.

96. State Farm breached its duty of good faith and fair dealing by negligently, gross negligently, and/or recklessly failing to conduct an adequate, proper, honest, and good faith inspection, adjustment, and investigation of Plaintiff's claims for hurricane damage prior to denying such claims.

97. State Farm breached its duty of good faith and fair dealing by denying Plaintiff's claims for hurricane damage without conducting an adequate, proper, honest, and good faith inspection, adjustment, and investigation of Plaintiff's claims for hurricane damage under the policy.

98. State Farm breached its duty of good faith and fair dealing by basing its denial of Plaintiff's claim for hurricane damage on an inadequate investigation, inspection, and adjustment of Plaintiff's loss.

99. State Farm breached its duty of good faith and fair dealing by basing its denial of Plaintiff's claims for hurricane damage on the investigation, inspection, and adjustment of an adjuster who was unqualified to determine the proximate cause of the loss.

100. State Farm breached its duty of good faith and fair dealing by failing to utilize an objective meteorologist or engineer to determine the proximate cause of the loss prior to denying Plaintiff's claims for hurricane damage.

101. State Farm breached its duty of good faith and fair dealing by pressuring and coercing its retained engineering firms to uniformly conclude that water caused all of the loss to Plaintiff's insured property and that of all other State Farm policyholders on the Mississippi Gulf Coast.

102. State Farm breached its duty of good faith and fair dealing by failing to construe the policy in favor of coverage for Plaintiff's loss.

103. State Farm breached its duty of good faith and fair dealing by predetermining, in conjunction with other property insurers, shortly before Hurricane Katrina made landfall that it would not cover the hurricane damage to insured properties on the Mississippi Gulf Coast, including damage incurred by Plaintiff, caused by Hurricane Katrina.

104. Such conduct by State Farm violates the standards of decency, fairness, and reasonableness.

105. State Farm's breaches of its duty of good faith and fair dealing have proximately caused Plaintiff's economic and emotional damages.

COUNT FOUR
BAD FAITH AND TORTIOUS BREACH OF CONTRACT

106. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

107. State Farm tortiously, maliciously, and in bad faith breached the subject policy by refusing to provide full insurance coverage under the subject policy for Plaintiff's "accidental direct physical loss" without a legitimate or arguable reason in fact or law in the following ways:

108. State Farm tortiously, maliciously, and in bad faith without a legitimate or

arguable reason breached the subject policy by denying Plaintiff's claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the evidence that Plaintiff's "accidental direct physical loss" was proximately and efficiently caused by "water damage," a peril excluded by the policy.

109. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by denying Plaintiff's claim without meeting its affirmative burden of establishing at the time of the denial by a preponderance of the evidence which amount of Plaintiff's loss was caused by "water" and which amount was caused by wind and wind borne or water borne objects, material or debris.

110. Similarly, State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by failing to pay Plaintiff for the damage it could not prove by a preponderance of the evidence was caused by "water."

111. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by shifting to Plaintiff the burden of proving that his/her loss was not excluded by the policy.

112. State Farm's improper burden shifting and failure to satisfy its burden of proving an excluded cause in Plaintiff's case was part of a concerted course of conduct by State Farm to deny and/or underpay Katrina damage claims in order to force the Plaintiff and other State Farm policyholders to initiate years of protracted litigation just to recover the insurance payments that should have been paid to them unconditionally during the claims process and prior to denial. This business plan of purposefully denying all claims regardless of the merits in order to save money was first proposed to State Farm by its consulting company McKenzie and Company in

the early 1990s. Since then, State Farm has adopted and implemented this fraudulent claims strategy in the handling of claims brought under both its Auto and Property Insurance lines with unprecedented success and savings. State Farm is now the most profitable insurance company in the United States.

113. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by denying Plaintiff's claims for hurricane damages without being able to meet its burden of proving by a preponderance of the evidence that Plaintiff's loss was not caused by a covered hurricane wind, tornado, microburst, mesocyclone, or other convective activity.

114. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by failing to conclusively and objectively determine the proximate and efficient cause of the loss prior to its denial of Plaintiff's claims for hurricane damage.

115. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by denying Plaintiff's claims for hurricane damage without being able to conclusively and objectively determine the proximate and efficient cause of the loss.

116. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by intentionally relying on unreliable meteorological data from HAAG Engineering and others and by mischaracterizing, perverting, and ignoring valid meteorological data and eyewitness accounts in denying the claim.

117. State Farm tortiously, maliciously, and in bad faith without a legitimate or

arguable reason breached the subject policy by denying Plaintiff's claims for hurricane damage despite the overwhelming evidence from the insured property, surrounding area, and eyewitnesses that the loss was caused by hurricane wind, tornadoes, microbursts, and/or mesocyclones.

118. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by unjustifiably denying insurance coverage for Plaintiff's loss based on the "anti-concurrent cause clause" to the "water damage" exclusion. Similarly, State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by denying Plaintiff's insured loss in accordance with its post-Katrina corporate policy of denying all claims where hurricane wind acted "concurrently" with hurricane water, which is the category State Farm considered the Plaintiff's loss to fall under.

119. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by continuing to deny and failing to reopen or readjust Plaintiff's claims for hurricane damage after the Federal Court invalidated its "anti-concurrent cause clause" and ruled it ambiguous and unenforceable.

120. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by unfairly treating and adjusting Plaintiff's claims for hurricane damage differently than the few other similar claims for hurricane damage that it did provide coverage for and pay under the subject policy.

121. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by negligently, gross negligently, and/or recklessly failing to conduct an adequate, proper, honest, and good faith inspection, adjustment, and

investigation of Plaintiff's claims for hurricane damage prior to denying such claims.

122. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by denying Plaintiff's claims for hurricane damage without conducting an adequate, proper, honest, and good faith inspection, adjustment, and investigation of Plaintiff's claims for hurricane damage under the policy.

123. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by basing its denial of Plaintiff's claim for hurricane damage on an inadequate investigation, inspection, and adjustment of Plaintiff's loss.

124. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by basing its denial of Plaintiff's claims for hurricane damage on the inspection, investigation, and adjustment of an adjuster who was unqualified to determine the proximate cause of the loss.

125. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by failing to utilize an objective meteorologist or engineer to determine the proximate cause of the loss prior to denying Plaintiff's claims for hurricane damage.

126. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by pressuring and coercing its retained engineering firms to uniformly conclude that water caused all of the loss to Plaintiff's insured property and that of all other State Farm policyholders on the Mississippi Gulf Coast.

127. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by failing to construe the policy in favor of coverage

for Plaintiff's total loss.

128. State Farm tortiously, maliciously, and in bad faith without a legitimate or arguable reason breached the subject policy by predetermining, in conjunction with other property insurers, shortly before Hurricane Katrina made landfall that it would not cover the hurricane damage to insured properties on the Mississippi Gulf Coast, including damage incurred by Plaintiff caused by Hurricane Katrina.

129. State Farm's tortious, malicious, and bad faith conduct towards Plaintiff as alleged above was grounded in and consistent with State Farm policies, procedures, and a general corporate course of conduct in handling all damage claims in catastrophes like Hurricane Katrina.

130. State Farm's tortious, malicious, and bad faith breaches of contract have proximately caused Plaintiff's economic and emotional damages.

131. State Farm's acts and conduct as alleged above were willful, wanton, malicious, grossly negligent, and done with reckless disregard for the rights of Plaintiff, thereby arising to the level of an independent tort and entitling Plaintiff to an award of Punitive Damages.

COUNT FIVE
WAIVER & ESTOPPEL

132. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

133. State Farm had the obligation and duty to establish what, if any, part of the total loss fell under the terms of its exclusion. By declaring its burden of proof irrelevant and intentionally abandoning its burden of establishing what, if any, part of the loss was excluded and thereby shifting its burden of proof to Plaintiff, State Farm waived its right to exclude any part of

the loss.

134. State Farm's conduct and denial constitutes a waiver of its right to now inspect the insured property; reinvestigate the cause of loss, or utilize engineering and/or meteorologist to do what should have been done prior to the denial. State Farm therefore waived its right to make any causal determination of the loss now that the matter is in litigation, and should be estopped from being able to conduct any kind of post-denial investigation, inspection of the insured property, or utilizing different litigation experts to now determine the cause of the loss and "clean up" its bad faith conduct. State Farm should further be estopped from using litigation experts to now determine the cause of loss and justify its invalid denial.

COUNT SIX
FRAUDULENT CLAIMS PRACTICES

135. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

136. The massive number of State Farm insured homes destroyed by Hurricane Katrina left State Farm facing huge losses after Katrina. To reduce its financial exposure, State Farm then conceived and instituted a fraudulent course of claims practices to be applied to Katrina "slab" claims and other damage claims, including that of Plaintiff.

137. The claim of Plaintiff for his/her Hurricane Katrina damages was wrongfully denied pursuant to State Farm's scheme of fraudulent and deceptive claims practices.

138. State Farm, in effect re-wrote its contract and its claims procedures for "slab" cases destroyed by wind and water and embarked on an intentional course of pre-litigation and post-litigation conduct fraudulently concealed from Plaintiff and deliberately designed to deny

Plaintiff's legitimate claims under his/her State Farm contract and Mississippi law.

139. The actions of State Farm constitute a deliberate course of company-wide fraudulent post-Katrina claims handling practices by which State Farm intentionally undertook to defraud the Plaintiff.

140. Said actions by Defendants constitute fraud, fraudulent concealment, and fraudulent inducement, as well as bad faith claims handling on an institutional basis in the handling by State Farm of Katrina damage claims. The actions by the Defendants were intended to, and did, result in the intentional and fraudulent denial of the claims of the Plaintiff whose home was destroyed by the Hurricane.

141. The actions of State Farm were undertaken with willful and deliberate disregard of the rights of the Plaintiff. The actions of State Farm warrant the imposition of extra-contractual and punitive damages under Mississippi law and the United States Constitution.

COUNT SEVEN
AIDING AND ABETTING; CIVIL CONSPIRACY

142. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

143. Defendants aided and abetted Defendant State Farm in its wrongful and fraudulent denial of Plaintiff's insurance claim. Defendants had knowledge of State Farm's tortious, wrongful and fraudulent claims handling activities that affected the adjustment of Plaintiff's claim and all other State Farm policyholders on the Mississippi Gulf Coast, and yet gave substantial assistance to such conduct.

144. Moreover, Defendants had knowledge of State Farm's tortious, wrongful and

fraudulent denial of Plaintiff's claims for hurricane damage under the subject policy, and yet gave substantial assistance to State Farm in such conduct.

145. Defendants also acted in concert with Defendant State Farm in its scheme to wrongfully and fraudulently deny insurance benefits to Plaintiff. Defendant State Farm developed a pretextual basis for claim denial, relying in whole or part on actions of Defendants.

146. Defendants knew that their actions were aiding and abetting State Farm in its efforts to develop pretextual grounds for claim denial.

147. Defendants conduct and actions in this regard substantially assisted and encouraged Defendant State Farm in its fraudulent denial of Plaintiff's insurance claim. Through such conduct, Defendants acted in concert with Defendant State Farm in their common plan to obscure the true cause of the loss suffered by Plaintiff.

148. Defendants further substantially assisted, acted in concert pursuant to a common plan, and acted a joint and concurrent tortfeasor in Defendant State Farm's fraudulent denial of Plaintiff's insurance claim.

149. The above actions of all Defendants, and each of them, were in furtherance of a civil conspiracy to deny legitimate insurance claims, including Plaintiff's claim, without legitimate or arguable reason in fact or law. Such actions violate not only the duty of good faith and fair dealing, but were so grossly negligent and committed in reckless disregard of the rights of Plaintiff that they violate Mississippi statutory law and constitute negligence *per se*.

150. The object of the conspiracy between Defendants and Defendant State Farm was to deny legitimate claims of coverage and was in violation of both the criminal statutes of the State of Mississippi and the positive duties placed on Defendants by Mississippi substantive law.

VI.
REMEDIES

151. Plaintiff hereby incorporates and adopts by reference each and every allegation set forth in the foregoing Paragraphs of the Complaint.

152. As a direct and proximate result of State Farm's negligence, gross negligence, reckless disregard for Plaintiff's rights as a State Farm insured, breach of contract, breach of duty of good faith and fair dealing, and bad faith and tortious breach of contract without a legitimate or arguable reason in fact or law, Plaintiff is entitled to the following relief:

(A) Payment for all contractual benefits for all coverages afforded to Plaintiff under the subject State Farm policy for damage to his/her insured residence and personal contents caused by Hurricane Katrina, with interest on all amounts due Plaintiff under his/her policy;

(B) With respect to "Additional Living Expenses" benefits owing under the policy, Defendant should be ordered to immediately pay all such benefits retroactive to August 29, 2005, with interest on all past-due amounts, and pay such benefits prospectively to the limits of coverage or the insured is no longer entitled to them;

(C) Prejudgment interest on the amounts owing to Plaintiff in contractual or policy benefits with interest, retroactive to August 29, 2005;

(D) Compensatory damages on the tort claims for mental distress, emotional harm, and other losses and damages suffered by Plaintiff as a proximate result on the denial of coverage. Plaintiff is entitled on his/her contract claims to consequential damages, including but not limited to the amounts Plaintiff expended or lost in trying to

subsist without insurance benefits since August 29, 2005. On all claims Plaintiff is entitled to recovery for humiliation, stigmatization in the Plaintiff's communities, embarrassment, and mental distress proximately caused by State Farm's bad faith denial of his/her claim;

(E) For the intentionally tortious actions of State Farm, compensatory damages as described above, and as further provided under Mississippi law, Plaintiff is entitled to recovery of his/her attorney fees and costs of litigation for such intentional acts committed by State Farm;

(F) Extra-contractual damages for State Farm's tortious, malicious, willful, wanton, reckless, grossly negligent, and bad faith conduct, which arose to the level of an independent tort, including but not limited to, compensatory damages for all out-of-pocket expenses incurred by reason of State Farm's refusal to pay contractual benefits, mental distress and/or emotional harm caused or contributed to by Defendants' bad faith refusal to honor its contract of insurance, and recovery of attorney fees and litigation expenses incurred by Plaintiff by reason of Defendants' denial of insurance coverage, including mental distress, all out-of-pocket expenses and attorney fees and expenses incurred by Plaintiff;

(G) Punitive and exemplary damages for Defendants' tortious, malicious, willful, wanton, reckless, grossly negligent, and bad faith conduct which arose to the level of an independent tort, including but not limited to, an award of punitive damages sufficient to punish and deter Defendants, make an example of the Defendants to discourage other insurers from engaging in such misconduct, taking into account

Defendants' financial condition, all in an amount sufficient to achieve the public purposes underlying an award of punitive damages as may be determined by the Court and/or jury; prejudgment interest on all amounts in contractual benefits and compensatory damages awarded by the Court and/or jury; and all costs of the litigation, including but not limited to reasonable attorney fees, incurred in prosecuting this action and any subsidiary or auxiliary actions that arise in determining the losses of the individual Plaintiff by reason of the non-payment of contractual benefits, in an amount to be determined by the Court following conclusion of all proceedings herein; and

(H) An Order estopping Defendants from now inspecting the insured property or determining the cause of loss based on its denial and post-denial conduct.

153. Plaintiff respectfully requests such further general or specific relief to which he/she is entitled to at law or in equity.

154. Plaintiff respectfully requests a trial by jury on all issues so triable.

Respectfully submitted this 20th day of June, 2007.

ELDRIDGE BOYD
PLAINTIFF

By:


DEREK A. WYATT (MS BAR #7413)

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ATTORNEYS FOR PLAINTIFF

CIVIL COVER SHEET

1:07CV82DLTSRAW

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS
 ELDRIDGE BOYD

(b) County of Residence of First Listed Plaintiff Hancock
 (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)
 Derek A. Wyatt, Nutt & McAlister, P.L.L.C., 605 Crescent Blvd., Suite 200, Ridgeland, MS 39157; (601) 898-7302

DEFENDANTS
 STATE FARM FIRE & CASUALTY CO., STATE FARM MUTUAL AUTOMOBILE INS. CO., & JOHN DOES 1 - 10

County of Residence of First Listed Defendant _____
 (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known) _____

SOUTHERN DISTRICT OF MISSISSIPPI
 FILED
 JUN 20 2007
 J.T. NOBLIN, CLERK
 DEPUTY

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question (U.S. Government Not a Party)

4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

| | | | | | |
|---|---------------------------------------|---------------------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input checked="" type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

| CONTRACT | TORTS | FORFEITURE/PENALTY | BANKRUPTCY | OTHER STATUTES |
|---|--|--|--|--|
| <input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury | PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability | <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609 | <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes |
| REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property | CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights | PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition | <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | |

V. ORIGIN (Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from another district (specify) _____

6 Multidistrict Litigation

7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. 1332

Brief description of cause: _____

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23


DEMAND \$ _____

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE: 06/20/2007

SIGNATURE OF ATTORNEY OF RECORD: 

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____



HOMEOWNERS POLICY



FP-7955
(8/96)

PRINTED
IN
U.S.A.

This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars. However, we want to point out that every policy contains limitations and exclusions. Please read your policy carefully, especially "Losses Not Insured" and all exclusions.

EXHIBIT "A"

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DECLARATIONS

Your Name
Location of Your Residence
Policy Period
Coverages
Limits of Liability
Deductibles

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HOMEOWNERS POLICY
DECLARATIONS CONTINUED

We agree to provide the insurance described in this policy:

1. based on your payment of premium for the coverages you chose;
2. based on your compliance with all applicable provisions of this policy; and
3. in reliance on your statements in these **Declarations**.

You agree, by acceptance of this policy, that:

1. you will pay premiums when due and comply with the provisions of the policy;
2. the statements in these **Declarations** are your statements and are true;

3. we insure you on the basis your statements are true; and
4. this policy contains all of the agreements between you and us and any of our agents.

Unless otherwise indicated in the application, you state that during the three years preceding the time of your application for this insurance your Loss History and Insurance History are as follows:

1. Loss History: you have not had any losses, insured or not; and
2. Insurance History: you have not had any insurer or agency cancel or refuse to issue or renew similar insurance to you or any household member.

DEFINITIONS

"You" and "your" mean the "named insured" shown in the **Declarations**. Your spouse is included if a resident of your household. "We", "us" and "our" mean the Company shown in the **Declarations**.

Certain words and phrases are defined as follows:

1. "bodily injury" means physical injury, sickness, or disease to a person. This includes required care, loss of services and death resulting therefrom.

Bodily injury does not include:

- a. any of the following which are communicable: disease, bacteria, parasite, virus, or other organism, any of which are transmitted by any insured to any other person;
- b. the exposure to any such disease, bacteria, parasite, virus, or other organism by any Insured to any other person; or
- c. emotional distress, mental anguish, humiliation, mental distress, mental injury, or any similar injury unless it arises out of actual physical injury to some person.

2. "business" means a trade, profession or occupation. This includes farming.

3. "Declarations" means the policy **Declarations**, any amended **Declarations**, the most recent renewal notice or certificate, an Evidence of Insurance form or any endorsement changing any of these.

4. "insured" means you and, if residents of your household:

- a. your relatives; and
- b. any other person under the age of 21 who is in the care of a person described above.

Under Section II, "insured" also means:

- c. with respect to animals or watercraft to which this policy applies, the person or organization legally responsible for them. However, the animal or watercraft must be owned by you or a person included in 4.a. or 4.b. A person or organization using or having custody of these animals or watercraft in the course of a business, or without permission of the owner, is not an insured; and

- d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of a person included in 4.a. or 4.b.

5. "insured location" means:

- a. the residence premises;
- b. the part of any other premises, other structures and grounds used by you as a residence. This includes premises, structures and grounds you acquire while this policy is in effect for your use as a residence;
- c. any premises used by you in connection with the premises included in 5.a. or 5.b.;
- d. any part of a premises not owned by an insured but where an insured is temporarily residing;
- e. land owned by or rented to an insured on which a one or two family dwelling is being constructed as a residence for an insured;
- f. individual or family cemetery plots or burial vaults owned by an insured;
- g. any part of a premises occasionally rented to an insured for other than business purposes;
- h. vacant land owned by or rented to an insured. This does not include farm land; and
- i. farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

6. "motor vehicle", when used in Section II of this policy, means:

- a. a motorized land vehicle designed for travel on public roads or subject to motor vehicle registration. A motorized land vehicle in dead storage on an insured location is not a motor vehicle;
- b. a trailer or semi-trailer designed for travel on public roads and subject to motor vehicle registration. A boat, camp, home or utility trailer not being towed by

or carried on a vehicle included in 6.a. is not a motor vehicle;

- c. a motorized golf cart, snowmobile, motorized bicycle, motorized tricycle, all-terrain vehicle or any other similar type equipment owned by an insured and designed or used for recreational or utility purposes off public roads, while off an insured location. A motorized golf cart while used for golfing purposes is not a motor vehicle; and
- d. any vehicle while being towed by or carried on a vehicle included in 6.a., 6.b. or 6.c.

7. "occurrence", when used in Section II of this policy, means an accident, including exposure to conditions, which results in:

- a. bodily injury; or
- b. property damage;

during the policy period. Repeated or continuous exposure to the same general conditions is considered to be one occurrence.

8. "property damage" means physical damage to or destruction of tangible property, including loss of use of this property. Theft or conversion of property by any insured is not property damage.

9. "residence employee" means an employee of an insured who performs duties, including household or domestic services, in connection with the maintenance or use of the residence premises. This includes employees who perform similar duties elsewhere for you. This does not include employees while performing duties in connection with the business of an insured.

10. "residence premises" means:

- a. the one, two, three or four-family dwelling, other structures and grounds; or
- b. that part of any other building; where you reside and which is shown in the Declarations.

SECTION I - COVERAGES

COVERAGE A - DWELLING

1. **Dwelling.** We cover the dwelling used principally as a private residence on the residence premises shown in the Declarations.

Dwelling includes:

- a. structures attached to the dwelling;
 - b. materials and supplies located on or adjacent to the residence premises for use in the construction, alteration or repair of the dwelling or other structures on the residence premises;
 - c. foundation, floor slab and footings supporting the dwelling; and
 - d. wall-to-wall carpeting attached to the dwelling.
2. **Dwelling Extension.** We cover other structures on the residence premises, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

We do not cover other structures:

- a. not permanently attached to or otherwise forming a part of the realty;
 - b. used in whole or in part for business purposes; or
 - c. rented or held for rental to a person not a tenant of the dwelling, unless used solely as a private garage.
3. **Property Not Covered.** We do not cover:
 - a. land, including the land necessary to support any Coverage A property;
 - b. any costs required to replace, rebuild, stabilize, or otherwise restore the land; or
 - c. the costs of repair techniques designed to compensate for or prevent land instability to any property, whether or not insured under Coverage A.

COVERAGE B - PERSONAL PROPERTY

1. **Property Covered.** We cover personal property owned or used by an insured while it is anywhere in the world. This includes structures not permanently attached to or

otherwise forming a part of the realty. At your request, we will cover personal property owned by others while the property is on the part of the residence premises occupied exclusively by an insured. At your request, we will also cover personal property owned by a guest or a residence employee, while the property is in any other residence occupied by an insured.

We cover personal property usually situated at an insured's residence, other than the residence premises, for up to \$1,000 or 10% of the Coverage B limit, whichever is greater. This limitation does not apply to personal property in a newly acquired principal residence for the first 30 days after you start moving the property there. If the residence premises is a newly acquired principal residence, personal property in your immediate past principal residence is not subject to this limitation for the first 30 days after the inception of this policy.

Special Limits of Liability. These limits do not increase the Coverage B limit. The special limit for each of the following categories is the total limit for each loss for all property in that category:

- a. \$200 on money, coins and medals, including any of these that are a part of a collection, and bank notes;
 - b. \$1,000 on property used or intended for use in a business, including merchandise held as samples or for sale or for delivery after sale, while on the residence premises. This coverage is limited to \$250 on such property away from the residence premises.
- Electronic data processing system equipment or the recording or storage media used with that equipment is not included under this coverage;
- c. \$1,000 on securities, checks, cashier's checks, traveler's checks, money orders, and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports and tickets;
 - d. \$1,000 on watercraft of all types and outboard motors, including their trailers, furnishings and equipment;
 - e. \$1,000 on trailers not used with watercraft;

- f. \$2,500 on stamps, trading cards and comic books, including any of these that are a part of a collection;
- g. \$2,500 for loss by theft of firearms;
- h. \$2,500 for loss by theft of silverware and goldware;
- i. \$5,000 on electronic data processing system equipment and the recording or storage media used with that equipment. There is no coverage for said equipment or media while located away from the residence premises except when said equipment or media are removed from the residence premises for the purpose of repair, servicing or temporary use. An insured student's equipment and media are covered while at a residence away from home; and
- j. \$5,000 on any one article and \$10,000 in the aggregate for loss by theft of any rug, carpet (except wall-to-wall carpet), tapestry, wall-hanging or other similar article.

2. Property Not Covered. We do not cover:

- a. articles separately described and specifically insured in this or any other insurance;
- b. animals, birds or fish;
- c. any engine or motor propelled vehicle or machine, including the parts, designed for movement on land. We do cover those not licensed for use on public highways which are:
 - (1) used solely to service the insured location; or
 - (2) designed for assisting the handicapped;
- d. devices or instruments for the recording or reproduction of sound permanently attached to an engine or motor propelled vehicle. We do not cover tapes, wires, records or other mediums that may be used with these devices or instruments while in the vehicle;
- e. aircraft and parts;
- f. property of roomers, boarders, tenants and other residents not related to an insured. We do cover property of roomers, boarders and other residents related to an insured;
- g. property regularly rented or held for rental to others by an insured. This exclusion does not apply to

property of an insured in a sleeping room rented to others by an insured;

- h. property rented or held for rental to others away from the residence premises;
- i. any citizens band radios, radio telephones, radio transceivers, radio transmitters, radar or laser detectors; antennas and other similar equipment permanently attached to an engine or motor propelled vehicle;
- j. books of account, abstracts, drawings, card index systems and other records. This exclusion does not apply to any recording or storage media for electronic data processing. We will cover the cost of blank books, cards or other blank material plus the cost of labor you incur for transcribing or copying such records; or
- k. recording or storage media for electronic data processing that cannot be replaced with other of like kind and quality on the current retail market.

COVERAGE C - LOSS OF USE

1. **Additional Living Expense.** When a Loss Insured causes the residence premises to become uninhabitable, we will cover the necessary increase in cost you incur to maintain your standard of living for up to 24 months. Our payment is limited to incurred costs for the shortest of: (a) the time required to repair or replace the premises; (b) the time required for your household to settle elsewhere; or (c) 24 months. This coverage is not reduced by the expiration of this policy.
2. **Fair Rental Value.** When a Loss Insured causes that part of the residence premises rented to others or held for rental by you to become uninhabitable, we will cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 12 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the residence premises rented or held for rental is uninhabitable.
3. **Prohibited Use.** When a civil authority prohibits your use of the residence premises because of direct damage to a neighboring premises by a Loss Insured, we will cover any resulting Additional Living Expense and Fair Rental

Value. Coverage is for a period not exceeding two weeks while use is prohibited.

We do not cover loss or expense due to cancellation of a lease or agreement.

SECTION I - ADDITIONAL COVERAGES

The following Additional Coverages are subject to all the terms, provisions, exclusions and conditions of this policy.

1. **Debris Removal.** We will pay the reasonable expenses you incur in the removal of debris of covered property damaged by a Loss Insured. This expense is included in the limit applying to the damaged property.

When the amount payable for the property damage plus the debris removal exceeds the limit for the damaged property, an additional 5% of that limit is available for debris removal expense. This additional amount of insurance does not apply to Additional Coverage, item 3. Trees, Shrubs and Other Plants.

We will also pay up to \$500 in the aggregate for each loss to cover the reasonable expenses you incur in the removal of tree debris from the residence premises when the tree has caused a Loss Insured to Coverage A property.

2. **Temporary Repairs.** If damage is caused by a Loss Insured, we will pay the reasonable and necessary cost you incur for temporary repairs to covered property to protect the property from further immediate damage or loss. This coverage does not increase the limit applying to the property being repaired.

3. **Trees, Shrubs and Other Plants.** We cover outdoor trees, shrubs, plants or lawns, on the residence premises, for direct loss caused by the following: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles (not owned or operated by a resident of the residence premises), Vandalism or malicious mischief or Theft.

The limit for this coverage, including the removal of debris, shall not exceed 5% of the amount shown in the Declarations for COVERAGE A - DWELLING. We will not pay more than \$500 for any one outdoor tree, shrub or plant, including debris removal expense. This coverage may increase the limit otherwise applicable. We do not cover property grown for business purposes.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges. This means charges incurred when the fire department is called to save or protect covered property from a Loss Insured. No deductible applies to this coverage. This coverage may increase the limit otherwise applicable.

5. **Property Removed.** Covered property, while being removed from a premises endangered by a Loss Insured, is covered for any accidental direct physical loss. This coverage also applies to the property for up to 30 days while removed. We will also pay for reasonable expenses incurred by you for the removal and return of the covered property. This coverage does not increase the limit applying to the property being removed.

6. **Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money.**

- a. We will pay up to \$1,000 for:

- (1) the legal obligation of an insured to pay because of the theft or unauthorized use of credit cards and bank fund transfer cards issued to or registered in an insured's name. If an insured has not complied with all terms and conditions under which the cards are issued, we do not cover use by an insured or anyone else;

- (2) loss to an insured caused by forgery or alteration of any check or negotiable instrument; and

- (3) loss to an insured through acceptance in good faith of counterfeit United States or Canadian paper currency.

No deductible applies to this coverage.

We will not pay more than the limit stated above for forgery or alteration committed by any one person. This limit applies when the forgery or alteration involves one or more instruments in the same loss.

- b. We do not cover loss arising out of business pursuits or dishonesty of an insured.

- c. Defense:

- (1) We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend claims or suits ends when

the amount we pay for the loss equals our limit of liability.

(2) If claim is made or a suit is brought against an Insured for liability under the Credit Card or Bank Fund Transfer Card coverage, we will provide a defense. This defense is at our expense by counsel of our choice.

(3) We have the option to defend at our expense an insured or an insured's bank against any suit for the enforcement of payment under the Forgery coverage.

7. **Power Interruption.** We cover accidental direct physical loss caused directly or indirectly by a change of temperature which results from power interruption that takes place on the residence premises. The power interruption must be caused by a Loss Insured occurring on the residence premises. The power lines off the residence premises must remain energized. This coverage does not increase the limit applying to the damaged property.

8. **Refrigerated Products.** Coverage B is extended to cover the contents of deep freeze or refrigerated units on the residence premises for loss due to power failure or mechanical failure. If mechanical failure or power failure is known to you, all reasonable means must be used to protect the property insured from further damage or this coverage is void. Power failure or mechanical failure shall not include:

- a. removal of a plug from an electrical outlet; or
- b. turning off an electrical switch unless caused by a Loss Insured.

This coverage does not increase the limit applying to the damaged property.

9. **Arson Reward.** We will pay \$1,000 for information which leads to an arson conviction in connection with a fire loss to property covered by this policy. This coverage may increase the limit otherwise applicable. However, the \$1,000 limit shall not be increased regardless of the number of persons providing information.

10. **Volcanic Action.** We cover direct physical loss to a covered building or covered property contained in a building resulting from the eruption of a volcano when the loss is directly and immediately caused by:

- a. volcanic blast or airborne shock waves;
- b. ash, dust or particulate matter; or
- c. lava flow.

We will also pay for the removal of that ash, dust or particulate matter which has caused direct physical loss to a covered building or covered property contained in a building.

One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

This coverage does not increase the limit applying to the damaged property.

11. **Collapse.** We insure only for direct physical loss to covered property involving the sudden, entire collapse of a building or any part of a building.

Collapse means actually fallen down or fallen into pieces. It does not include settling, cracking, shrinking, bulging, expansion, sagging or bowing.

The collapse must be directly and immediately caused only by one or more of the following:

- a. perils described in SECTION I - LOSSES INSURED, COVERAGE B - PERSONAL PROPERTY. These perils apply to covered building and personal property for loss insured by this Additional Coverage;
- b. hidden decay of a supporting or weight-bearing structural member of the building;
- c. hidden insect or vermin damage to a structural member of the building;
- d. weight of contents, equipment, animals or people;
- e. weight of ice, snow, sleet or rain which collects on a roof; or
- f. use of defective material or methods in the construction (includes remodeling or renovation) of the building, if the collapse occurs during the course of the construction of the building.

Loss to an awning, fence, patio, pavement, swimming pool, underground pipe, flue, drain, cesspool, septic tank, foundation, retaining wall, bulkhead, pier, wharf or dock is not included under items b., c., d., e. and f. unless the

loss is the direct and immediate cause of the collapse of the building.

This coverage does not increase the limit applying to the damaged property.

12. **Locks.** We will pay the reasonable expenses you incur to re-key locks on exterior doors of the dwelling located on the residence premises, when the keys to those locks are a part of a covered theft loss.

No deductible applies to this coverage.

INFLATION COVERAGE

The limits of liability shown in the Declarations for Coverage A, Coverage B and, when applicable, Option ID will be

increased at the same rate as the increase in the Inflation Coverage Index shown in the Declarations.

To find the limits on a given date:

1. divide the Index on that date by the index as of the effective date of this Inflation Coverage provision; then
2. multiply the resulting factor by the limits of liability for Coverage A, Coverage B and Option ID separately.

The limits of liability will not be reduced to less than the amounts shown in the Declarations.

If during the term of this policy the Coverage A limit of liability is changed at your request, the effective date of this Inflation Coverage provision is changed to coincide with the effective date of such change.

SECTION I - LOSSES INSURED

COVERAGE A - DWELLING

We insure for accidental direct physical loss to the property described in Coverage A, except as provided in SECTION I - LOSSES NOT INSURED.

COVERAGE B - PERSONAL PROPERTY

We insure for accidental direct physical loss to property described in Coverage B caused by the following perils, except as provided in SECTION I - LOSSES NOT INSURED:

1. Fire or lightning.
2. Windstorm or hail. This peril does not include loss to property contained in a building caused by rain, snow, sleet, sand or dust. This limitation does not apply when the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand or dust enters through this opening.

This peril includes loss to watercraft of all types and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building.

3. Explosion.
4. Riot or civil commotion.
5. Aircraft, including self-propelled missiles and spacecraft.

6. Vehicles, meaning impact by a vehicle.
7. Smoke, meaning sudden and accidental damage from smoke.

This peril does not include loss caused by smoke from agricultural smudging or industrial operations.

8. Vandalism or malicious mischief, meaning only willful and malicious damage to or destruction of property.
9. Theft, including attempted theft and loss of property from a known location when it is probable that the property has been stolen.

This peril does not include:

- a. loss of a precious or semi-precious stone from its setting;
- b. loss caused by theft:
 - (1) committed by an insured or by any other person regularly residing on the insured location. Property of a student who is an insured is covered while located at a residence away from home, if the theft is committed by a person who is not an insured;
 - (2) in or to a dwelling under construction or of materials and supplies for use in the construction until the dwelling is completed and occupied; or

(3) from the part of a residence premises rented to others:

(a) caused by a tenant, members of the tenant's household, or the tenant's employees;

(b) of money, bank notes, bullion, gold, goldware, silver, silverware, pewterware, platinum, coins and medals;

(c) of securities, checks, cashier's checks, traveler's checks, money orders and other negotiable instruments, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, passports, tickets and stamps; or

(d) of jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones;

c. loss caused by theft that occurs away from the residence premises of:

(1) property while at any other residence owned, rented to, or occupied by an insured, except while an insured is temporarily residing there. Property of a student who is an insured is covered while at a residence away from home;

(2) watercraft of all types, including their furnishings, equipment and outboard motors; or

(3) trailers and campers designed to be pulled by or carried on a vehicle.

If the residence premises is a newly acquired principal residence, property in the immediate past principal residence shall not be considered property away from the residence premises for the first 30 days after the inception of this policy.

10. **Falling objects.** This peril does not include loss to property contained in a building unless the roof or an exterior wall of the building is first damaged by a falling object. Damage to the falling object itself is not included.

11. **Weight of ice, snow or sleet** which causes damage to property contained in a building.

12. **Sudden and accidental discharge or overflow of water or steam from within a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or from within a household appliance.**

This peril does not include loss:

a. to the system or appliance from which the water or steam escaped;

b. caused by or resulting from freezing;

c. caused by or resulting from water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove subsurface water which is drained from the foundation area; or

d. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

13. **Sudden and accidental tearing asunder, cracking, burning or bulging of a steam or hot water heating system, an air conditioning or automatic fire protective sprinkler system, or an appliance for heating water.**

This peril does not include loss:

a. caused by or resulting from freezing; or

b. caused by or resulting from continuous or repeated seepage or leakage of water or steam which occurs over a period of time and results in deterioration, corrosion, rust, mold, or wet or dry rot.

14. **Freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance.**

This peril does not include loss on the residence premises while the dwelling is vacant, unoccupied or being constructed, unless you have used reasonable care to:

a. maintain heat in the building; or

b. shut off the water supply and drain the system and appliances of water.

15. Sudden and accidental damage to electrical appliances, devices, fixtures and wiring from an increase or decrease of artificially generated electrical current. We will pay up to \$1,000 under this peril for each damaged item described above.

16. Breakage of glass, meaning damage to personal property caused by breakage of glass which is a part of a building on the residence premises. There is no coverage for loss or damage to the glass.

SECTION I - LOSSES NOT INSURED

1. We do not insure for any loss to the property described in Coverage A which consists of, or is directly and immediately caused by, one or more of the perils listed in items a. through n. below, regardless of whether the loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

- a. collapse, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Collapse;
- b. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system, or of a household appliance, or by discharge, leakage or overflow from within the system or appliance caused by freezing. This exclusion only applies while the dwelling is vacant, unoccupied or being constructed. This exclusion does not apply if you have used reasonable care to:
 - (1) maintain heat in the building; or
 - (2) shut off the water supply and drain the system and appliances of water;
- c. freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a swimming pool, hot tub or spa, including their filtration and circulation systems, fence, pavement, patio, foundation, retaining wall, bulkhead, pier, wharf or dock;
- d. theft in or to a dwelling under construction, or of materials and supplies for use in the construction, until the dwelling is completed and occupied;
- e. vandalism or malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

f. continuous or repeated seepage or leakage of water or steam from a:

- (1) heating, air conditioning or automatic fire protective sprinkler system;
- (2) household appliance; or
- (3) plumbing system, including from, within or around any shower stall, shower bath, tub installation, or other plumbing fixture, including their walls, ceilings or floors;

which occurs over a period of time. If loss to covered property is caused by water or steam not otherwise excluded, we will cover the cost of tearing out and replacing any part of the building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water or steam escaped;

- g. wear, tear, marring, scratching, deterioration, inherent vice, latent defect or mechanical breakdown;
- h. corrosion, electrolysis or rust;
- i. mold, fungus or wet or dry rot;
- j. contamination;
- k. smog; smoke from agricultural smudging or industrial operations;
- l. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundation, walls, floors, roofs or ceilings;
- m. birds, vermin, rodents, insects, or domestic animals. We do cover the breakage of glass or safety glazing material which is a part of a building, when caused by birds, vermin, rodents, insects or domestic animals; or

n. pressure from or presence of tree, shrub or plant roots.

However, we do insure for any resulting loss from items a. through m. unless the resulting loss is itself a Loss Not Insured by this Section.

2. We do not insure under any coverage for any loss which would not have occurred in the absence of one or more of the following excluded events. We do not insure for such loss regardless of: (a) the cause of the excluded event; or (b) other causes of the loss; or (c) whether other causes acted concurrently or in any sequence with the excluded event to produce the loss; or (d) whether the event occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these:

a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure.

b. **Earth Movement**, meaning the sinking, rising, shifting, expanding or contracting of earth, all whether combined with water or not. Earth movement includes but is not limited to earthquake, landslide, mudflow, mudslide, sinkhole, subsidence, erosion or movement resulting from improper compaction, site selection or any other external forces. Earth movement also includes volcanic explosion or lava flow, except as specifically provided in SECTION I - ADDITIONAL COVERAGES, Volcanic Action.

However, we do insure for any direct loss by fire resulting from earth movement, provided the resulting fire loss is itself a Loss Insured.

c. **Water Damage**, meaning:

(1) flood, surface water, waves, tidal water, tsunami, seiche, overflow of a body of water, or spray from any of these, all whether driven by wind or not;

(2) water or sewage from outside the residence premises plumbing system that enters through sewers or drains, or water which enters into and overflows from within a sump pump, sump pump well or any other system designed to remove

subsurface water which is drained from the foundation area; or

(3) water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure.

However, we do insure for any direct loss by fire, explosion or theft resulting from water damage, provided the resulting loss is itself a Loss Insured.

d. **Neglect**, meaning neglect of the insured to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered.

e. **War**, including any undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.

f. **Nuclear Hazard**, meaning any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion or smoke.

However, we do insure for any direct loss by fire resulting from the nuclear hazard, provided the resulting fire loss is itself a Loss Insured.

3. We do not insure under any coverage for any loss consisting of one or more of the items below. Further, we do not insure for loss described in paragraphs 1. and 2. immediately above regardless of whether one or more of the following: (a) directly or indirectly cause, contribute to or aggravate the loss; or (b) occur before, at the same time, or after the loss or any other cause of the loss:

a. conduct, act, failure to act, or decision of any person, group, organization or governmental body whether intentional, wrongful, negligent, or without fault;

b. defect, weakness, inadequacy, fault or unsoundness in:

- (1) planning, zoning, development, surveying, siting;
- (2) design, specifications, workmanship, construction, grading, compaction;
- (3) materials used in construction or repair; or
- (4) maintenance;

of any property (including land, structures, or improvements of any kind) whether on or off the residence premises; or

c. weather conditions.

However, we do insure for any resulting loss from items a., b. and c. unless the resulting loss is itself a Loss Not Insured by this Section.

SECTION I - LOSS SETTLEMENT

Only the Loss Settlement provisions shown in the Declarations apply. We will settle covered property losses according to the following.

COVERAGE A - DWELLING

1. A1 - Replacement Cost Loss Settlement - Similar Construction.

a. We will pay the cost to repair or replace with similar construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

- (1) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or replace the damaged part of the property;
- (2) when the repair or replacement is actually completed, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;
- (3) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

(4) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

2. A2 - Replacement Cost Loss Settlement - Common Construction.

a. We will pay the cost to repair or replace with common construction and for the same use on the premises shown in the Declarations, the damaged part of the property covered under SECTION I - COVERAGES, COVERAGE A - DWELLING, except for wood fences, subject to the following:

- (1) we will pay only for repair or replacement of the damaged part of the property with common construction techniques and materials commonly used by the building trades in standard new construction. We will not pay the cost to repair or replace obsolete, antique or custom construction with like kind and quality;
- (2) until actual repair or replacement is completed, we will pay only the actual cash value at the time of the loss of the damaged part of the property, up to the applicable limit of liability shown in the Declarations, not to exceed the cost to repair or

replace the damaged part of the property as described in a.(1) above;

(3) when the repair or replacement is actually completed as described in a.(1) above, we will pay the covered additional amount you actually and necessarily spend to repair or replace the damaged part of the property, or an amount up to the applicable limit of liability shown in the Declarations, whichever is less;

(4) to receive any additional payments on a replacement cost basis, you must complete the actual repair or replacement of the damaged part of the property within two years after the date of loss, and notify us within 30 days after the work has been completed; and

(5) we will not pay for increased costs resulting from enforcement of any ordinance or law regulating the construction, repair or demolition of a building or other structure, except as provided under Option OL - Building Ordinance or Law Coverage.

b. Wood Fences: We will pay the actual cash value at the time of loss for loss or damage to wood fences, not to exceed the limit of liability shown in the Declarations for COVERAGE A - DWELLING EXTENSION.

COVERAGE B - PERSONAL PROPERTY

1. B1 - Limited Replacement Cost Loss Settlement

a. We will pay the cost to repair or replace property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below, subject to the following:

(1) until repair or replacement is completed, we will pay only the cost to repair or replace less depreciation;

(2) after repair or replacement is completed, we will pay the difference between the cost to repair or replace less depreciation and the cost you have

actually and necessarily spent to repair or replace the property; and

(3) if property is not repaired or replaced within two years after the date of loss, we will pay only the cost to repair or replace less depreciation.

b. We will pay market value at the time of loss for:

(1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;

(2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and

(3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

(1) our cost to replace at the time of loss;

(2) the full cost of repair;

(3) any special limit of liability described in the policy; or

(4) any applicable Coverage B limit of liability.

2. B2 - Depreciated Loss Settlement

a. We will pay the cost to repair or replace less depreciation at the time of loss for property covered under SECTION I - COVERAGES, COVERAGE B - PERSONAL PROPERTY, except for property listed in item b. below.

b. We will pay market value at the time of loss for:

(1) antiques, fine arts, paintings, statuary and similar articles which by their inherent nature cannot be replaced with new articles;

(2) articles whose age or history contribute substantially to their value including, but not limited to, memorabilia, souvenirs and collectors items; and

(3) property not useful for its intended purpose.

However, we will not pay an amount exceeding the smallest of the following for items a. and b. above:

- (1) our cost to replace at the time of loss;
- (2) the full cost of repair;

- (3) any special limit of liability described in the policy; or
- (4) any applicable Coverage B limit of liability.

SECTION I - CONDITIONS

1. Insurable Interest and Limit of Liability. Even if more than one person has an insurable interest in the property covered, we shall not be liable:

- a. to the insured for an amount greater than the insured's interest; or
- b. for more than the applicable limit of liability.

2. Your Duties After Loss. After a loss to which this insurance may apply, you shall see that the following duties are performed:

- a. give immediate notice to us or our agent. Also notify the police if the loss is caused by theft. Also notify the credit card company or bank if the loss involves a credit card or bank fund transfer card;
- b. protect the property from further damage or loss, make reasonable and necessary temporary repairs required to protect the property, keep an accurate record of repair expenditures;
- c. prepare an inventory of damaged or stolen personal property. Show in detail the quantity, description, age, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
- d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies;
 - (3) submit to and subscribe, while not in the presence of any other insured:
 - (a) statements; and
 - (b) examinations under oath; and

(4) produce employees, members of the insured's household or others for examination under oath to the extent it is within the insured's power to do so; and

e. submit to us, within 60 days after the loss, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief:

- (1) the time and cause of loss;
- (2) interest of the insured and all others in the property involved and all encumbrances on the property;
- (3) other insurance which may cover the loss;
- (4) changes in title or occupancy of the property during the term of this policy;
- (5) specifications of any damaged building and detailed estimates for repair of the damage;
- (6) an inventory of damaged or stolen personal property described in 2.c.;
- (7) receipts for additional living expenses incurred and records supporting the fair rental value loss; and
- (8) evidence or affidavit supporting a claim under the Credit Card, Bank Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. Loss to a Pair or Set. In case of loss to a pair or set, we may elect to:

- 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 depreciated value of the property before and after the loss.

4. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent, disinterested appraiser. Each shall notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent, impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the residence premises is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.
5. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only our share of the loss. Our share is the proportion of the loss that the applicable limit under this policy bears to the total amount of insurance covering the loss.
6. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions. The action must be started within one year after the date of loss or damage.
7. **Our Option.** We may repair or replace any part of the property damaged or stolen with similar property. Any property we pay for or replace becomes our property.
8. **Loss Payment.** We will adjust all losses with you. We will pay you unless some other person is named in the policy or is legally entitled to receive payment. Loss will be payable 60 days after we receive your proof of loss and:
- reach agreement with you;
 - there is an entry of a final judgment; or
 - there is a filing of an appraisal award with us.
9. **Abandonment of Property.** We need not accept any property abandoned by an insured.

10. **Mortgage Clause.** The word "mortgagee" includes trustee.
- If a mortgagee is named in this policy, any loss payable under Coverage A shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order of precedence of the mortgages.
 - If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
 - notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
 - pays on demand any premium due under this policy, if you have not paid the premium; and
 - submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us and Loss Payment apply to the mortgagee.
 - If this policy is cancelled by us, the mortgagee shall be notified at least 10 days before the date cancellation takes effect. Proof of mailing shall be proof of notice.
 - If we pay the mortgagee for any loss and deny payment to you:
 - we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
 - at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.
 - Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.
11. **No Benefit to Bailee.** We will not recognize an assignment or grant coverage for the benefit of a person or organization holding, storing or transporting property for

a fee. This applies regardless of any other provision of this policy.

12. **Intentional Acts.** If you or any person insured under this policy causes or procures a loss to property covered

under this policy for the purpose of obtaining insurance benefits, then this policy is void and we will not pay you or any other insured for this loss.

SECTION II - LIABILITY COVERAGES

COVERAGE L - PERSONAL LIABILITY

If a claim is made or a suit is brought against an insured for damages because of **bodily injury** or **property damage** to which this coverage applies, caused by an occurrence, we will:

1. pay up to our limit of liability for the damages for which the insured is legally liable; and
2. provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for damages, to effect settlement or satisfy a judgment resulting from the occurrence, equals our limit of liability.

COVERAGE M - MEDICAL PAYMENTS TO OTHERS

We will pay the necessary medical expenses incurred or medically ascertained within three years from the date of an accident causing **bodily injury**. Medical expenses means reasonable charges for medical, surgical, x-ray, dental, ambulance, hospital, professional nursing, prosthetic devices and funeral services. This coverage applies only:

1. to a person on the insured location with the permission of an insured;
2. to a person off the insured location, if the bodily injury:
 - a. arises out of a condition on the insured location or the ways immediately adjoining;
 - b. is caused by the activities of an insured;
 - c. is caused by a residence employee in the course of the residence employee's employment by an insured; or
 - d. is caused by an animal owned by or in the care of an insured; or
3. to a residence employee if the occurrence causing bodily injury occurs off the insured location and arises

out of or in the course of the residence employee's employment by an insured.

SECTION II - ADDITIONAL COVERAGES

We cover the following in addition to the limits of liability:

1. **Claim Expenses.** We pay:
 - a. expenses we incur and costs taxed against an insured in suits we defend;
 - b. premiums on bonds required in suits we defend, but not for bond amounts greater than the Coverage L limit. We are not obligated to apply for or furnish any bond;
 - c. reasonable expenses an insured incurs at our request. This includes actual loss of earnings (but not loss of other income) up to \$100 per day for aiding us in the investigation or defense of claims or suits;
 - d. prejudgment interest awarded against the insured on that part of the judgment we pay; and
 - e. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the limit of liability that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by an insured for bodily injury covered under this policy. We will not pay for first aid to you or any other insured.
3. **Damage to Property of Others.**
 - a. We will pay for property damage to property of others caused by an insured.
 - b. We will not pay more than the smallest of the following amounts:
 - (1) replacement cost at the time of loss;
 - (2) full cost of repair; or

- (3) \$500 in any one occurrence.
- c. We will not pay for property damage:
 - (1) if insurance is otherwise provided in this policy;
 - (2) caused intentionally by an insured who is 13 years of age or older;
 - (3) to property, other than a rented golf cart, owned by or rented to an insured, a tenant of an insured, or a resident in your household; or
- (4) arising out of:
 - (a) business pursuits;
 - (b) any act or omission in connection with a premises an insured owns, rents or controls, other than the insured location; or
 - (c) the ownership, maintenance, or use of a motor vehicle, aircraft, or watercraft, including airboat, air cushion, personal watercraft, sail board or similar type watercraft.

SECTION II - EXCLUSIONS

1. Coverage L and Coverage M do not apply to:
 - a. bodily injury or property damage:
 - (1) which is either expected or intended by the insured; or
 - (2) which is the result of willful and malicious acts of the insured;
 - b. bodily injury or property damage arising out of business pursuits of any insured or the rental or holding for rental of any part of any premises by any insured. This exclusion does not apply:
 - (1) to activities which are ordinarily incident to non-business pursuits;
 - (2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
 - (3) to the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an office, school, studio or private garage;
 - (4) when the dwelling on the residence premises is a two, three or four-family dwelling and you occupy one part and rent or hold for rental the other part; or
 - (5) to farm land (without buildings), rented or held for rental to others; but not to exceed a total of 500 acres, regardless of the number of locations;
 - c. bodily injury or property damage arising out of the rendering or failing to render professional services;
 - d. bodily injury or property damage arising out of any premises currently owned or rented to any insured which is not an insured location. This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an insured;
 - e. bodily injury or property damage arising out of the ownership, maintenance, use, loading or unloading of:
 - (1) an aircraft;
 - (2) a motor vehicle owned or operated by or rented or loaned to any insured; or
 - (3) a watercraft:
 - (a) owned by or rented to any insured if it has inboard or inboard-outdrive motor power of more than 50 horsepower;
 - (b) owned by or rented to any insured if it is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;

- (c) powered by one or more outboard motors with more than 25 total horsepower owned by any Insured;
- (d) designated as an airboat, air cushion, or similar type of craft; or
- (e) owned by any Insured which is a personal watercraft using a water jet pump powered by an internal combustion engine as the primary source of propulsion.

This exclusion does not apply to bodily injury to a residence employee arising out of and in the course of the residence employee's employment by an Insured. Exclusion e.(3) does not apply while the watercraft is on the residence premises;

- f. **bodily injury or property damage arising out of:**
 - (1) the entrustment by any Insured to any person;
 - (2) the supervision by any Insured of any person;
 - (3) any liability statutorily imposed on any Insured; or
 - (4) any liability assumed through an unwritten or written agreement by any Insured;

with regard to the ownership, maintenance or use of any aircraft, watercraft, or motor vehicle which is not covered under Section II of this policy;

- g. **bodily injury or property damage caused directly or indirectly by war, including undeclared war, or any warlike act including destruction or seizure or use for a military purpose, or any consequence of these.** Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;

- h. **bodily injury to you or any Insured within the meaning of part a. or b. of the definition of Insured.**

This exclusion also applies to any claim made or suit brought against you or any Insured to share damages with or repay someone else who may be obligated to pay damages because of the bodily injury sustained by you or any Insured within the meaning of part a. or b. of the definition of Insured;

- i. **any claim made or suit brought against any Insured by:**

- (1) any person who is in the care of any Insured because of child care services provided by or at the direction of:

- (a) any Insured;
- (b) any employee of any Insured; or
- (c) any other person actually or apparently acting on behalf of any Insured; or

- (2) any person who makes a claim because of bodily injury to any person who is in the care of any Insured because of child care services provided by or at the direction of:

- (a) any Insured;
- (b) any employee of any Insured; or
- (c) any other person actually or apparently acting on behalf of any Insured.

This exclusion does not apply to the occasional child care services provided by any Insured, or to the part-time child care services provided by any Insured who is under 19 years of age; or

- j. **bodily injury or property damage arising out of an Insured's participation in, or preparation or practice for any prearranged or organized race, speed or demolition contest, or similar competition involving a motorized land vehicle or motorized watercraft.** This exclusion does not apply to a sailing vessel less than 26 feet in overall length with or without auxiliary power.

2. Coverage L does not apply to:

- a. **liability:**
 - (1) for your share of any loss assessment charged against all members of an association of property owners; or
 - (2) assumed under any unwritten contract or agreement, or by contract or agreement in connection with a business of the Insured;
- b. **property damage to property currently owned by any Insured;**
- c. **property damage to property rented to, occupied or used by or in the care of any Insured.** This exclusion

does not apply to property damage caused by fire, smoke or explosion;

- d. **bodily injury** to a person eligible to receive any benefits required to be provided or voluntarily provided by an insured under a workers' compensation, non-occupational disability, or occupational disease law;
- e. **bodily injury or property damage** for which an insured under this policy is also an insured under a nuclear energy liability policy or would be an insured but for its termination upon exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada, or any of their successors.

3: Coverage M does not apply to bodily injury:

- a. to a **residence employee** if it occurs off the insured location and does not arise out of or in the course of the residence employee's employment by an insured;
- b. to a person eligible to receive any benefits required to be provided or voluntarily provided under any workers' compensation, non-occupational disability or occupational disease law;
- c. from nuclear reaction, radiation or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these;
- d. to a person other than a **residence employee** of an insured, regularly residing on any part of the insured location.

SECTION II - CONDITIONS

- 1. **Limit of Liability.** The Coverage L limit is shown in the Declarations. This is our limit for all damages from each occurrence regardless of the number of insureds, claims made or persons injured.

The Coverage M limit is shown in the Declarations. This is our limit for all medical expense for **bodily injury** to one person as the result of one accident.

- 2. **Severability of Insurance.** This insurance applies separately to each insured. This condition shall not increase our limit of liability for any one occurrence.

- 3. **Duties After Loss.** In case of an accident or occurrence, the insured shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:

- a. give written notice to us or our agent as soon as practicable, which sets forth:

- (1) the identity of this policy and insured;
- (2) reasonably available information on the time, place and circumstances of the accident or occurrence; and

- (3) names and addresses of any claimants and available witnesses;

- b. immediately forward to us every notice, demand, summons or other process relating to the accident or occurrence;

- c. at our request, assist in:

- (1) making settlement;

- (2) the enforcement of any right of contribution or indemnity against a person or organization who may be liable to an insured;

- (3) the conduct of suits and attend hearings and trials; and

- (4) securing and giving evidence and obtaining the attendance of witnesses;

- d. under the coverage - **Damage to Property of Others**, exhibit the damaged property if within the insured's control; and

- e. the insured shall not, except at the insured's own cost, voluntarily make payments, assume obligations or incur expenses. This does not apply to expense for first aid to others at the time of the **bodily injury**.

4. **Duties of an Injured Person - Coverage M.** The injured person, or, when appropriate, someone acting on behalf of that person, shall:

- a. give us written proof of claim, under oath if required, as soon as practicable;
- b. execute authorization to allow us to obtain copies of medical reports and records; and
- c. submit to physical examination by a physician selected by us when and as often as we reasonably require.

5. **Payment of Claim - Coverage M.** Payment under this coverage is not an admission of liability by an insured or us.

6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have the right to join us as a party to an action against an insured. Further, no action with respect to Coverage L shall be brought against us until the obligation of the insured has been determined by final judgment or agreement signed by us.

7. **Bankruptcy of an Insured.** Bankruptcy or insolvency of an insured shall not relieve us of our obligation under this policy.

8. **Other Insurance - Coverage L.** This insurance is excess over any other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this policy.

SECTION I AND SECTION II - CONDITIONS

1. **Policy Period.** This policy applies only to loss under Section I or bodily injury or property damage under Section II which occurs during the period this policy is in effect.

2. **Concealment or Fraud.** This policy is void as to you and any other insured, if you or any other insured under this policy has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance, whether before or after a loss.

3. **Liberalization Clause.** If we adopt any revision which would broaden coverage under this policy without additional premium, within 60 days prior to or during the period this policy is in effect, the broadened coverage will immediately apply to this policy.

4. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.

5. **Cancellation.**

- a. You may cancel this policy at any time by notifying us in writing of the date cancellation is to take effect. We may waive the requirement that the notice be in writing by confirming the date and time of cancellation to you in writing.

b. We may cancel this policy only for the reasons stated in this condition. We will notify you in writing of the date cancellation takes effect. This cancellation notice may be delivered to you, or mailed to you at your mailing address shown in the Declarations. Proof of mailing shall be sufficient proof of notice:

(1) When you have not paid the premium, we may cancel at any time by notifying you at least 10 days before the date cancellation takes effect. This condition applies whether the premium is payable to us or our agent or under any finance or credit plan.

(2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason. We may cancel by notifying you at least 10 days before the date cancellation takes effect.

(3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel:

- (a) if there has been a material misrepresentation of fact which, if known to us, would have caused us not to issue this policy; or

(b) if the risk has changed substantially since the policy was issued.

We may cancel this policy by notifying you at least 30 days before the date cancellation takes effect.

(4) When this policy is written for a period longer than one year, we may cancel for any reason at anniversary. We may cancel by notifying you at least 30 days before the date cancellation takes effect.

c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded. When you request cancellation, the return premium will be based on our rules for such cancellation. The return premium may be less than a full pro rata refund. When we cancel, the return premium will be pro rata.

d. The return premium may not be refunded with the notice of cancellation or when the policy is returned to us. In such cases, we will refund it within a reasonable time after the date cancellation takes effect.

6. **Nonrenewal.** We may elect not to renew this policy. If we elect not to renew, a written notice will be delivered to you, or mailed to you at your mailing address shown in the Declarations. The notice will be mailed or delivered at least 30 days before the expiration date of this policy. Proof of mailing shall be sufficient proof of notice.

7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.

8. **Subrogation.** An insured may waive in writing before a loss all rights of recovery against any person. If not

walved, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an insured shall:

a. sign and deliver all related papers;

b. cooperate with us in a reasonable manner; and

c. do nothing after a loss to prejudice such rights.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.

9. **Death.** If any person shown in the Declarations or the spouse, if a resident of the same household, dies:

a. we insure the legal representative of the deceased. This condition applies only with respect to the premises and property of the deceased covered under this policy at the time of death;

b. insured includes:

(1) any member of your household who is an insured at the time of your death, but only while a resident of the residence premises; and

(2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.

10. **Conformity to State Law.** When a policy provision is in conflict with the applicable law of the State in which this policy is issued, the law of the State will apply.

OPTIONAL POLICY PROVISIONS

Each Optional Policy Provision applies only as shown in the Declarations and is subject to all the terms, provisions, exclusions and conditions of this policy.

Option AI - Additional Insured. The definition of insured is extended to include the person or organization shown in the Declarations as an Additional Insured or whose name is on file with us. Coverage is with respect to:

1. Section I - Coverage A; or

2. Section II - Coverages L and M but only with respect to the residence premises. This coverage does not apply to bodily injury to an employee arising out of or in the course of the employee's employment by the person or organization.

This option applies only with respect to the location shown in the Declarations.

Option BP - Business Property. The COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, item b., for property used or intended for use in a business,

including merchandise held as samples or for sale or for delivery after sale, is changed as follows:

The \$1,000 limit is replaced with the amount shown in the Declarations for this option.

Option BU - Business Pursuits. SECTION II - EXCLUSIONS, item 1.b. is modified as follows:

1. Section II coverage applies to the business pursuits of an Insured who is a:

- a. clerical office employee, salesperson, collector, messenger; or
- b. teacher (except college, university and professional athletic coaches), school principal or school administrator;

while acting within the scope of the above listed occupations.

2. However, no coverage is provided:

- a. for **bodily injury or property damage** arising out of a business owned or financially controlled by the insured or by a partnership of which the insured is a partner or member;
- b. for **bodily injury or property damage** arising out of the rendering of or failure to render professional services of any nature (other than teaching or school administration). This exclusion includes but is not limited to:
 - (1) computer programming, architectural, engineering or industrial design services;
 - (2) medical, surgical, dental or other services or treatment conducive to the health of persons or animals; and
 - (3) beauty or barber services or treatment;
- c. for **bodily injury** to a fellow employee of the insured injured in the course of employment; or
- d. when the insured is a member of the faculty or teaching staff of a school or college:
 - (1) for **bodily injury or property damage** arising out of the maintenance, use, loading or unloading of:

(a) draft or saddle animals, including vehicles for use with them; or

(b) aircraft, motor vehicles, recreational motor vehicles or watercraft, airboats, air cushions or personal watercraft which use a water jet pump powered by an internal combustion engine as the primary source of propulsion;

owned or operated, or hired by or for the insured or employer of the insured or used by the insured for the purpose of instruction in the use thereof; or

(2) under Coverage M for **bodily injury** to a pupil arising out of corporal punishment administered by or at the direction of the insured.

Option FA - Firearms. Firearms are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. any process of refinishing, renovating, or repairing;
 - d. dampness of atmosphere or extremes of temperatures;
 - e. inherent defect or faulty manufacture;
 - f. rust, fouling or explosion of firearms;
 - g. breakage, marring, scratching, tearing or denting unless caused by fire, thieves or accidents to conveyances; or
 - h. infidelity of an insured's employees or persons to whom the insured property may be entrusted or rented;

2. our limit for loss by any Coverage B peril except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit;
3. our limits for loss by theft are those shown in the Declarations for this option. These limits apply in lieu of the Coverage B theft limit; and
4. our limits for loss by any covered peril except those in items 2. and 3. are those shown in the Declarations.

Option HC - Home Computer. The **COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability, item 1.**, for electronic data processing system equipment and the recording or storage media used with that equipment is increased to be the amount shown in the Declarations for this option.

Option ID - Increased Dwelling Limit. We will settle losses to damaged building structures covered under **COVERAGE A - DWELLING** according to the **SECTION I - LOSS SETTLEMENT** provision shown in the Declarations.

If the amount you actually and necessarily spend to repair or replace damaged building structures exceeds the applicable limit of liability shown in the Declarations, we will pay the additional amounts not to exceed:

1. the Option ID limit of liability shown in the Declarations to repair or replace the Dwelling; or
2. 10% of the Option ID limit of liability to repair or replace building structures covered under **COVERAGE A - DWELLING, Dwelling Extension.**

Report Increased Values. You must notify us within 90 days of the start of any new building structure costing \$5,000 or more; or any additions to or remodeling of building structures which increase their values by \$5,000 or more. You must pay any additional premium due for the increased value. We will not pay more than the applicable limit of liability shown in the Declarations, if you fail to notify us of the increased value within 90 days.

Option IO - Incidental Business. The coverage provided by this option applies only to that incidental business occupancy on file with us:

1. **COVERAGE A - DWELLING, Dwelling Extension, item 2.b.** is deleted.
2. **COVERAGE B - PERSONAL PROPERTY** is extended to include equipment, supplies and furnishings usual and

incidental to this business occupancy. This Optional Policy Provision does not include electronic data processing system equipment or the recording or storage media used with that equipment or merchandise held as samples or for sale or for delivery after sale.

The Option IO limits are shown in the Declarations. The first limit applies to property on the residence premises. The second limit applies to property while off the residence premises. These limits are in addition to the **COVERAGE B - PERSONAL PROPERTY, Special Limits of Liability** on property used or intended for use in a business.

3. Under Section II, the residence premises is not considered business property because an insured occupies a part of it as an incidental business.

4. **SECTION II - EXCLUSIONS, item 1.b.** of Coverage L and Coverage M is replaced with the following:

b. **bodily injury or property damage** arising out of **business pursuits of an insured or the rental or holding for rental of any part of any premises by an insured.** This exclusion does not apply:

- (1) to activities which are ordinarily incident to non-business pursuits or to business pursuits of an insured which are necessary or incidental to the use of the residence premises as an incidental business;
- (2) with respect to Coverage L to the occasional or part-time business pursuits of an insured who is under 19 years of age;
- (3) to the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an incidental business or private garage;
- (4) when the dwelling on the residence premises is a two family dwelling and you occupy

one part and rent or hold for rental the other part; or

(5) to farm land (without buildings), rented or held for rental to others, but not to exceed a total of 500 acres, regardless of the number of locations.

5. This insurance does not apply to:

- a. bodily injury to an employee of an insured arising out of the residence premises as an incidental business other than to a residence employee while engaged in the employee's employment by an insured;
- b. bodily injury to a pupil arising out of corporal punishment administered by or at the direction of the insured;
- c. liability arising out of any acts, errors or omissions of an insured, or any other person for whose acts an insured is liable, resulting from the preparation or approval of data, plans, designs, opinions, reports, programs, specifications, supervisory inspections or engineering services in the conduct of an insured's incidental business involving data processing, computer consulting or computer programming; or
- d. any claim made or suit brought against any insured by:
 - (1) any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;
 - (b) any employee of any insured; or
 - (c) any other person actually or apparently acting on behalf of any insured; or
 - (2) any person who makes a claim because of bodily injury to any person who is in the care of any insured because of child care services provided by or at the direction of:
 - (a) any insured;

(b) any employee of any insured; or

(c) any other person actually or apparently acting on behalf of any insured.

Coverage M does not apply to any person indicated in (1) and (2) above.

This exclusion does not apply to the occasional child care services provided by any insured, or to the part-time child care services provided by any insured who is under 19 years of age.

Option JF - Jewelry and Furs. Jewelry, watches, fur garments and garments trimmed with fur, precious and semi-precious stones, gold other than goldware, silver other than silverware and platinum are insured for accidental direct physical loss or damage.

The limits for this option are shown in the Declarations. The first amount is the limit for any one article; the second amount is the aggregate limit for each loss.

The following additional provisions apply:

1. we do not insure for any loss to the property described in this option either consisting of, or directly and immediately caused by, one or more of the following:
 - a. mechanical breakdown, wear and tear, gradual deterioration;
 - b. insects or vermin;
 - c. inherent vice; or
 - d. seizure or destruction under quarantine or customs regulations;
2. our limit for loss by any Coverage B peril except theft is the limit shown in the Declarations for Coverage B, plus the aggregate limit;
3. our limits for loss by theft are those shown in the Declarations for this option; and
4. our limits for loss by any covered peril except those in items 2. and 3. are those shown in the Declarations for this option.

Option OL - Building Ordinance or Law.

1. Coverage Provided.

The total limit of insurance provided by this Building Ordinance or Law provision will not exceed an amount equal to the Option OL percentage shown in the Declarations of the Coverage A limit shown in the Declarations at the time of the loss, as adjusted by the inflation coverage provisions of the policy. This is an additional amount of insurance and applies only to the dwelling.

2. Damaged Portions of Dwelling.

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured we will pay for the increased cost to repair or rebuild the physically damaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

3. Undamaged Portions of Damaged Dwelling.

When the dwelling covered under **COVERAGE A - DWELLING** is damaged by a Loss Insured we will also pay for:

- a. the cost to demolish and clear the site of the undamaged portions of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs; and
- b. loss to the undamaged portion of the dwelling caused by enforcement of any ordinance or law if:
 - (1) the enforcement is directly caused by the same Loss Insured;
 - (2) the enforcement requires the demolition of portions of the same dwelling not damaged by the same Loss Insured;
 - (3) the ordinance or law regulates the construction or repair of the dwelling, or establishes zoning or

land use requirements at the described premises; and

- (4) the ordinance or law is in force at the time of the occurrence of the same Loss Insured; or
- c. the legally required changes to the undamaged portion of the dwelling caused by the enforcement of a building, zoning or land use ordinance or law if the enforcement is directly caused by the same Loss Insured and the requirement is in effect at the time the Loss Insured occurs.

4. Building Ordinance or Law Coverage Limitations.

- a. We will not pay for any increased cost of construction under this coverage:
 - (1) until the dwelling is actually repaired or replaced at the same or another premises in the same general vicinity; and
 - (2) unless the repairs or replacement are made as soon as reasonably possible after the loss, not to exceed two years.
- b. We will not pay more for loss to the undamaged portion of the dwelling caused by the enforcement of any ordinance or law than:
 - (1) the depreciated value of the undamaged portion of the dwelling, if the dwelling is not repaired or replaced;
 - (2) the amount you actually spend to replace the undamaged portion of the dwelling if the dwelling is repaired or replaced.
- c. We will not pay more under this coverage than the amount you actually spend:
 - (1) for the increased cost to repair or rebuild the dwelling at the same or another premises in the same general vicinity if relocation is required by ordinance or law; and
 - (2) to demolish and clear the site of the undamaged portions of the dwelling caused by enforcement of building, zoning or land use ordinance or law.

We will never pay for more than a dwelling of the same height, floor area and style on the same or similar premises as the dwelling, subject to the limit provided in paragraph 1. Coverage Provided of this option.

Option SG - Silverware and Goldware Theft. The COVER-AGE B - PERSONAL PROPERTY, Special Limits of Liability, item h., for theft of silverware and goldware is increased to be the amount shown in the Declarations for this option.

IN WITNESS WHEREOF, this Company has caused this policy to be signed by its President and Secretary at Bloomington, Illinois.

Kim M. Bruner

Secretary

Edward B. Rust, Jr.

President

The Board of Directors, in accordance with Article VI(c) of this Company's Articles of Incorporation, may from time to time distribute equitably to the holders of the participating policies issued by said Company such sums out of its earnings as in its judgment are proper.