

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

JACK TIBLIER AND GLENDA TIBLIER
Plaintiffs,

CASE NO.: 1:08CV493LG-RHW

vs.

LEXINGTON INSURANCE COMPANY,
Defendant,

COMPLAINT

JURY TRIAL DEMANDED

Plaintiffs, JACK TIBLIER AND GLENDA TIBLIER ("the Plaintiffs"), by and through their undersigned attorneys, hereby sue the Defendant, LEXINGTON INSURANCE COMPANY ("Lexington Insurance Company"), and allege the following:

GENERAL ALLEGATIONS

1. This is an action for damages in excess of the jurisdictional limits of this Court, as well as for declaratory relief pursuant to Fed. R. Civ. P. 57, and for additional equitable relief.
2. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a) because complete diversity exists among the parties and the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00), exclusive of interest and costs. The property insured by Lexington Insurance Company's policy at issue in this case is situated in this judicial district, and a substantial part of the events giving rise to the Plaintiffs' claims occurred in this district. Venue is proper in this Court under 28 U.S.C. § 1391, the general statute, including subsections (a) and (c) thereof.

3. At all times material hereto, the Plaintiffs were Mississippi residents owning property located at 14405 Lemoyne Boulevard, Biloxi, Harrison County, Mississippi.

4. At all times material hereto, Lexington Insurance Company was and is a foreign corporation duly authorized to conduct the business of insurance in the State of Mississippi, and was and is engaged in the business of insurance in Harrison County, Mississippi and throughout the State of Mississippi and may be served with process through its agent for service of process, Jeff Wagner, 4268 I-55 North Meadowbrook Office Park, Jackson, Mississippi 39211.

5. In consideration of the premiums paid, Lexington Insurance Company issued to the Plaintiffs in Biloxi, Harrison County, Mississippi, a policy of homeowners insurance bearing policy number LE 0581474 03 ("the Policy"). The Policy was in full force and effect when substantial damage occurred to the insured property as a result of hurricane and/or hurricane force winds from Hurricane Katrina on or about August 29, 2005. Copies of those portions of the policy in the possession of the Plaintiffs are attached hereto as Exhibit "A".

6. As a result of the devastation caused by Hurricane Katrina, the Plaintiffs' insured home was substantially destroyed, together with all contents and personal property situated therein, as well as all other structures located at or upon the insured property.

7. Hurricane and/or windstorm damages and ensuing damages as a result thereof are covered by the Policy. The Policy is an "all risk" homeowner's policy, such that once the insured demonstrates a fortuitous loss occurred during the policy period, the burden is on the insurer to prove that any exclusion to coverage applies to preclude coverage for the loss. Specifically the Policy contains the following insuring provision:

SECTION I – PERILS INSURED AGAINST

Coverage A – Dwelling and Coverage B – Other Structures

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property.

8. After their insured property sustained extensive damage and destruction as a result of Hurricane Katrina, the Plaintiffs properly and promptly submitted a claim to Lexington Insurance Company, seeking to obtain benefits under the Policy, as was their right.

9. Lexington Insurance Company conducted a series of cursory investigations of the loss, initially sending its representative(s) to inspect the property, and assigning claim number 198973 to the Plaintiffs' claim. However, rather than accepting its responsibility to provide coverage for the loss, Lexington Insurance Company denied all benefits under the Policy by claiming the loss was excluded from coverage pursuant to the following exclusionary clause found in the Policy:

SECTION I - EXCLUSIONS

* * *

c. **Water Damage**, meaning:

- (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind.
- (2) Water which backs up through sewers or drains or which overflows from a sump; 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.

10. The Plaintiffs purchased the Policy from Lexington Insurance Company as a way to insure against property damage that could potentially result from hurricanes impacting the Mississippi Gulf Coast, including any and all damage proximately, efficiently, and otherwise caused by hurricane-force wind, rain and water.

11. When selling the Policy to the Plaintiffs, and subsequently collecting premiums under the policy, Lexington Insurance Company expressly and/or impliedly represented to its insureds that they would have full and comprehensive coverage for any and all hurricane damage, including any and all damage proximately, efficiently and typically caused by hurricane wind, rain and water.

12. Because of the representations of coverage made by Lexington Insurance Company, as well as Lexington Insurance Company's expressed and implicit promises, the Plaintiffs were left with the belief and reasonable expectation that the Policy would provide full and comprehensive coverage for all hurricane-related damage sustained to the insured residence, other structures on the premises and their personal property. However, in response to the Plaintiffs' Hurricane Katrina loss, Lexington Insurance Company took the position that the Policy does not cover any of the Plaintiffs' hurricane-related damage, based on the theory that damage caused by flood, surface water, and waves is specifically excluded from coverage, whether driven by wind or not, thus refusing to provide any benefits under the Policy.

13. Mississippi's insurance law in existence for the last forty years mandates full insurance coverage if the covered event, in this case hurricane wind and water, was the efficient proximate cause of the loss. Nevertheless, Lexington Insurance Company asserts entitlement to raise the exclusionary clause at issue based on the theory that the lead-in clause to the exclusion provides an "anti-concurrent causation" exception to this Rule with the following language:

SECTION I - EXCLUSIONS

* * *

c. **Water Damage**, meaning:

- (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind.

- (2) Water which backs up through sewers or drains or which overflows from a sump; 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.

14. Additionally, as the policy at issue is an “all risk” policy, all risks of accidental direct physical loss are covered by the Policy unless specifically excluded by the terms of the contract. In such policies, an insured such as the Plaintiffs only have the burden of showing the existence of a fortuitous loss, at which time the burden of proof shifts to the insurer, Lexington Insurance Company, to establish the applicability of a named exclusion under the facts of the case and the terms of the policy.

15. In this case, there is no question but that the Plaintiffs have established a loss that is covered by the general insuring language of the Policy. Thus, Lexington Insurance Company has the burden to prove that the loss would not have occurred in the absence of the excluded event, the water. Lexington Insurance Company has not and will not meet this burden of proof.

16. An insurance contract is a contract of adhesion, and should be construed in the light most favorable to the insured.

17. The concept of insurance is that insurance is the insurer’s granting of prompt indemnity or security against a contingent loss.

18. Inherent in any insurance contract is the premise that payment must be made promptly so that the insured may mitigate his or her damages and be put back into the position he or she was, prior to the loss, and as quickly as possible.

19. A special relationship exists between an insurer and its insured, and is commonly described as one of the utmost of good faith and fair dealing.

20. In Mississippi, the work of adjusting insurance claims engages the public trust.

21. The Plaintiffs have complied with all conditions precedent to obtaining payment of benefits under the Policy from Lexington Insurance Company, or Lexington Insurance Company has waived and/or is estopped from raising such conditions precedent.

COUNT I

DECLARATORY JUDGMENT

22. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

23. This is an action for declaratory judgment.

24. This action for declaratory judgment has been filed for the purpose of determining an actual controversy between the Plaintiffs and Defendant.

25. On the occasion of Hurricane Katrina, the Plaintiffs' insured property sustained extensive damage and loss, resulting in the total devastation of their home and loss of substantially all of the contents and personal property located on or in the premises. However, Lexington Insurance Company's position has been that it owes no obligation to provide any benefits to the Plaintiffs for their loss and damage, relying on the exclusions to coverage contained within SECTION I – EXCLUSIONS, paragraph c.

26. Lexington Insurance Company's position is that lead-in sentence to SECTION I – EXCLUSIONS is an "anti-concurrent causation" clause, such that all coverage is precluded for the Plaintiffs' loss if any water damage occurred in combination with wind and/or rain damage to cause the loss to the insured premises.

27. The Plaintiffs allege that Lexington Insurance Company breached its policy obligations to its insureds, the Plaintiffs, and that Lexington Insurance Company owes coverage for the damage sustained due to Hurricane Katrina at the insureds' property.

28. The Plaintiffs allege that the exclusionary clause relied upon by Lexington Insurance Company does not operate as an “anti-concurrent causation” clause sufficient to contract around Mississippi’s efficient proximate cause doctrine as relating to insurance policy interpretation, so that the damage is covered by the Policy, since the winds of Hurricane Katrina were the efficient proximate cause of the damage to the insured property.

29. The Lexington Insurance Company Policy is an “all risk” policy, under which all risks of accidental direct physical loss to the insured property are covered unless specifically excluded by the terms of the policy.

30. The Plaintiffs allege that the lead-in sentence relied upon by Lexington Insurance Company as being an “anti-concurrent causation” clause only applies to any damage which would not have occurred in the absence of the excluded event.

31. The Plaintiffs allege that, in order to deny coverage for their Hurricane Katrina claim under the pertinent policy exclusion at issue, Lexington Insurance Company has the burden to prove that the loss and damage would not have occurred in the absence of flood water damage.

32. The Plaintiffs allege that Lexington Insurance Company has not met its burden of proof, and the loss and damage is covered under the Policy.

33. As a result of the facts set forth herein, the parties are uncertain to their rights and obligations under the policy, and there exists a present, ascertainable set of facts concerning the rights and obligations of both the Plaintiffs and Lexington Insurance Company under the Policy.

34. The rights and obligations of both the Plaintiffs and Lexington Insurance Company under the Policy are dependent upon the facts and law applicable to the facts affecting coverages under the Policy.

WHEREFORE, the Plaintiffs, Mr. and Mrs. Jack Tiblier, respectfully seek a declaration from this Court that:

- (a) Lexington Insurance Company breached its policy obligations to its insureds and Lexington Insurance Company owes the full amount of coverage for the damage sustained due to Hurricane Katrina at the insured property;
- (b) The exclusionary clause relied upon by Lexington Insurance Company does not operate as an “anti-concurrent causation” clause sufficient to contract around Mississippi’s efficient proximate cause doctrine as relating to insurance policy interpretation, so that the damage is covered by the Policy, since the winds of Hurricane Katrina were the efficient proximate cause of the damage to the insured property.
- (c) The Lexington Insurance Company Policy is an “all risk” policy, under which all risks of accidental direct physical loss to the insured property are covered unless specifically excluded by the terms of the policy.
- (d) The lead-in sentence relied upon by Lexington Insurance Company as being an “anti-concurrent causation” clause only applies to any damage which would not have occurred in the absence of the excluded event.
- (e) In order to deny coverage for the Plaintiffs’ Hurricane Katrina claim under the pertinent policy exclusion at issue, Lexington Insurance Company has the burden to prove that the loss and damage would not have occurred in the absence of floodwater damage, an excluded event.
- (f) Lexington Insurance Company has not met its burden of proof, and the loss and damage is covered under the Policy.

(g) The Plaintiffs are entitled to an award of damages, and such other and further relief as this Court may deem just and proper, and the Plaintiffs are entitled to receive a trial by jury on all issues so triable.

COUNT II

**NEGLIGENCE/GROSS NEGLIGENCE/RECKLESS DISREGARD
FOR RIGHTS OF PLAINTIFFS**

35. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

36. Lexington Insurance Company had a duty under Mississippi law to fully, fairly, adequately and correctly investigate and adjust Plaintiffs' claims for hurricane damage.

37. Lexington Insurance Company breached this duty by failing to adequately investigate and adjust Plaintiffs' claims for hurricane damage.

38. Lexington Insurance Company breached its duty by denying Plaintiffs' claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the evidence that Plaintiffs' loss was proximately and efficiently caused by a non-covered peril or a peril excluded by the policy.

39. Lexington Insurance Company breached its duty by denying Plaintiffs' claim without meeting its affirmative burden of establishing at the time of the denial by a preponderance of the evidence which part of Plaintiffs' loss was caused by an excluded peril.

40. Similarly, Lexington Insurance Company breached its duty by failing to pay Plaintiffs for the damage it could not prove by preponderance of the evidence was caused by an excluded peril.

41. Lexington Insurance Company breached its duty by shifting to Plaintiffs the burden of proving that its loss was not excluded by the policy.

42. Lexington Insurance Company breached its duty by dispatching an adjuster to investigate, adjust, and deny Plaintiffs' loss who did not have the qualifications or training to determine the cause of the Plaintiffs' loss.

43. Lexington Insurance Company breached its duty by failing to properly train its adjuster on how to investigate and adjust Plaintiffs' loss.

44. Lexington Insurance Company breached its duty by basing its denial of Plaintiffs' claim for hurricane damage on the investigation and adjustment of an unqualified adjuster.

45. Lexington Insurance Company breached its duty by failing to adequately inspect, investigate or adjust the insured property prior to denying the claim.

46. Lexington Insurance Company breached its duty by failing to conduct a complete, adequate, full, fair, and adequate investigation and adjustment of Plaintiffs' claim for damage under the policy.

47. Lexington Insurance Company breached its duty by failing to credit the statements from eyewitnesses in investigating and adjusting Plaintiffs' claim.

48. Lexington Insurance Company breached its duty by failing to utilize an objective meteorologist or structural engineer to determine the cause of Plaintiffs' loss prior to denying the claim.

49. Lexington Insurance Company breached its duty by attempting to characterize storm damage as pre-existing defects.

50. Lexington Insurance Company breached its duty by denying Plaintiffs' claim without knowing what caused the loss or undertaking a reasonable effort to find out.

51. Lexington Insurance Company breached its duty by characterizing covered damages as flood or storm surge related so as to deny coverage.

52. Such conduct as alleged above constitutes negligence, gross negligence, and/or reckless disregard for Plaintiffs' rights as Lexington Insurance Company insureds.

WHEREFORE, the Plaintiffs, Mr. and Mrs. Jack Tiblier, pray this Court enter an award of actual, compensatory and consequential damages, interest, the costs of this action, and such other and further relief as this Court may deem just and proper. Further, the Plaintiffs request a trial by jury on all issues so triable.

COUNT III

BREACH OF CONTRACT

53. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

54. Lexington Insurance Company owed a duty to its policyholders, Mr. and Mrs. Jack Tiblier, to make prompt and proper payment for their Hurricane Katrina claim, and to make available its policy limits to compensate its insureds for their loss. These duties arise from the language of the policy itself, from Mississippi statutory law and rules, and from the duties implied in every insurance contract in the State of Mississippi.

55. Lexington Insurance Company breached these duties and obligations as recited above, by failing to make available any sums to indemnify its insureds, and by relying upon a policy exclusion to deny coverage which is, and should be, inapplicable under the circumstances of this claim.

56. Lexington Insurance Company breached the Policy by failing to pay all benefits available and by utilizing an inappropriate interpretation of the Policy so as to attempt to avoid its obligations imposed by the Policy and by Mississippi law.

57. Lexington Insurance Company breached the subject policy by denying Plaintiffs' claim without meeting its affirmative burden of proving at the time of the denial by a

preponderance of the evidence that Plaintiffs' direct loss was proximately and efficiently caused by a non-covered peril or a peril excluded from coverage in the insurance policy.

58. Lexington Insurance Company breached the subject policy by shifting to Plaintiffs the burden of proving that the loss was not excluded by the policy.

59. Lexington Insurance Company breached the subject policy by failing to conclusively and objectively determine the proximate and efficient cause of loss.

60. Lexington Insurance Company breached the subject policy by basing its denial of Plaintiffs' claim on a nonobjective and scientifically unreliable engineering report.

61. Lexington Insurance Company 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 Plaintiffs' claim for hurricane damage under the policy.

62. Lexington Insurance Company breached the subject policy by basing its denial of Plaintiffs' claim for hurricane damage on an inadequate investigation, inspection and adjustment of Plaintiffs' loss.

63. Lexington Insurance Company breached the subject policy by basing its denial of Plaintiffs' claim for hurricane damage on the investigation and adjustment of an adjuster who was unqualified to determine the proximate cause of the loss.

64. Lexington Insurance Company breached the subject policy by failing to utilize an objective engineer or other expert to determine the proximate cause of the loss prior to denying Plaintiffs' claim for hurricane damage.

65. Lexington Insurance Company breached the subject policy by failing to construe the policy in favor of coverage for Plaintiffs' insured loss.

66. As a result of these breaches, the Plaintiffs have been damaged, they have not been made whole, and they have been unable to make repairs necessary to return the property to its pre-loss condition.

67. As a direct result of Lexington Insurance Company's breaches of its insurance contract, the Plaintiffs have lost the benefit of the use of their insured home, they continue to suffer this loss, and they have sustained substantial damages.

WHEREFORE, the Plaintiffs, Mr. and Mrs. Jack Tiblier, pray this Court enter an award of actual, compensatory and consequential damages, interest, the costs of this action, and such other and further relief as this Court may deem just and proper. Further, the Plaintiffs request a trial by jury on all issues so triable.

COUNT IV

BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

68. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

69. Lexington Insurance Company breached its duty of good faith and fair dealing by unjustifiably denying the insurance coverage for Plaintiffs' insured loss.

70. Lexington Insurance Company breached its duty of good faith and fair dealing by denying Plaintiffs' claim without meeting its affirmative burden of proving at the time of the denial by a preponderance of the evidence that the direct physical loss to Plaintiffs' insured property was proximately and efficiently caused by a non-covered peril or a peril excluded by the policy.

71. Lexington Insurance Company breached its duty of good faith and fair dealing by shifting to Plaintiffs the burden of proving that their loss was not excluded by the policy.

72. Lexington Insurance Company 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 Plaintiffs' claim for damage.

73. Lexington Insurance Company breached its duty of good faith and fair dealing by denying Plaintiffs' claim for hurricane damage without being able to conclusively and objectively determine the proximate and efficient cause of the loss.

74. Lexington Insurance Company breached its duty of good faith and fair dealing by basing its denial of Plaintiffs' claim on a nonobjective and scientifically unreliable engineering report and/or failing to obtain objective and scientifically reliable reports from engineers and other experts.

75. Lexington Insurance Company breached its duty of good faith and fair dealing by basing its denial of Plaintiffs' claim on an engineering report that was speculative, inconsistent and inconclusive.

76. Lexington Insurance Company breached its duty of good faith and fair dealing by denying Plaintiffs' 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.

77. Lexington Insurance Company breached its duty of good faith and fair dealing by negligently, grossly negligently, and/or recklessly failing to conduct an adequate, proper, honest, and good faith inspection, adjustment and investigation of Plaintiffs' claim for hurricane damage prior to denying such claims.

78. Lexington Insurance Company breached its duty of good faith and fair dealing by denying Plaintiffs' claim for hurricane damage without conducting an adequate, proper, honest,

and good faith inspection, adjustment and investigation of Plaintiffs' claim for hurricane damage under the policy.

79. Lexington Insurance Company breached its duty of good faith and fair dealing by basing its denial of Plaintiffs' claim for hurricane damage on an inadequate investigation, inspection, and adjustment of Plaintiffs' loss.

80. Lexington Insurance Company breached its duty of good faith and fair dealing by basing its denial of Plaintiffs' claim for hurricane damage on the investigation, inspection and adjustment of an adjuster who was unqualified to determine the proximate cause of the loss.

81. Lexington Insurance Company breached its duty of good faith and fair dealing by failing to utilize an objective meteorologist, engineer or other qualified expert to determine the proximate cause of the loss prior to denying Plaintiffs' claims for hurricane damage.

82. Lexington Insurance Company breached its duty of good faith and fair dealing by failing to construe the policy in favor of coverage for Plaintiffs.

83. Such conduct by Lexington Insurance Company violates the standards of decency, fairness and reasonableness.

84. Lexington Insurance Company's breaches of its duty of good faith and fair dealing have proximately caused Plaintiffs to incur damages.

WHEREFORE, the Plaintiffs, Mr. and Mrs. Jack Tiblier, pray this Court enter an award of actual, compensatory and consequential damages, interest, the costs of this action, and such other and further relief as this Court may deem just and proper. Further, the Plaintiffs request a trial by jury on all issues so triable.

COUNT V

POLICY REFORMATION

85. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

86. This is an action for reformation of the Lexington Insurance Company-issued "all risk" Policy issued by the Defendant, Lexington Insurance Company, to the Plaintiffs, Mr. and Mrs. Jack Tiblier, when insuring the property that is the subject of this litigation.

87. The Plaintiffs allege that the policy does and should provide coverage for their Hurricane Katrina damage, as the efficient proximate cause of that damage was windstorm and wind-related.

88. However, should this Court determine that coverage is precluded for this loss by the tortured exclusion language of the policy, even though the efficient proximate cause was windstorm, and conclude that some damage was due to flood waters/storm surge, then the Plaintiffs seek a reformation of the contract of insurance.

89. The intent of the Plaintiffs when they entered into this contract was to obtain the best and most comprehensive coverage available, including obtaining coverage for the express situation that occurred when their home sustained substantial and devastating Hurricane Katrina-related damage due to wind and water, where the efficient proximate cause of the loss was the windstorm. The Plaintiffs reasonably believed that they were obtaining coverage for this type of an occurrence when they purchased the Policy from Lexington Insurance Company.

90. Even if Lexington Insurance Company's misguided interpretation of its own policy were accepted, then the failure of coverage is due to unilateral mistake on the part of the insureds, the Plaintiffs, along with inequitable and improper conduct by the insurer, Lexington Insurance Company, in conjunction with this mistake. Particularly, this reasonable mistake on

the part of the Plaintiffs, as well as the inequitable and improper conduct of Lexington Insurance Company, is evidenced, in part, by the statement contained on the face of the homeowner's coverage form wherein it states: "This policy is one of the broadest forms available today, and provides you with outstanding value for your insurance dollars."

91. In fact, Lexington Insurance Company used its superior bargaining position and power over its insureds so as to mislead and induce its insureds, the Plaintiffs, into believing that they would receive coverage for the exact circumstances which occurred in this case. Then, once the insureds were at their most vulnerable, Lexington Insurance Company refused to provide coverage for any of the loss to the insured property, relying upon the particular exclusionary clause discussed above.

92. Ultimately, should this Court find that there is no coverage under the Policy for the Plaintiffs' Hurricane Katrina loss, the Policy should be reformed to reflect the intent and mistake of the Plaintiffs, in conjunction with the inequitable conduct of Lexington Insurance Company, and this Court should require the Policy to provide coverage for the damages and loss sustained by the Plaintiffs.

WHEREFORE, Plaintiffs, Mr. and Mrs. Jack Tiblier, request that the policy be reformed to comport with the intent that coverage be afforded to the Plaintiffs for the Hurricane Katrina-related damages as was their understanding, intent and belief at the time the contract was formed. Plaintiffs further request that this Court award any and all other relief including costs, and other damages such as monetary damages for the policy benefits available, and such other and further relief as this Court deems just and appropriate. Plaintiffs request a trial by jury on all issues so triable.

COUNT VI

PROMISSORY ESTOPPEL

93. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

94. This Count is being brought as an additional and alternative theory regarding the amount of money/policy benefits owed to the Plaintiffs from Lexington Insurance Company as a result of their Hurricane Katrina loss.

95. Prior to the issuance of the Lexington Insurance Company Policy, the Plaintiffs sought, and were promised, the most extensive and best coverage they could obtain for any damages arising as a result of a hurricane and to protect their covered property, which is an area potentially vulnerable to hurricane damage. In seeking such coverage, the Plaintiffs specifically requested a policy that would provide comprehensive coverage to the insured property for all damages where the efficient proximate cause of the loss was a hurricane. The Plaintiffs sought, and were promised by Lexington Insurance Company that they were obtaining, such coverage, so that they did not seek to insure this type of loss with additional and more comprehensive coverage elsewhere.

96. During the course of Hurricane Katrina, the Plaintiffs' insured property sustained substantial damage resulting in a complete and total destruction of the insured property. However, Lexington Insurance Company completely denied any coverage for the loss, arguing that the Policy does not cover the damage, due to the fact that the ultimate result of the hurricane was flood water/storm surge.

97. The Plaintiffs reasonably relied upon the representations and conduct of Lexington Insurance Company to their detriment, since Lexington Insurance Company has now disavowed any coverage for the loss, in spite of its original promises of full, complete, and

comprehensive coverage. Now the Plaintiffs are faced with the possibility of not being able to recover any insurance policy benefits for the loss should Lexington Insurance Company prevail on its position regarding coverage. If the Plaintiffs had not relied upon Lexington Insurance Company's promises, they could have sought additional and alternative coverage elsewhere to have accounted for this lack of comprehensive coverage in the Policy. The Plaintiffs changed their position in reliance on Lexington Insurance Company's promises, to their detriment, and as a result they have sustained damages.

98. As a result, Lexington Insurance Company should not be allowed to rely upon its improper, inequitable and inappropriate conduct, and the Plaintiffs should be awarded coverage for their loss.

WHEREFORE, Plaintiffs, Mr. and Mrs. Jack Tiblier, request that this Court enter an award of actual, compensatory and consequential damages, prejudgment interest, costs of this action, and such other and further relief as this Court deems just and appropriate. Further, Plaintiffs request a trial by jury on all issues so triable.

COUNT VII

AGENT NEGLIGENCE

99. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

100. The Plaintiffs allege that Lexington Insurance Company, through its captive insurance agents, owed them a duty of care to procure full and comprehensive coverage for all hurricane-related damage at their home. Moreover, Lexington Insurance Company had a duty to advise the Plaintiffs of its restrictive interpretation and application of its own policy language as it relates to storm surge damage and concurrent causation and that under its interpretation of the

policy language, if the Plaintiffs sustained any amount of storm surge damage, however minor, during a hurricane, their coverage under their homeowners policy would be null and void.

101. The Plaintiffs further allege that Lexington Insurance Company failed to procure adequate coverage and at no time did Lexington Insurance Company notify them of their failure to procure full and comprehensive coverage for all hurricane-related damage.

102. The Plaintiffs allege that Lexington Insurance Company's failure to procure the full and comprehensive insurance coverage they sought amounted to a breach of the duty of care owed to Plaintiffs, and in the alternative, allege that Lexington Insurance Company's failure to advise and warn them of the huge gaps in coverage for hurricane damage as a result of its tortured interpretation of its own policy form was, likewise, a breach of the duty of care owed the Plaintiffs by Lexington Insurance Company's agents.

103. The Plaintiffs allege further that the breach of the duty of care by Lexington Insurance Company and its agents proximately caused damage and loss to the Plaintiffs equal to the total amount of any uninsured losses sustained to the Plaintiffs' property as a result of Hurricane Katrina. Moreover, Lexington Insurance Company's breach of its duties to the Plaintiffs amounted to willful and wanton, or gross, negligence entitling the Plaintiffs to recover punitive damages.

WHEREFORE, Plaintiffs, Mr. and Mrs. Jack Tiblier, request that this Court enter an award of actual, compensatory and consequential damages, prejudgment interest, costs of this action, and such other and further relief as this Court deems just and appropriate. Further, Plaintiffs request a trial by jury on all issues so triable.

COUNT VIII

BAD FAITH

104. The Plaintiffs' re-allege paragraphs 1 through 21 as if fully set forth herein.

105. This is an action for insurer bad faith against Lexington Insurance Company for its breach of the covenant of good faith and fair dealing, seeking compensatory damages, punitive damages, and attorney's fees.

106. This action arises from the Hurricane Katrina loss sustained by the insureds, Mr. and Mrs. Jack Tiblier, against their insurer, Lexington Insurance Company, for its egregious misconduct in adjusting and investigating its insureds' loss.

107. Mississippi law requires a duly admitted insurance carrier, such as Lexington Insurance Company, to treat its insureds with honesty, fairness, and with due regard for the interests of the insured. The special relationship between an insurer and its insured requires the insurer to act toward insured with the utmost of good faith and fair dealing when the insured is at his or her most vulnerable. Lexington Insurance Company breached these duties in the handling of the Plaintiffs' claim in order to ensure its own financial gain and profit.

108. Lexington Insurance Company is engaged in the business of insurance, and is subject to Mississippi statutes, Mississippi regulations, and Mississippi law while involved and engaged in the business of insurance. In the State of Mississippi, an insurance carrier has an implied duty of good faith and fair dealing to treat its insured fairly, reasonably, and honestly, and with the due regard for the insured's interest. Lexington Insurance Company has been guilty of failing and/or refusing in good faith to settle this subject claim when under all the circumstances it could and should have done so had it acted fairly and honestly towards its insured.

109. Significantly, when Lexington Insurance Company issued the Policy to the Plaintiffs, it promised to provide the best and most comprehensive coverage available, including coverage for any loss where the efficient proximate cause of the loss was a windstorm such as Hurricane Katrina. In spite of these promises, when faced with its insureds' devastating loss in the aftermath of Hurricane Katrina, Lexington Insurance Company attempted to avoid its coverage obligations and instead adopted a position completely contrary to Mississippi law on the subject. Lexington Insurance Company systematically engaged in a scheme to intentionally misinterpret its own policy exclusion language to avoid paying claims for Hurricane Katrina damage. Lexington Insurance Company tortiously breached its claims handling duties by seeking any way to disavow coverage, even when coverage was afforded by the Policy, and by Mississippi law.

110. Moreover, Lexington Insurance Company only conducted a very cursory review of the insured property after the storm, and it did not conduct a complete and proper evaluation of the damage or the cause of the damage.

111. Significantly, the Mississippi insurance department issued Bulletin 2005-6 on September 7, 2005, specifically addressing situations where little or nothing remains of the insured structure following Hurricane Katrina damage, such that a fact issue may arise concerning the cause of the loss. The Bulletin specifically requires:

In those situations, the insurance company must be able to clearly demonstrate the cause of the loss. I expect and believe that when there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured. In instances where the insurance company believes the damage was caused by water, I expect the insurance company to be able to prove to this office and insured that the damage was caused by water and not by wind.

A copy of this Bulletin is attached hereto as Exhibit "B". This Bulletin, authored by the Commissioner of Insurance, George Dale, was completely disregarded and ignored by Lexington Insurance Company in the adjustment of the Plaintiffs' loss.

112. Rather than carrying out its contractual, statutory, regulatory and ethical duties, Lexington Insurance Company has committed acts during the adjustment of the Plaintiffs' claim that were not in good faith, and were so egregious as to constitute intentional and willful misconduct, or gross negligence or reckless disregard for the rights of its insureds.

113. Upon information and belief, Lexington Insurance Company implemented claims programs for the adjustment of Hurricane Katrina claims that are/were secret and unknown practices that were designed to pressure its adjusters/investigators/employees to pay less than the fair value of the claim, to be free from regulatory and judicial review, and to create an unfair advantage over its competitors, and its insureds.

114. Upon information and belief, as a general business practice, Lexington Insurance Company has adopted this practice throughout the State of Mississippi as a way to reduce its exposure in the face of catastrophic losses, even though the duty to accept coverage and pay policy benefits must be afforded under the circumstances.

115. Lexington Insurance Company has pursued this course of conduct willfully and maliciously, or with gross negligence or in reckless disregard for the rights of its insureds, including the Plaintiffs. Lexington Insurance Company's motivation for attempting to disavow coverage arises from its attempts to preserve profits rather than any attempts to treat its insureds fairly and honestly.

116. Upon information and belief, Lexington Insurance Company has financially benefited from this unfair claims handling practice, and Lexington Insurance Company should be

made to disgorge all unlawful or illegitimate profits and monies from such bad faith claims handling practices.

117. As a direct result of Lexington Insurance Company's aforementioned acts, omissions, and violations of the law, the Plaintiffs were required to hire the undersigned attorneys to represent them in this matter, and the Plaintiffs are required and obligated for attorney's fees and costs in connection with the prosecution of this action. The Plaintiffs are entitled to recover these attorney's fees, as well as punitive damages in this case, due to Lexington Insurance Company's improper conduct, and as a way to punish and deter Lexington Insurance Company from engaging in this practice in the future.

WHEREFORE, Plaintiffs, Mr. and Mrs. Jack Tiblier, demand judgment against the Defendant, Lexington Insurance Company, for actual and compensatory damages, interest, costs, attorney's fees, and punitive damages, and such other and further relief as this Court deems just and appropriate. Plaintiffs further request a trial by jury on all issues so triable.

COUNT IX

NEGLIGENT/INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

118. The Plaintiffs re-allege paragraphs 1 through 21 as if fully set forth herein.

119. The conduct and omissions of Lexington Insurance Company as alleged above constitutes negligent and/or infliction of emotional distress on Plaintiffs.

120. Lexington Insurance Company's bad faith adjustment and denial of Plaintiffs' claim for damage caused by Hurricane Katrina as set forth above, and its treatment of Plaintiffs through the claims process was outrageous, repulsive, malicious, intentional, unjustified, willful, wanton, reckless, grossly negligent, and done with gross indifference and reckless disregard to Plaintiffs' rights.

121. Plaintiffs have suffered mental and emotional pain, suffering, and financial injury as a proximate and foreseeable result of Lexington Insurance Company's bad faith adjustment and denial and treatment of Plaintiffs through the claims process. Plaintiffs have also suffered physical manifestations and injuries resulting from this emotional distress proximately and foreseeably caused by Lexington Insurance Company's adjustment, denial and conduct.

WHEREFORE, Plaintiffs, Mr. and Mrs. Jack Tiblier, demand judgment against the Defendant, Lexington Insurance Company, for actual, compensatory and consequential damages, interest, costs, attorney's fees, and punitive damages, and such other and further relief as this Court deems just and appropriate. Plaintiffs further request a trial by jury on all issues so triable.

X

REMEDIES

122. The Plaintiffs re-allege each and every allegation set forth in all foregoing paragraphs of the Complaint.

123. Plaintiffs respectfully demand a trial by jury on all issues so triable.

124. As a direct and proximate result of Lexington Insurance Company's negligence, gross negligence, breach of contract, breach of duty of good faith and fair dealing, bad faith and tortious breach of contract without a legitimate or arguable reason in fact or law and Lexington Insurance Company's reckless disregard for Plaintiffs' rights as a Lexington Insurance Company insured, Plaintiffs are entitled to the following relief:

(A) Payment for all contractual benefits for all coverages afforded to Plaintiffs under the subject Lexington Insurance Company policy for damage to Plaintiffs' insured

property caused by Hurricane Katrina, with interest on all amounts due Plaintiffs under its policy;

(B) Prejudgment interest on the amounts owing to Plaintiffs in contractual or policy benefits with interest, retroactive to August 29, 2005.

(C) Consequential damages on its contract claims, including but not limited to the amounts Plaintiffs expended or lost in trying to repair/replace its insured property without proper insurance benefits since August 29, 2005.

(D) Compensatory and consequential damages for the tort claims, mental distress, emotional distress and harm, and other losses and damages suffered by Jack Tiblier as a result of the denial of coverage.

(E) Attorney fees and costs of litigation for intentional acts committed by Lexington Insurance Company.

(F) Extra-contractual damages for Lexington Insurance Company'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 Lexington Insurance Company's refusal to pay contractual benefits including, but not limited to, recovery of public adjuster, appraiser and umpire expenses incurred by Plaintiffs because of Defendant's denial of insurance coverage, as well as attorney's fees and costs.

(G) Punitive and exemplary damages for Lexington Insurance Company's tortious, malicious, willful, wanton, reckless, grossly negligent, and bad faith conduct which rose to the level of an independent tort, including but not limited to, an award of punitive damages sufficient to punish and deter Lexington Insurance Company and to make an example of the

Defendant insurance company to discourage other insurers from engaging in such misconduct, taking into account Lexington Insurance Company's financial condition in determining an amount sufficient to achieve the public purposes underlying an award of punitive damages as may be determined by the Court and/or jury.

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

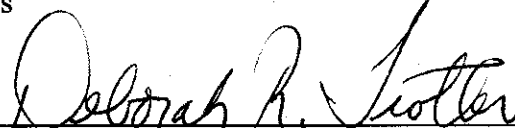
(I) On all claims, Plaintiffs are entitled to recovery for humiliation stigmatization in the Plaintiffs' communities, embarrassment and mental distress proximately caused by Defendant's wrongful denial of the claim.

125. Plaintiffs respectfully request such further general or specific relief to which it is entitled to at law or in equity.

Respectfully submitted this 28th day of August, 2008.

JACK TIBLIER AND GLENDA TIBLIER,
Plaintiffs

BY:


DEBORAH R. TROTTER
MSB: #101360

DEBORAH R. TROTTER
Merlin Law Group, P.A
368 Courthouse Road, Suite C
Gulfport, MS 39507
Telephone (228) 604-1175
Fax (228) 604-1176
Email dtrotter@merlinlawgroup.com
ATTORNEYS FOR PLAINTIFFS

CIVIL COVER SHEET

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
 JACK TIBLIER and GLENDA TIBLIER

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

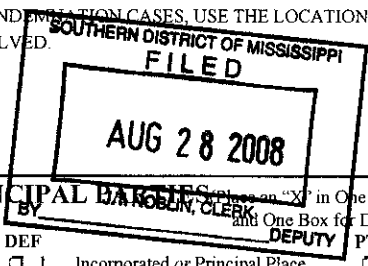
(c) Attorney's (Firm Name, Address, and Telephone Number)
 Deborah R. Trotter (MSB #101360), Merlin Law Group, 368 Courthouse Rd., Suite C, Gulfport, MS 39507 (228) 604-1175

DEFENDANTS
 LEXINGTON INSURANCE COMPANY

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) _____



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 (For Diversity Cases Only)

	PTF	DEF		PTF	DEF
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 checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input 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"/> 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	<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	CIVIL RIGHTS	PRISONER PETITIONS	LABOR	PROPERTY RIGHTS
<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	<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	<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"/> 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	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <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)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609
			IMMIGRATION	SOCIAL SECURITY
			<input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 866 DIWC/DIWW (405(g)) <input type="checkbox"/> 867 RSI (405(g)) <input type="checkbox"/> 868 RSI (405(g)) <input type="checkbox"/> 869 RSI (405(g)) <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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 8/28/2008 SIGNATURE OF ATTORNEY OF RECORD Deborah R. Trotter

FOR OFFICE USE ONLY

RECEIPT # 6028428 AMOUNT \$350.00 APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

EXHIBIT "A"

**HOMEOWNERS 3
SPECIAL FORM**

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy.

DEFINITIONS

In this policy, "you" and "your" refer to the "named insured" shown in the Declarations and the spouse if a resident of the same household. "We," "us" and "our" refer to the Company providing this insurance. In addition, certain words and phrases are defined as follows:

1. "Bodily injury" means bodily harm, sickness or disease, including required care, loss of services and death that results.
2. "Business" includes trade, profession or occupation.
3. "Insured" means you and residents of your household who are:
 - a. Your relatives; or
 - b. Other persons under the age of 21 and in the care of any person named above.

Under Section II, "insured" also means:

 - c. With respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in 3.a. or 3.b. above. A person or organization using or having custody of these animals or watercraft in the course of any "business" or without consent of the owner is not an "insured";
 - d. With respect to any vehicle to which this policy applies:
 - (1) Persons while engaged in your employ or that of any person included in 3.a. or 3.b. above; or
 - (2) Other persons using the vehicle on an "insured location" with your consent.
4. "Insured location" means:
 - a. The "residence premises";
 - b. The part of other premises, other structures and grounds used by you as a residence and:
 - (1) Which is shown in the Declarations; or
 - (2) Which is acquired by you during the policy period for your use as a residence;
- c. Any premises used by you in connection with a premises in 4.a. and 4.b. above;
- d. Any part of a premises:
 - (1) Not owned by an "insured"; and
 - (2) Where an "insured" is temporarily residing;
- e. Vacant land, other than farm land, owned by or rented to an "insured";
- f. Land owned by or rented to an "insured" on which a one or two family dwelling is being built as a residence for an "insured";
- g. Individual or family cemetery plots or burial vaults of an "insured"; or
- h. Any part of a premises occasionally rented to an "insured" for other than "business" use.
5. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions, which results, during the policy period, in:
 - a. "Bodily injury"; or
 - b. "Property damage."
6. "Property damage" means physical injury to, destruction of, or loss of use of tangible property.
7. "Residence employee" means:
 - a. An employee of an "insured" whose duties are related to the maintenance or use of the "residence premises," including household or domestic services; or
 - b. One who performs similar duties elsewhere not related to the "business" of an "insured."
8. "Residence premises" means:
 - a. The one family dwelling, other structures, and grounds; or
 - b. That part of any other building;

where you reside and which is shown as the "residence premises" in the Declarations.

"Residence premises" also means a two family dwelling where you reside in at least one of the family units and which is shown as the "residence premises" in the Declarations.

SECTION I – PROPERTY COVERAGES

COVERAGE A – Dwelling

We cover:

1. The dwelling on the "residence premises" shown in the Declarations, including structures attached to the dwelling; and
2. Materials and supplies located on or next to the "residence premises" used to construct, alter or repair the dwelling or other structures on the "residence premises."

This coverage does not apply to land, including land on which the dwelling is located.

COVERAGE B – Other Structures

We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection.

This coverage does not apply to land, including land on which the other structures are located.

We do not cover other structures:

1. Used in whole or in part for "business"; or
2. Rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage.

The limit of liability for this coverage will not be more than 10% of the limit of liability that applies to Coverage A. Use of this coverage does not reduce the Coverage A limit of liability.

COVERAGE C – Personal Property

We cover personal property owned or used by an "insured" while it is anywhere in the world. At your request, we will cover personal property owned by:

1. Others while the property is on the part of the "residence premises" occupied by an "insured";
2. A guest or a "residence employee," while the property is in any residence occupied by an "insured."

Our limit of liability for personal property usually located at an "insured's" residence, other than the "residence premises," is 10% of the limit of liability for Coverage C, or \$1000, whichever is greater. Personal property in a newly acquired principal residence is not subject to this limitation for the 30 days from the time you begin to move the property there.

Special Limits of Liability. These limits do not increase the Coverage C limit of liability. The special limit for each numbered category below is the total limit for each loss for all property in that category.

1. \$200 on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins and medals.
2. \$1000 on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists.

This limit includes the cost to research, replace or restore the information from the lost or damaged material.

3. \$1000 on watercraft, including their trailers, furnishings, equipment and outboard engines or motors.
4. \$1000 on trailers not used with watercraft.
5. \$1000 for loss by theft of jewelry, watches, furs, precious and semi-precious stones.
6. \$2000 for loss by theft of firearms.
7. \$2500 for loss by theft of silverware, silver-plated ware, goldware, gold-plated ware and pewterware. This includes flatware, hollowware, tea sets, trays and trophies made of or including silver, gold or pewter.
8. \$2500 on property, on the "residence premises," used at any time or in any manner for any "business" purpose.
9. \$250 on property, away from the "residence premises," used at any time or in any manner for any "business" purpose. However, this limit does not apply to loss to adaptable electronic apparatus as described in Special Limits 10. and 11. below.
10. \$1000 for loss to electronic apparatus, while in or upon a motor vehicle or other motorized land conveyance, if the electronic apparatus is equipped to be operated by power from the electrical system of the vehicle or conveyance while retaining its capability of being operated by other sources of power. Electronic apparatus includes:
 - a. Accessories or antennas; or
 - b. Tapes, wires, records, discs or other media; for use with any electronic apparatus.

11. \$1000 for loss to electronic apparatus, while not in or upon a motor vehicle or other motorized land conveyance, if the electronic apparatus:
- a. Is equipped to be operated by power from the electrical system of the vehicle or conveyance while retaining its capability of being operated by other sources of power;
 - b. Is away from the "residence premises"; and
 - c. Is used at any time or in any manner for any "business" purpose.

Electronic apparatus includes:

- a. Accessories and antennas; or
- b. Tapes, wires, records, discs or other media; for use with any electronic apparatus.

Property Not Covered. We do not cover:

- 1. Articles separately described and specifically insured in this or other insurance;
- 2. Animals, birds or fish;
- 3. Motor vehicles or all other motorized land conveyances. This includes:
 - a. Their equipment and accessories; or
 - b. Electronic apparatus that is designed to be operated solely by use of the power from the electrical system of motor vehicles or all other motorized land conveyances. Electronic apparatus includes:

- (1) Accessories or antennas; or
- (2) Tapes, wires, records, discs or other media; for use with any electronic apparatus.

The exclusion of property described in 3.a. and 3.b. above applies only while the property is in or upon the vehicle or conveyance.

We do cover vehicles or conveyances not subject to motor vehicle registration which are:

- a. Used to service an "insured's" residence; or
- b. Designed for assisting the handicapped;
- 4. Aircraft and parts. Aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;
- 5. Property of roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";
- 6. Property in an apartment regularly rented or held for rental to others by an "insured," except as provided in Additional Coverages 10.;
- 7. Property rented or held for rental to others off the "residence premises";

- 8. "Business" data, including such data stored in:
 - a. Books of account, drawings or other paper records; or
 - b. Electronic data processing tapes, wires, records, discs or other software media;

However, we do cover the cost of blank recording or storage media, and of pre-recorded computer programs available on the retail market; or

- 9. Credit cards or fund transfer cards except as provided in Additional Coverages 6.

COVERAGE D – Loss Of Use

The limit of liability for Coverage D is the total limit for all the coverages that follow.

- 1. If a loss covered under this Section makes that part of the "residence premises" where you reside not fit to live in, we cover, at your choice, either of the following. However, if the "residence premises" is not your principal place of residence, we will not provide the option under paragraph b. below.

- a. **Additional Living Expense**, meaning any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living; or
- b. **Fair Rental Value**, meaning the fair rental value of that part of the "residence premises" where you reside less any expenses that do not continue while the premises is not fit to live in.

Payment under a. or b. will be for the shortest time required to repair or replace the damage or, if you permanently relocate, the shortest time required for your household to settle elsewhere.

- 2. If a loss covered under this Section makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the:

Fair Rental Value, meaning the fair rental value of that part of the "residence premises" rented to others or held for rental by you less any expenses that do not continue while the premises is not fit to live in.

Payment will be for the shortest time required to repair or replace that part of the premises rented or held for rental.

- 3. If a civil authority prohibits you from use of the "residence premises" as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, we cover the Additional Living Expense and Fair Rental Value loss as provided under 1. and 2. above for no more than two weeks.

The periods of time under 1., 2. and 3. above are not limited by expiration of this policy.

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

ADDITIONAL COVERAGES

1. **Debris Removal.** We will pay your reasonable expense for the removal of:

- a. Debris of covered property if a Peril Insured Against that applies to the damaged property causes the loss; or
- b. Ash, dust or particles from a volcanic eruption that has caused direct loss to a building or property contained in a building.

This expense is included in the limit of liability that applies to the damaged property. If the amount to be paid for the actual damage to the property plus the debris removal expense is more than the limit of liability for the damaged property, an additional 5% of that limit of liability is available for debris removal expense.

We will also pay your reasonable expense, up to \$500, for the removal from the "residence premises" of:

- a. Your tree(s) felled by the peril of Windstorm or Hail;
- b. Your tree(s) felled by the peril of Weight of Ice, Snow or Sleet; or
- c. A neighbor's tree(s) felled by a Peril Insured Against under Coverage C;

provided the tree(s) damages a covered structure. The \$500 limit is the most we will pay in any one loss regardless of the number of fallen trees.

2. **Reasonable Repairs.** In the event that covered property is damaged by an applicable Peril Insured Against, we will pay the reasonable cost incurred by you for necessary measures taken solely to protect against further damage. If the measures taken involve repair to other damaged property, we will pay for those measures only if that property is covered under this policy and the damage to that property is caused by an applicable Peril Insured Against.

This coverage:

- a. Does not increase the limit of liability that applies to the covered property;
- b. Does not relieve you of your duties, in case of a loss to covered property, as set forth in SECTION I – CONDITION 2.d.

3. **Trees, Shrubs and Other Plants.** We cover trees, shrubs, plants or lawns, on the "residence premises," for loss caused by the following Perils Insured Against: 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.

We will pay up to 5% of the limit of liability that applies to the dwelling for all trees, shrubs, plants or lawns. No more than \$500 of this limit will be available for any one tree, shrub or plant. We do not cover property grown for "business" purposes.

This coverage is additional insurance.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. We do not cover fire department service charges if the property is located within the limits of the city, municipality or protection district furnishing the fire department response.

This coverage is additional insurance. No deductible applies to this coverage.

5. **Property Removed.** We insure covered property against direct loss from any cause while being removed from a premises endangered by a Peril Insured Against and for no more than 30 days while removed. This coverage does not change the limit of liability that applies to the property being removed.

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

We will pay up to \$500 for:

- a. The legal obligation of an "insured" to pay because of the theft or unauthorized use of credit cards issued to or registered in an "insured's" name;
- b. Loss resulting from theft or unauthorized use of a fund transfer card used for deposit, withdrawal or transfer of funds, issued to or registered in an "insured's" name;
- c. Loss to an "insured" caused by forgery or alteration of any check or negotiable instrument; and
- d. Loss to an "insured" through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover use of a credit card or fund transfer card:

- a. By a resident of your household;
- b. By a person who has been entrusted with either type of card; or
- c. If an "insured" has not complied with all terms and conditions under which the cards are issued.

All loss resulting from a series of acts committed by any one person or in which any one person is concerned or implicated is considered to be one loss.

We do not cover loss arising out of "business" use or dishonesty of an "insured."

This coverage is additional insurance. No deductible applies to this coverage.

Defense:

- a. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to defend a claim or suit ends when the amount we pay for the loss equals our limit of liability.
- b. If a suit is brought against an "insured" for liability under the Credit Card or Fund Transfer Card coverage, we will provide a defense at our expense by counsel of our choice.
- c. 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. **Loss Assessment.** We will pay up to \$1000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under COVERAGE A – DWELLING, other than earthquake or land shock waves or tremors before, during or after a volcanic eruption.

This coverage applies only to loss assessments charged against you as owner or tenant of the "residence premises."

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

The limit of \$1000 is the most we will pay with respect to any one loss, regardless of the number of assessments.

Condition 1. Policy Period, under SECTIONS I AND II CONDITIONS, does not apply to this coverage.

- 8. **Collapse.** We insure for direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in COVERAGE C – PERSONAL PROPERTY. These perils apply to covered buildings and personal property for loss insured by this additional coverage;
- b. Hidden decay;
- c. Hidden insect or vermin damage;
- d. Weight of contents, equipment, animals or people;
- e. Weight of rain which collects on a roof; or
- f. Use of defective material or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

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 a direct result of the collapse of a building.

Collapse does not include settling, cracking, shrinking, bulging or expansion.

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

- 9. **Glass or Safety Glazing Material.**

We cover:

- a. The breakage of glass or safety glazing material which is part of a covered building, storm door or storm window; and
- b. Damage to covered property by glass or safety glazing material which is part of a building, storm door or storm window.

This coverage does not include loss on the "residence premises" if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant.

Loss for damage to glass will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

This coverage does not increase the limit of liability that applies to the damaged property.

10. Landlord's Furnishings. We will pay up to \$2500 for your appliances, carpeting and other household furnishings, in an apartment on the "residence premises" regularly rented or held for rental to others by an "insured," for loss caused only by the following Perils Insured Against:

a. Fire or lightning.

b. Windstorm or hail.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless 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 and their trailers, furnishings, equipment, and outboard engines or motors, only while inside a fully enclosed building.

c. Explosion.

d. Riot or civil commotion.

e. Aircraft, including self-propelled missiles and spacecraft.

f. Vehicles.

g. Smoke, meaning sudden and accidental damage from smoke.

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

h. Vandalism or malicious mischief.

i. Falling objects.

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

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

k. 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:

- (1) To the system or appliance from which the water or steam escaped;
- (2) Caused by or resulting from freezing except as provided in the peril of freezing below; or
- (3) On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises."

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

l. Sudden and accidental tearing apart, 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.

We do not cover loss caused by or resulting from freezing under this peril.

m. 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 unoccupied, unless 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.

n. Sudden and accidental damage from artificially generated electrical current.

This peril does not include loss to a tube, transistor or similar electronic component.

o. Volcanic eruption other than loss caused by earthquake, land shock waves or tremors.

The \$2500 limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishings involved in the loss.

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING and COVERAGE B – OTHER STRUCTURES

We insure against risk of direct loss to property described in Coverages A and B only if that loss is a physical loss to property. We do not insure, however, for loss:

1. Involving collapse, other than as provided in Additional Coverage 8.;
2. Caused by:

- a. 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 applies only while the dwelling is vacant, unoccupied or being constructed, unless 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;
- b. Freezing, thawing, pressure or weight of water or ice, whether driven by wind or not, to a:
- (1) Fence, pavement, patio or swimming pool;
 - (2) Foundation, retaining wall, or bulkhead; or
 - (3) Pier, wharf or dock;
- c. Theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
- d. Vandalism and malicious mischief if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;
- e. Any of the following:
- (1) Wear and tear, marring, deterioration;
 - (2) Inherent vice, latent defect, mechanical breakdown;
 - (3) Smog, rust or other corrosion, mold, wet or dry rot;
 - (4) Smoke from agricultural smudging or industrial operations;
 - (5) Discharge, dispersal, seepage, migration, release or escape of pollutants unless the discharge, dispersal, seepage, migration, release or escape is itself caused by a Peril Insured Against under Coverage C of this policy.
Pollutants means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed;
 - (6) Settling, shrinking, bulging or expansion, including resultant cracking, of pavements, patios, foundations, walls, floors, roofs or ceilings;
 - (7) Birds, vermin, rodents, or insects; or
 - (8) Animals owned or kept by an "insured."

If any of these cause water damage not otherwise excluded, from a plumbing, heating, air conditioning or automatic fire protective sprinkler system or household appliance, we cover loss caused by the water including the cost of tearing out and replacing any part of a building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which this water escaped.

3. Excluded under Section I – Exclusions.

Under Items 1. and 2., any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

COVERAGE C – PERSONAL PROPERTY

We insure for direct physical loss to the property described in Coverage C caused by a peril listed below unless the loss is excluded in SECTION I – EXCLUSIONS.

1. Fire or lightning.

2. Windstorm or hail.

This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand or dust unless 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 and their trailers, furnishings, equipment, and outboard engines or 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.

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.

9. Theft, including attempted theft and loss of property from a known place when it is likely that the property has been stolen.

This peril does not include loss caused by theft:

a. Committed by an "insured";

b. In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied; or

- c. From that part of a "residence premises" rented by an "insured" to other than an "insured."

This peril does not include loss caused by theft that occurs off the "residence premises" of:

- a. Property while at any other residence owned by, rented to, or occupied by an "insured," except while an "insured" is temporarily living there. Property of a student who is an "insured" is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss;
- b. Watercraft, and their furnishings, equipment and outboard engines or motors; or
- c. Trailers and campers.

10. Falling objects.

This peril does not include loss to property contained in a building unless the roof or an outside 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. 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 except as provided in the peril of freezing below; or

- c. On the "residence premises" caused by accidental discharge or overflow which occurs off the "residence premises."

In this peril, a plumbing system does not include a sump, sump pump or related equipment.

- 13. Sudden and accidental tearing apart, 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.

We do not cover loss caused by or resulting from freezing under this peril.

- 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 unoccupied, 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 from artificially generated electrical current.**

This peril does not include loss to a tube, transistor or similar electronic component.

- 16. Volcanic eruption** other than loss caused by earthquake, land shock waves or tremors.

SECTION I – EXCLUSIONS

- 1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

- b. **Earth Movement**, meaning earthquake including land shock waves or tremors before, during or after a volcanic eruption; landslide; mine subsidence; mudflow; earth sinking, rising or shifting; unless direct loss by:

- (1) Fire;
- (2) Explosion; or

- (3) **Breakage of glass or safety glazing material** which is part of a building, storm door or storm window;

ensues and then we will pay only for the ensuing loss.

This exclusion does not apply to loss by theft.

- c. **Water Damage**, meaning:

- (1) Flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- (2) Water which backs up through sewers or drains or which overflows from a sump; 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.

Direct loss by fire, explosion or theft resulting from water damage is covered.

d. **Power Failure**, meaning the failure of power or other utility service if the failure takes place off the "residence premises." But, if a Peril Insured Against ensues on the "residence premises," we will pay only for that ensuing loss.

e. **Neglect**, meaning neglect of the "insured" to use all reasonable means to save and preserve property at and after the time of a loss.

f. **War**, including the following and any consequence of any of the following:

- (1) Undeclared war, civil war, insurrection, rebellion or revolution;
- (2) Warlike act by a military force or military personnel; or
- (3) Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental.

g. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of SECTION I - CONDITIONS.

h. **Intentional Loss**, meaning any loss arising out of any act committed:

- (1) By or at the direction of an "insured"; and
- (2) With the intent to cause a loss.

2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.

a. **Weather conditions**. However, this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;

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

c. **Faulty, inadequate or defective:**

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property whether on or off the "residence premises."

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 will not be liable in any one loss:

- a. To the "insured" for more than the amount of the "insured's" interest at the time of loss; or
- b. For more than the applicable limit of liability.

2. **Your Duties After Loss**. In case of a loss to covered property, you must see that the following are done:

- a. Give prompt notice to us or our agent;
- b. Notify the police in case of loss by theft;
- c. Notify the credit card or fund transfer card company in case of loss under Credit Card or Fund Transfer Card coverage;
- d. Protect the property from further damage. If repairs to the property are required, you must:

(1) Make reasonable and necessary repairs to protect the property; and

(2) Keep an accurate record of repair expenses;

e. Prepare an inventory of damaged personal property showing the quantity, description, actual cash value and amount of loss. Attach all bills, receipts and related documents that justify the figures in the inventory;

f. As often as we reasonably require:

- (1) Show the damaged property;
- (2) Provide us with records and documents we request and permit us to make copies; and
- (3) Submit to examination under oath, while not in the presence of any other "insured," and sign the same;

g. Send to us, within 60 days after our request, 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) The interest of the "insured" and all others in the property involved and all liens on the property;
- (3) Other insurance which may cover the loss;
- (4) Changes in title or occupancy of the property during the term of the policy;
- (5) Specifications of damaged buildings and detailed repair estimates;
- (6) The inventory of damaged personal property described in 2.e. above;
- (7) Receipts for additional living expenses incurred and records that support the fair rental value loss; and
- (8) Evidence or affidavit that supports a claim under the Credit Card, Fund Transfer Card, Forgery and Counterfeit Money coverage, stating the amount and cause of loss.

3. **Loss Settlement.** Covered property losses are settled as follows:

a. Property of the following types:

- (1) Personal property;
- (2) Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings; and
- (3) Structures that are not buildings;

at actual cash value at the time of loss but not more than the amount required to repair or replace.

b. Buildings under Coverage A or B at replacement cost without deduction for depreciation, subject to the following:

- (1) If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, after application of deductible and without deduction for depreciation, but not more than the least of the following amounts:
 - (a) The limit of liability under this policy that applies to the building;
 - (b) The replacement cost of that part of the building damaged for like construction and use on the same premises; or

(c) The necessary amount actually spent to repair or replace the damaged building.

(2) If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:

- (a) The actual cash value of that part of the building damaged; or
- (b) That proportion of the cost to repair or replace, after application of deductible and without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

(3) To determine the amount of insurance required to equal 80% of the full replacement cost of the building immediately before the loss, do not include the value of:

- (a) Excavations, foundations, piers or any supports which are below the undersurface of the lowest basement floor;
- (b) Those supports in (a) above which are below the surface of the ground inside the foundation walls, if there is no basement; and
- (c) Underground flues, pipes, wiring and drains.

(4) We will pay no more than the actual cash value of the damage until actual repair or replacement is complete. Once actual repair or replacement is complete, we will settle the loss according to the provisions of b.(1) and b.(2) above.

However, if the cost to repair or replace the damage is both:

- (a) Less than 5% of the amount of insurance in this policy on the building; and
- (b) Less than \$2500;

we will settle the loss according to the provisions of b.(1) and b.(2) above whether or not actual repair or replacement is complete.

(5) You may disregard the replacement cost loss settlement provisions and make claim under this policy for loss or damage to buildings on an actual cash value basis. You may then make claim within 180 days after loss for any additional liability according to the provisions of this Condition 3. Loss Settlement.

4. **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 actual cash value of the property before and after the loss.

5. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against will be settled on the basis of replacement with safety glazing materials when required by ordinance or law.

6. **Appraisal.** If you and we fail to agree on the amount of loss, either may demand an appraisal of the loss. In this event, each party will choose a competent appraiser within 20 days after receiving a written request from the other. The two appraisers will choose an umpire. If they cannot agree upon an umpire within 15 days, you or we may request that the choice be made by a judge of a court of record in the state where the "residence premises" is located. The appraisers will separately set the amount of loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon will be the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will set the amount of loss.

Each party will:

- a. Pay its own appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the limit of liability that applies under this policy bears to the total amount of insurance covering the loss.

8. **Suit Against Us.** No action can be brought unless the policy provisions have been complied with and the action is started within one year after the date of loss.

9. **Our Option.** If we give you written notice within 30 days after we receive your signed, sworn proof of loss, we may repair or replace any part of the damaged property with like property.

10. **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:

- a. Reach an agreement with you;
- b. There is an entry of a final judgment; or
- c. There is a filing of an appraisal award with us.

11. **Abandonment of Property.** We need not accept any property abandoned by an "insured."

12. **Mortgage Clause.**

The word "mortgagee" includes trustee.

If a mortgagee is named in this policy, any loss payable under Coverage A or B will be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment will be the same as the order of precedence of the mortgages.

If we deny your claim, that denial will not apply to a valid claim of the mortgagee, if the mortgagee:

- a. Notifies us of any change in ownership, occupancy or substantial change in risk of which the mortgagee is aware;
- b. Pays any premium due under this policy on demand if you have neglected to pay the premium; and
- c. 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 we decide to cancel or not to renew this policy, the mortgagee will be notified at least 10 days before the date cancellation or nonrenewal takes effect.

If we pay the mortgagee for any loss and deny payment to you:

- a. We are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. At our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we will receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt.

Subrogation will not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

13. No Benefit to Bailee. We will not recognize any assignment or grant any coverage that benefits a person or organization holding, storing or moving property for a fee regardless of any other provision of this policy.

14. Nuclear Hazard Clause.

- a. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- b. Loss caused by the nuclear hazard will not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I.

c. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

15. Recovered Property. If you or we recover any property for which we have made payment under this policy, you or we will notify the other of the recovery. At your option, the property will be returned to or retained by you or it will become our property. If the recovered property is returned to or retained by you, the loss payment will be adjusted based on the amount you received for the recovered property.

16. Volcanic Eruption Period. One or more volcanic eruptions that occur within a 72-hour period will be considered as one volcanic eruption.

SECTION II – LIABILITY COVERAGES

COVERAGE E – Personal Liability

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

1. Pay up to our limit of liability for the damages for which the "insured" is legally liable. Damages include prejudgment interest awarded against the "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when the amount we pay for damages resulting from the "occurrence" equals our limit of liability.

COVERAGE F – Medical Payments To Others

We will pay the necessary medical expenses that are 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 does not apply to you or regular residents of your household except "residence employees." As to others, this coverage applies only:

1. To a person on the "insured location" with the permission of an "insured"; or
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."

SECTION II – EXCLUSIONS

1. Coverage E – Personal Liability and Coverage F – Medical Payments to Others do not apply to "bodily injury" or "property damage":

- a. Which is expected or intended by the "insured";

- b. Arising out of or in connection with a "business" engaged in by an "insured." This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business";

c. Arising out of the rental or holding for rental of any part of any premises by an "insured." This exclusion does not apply to the rental or holding for rental of an "insured location":

- (1) On an occasional basis if used only as a residence;
- (2) In part for use only as a residence, unless a single family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (3) In part, as an office, school, studio or private garage;

d. Arising out of the rendering of or failure to render professional services;

e. Arising out of a premises:

- (1) Owned by an "insured";
- (2) Rented to an "insured"; or
- (3) Rented to others by an "insured"; that is not an "insured location";

f. Arising out of:

- (1) The ownership, maintenance, use, loading or unloading of motor vehicles or all other motorized land conveyances, including trailers, owned or operated by or rented or loaned to an "insured";
- (2) The entrustment by an "insured" of a motor vehicle or any other motorized land conveyance to any person; or
- (3) Vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using a conveyance excluded in paragraph (1) or (2) above.

This exclusion does not apply to:

- (1) A trailer not towed by or carried on a motorized land conveyance.
- (2) A motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and:
 - (a) Not owned by an "insured"; or
 - (b) Owned by an "insured" and on an "insured location";
- (3) A motorized golf cart when used to play golf on a golf course;
- (4) A vehicle or conveyance not subject to motor vehicle registration which is:
 - (a) Used to service an "insured's" residence;
 - (b) Designed for assisting the handicapped; or
 - (c) In dead storage on an "insured location";

g. Arising out of:

- (1) The ownership, maintenance, use, loading or unloading of an excluded watercraft described below;
- (2) The entrustment by an "insured" of an excluded watercraft described below to any person; or
- (3) Vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using an excluded watercraft described below.

Excluded watercraft are those that are principally designed to be propelled by engine power or electric motor, or are sailing vessels, whether owned by or rented to an "insured." This exclusion does not apply to watercraft:

- (1) That are not sailing vessels and are powered by:
 - (a) Inboard or inboard-outdrive engine or motor power of 50 horsepower or less not owned by an "insured";
 - (b) Inboard or inboard-outdrive engine or motor power of more than 50 horsepower not owned by or rented to an "insured";
 - (c) One or more outboard engines or motors with 25 total horsepower or less;
 - (d) One or more outboard engines or motors with more than 25 total horsepower if the outboard engine or motor is not owned by an "insured";
 - (e) Outboard engines or motors of more than 25 total horsepower owned by an "insured" if:
 - (i) You acquire them prior to the policy period; and
 - (a) You declare them at policy inception; or
 - (b) Your intention to insure is reported to us in writing within 45 days after you acquire the outboard engines or motors.
 - (ii) You acquire them during the policy period.
 This coverage applies for the policy period.
- (2) That are sailing vessels, with or without auxiliary power:
 - (a) Less than 26 feet in overall length;
 - (b) 26 feet or more in overall length, not owned by or rented to an "insured."

(3) That are stored;

h. Arising out of:

- (1) The ownership, maintenance, use, loading or unloading of an aircraft;
- (2) The entrustment by an "insured" of an aircraft to any person; or
- (3) Vicarious liability, whether or not statutorily imposed, for the actions of a child or minor using an aircraft.

An aircraft means any contrivance used or designed for flight, except model or hobby aircraft not used or designed to carry people or cargo;

i. Caused directly or indirectly by war, including the following and any consequence of any of the following:

- (1) Undeclared war, civil war, insurrection, rebellion or revolution;
- (2) Warlike act by a military force or military personnel; or
- (3) Destruction, seizure or use for a military purpose.

Discharge of a nuclear weapon will be deemed a warlike act even if accidental;

j. Which arises out of the transmission of a communicable disease by an "insured";

k. Arising out of sexual molestation, corporal punishment or physical or mental abuse; or

l. Arising out of the use, sale, manufacture, delivery, transfer or possession by any person of a Controlled Substance(s) as defined by the Federal Food and Drug Law at 21 U.S.C.A. Sections 811 and 812. Controlled Substances include but are not limited to cocaine, LSD, marijuana and all narcotic drugs. However, this exclusion does not apply to the legitimate use of prescription drugs by a person following the orders of a licensed physician.

Exclusions e., f., g., and h. do 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."

2. Coverage E – Personal Liability, does not apply to:

a. Liability:

- (1) For any loss assessment charged against you as a member of an association, corporation or community of property owners;
- (2) Under any contract or agreement. However, this exclusion does not apply to written contracts:

(a) That directly relate to the ownership, maintenance or use of an "insured location"; or

(b) Where the liability of others is assumed by the "insured" prior to an "occurrence"; unless excluded in (1) above or elsewhere in this policy;

b. "Property damage" to property owned by the "insured";

c. "Property damage" to property rented to, occupied or used by or in the care of the "insured." This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

d. "Bodily injury" to any person eligible to receive any benefits:

(1) Voluntarily provided; or

(2) Required to be provided;

by the "insured" under any:

(1) Workers' compensation law;

(2) Non-occupational disability law; or

(3) Occupational disease law;

e. "Bodily injury" or "property damage" for which an "insured" under this policy:

(1) Is also an insured under a nuclear energy liability policy; or

(2) Would be an insured under that policy but for the exhaustion of its limit of liability.

A nuclear energy liability policy is one issued by:

(1) American Nuclear Insurers;

(2) Mutual Atomic Energy Liability Underwriters;

(3) Nuclear Insurance Association of Canada; or any of their successors; or

f. "Bodily injury" to you or an "insured" within the meaning of part a. or b. of "insured" as defined.

3. Coverage F – Medical Payments to Others, does not apply to "bodily injury":

a. To a "residence employee" if the "bodily injury":

(1) Occurs off the "insured location"; and

(2) Does not arise out of or in the course of the "residence employee's" employment by an "insured";

b. To any person eligible to receive benefits:

- (1) Voluntarily provided; or
- (2) Required to be provided; under any:
 - (1) Workers' compensation law;
 - (2) Non-occupational disability law; or
 - (3) Occupational disease law;

c. From any:

- (1) Nuclear reaction;

(2) Nuclear radiation; or

- (3) Radioactive contamination; all whether controlled or uncontrolled or however caused; or
- (4) Any consequence of any of these; or

d. To any person, other than a "residence employee" of an "insured," regularly residing on any part of the "insured location."

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 any suit we defend;
- b. Premiums on bonds required in a suit we defend, but not for bond amounts more than the limit of liability for Coverage E. We need not apply for or furnish any bond;
- c. Reasonable expenses incurred by an "insured" at our request, including actual loss of earnings (but not loss of other income) up to \$50 per day, for assisting us in the investigation or defense of a claim or suit; and
- d. 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. We will pay, at replacement cost, up to \$500 per "occurrence" for "property damage" to property of others caused by an "insured."

We will not pay for "property damage":

- a. To the extent of any amount recoverable under Section I of this policy;
- b. Caused intentionally by an "insured" who is 13 years of age or older;
- c. To property owned by an "insured";
- d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or

e. Arising out of:

- (1) A "business" engaged in by an "insured";
- (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured," other than the "insured location"; or
- (3) The ownership, maintenance, or use of aircraft, watercraft or motor vehicles or all other motorized land conveyances.

This exclusion does not apply to a motorized land conveyance designed for recreational use off public roads, not subject to motor vehicle registration and not owned by an "insured."

4. Loss Assessment. We will pay up to \$1000 for your share of loss assessment charged during the policy period against you by a corporation or association of property owners, when the assessment is made as a result of:

- a. "Bodily injury" or "property damage" not excluded under Section II of this policy; or
- b. Liability for an act of a director, officer or trustee in the capacity as a director, officer or trustee, provided:
 - (1) The director, officer or trustee is elected by the members of a corporation or association of property owners; and
 - (2) The director, officer or trustee serves without deriving any income from the exercise of duties which are solely on behalf of a corporation or association of property owners.

This coverage applies only to loss assessments charged against you as owner or tenant of the "residence premises."

We do not cover loss assessments charged against you or a corporation or association of property owners by any governmental body.

Regardless of the number of assessments, the limit of \$1000 is the most we will pay for loss arising out of:

- a. One accident, including continuous or repeated exposure to substantially the same general harmful condition; or

- b. A covered act of a director, officer or trustee. An act involving more than one director, officer or trustee is considered to be a single act.

The following do not apply to this coverage:

- 1. Section II – Coverage E – Personal Liability Exclusion 2.a.(1);
- 2. Condition 1. Policy Period, under SECTIONS I AND II – CONDITIONS.

SECTION II – CONDITIONS

- 1. **Limit of Liability.** Our total liability under Coverage E for all damages resulting from any one "occurrence" will not be more than the limit of liability for Coverage E as shown in the Declarations. This limit is the same regardless of the number of "insureds," claims made or persons injured. All "bodily injury" and "property damage" resulting from any one accident or from continuous or repeated exposure to substantially the same general harmful conditions shall be considered to be the result of one "occurrence."

Our total liability under Coverage F for all medical expense payable for "bodily injury" to one person as the result of one accident will not be more than the limit of liability for Coverage F as shown in the Declarations.

- 2. **Severability of Insurance.** This insurance applies separately to each "insured." This condition will not increase our limit of liability for any one "occurrence."
- 3. **Duties After Loss.** In case of an accident or "occurrence," the "insured" will perform the following duties that apply. You will help us by seeing that these duties are performed:
 - a. Give written notice to us or our agent as soon as is practical, which sets forth:
 - (1) The identity of the 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 witnesses;
 - b. Promptly forward to us every notice, demand, summons or other process relating to the accident or "occurrence";

- c. At our request, help us:

- (1) To make settlement;
- (2) To enforce any right of contribution or indemnity against any person or organization who may be liable to an "insured";
- (3) With the conduct of suits and attend hearings and trials; and
- (4) To secure and give evidence and obtain the attendance of witnesses;

- d. Under the coverage – Damage to Property of Others – submit to us within 60 days after the loss, a sworn statement of loss and show the damaged property, if in the "insured's" control;

- e. The "insured" will not, except at the "insured's" own cost, voluntarily make payment, assume obligation or incur expense other than for first aid to others at the time of the "bodily injury."

- 4. **Duties of an Injured Person – Coverage F – Medical Payments to Others.**

The injured person or someone acting for the injured person will:

- a. Give us written proof of claim, under oath if required, as soon as is practical; and
- b. Authorize us to obtain copies of medical reports and records.

The injured person will submit to a physical exam by a doctor of our choice when and as often as we reasonably require.

- 5. **Payment of Claim – Coverage F – Medical Payments to Others.** Payment under this coverage is not an admission of liability by an "insured" or us.

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

No one will have the right to join us as a party to any action against an "insured." Also, no action with respect to Coverage E can 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" will not relieve us of our obligations under this policy.

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

SECTIONS I AND II – CONDITIONS

- 1. Policy Period.** This policy applies only to loss in Section I or "bodily injury" or "property damage" in Section II, which occurs during the policy period.
 - 2. Concealment or Fraud.** The entire policy will be void if, whether before or after a loss, an "insured" has:
 - a. Intentionally concealed or misrepresented any material fact or circumstance;
 - b. Engaged in fraudulent conduct; or
 - c. Made false statements; relating to this insurance.
 - 3. Liberalization Clause.** If we make a change which broadens coverage under this edition of our policy without additional premium charge, that change will automatically apply to your insurance as of the date we implement the change in your state, provided that this implementation date falls within 60 days prior to or during the policy period stated in the Declarations.
 This Liberalization Clause does not apply to changes implemented through introduction of a subsequent edition of our policy.
 - 4. Waiver or Change of Policy Provisions.**
 A waiver or change of a provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination will not waive any of our rights.
 - 5. Cancellation.**
 - a. You may cancel this policy at any time by returning it to us or by letting us know in writing of the date cancellation is to take effect.
 - b. We may cancel this policy only for the reasons stated below by letting you know 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 will be sufficient proof of notice.
 - 6. Nonrenewal.** We may elect not to renew this policy. We may do so by delivering to you, or mailing to you at your mailing address shown in the Declarations, written notice at least 30 days before the expiration date of this policy. Proof of mailing will be sufficient proof of notice.
 - 7. Assignment.** Assignment of this policy will not be valid unless we give our written consent.
- (1) When you have not paid the premium, we may cancel at any time by letting you know at least 10 days before the date cancellation takes effect.
 - (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 by letting you know 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 the policy; or
 - (b) If the risk has changed substantially since the policy was issued.
 This can be done by letting you know at least 30 days before the date cancellation takes effect.
 - (4) When this policy is written for a period of more than one year, we may cancel for any reason at anniversary by letting you know 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 pro rata.
 - d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

- 8. Subrogation.** An "insured" may waive in writing before a loss all rights of recovery against any person. If not waived, 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" must sign and deliver all related papers and cooperate with us.

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

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

- a. We insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the 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.

EXHIBIT "B"



GEORGE DALE
Commissioner of Insurance
State Fire Marshal

LEE HARRELL
Deputy Commissioner

STATE OF MISSISSIPPI
Mississippi Insurance Department

501 N. West Street
1001 Woolfolk Building (39201)
Post Office Box 79
Jackson, Mississippi 39205-0079
(601) 359-3569
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Mississippi Insurance Department
Bulletin No. 2005-6
September 7, 2005

This Office has been working with Mississippi consumers and the insurance industry to ensure that Mississippians impacted by Hurricane Katrina are treated fairly and receive compensation in a timely manner. While a lack of housing, communications and fuel has made it difficult in many cases for adjusters to get with insureds, this situation is improving daily and the claims adjustment process is moving forward.

My Office has been contacted by Mississippians who advise that their adjusters allegedly denied their homeowners' claims without inspecting the damaged property. While there was significant water damage on the Mississippi Gulf Coast, and homeowners' policies offered throughout the United States generally contain a water damage exclusion, an adjuster cannot summarily determine the cause of damage without inspecting the damaged property. Consequently, I am instructing all companies to be aware of these issues and to fully inspect any damaged property before a coverage decision is made.

In some situations, there is either very little or nothing left of the insured structure and it will be a fact issue whether the loss was caused by wind or water. In these situations, the insurance company must be able to clearly demonstrate the cause of the loss. I expect and believe that where there is any doubt, that doubt will be resolved in favor of finding coverage on behalf of the insured. In instances where the insurance company believes the damage was caused by water, I expect the insurance company to be able to prove to this office and the insured that the damage was caused by water and not by wind.

These are very difficult times for our State and region, and I ask that the insurance industry construe coverage issues in a manner that will afford coverage to as many of our citizens as possible. We will continue to work with Mississippi consumers and the insurance industry to ensure that all claims are fairly and promptly processed.

This the 7th day of September, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "George Dale", written over a horizontal line.

GEORGE DALE