

# ADMIRAL INSURANCE COMPANY

A Stock Company

## COMMERCIAL LINES POLICY

THIS POLICY IS NOT OBTAINED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES.

THIS POLICY CONSISTS OF:

- DECLARATIONS
- COMMON POLICY CONDITIONS
- ONE OR MORE COVERAGE PARTS. A COVERAGE PART CONSISTS OF:
  - ONE OR MORE COVERAGE FORMS
  - APPLICABLE FORMS AND ENDORSEMENTS

In Witness Whereof, we have caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by our authorized representative.

A handwritten signature in dark ink, appearing to be "D. A. P.", written over a horizontal line.

Secretary

A handwritten signature in dark ink, reading "James S. Carey", written over a horizontal line.

President and CEO

1255 Caldwell Road

Cherry Hill, NJ 08034

Telephone (856) 429-9200

Facsimile (856) 429-8611

JA1001 (01/02)

Exhibit C



ADMIRAL INSURANCE COMPANY

A STOCK COMPANY  
(herein called "the Company")

COMMON POLICY DECLARATIONS

Policy No.: CA000001043-06

Renewal/Rewrite of: CA000001043-05

Named Insured and Mailing Address	Producer's Name and Address
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WOOD'S ROOFING, INC.  
P.O. BOX 1453  
MORGAN HILL, CA 95037

AMERICAN E & S INSURANCE BROKERS  
101 CALIFORNIA STREET, SUITE 900  
SAN FRANCISCO, CA 94111  
Producer Code: 0343B      Commission: 17.50%

Policy Period: From 09/28/2007 To 09/28/2008 At 12:01 A.M. Standard Time at the address of the Named Insured as stated herein

THE NAMED INSURED IS:     Individual;     Partnership;     Corporation;     Joint Venture;     Other

BUSINESS DESCRIPTION: Roofing Contractor

AUDIT PERIOD:             Annual;             Other

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

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGES FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Commercial Property Coverage	\$	
Commercial General Liability Coverage	\$	\$31,930.00
Products/Completed Operations Liability Coverage	\$	
Equipment Breakdown Coverage	\$	
_____ Coverage	\$	
	PREMIUM: \$	\$31,930.00
	TERRORISM PREMIUM: \$	
	TOTAL PREMIUM: \$	\$31,930.00

Form(s) and Endorsement(s) made a part of this policy at inception:  
REFER TO SCHEDULE OF FORMS, AI 00 18 03 98

This policy is not binding unless countersigned by Admiral Insurance Company or it's authorized representative.

Countersigned On: 10/02/07

At: Seattle, WA

By: James S. Carey  
Authorized Representative

THESE COMMON POLICY DECLARATIONS AND, IF APPLICABLE, THE COMMERCIAL PROPERTY COVERAGE, THE COMMERCIAL GENERAL LIABILITY DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE PART(S), FORM(S) AND ENDORSEMENTS, IF ANY, ISSUES TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBER POLICY.



## COMMERCIAL GENERAL LIABILITY COVERAGE PART

## DECLARATIONS

Policy No.: CA000001043-06Effective Date: 09/28/2007 12:01 A. M., Standard Time**LIMITS OF INSURANCE**

General Aggregate Limit (Other Than Products- Completed Operations)	\$	1,000,000	
Products - Completed Operations Aggregate Limit	\$	1,000,000	
Personal and Advertising Injury Limit	\$	1,000,000	
Each Occurrence Limit	\$	1,000,000	
Damage To Premises Rented To You Limit	\$	50,000	Any One Premises
Medical Expense Limit	\$	EXCLUDED	

**RETROACTIVE DATES**

Coverages A and B of this insurance does not apply to "bodily injury", "personal injury", "property damage" or "advertising injury" which occurs before the Retroactive Date, if any, shown here:

None

(Enter Date or "None" if no Retroactive Date Applies)

**PREMIUM**

Classification	Code No.	Premium Basis	Rate	Per	Advance Premium
OPERATIONS RATED AS: ROOFING - RESIDENTIAL	98678	\$1,005,000 <sup>(3)</sup>	\$31.77	\$1,000 Sales	\$31,930.00
Total Advanced Premium					\$31,930.00
Minimum Term Premium					\$31,930.00

**ADDITIONAL DECLARATIONS**

When used as a Premium basis:

- (1) "remuneration" means the entire remuneration earned during the policy period by proprietors and by all employees of the Named Insured other than chauffeurs (except operators of mobile equipment) and aircraft pilots and co-pilots, subject to any overtime earnings or limitation or remuneration rule applicable in accordance with the manuals in use by the Company;
- (2) "cost" means the total cost to the Named Insured with respect to operations performed for the Named Insured during the policy period by independent contractors of all work let or sub-let in connection with each specific project, including the cost of all labor, materials and equipment furnished, used or delivered for use in the execution of such work, whether furnished by the owner, contractor or sub-contractor, including all fees, allowances, bonuses or commissions made, paid or due.
- (3) "sales" means the gross amount of money charged by the Named Insured, his concessionaires, and others trading under his name, for goods and products sold or distributed, operations performed (installation, repair or servicing), dues or fees and rentals during the policy term, and includes taxes, other than taxes which the Named Insured and such others collect as a separate item and remit directly to a governmental division.

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD

## SCHEDULE OF FORMS

Named Insured: WOOD'S ROOFING, INC.

Policy No.: CA000001043-06

FORM NUMBER	TITLE
JA10010102	COVER JACKET - ADMIRAL INSURANCE COMPANY
DE20010700	COMMON POLICY DECLARATIONS
DE20020700	COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS
A100180398	SCHEDULE OF FORMS
CG00011204	COMMERCIAL GENERAL LIABILITY COVERAGE FORM
CG20100704	ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION
CG21351001	EXCLUSION - COVERAGE C - MEDICAL PAYMENTS
CG21490999	TOTAL POLLUTION EXCLUSION ENDORSEMENT
CG21540196	EXCLUSION - DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP UP) INSURANCE PROGRAM
CG21751202	EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM
CG22430798	EXCLUSION - ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY
CG24260704	AMENDMENT OF INSURED CONTRACT DEFINITION
IL00171198	COMMON POLICY CONDITIONS
IL00210702	NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT
AD06571203	PRIMARY/NON-CONTRIBUTING INSURANCE ENDORSEMENT
AD08421204	BODILY INJURY REDEFINED

AD08431201	GENERAL LIABILITY AMENDATORY ENDORSEMENT - PRE-EXISTING DAMAGE EXCLUSION
AD08700507	EIFS & SPRAY - ON SIDING EXCLUSION
AD66000195	LEAD EXCLUSION (ABSOLUTE)
AD66080705	ASBESTOS EXCLUSION (ABSOLUTE)
AD66090295	MINIMUM PREMIUM AND MINIMUM RETAINED PREMIUMAMENDATORY ENDORSEMENT
AD66110406	DEDUCTIBLE LIABILITY INSURANCE
AD66150195	BOOM WARRANTY
AD66620705	SILICA EXCLUSION (ABSOLUTE)
AD66801197	INDEPENDENT CONTRACTOR INSURANCE AGREEMENT
AD67190705	CONDOMINIUM CONVERSION EXCLUSION
AD67200705	BERYLLIUM EXCLUSION (ABSOLUTE)
AD67230805	EMPLOYMENT-RELATED PRACTICES EXCLUSION
AD67220805	RESIDENTIAL CONSTRUCTION ACTIVITIES EXCLUSION (EXCEPT APARTMENTS AND REPAIR OR REMODELING OF SINGLE-FAMILY DWELLINGS)
AD67400807	ABSOLUTE UNSOLICITED COMMUNICATIONS EXCLUSION
AI07100207	SERVICE OF SUIT STATE OF CALIFORNIA
AI07340105	CALIFORNIA DISCLOSURE NOTICE
AI08350901	MICROORGANISMS, BIOLOGICAL ORGANISMS OR ORGANIC CONTAMINANTS EXCLUSION (GENERAL LIABILITY BROAD FORM)
AI09950506	AVIAN INFLUENZA A (AVIAN FLU) - ABSOLUTE EXCLUSION

## COMMERCIAL GENERAL LIABILITY

CG 00 01 12 04

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERAGES****COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY****I. Insuring Agreement**

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

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

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

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

- (2) The "bodily injury" or "property damage" occurs during the policy period; and

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

### f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

- (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
- (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
- (i) Any insured; or
  - (ii) Any person or organization for whom you may be legally responsible; or
- (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
- (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.
- g. **Aircraft, Auto Or Watercraft**
- "Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.
- This exclusion does not apply to:
- (1) A watercraft while ashore on premises you own or rent;
  - (2) A watercraft you do not own that is:
    - (a) Less than 26 feet long; and
    - (b) Not being used to carry persons or property for a charge;



- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
  - (b) the operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

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

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental

physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) Your product";
- (2) "Your work"; or
- (3) Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

**COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

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

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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

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

**2. Exclusions**

This insurance does not apply to:

- a. **Knowing Violation Of Rights Of Another**  
"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".
- b. **Material Published With Knowledge Of Falsity**  
"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.
- c. **Material Published Prior To Policy Period**  
"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.
- d. **Criminal Acts**  
"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.
- e. **Contractual Liability**  
"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.
- f. **Breach Of Contract**  
"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".
- g. **Quality Or Performance Of Goods – Failure To Conform To Statements**  
"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights.

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web-sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-Related**

Any loss, cost or expense arising out of any:

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

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

**o. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

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

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

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

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

provided that:

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

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

**2. Exclusions**

We will not pay expenses for "bodily injury":

**a. Any Insured**

To any insured, except "volunteer workers".

**b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

**c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

**d. Workers Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

**e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

**f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

**g. Coverage A Exclusions**

Excluded under Coverage A.

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

**1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:**

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All costs taxed against the insured in the "suit".
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

**2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:**

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
  - (1) Agrees in writing to:
    - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
    - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
    - (c) Notify any other insurer whose coverage is available to the indemnitee; and
    - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
  - (2) Provides us with written authorization to:
    - (a) Obtain records and other information related to the "suit"; and
    - (b) Conduct and control the defense of the indemnitee in such "suit".

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

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

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or

- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
    - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
    - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
    - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.
  2. Each of the following is also an insured:
    - a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:
      - (1) "Bodily injury" or "personal and advertising injury":
        - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
        - (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
      - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
      - (d) Arising out of his or her providing or failing to provide professional health care services.
    - (2) "Property damage" to property:
      - (a) Owned, occupied or used by,
      - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
  - b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
  - c. Any person or organization having proper temporary custody of your property if you die, but only:
    - (1) With respect to liability arising out of the maintenance or use of that property; and
    - (2) Until your legal representative has been appointed.
  - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

**SECTION III – LIMITS OF INSURANCE**

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought; or
  - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.
3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

**SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS**

1. **Bankruptcy**  
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. **Duties In The Event Of Occurrence, Offense, Claim Or Suit**
  - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
    - (1) How, when and where the "occurrence" or offense took place;
    - (2) The names and addresses of any injured persons and witnesses; and
    - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
  - b. If a claim is made or "suit" is brought against any insured, you must:
    - (1) Immediately record the specifics of the claim or "suit" and the date received; and
    - (2) Notify us as soon as practicable.  
You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
  - c. You and any other involved insured must:
    - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
    - (2) Authorize us to obtain records and other information;
    - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
    - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
  - d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.
3. **Legal Action Against Us**  
No person or organization has a right under this Coverage Part:
  - a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

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

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

#### 4. Other Insurance

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

##### a. Primary Insurance

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

##### b. Excess Insurance

This insurance is excess over:

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

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

##### c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

#### 5. Premium Audit

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### 6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

#### 7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### 8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### 9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or

c. All other parts of the world if the injury or damage arises out of:

- (1) Goods or products made or sold by you in the territory described in a. above;
- (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
- (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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

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

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

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;



- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

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

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

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

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

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- False arrest, detention or imprisonment;
  - Malicious prosecution;
  - The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - Oral or written publication, in any manner, of material that violates a person's right of privacy;
  - The use of another's advertising idea in your "advertisement"; or
  - Infringing upon another's copyright, trade dress or slogan in your "advertisement".
15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
16. "Products-completed operations hazard":
- Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
    - Products that are still in your physical possession; or
    - Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
      - When all of the work called for in your contract has been completed.
      - When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
      - When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
  - Does not include "bodily injury" or "property damage" arising out of:
    - The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
    - The existence of tools, uninstalled equipment or abandoned or unused materials; or
    - Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.
17. "Property damage" means:
- Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
  - Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.
- For the purposes of this insurance, electronic data is not tangible property.
- As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
- An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
21. "Your product":
- Means:
    - Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
      - You;

- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes
  - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
  - (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":
- a. Means:
    - (1) Work or operations performed by you or on your behalf; and
    - (2) Materials, parts or equipment furnished in connection with such work or operations.
  - b. Includes
    - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
    - (2) The providing of or failure to provide warnings or instructions.

Policy Number: CA000001043-06

CG 20 10 07 04

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – SCHEDULED PERSON OR  
ORGANIZATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name Of Additional Insured Person(s) Or Organization(s):	Location(s) Of Covered Operations
ANY PERSON OR ORGANIZATION THAT IS AN OWNER OF REAL PROPERTY OR PERSONAL PROPERTY ON WHICH YOU ARE PERFORMING ONGOING OPERATIONS, OR A CONTRACTOR ON WHOSE BEHALF YOU ARE PERFORMING ONGOING OPERATIONS, BUT ONLY IF COVERAGE AS AN ADDITIONAL INSURED IS REQUIRED BY A WRITTEN CONTRACT OR WRITTEN AGREEMENT THAT IS AN "INSURED CONTRACT", AND PROVIDED THAT THE "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" FIRST OCCURS SUBSEQUENT TO THE EXECUTION OF THE CONTRACT OR AGREEMENT.	ALL COVERED PROJECTS
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

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

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

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

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

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

Policy Number: CA000001043-06

CG 21 35 10 01

Effective Date: 10/02/2007

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

**EXCLUSION – COVERAGE C – MEDICAL PAYMENTS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Description And Location Of Premises Or Classification:

ALL PREMISES AND CLASSIFICATIONS

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

With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply: and

2. The following is added to Section I – Supplementary Payments:

- i. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

Policy Number: CA000001043-06

CG 21 49 09 99

Effective Date: 10/02/2007

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

## **TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

**f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

Policy Number: CA000001043-06

CG 21 54 01 96

Effective Date: 10/02/2007

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

Description and Location of Operation(s):

ALL PROJECTS COVERED UNDER CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

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

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section 1 – Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

Policy Number: CA000001043-06

CG 21 75 12 02

Effective Date: 10/02/2007

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

## **EXCLUSION OF CERTIFIED ACTS OF TERRORISM AND OTHER ACTS OF TERRORISM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK POLICY

**A. The following exclusion is added:**

This insurance does not apply to:

**TERRORISM**

"Any injury or damage" arising, directly or indirectly, out of a "certified act of terrorism" or an "other act of terrorism". However, with respect to an "other act of terrorism", this exclusion applies only when one or more of the following are attributed to such act:

1. The total of insured damage to all types of property exceeds \$25,000,000. In determining whether the \$25,000,000 threshold is exceeded, we will include all insured damage sustained by property of all persons and entities affected by the terrorism and business interruption losses sustained by owners or occupants of the damaged property. For the purpose of this provision, insured damage means damage that is covered by any insurance plus damage that would be covered by any insurance but for the application of any terrorism exclusions; or
2. Fifty or more persons sustain death or serious physical injury. For the purposes of this provision, serious physical injury means:
  - a. Physical injury that involves a substantial risk of death; or
  - b. Protracted and obvious physical disfigurement; or
  - c. Protracted loss of or impairment of the function of a bodily member or organ; or
3. The terrorism involves the use, release or escape of nuclear materials, or directly or indirectly results in nuclear reaction or radiation or radioactive contamination; or

4. The terrorism is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
5. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

With respect to this exclusion, Paragraphs 1. and 2. describe the thresholds used to measure the magnitude of an incident of an "other act of terrorism" and the circumstances in which the threshold will apply for the purpose of determining whether this exclusion will apply to that incident.

**B. The following definitions are added:**

1. For the purposes of this endorsement, "any injury or damage" means any injury or damage covered under any Coverage Part to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part.
2. "Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002. The federal Terrorism Risk Insurance Act of 2002 sets forth the following criteria for a "certified act of terrorism":
  - a. The act resulted in aggregate losses in excess of \$5 million; and



- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.
- 3. "Other act of terrorism" means a violent act or an act that is dangerous to human life, property or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the federal Terrorism Risk Insurance Act of 2002. Multiple incidents of an "other act of terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.
- C. In the event of any incident of a "certified act of terrorism" or an "other act of terrorism" that is not subject to this exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

Policy Number: CA000001043-06

CG 22 43 07 98

Effective Date: 10/02/2007

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

## **EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

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

Policy Number: CA000001043-06

CG 24 26 07 04

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**AMENDMENT OF INSURED CONTRACT DEFINITION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Paragraph 9. of the Definitions Section is replaced by the following:

9. "Insured contract" means:
- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

## COMMON POLICY CONDITIONS

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

### A. Cancellation

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

### B. Changes

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

### C. Examination Of Your Books And Records

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

### D. Inspections And Surveys

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

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

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - a. Are safe or healthful; or
  - b. Comply with laws, regulations, codes or standards.

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

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

### E. Premiums

The first Named Insured shown in the Declarations:

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

### F. Transfer Of Your Rights And Duties Under This Policy

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

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

Policy Number: CA000001043-06

IL 00 21 07 02

Effective Date: 10/02/2007

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY ENDORSEMENT (BROAD FORM)

This endorsement modifies insurance provided under the following:

COMMERCIAL AUTOMOBILE COVERAGE PART  
 COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 FARM COVERAGE PART  
 LIQUOR LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 POLLUTION LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 PROFESSIONAL LIABILITY COVERAGE PART  
 RAILROAD PROTECTIVE LIABILITY COVERAGE PART  
 UNDERGROUND STORAGE TANK POLICY

1. The insurance does not apply:
  - A. Under any Liability Coverage, to "bodily injury" or "property damage":
    - (1) With respect to which an "insured" under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, Nuclear Insurance Association of Canada or any of their successors, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
    - (2) Resulting from the "hazardous properties" of "nuclear material" and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the "insured" is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
  - B. Under any Medical Payments coverage, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material" and arising out of the operation of a "nuclear facility" by any person or organization.
  - C. Under any Liability Coverage, to "bodily injury" or "property damage" resulting from "hazardous properties" of "nuclear material", if:
    - (1) The "nuclear material" (a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or (b) has been discharged or dispersed therefrom;
    - (2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of, by or on behalf of an "insured"; or
    - (3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property thereat.

2. As used in this endorsement:

"Hazardous properties" includes radioactive, toxic or explosive properties.

"Nuclear material" means "source material", "Special nuclear material" or "by-product material".

"Source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.

"Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor".

"Waste" means any waste material (a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and (b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

- (a) Any "nuclear reactor";
- (b) Any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing "spent fuel", or (3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;

(d) Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

"Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

"Property damage" includes all forms of radioactive contamination of property.

Policy Number: CA000001043-06

AD 06 57 12 03

Effective Date: 10/02/2007

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

**PRIMARY/NON-CONTRIBUTING INSURANCE  
ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

Name of Person or Organization:

ANY PERSON OR ORGANIZATION QUALIFYING AS AN INSURED UNDER THE  
ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS ENDORSEMENT  
FORM CG2010 0704 ATTACHED TO THIS POLICY

It is agreed that Commercial General Liability Coverage Form CG 00 01 Section IV paragraphs 4.b. and 4.c. do not apply with respect to other valid and collectible Commercial General Liability insurance, whether primary or excess, available to the person or organization shown in the Schedule and:

- 1) Who is an insured under an Additional Insured-Owners, Lessees or Contractors endorsement attached to this policy; and

- 2) Who requires by specific written contract that this insurance is to be primary and/or non-contributory to other valid and collectible insurance available to that person or organization.

This endorsement does not change the scope of coverage provided to the person or organization by any Additional Insured endorsement.

All other terms and conditions remain unchanged.

Policy Number: CA000001043-06

AD 08 42 12 04

Effective Date: 10/02/2007

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

## **BODILY INJURY REDEFINED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM (OCCURRENCE VERSION)  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM (CLAIMS-MADE)  
PRODUCTS AND COMPLETED OPERATIONS LIABILITY COVERAGE FORM (OCCURRENCE VERSION)  
PRODUCTS AND COMPLETED OPERATIONS LIABILITY COVERAGE FORM (CLAIMS-MADE VERSION)  
LIQUOR LIABILITY COVERAGE (OCCURRENCE VERSION)  
LIQUOR LIABILITY COVERAGE (CLAIMS-MADE)  
OWNER'S AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE FORM  
RAILROAD PROTECTIVE LIABILITY COVERAGE FORM  
EXCESS LIABILITY COVERAGE FORM  
UMBRELLA LIABILITY COVERAGE FORM

The definition of "bodily injury" in DEFINITIONS is amended as follows;

"Bodily injury" means physical injury, physical sickness or physical disease sustained by any one person, including death therefrom. "Bodily injury" does not include shock or emotional, mental or psychological distress, injury, trauma or anguish, or other similar condition, unless such condition results solely and directly from prior physical injury, physical sickness or physical disease otherwise covered under this insurance.



Policy Number: CA000001043-06

AD 08 43 12 01

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**GENERAL LIABILITY AMENDATORY ENDORSEMENT -**  
**PRE-EXISTING DAMAGE EXCLUSION**

It is agreed under Section 1 Coverages, Coverage A Bodily Injury and Property Damage Liability, 1. Insuring Agreement, Paragraphs b (3), c and d are deleted in their entirety and the following exclusion is added to this policy.

This insurance does not apply to :

1. Any damages arising out of or related to "bodily injury" or "property damage", whether such "bodily injury" or "property damage" is known or unknown,
  - (a) which first occurred prior to the inception date of this policy (or the retroactive date of this policy, if any; whichever is earlier); or
  - (b) which are, or are alleged to be, in the process of occurring as of the inception date of the policy (or the retroactive date of this policy, if any; whichever is earlier) even if the "bodily injury" or "property damage" continues during this policy period.
2. Any damages arising out of or related to "bodily injury" or "property damage", whether known or unknown, which are in the process of settlement, adjustment or "suit" as of the inception date of this policy (or the retroactive date of this policy, if any; whichever is earlier).

We shall have no duty to defend any insured against any loss, claim, "suit", or other proceeding alleging damages arising out of or related to "bodily injury" or "property damage" to which this endorsement applies.

Policy Number: CA000001043-06

AD 08 70 05 07

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****EIFS & SPRAY-ON SIDING EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This insurance does not apply to liability, injury or damages of any kind, to include but not limited to "bodily injury", "property damage" and "personal and advertising injury", including costs or expenses, actually or allegedly arising out of, related to, caused by, contributed to by, or in any way connected with:

**A. EIFS (Exterior Insulation & Finish System)**

1. The design, manufacture, sale, use, construction, fabrication, preparation, installation, application, maintenance or repair including remodeling, service, correction, or replacement of, an "exterior insulation and finish system" (commonly referred to as synthetic stucco or EIFS) or any part or portion thereof, or any substantially similar system or any part or portion thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system.
2. Any design, manufacture, construction, fabrication, preparation, installation, application, maintenance, use, sale, service, repair, remodeling, correction, replacement or service of any exterior component, fixture or feature of any structure if an "exterior insulation and finish system" is used on any part of that structure.

For the purposes of this endorsement an "exterior insulation and finish system" means an exterior cladding or finish system used on any part of any structure and consisting of:

- a. a rigid or semi-rigid insulation board made of expanded polystyrene or other materials; and

- b. an adhesive and/or mechanical fasteners used to attach the insulation board to the substrate; and
- c. a reinforced base coat; and
- d. a finish coat providing surface texture and color.

**B. Spray-On Siding**

1. The design, manufacture, sale, use, construction, fabrication, preparation, installation, application, maintenance or repair including remodeling, service, correction, or replacement of, "spray-on siding", or any part or portion thereof, or any substantially similar siding or any part or portion thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such siding.
2. Any design, manufacture, construction, fabrication, preparation, installation, application, maintenance, use, sale, service, repair, remodeling, correction, replacement or service of any exterior component, fixture or feature of any structure if a "spray-on siding" is used on any part of that structure.

For the purposes of this endorsement "spray-on siding" means any spray-applied or brush-applied liquid or semi-liquid coating containing polyvinyl chloride resin or ceramic, and applied to any exterior part of any structure.

Policy Number: CA000001043-06

AD 66 00 01 95

Effective Date: 10/02/2007

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

## **LEAD EXCLUSION (ABSOLUTE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

It is agreed that the insurance afforded by this policy does not apply to any Bodily Injury, Property Damage or Personal Injury for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this policy does not apply to any liability including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;

- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- (4) The cost of compliance with any law or regulation regarding lead.

It is further agreed that for any claim made or suit brought which is excluded under the terms of this endorsement, the Company shall not have the obligation to defend, adjust, investigate or pay any cost for investigation, defense, adjustment or attorney fees arising out of such claims.

Policy Number: CA000001043-06

AD 66 08 07 05

Effective Date: 10/02/2007

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

## **ASBESTOS EXCLUSION (ABSOLUTE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART

This insurance does not apply to any "bodily injury", "property damage" or "personal and advertising injury" related to actual, alleged or threatened past, present or future claims arising in whole or in part, either directly or indirectly, out of mining, the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, testing for or failure to disclose the presence of asbestos, products containing asbestos, or products designed or used to protect from the inhalation, ingestion, contact with or other exposure to asbestos whether or not the asbestos is or was at any time airborne as a fume, dust, powder, fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to any loss, cost or expense including but not limited to, payment for investigation or defense, fines, penalties, interest and other costs or expenses, arising out of or related to any:

- (1) Clean up or removal of asbestos or products and materials containing asbestos;

- (2) Such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of asbestos or products and material containing asbestos;
- (3) Disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- (4) Compliance with any law or regulation regarding asbestos;
- (5) Existence, storage, handling or transportation of asbestos;
- (6) Any supervision, instructions, recommendations, warranties (express or implied), warnings or advice given or which should have been given.

It is further agreed that for any claim made or suit brought which is excluded under the terms of this endorsement the Company shall not have the obligation to defend, adjust, investigate or pay any cost for investigation, defense, attorney fees or adjustment arising out of such claims.

Policy Number: CA000001043-06

AD 66 09 02 95

Effective Date: 10/02/2007

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

**MINIMUM PREMIUM AND MINIMUM RETAINED  
PREMIUM AMENDATORY ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

1. Condition 5. Premium Audit as shown in SECTION IV- CONDITIONS is deleted and replaced by the following condition:

5. Premium Audit

All premiums for this policy shall be computed in accordance with our rules, rates, rating plans, premiums and minimum premiums applicable to the Insurance afforded herein.

Premium designated in this policy as Advance Premium is a Deposit Premium which shall be credited to the amount of the earned premium due at the end of the policy period. At the close of each period (or part thereof terminating with the end of policy period), designated in the DECLARATIONS as the audit period, the earned premium shall be computed for such period and, upon notice thereof to the first Named Insured, shall become due and payable.

Should it become necessary to institute collection activities, including litigation, in order to collect the additional earned premium, then you shall be responsible for 100% of the expenses, fees and costs incurred by the Company in that regard plus any collectible interest. If the total computed earned premium for the policy period is less than the premium previously paid, then we shall receive and retain no less than the minimum premium(s) listed in the coverage part(s) attached hereto.

You shall maintain records of such information as is necessary for premium computation, and shall send copies of such records to us at the end of the policy period and at such times during the policy period as we may direct.

2. It is further agreed that Section A. Cancellation, paragraph 5. of the COMMON POLICY CONDITIONS IS amended to read as follows:

5. If the policy is cancelled, we will send the first Named Insured any premium refund due.

If we cancel, the refund will be the lesser of the pro rata of the actual earned premium or Minimum Premium. If the Named Insured cancels, the refund may be less than pro rata. However in no event shall we retain less than 25% of the Advance Premium shown in the DECLARATIONS.



Policy Number: CA000001043-06

AD 66 11 04 06

Effective Date: 10/02/2007

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

## DEDUCTIBLE LIABILITY INSURANCE (APPLICABLE TO INDEMNITY AND EXPENSES)

This endorsement modifies insurance provided under the following:

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

### SCHEDULE

Coverage	Amount and Basis of Deductible	
	PER CLAIM	PER OCCURRENCE
Bodily Injury Liability	\$	\$
Property Damage Liability	\$	\$
Bodily Injury Liability and/or Property Damage Liability Combined	\$ 5,000	\$
Personal and Advertising Injury Liability	\$ 5,000	\$

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

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "Bodily Injury", "Property Damage" and "Personal and Advertising Injury"; however caused. Damages includes any payments made under the Supplementary Payments provisions of this policy including, but not limited to, expenses we incur to investigate or settle a claim, or to defend a "suit".):

#### No limitations

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.  
Damages includes any payments made under the Supplementary Payments provisions of this policy including, but not limited to, expenses we incur to investigate or settle a claim, or to defend a "suit".
2. The deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
  - a. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
    - (1) Under Bodily Injury Liability coverage, to all damages sustained by any one person because of "Bodily Injury";
    - (2) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of Personal and Advertising Injury Liability.
    - (3) Under Property Damage Liability Coverage, to all damages sustained by any one person because of "Property Damage"; or

- (4) Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
- (a) "Bodily Injury";
  - (b) "Property Damage"; or
  - (c) "Bodily Injury" and "Property Damages" combined as a result of any one "occurrence".

If damages are claimed for care, loss of services or death resulting at any time from "Bodily Injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respect to "Property Damage" and "Personal and Advertising Injury Liability", person includes an organization.

- b. PER OCCURRENCE BASIS. If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:
- (1) Under Bodily Injury Liability Coverage, to all damages because of "Bodily Injury";
  - (2) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of Personal and Advertising Injury Liability.
  - (3) Under Property Damage Liability Coverage, to all damages because of "Property Damage"; or

- (4) Under Bodily Injury Liability and/or Property Damages Liability Coverage Combined, to all damages because of:
- (a) "Bodily Injury"
  - (b) "Property Damage"; or
  - (c) "Bodily Injury" and "Property Damage" combined,
- as a result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

- 3. The terms of this insurance, including those with respect to:
  - a. Our right and duty to defend any "suits" seeking those damages; and
  - b. Your duties in the event of an "occurrence", claim, or "suit" apply irrespective of the application of the deductible amount.
- 4. We may pay any part or all of the deductible amount to effect settlement of any claims or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
- 5. When used in this endorsement, damages includes any payments made under the Supplementary Payments provisions of this policy including, but not limited to, expenses we incur to investigate or settle a claim, or to defend a "suit".
- 6. If you do not promptly reimburse us for any deductible amount owed, then any cost incurred by us in collection of the deductible amount will be added and applied in addition to the applicable deductible amount without any limitation. These costs include, but are not limited to, collection agency fees, attorney's fees and interest.

Policy Number: CA000001043-06

AD 66 15 01 95

Effective Date: 10/02/2007

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

## **BOOM WARRANTY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

This policy does not apply to "Mobile Equipment" used for lifting a load exceeding the registered lifting or supporting capacity of the "Mobile Equipment."

Your failure to comply with the foregoing will automatically terminate coverage under this policy unless you have obtained prior consent from us and such consent has been endorsed to this policy.



Policy Number: CA000001043-06

AD 66 62 07 05

Effective Date: 10/02/2007

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

**SILICA EXCLUSION (ABSOLUTE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART

This insurance does not apply to any "bodily injury", "property damage" or "personal and advertising injury" related to actual, alleged, or threatened past, present or future claims arising in whole or in part, either directly or indirectly, out of mining, the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, ingestion of, testing for or failure to disclose the presence of, failure to warn or advise of silica, products containing silica, or products designed or used to protect from the inhalation, ingestion, contact with or any other exposure to silica, whether or not the silica is or was at any time airborne as a fume, dust, powder, fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to any loss, cost or expense including, but not limited to, payment for investigation or defense, fines, penalties, interest and other costs or expenses, arising out of or related to any:

- (1) Clean up or removal of silica or products and materials containing silica;

- (2) Such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of silica or products and material containing silica;
- (3) Disposal of silica substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- (4) Compliance with any law or regulation regarding silica;
- (5) Existence, storage, handling or transportation of silica;
- (6) Any supervision, instructions, recommendations, warranties (express or implied), warnings or advice given or which should have been given.

It is further agreed that for any claim made or suit brought which is excluded under the terms of this endorsement the Company shall not have the obligation to defend, adjust, investigate or pay any cost for investigation, defense, attorney fees or adjustment arising out of such claims.

Policy Number: CA000001043-06

AD 66 80 11 97

Effective Date: 10/02/2007

## INDEPENDENT CONTRACTOR INSURANCE AGREEMENT

It is agreed that the following Condition is added to SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS:

10. a. It is agreed that any independent contractors or subcontractors utilized by you shall have insurance of the type described in the Schedule below and with limits of insurance equal to or greater than those shown in the Schedule below.
- b. It is further agreed that you will obtain a certificate of insurance from your independent contractors or subcontractors stating that you have been named as an additional insured on the independent contractor's or subcontractor's insurance policy.

## INDEPENDENT CONTRACTORS PRIMARY INSURANCE SCHEDULE

COVERAGE

Commercial General Liability

LIMITS OF INSURANCE

General Aggregate Limit (Other than Products-Completed Operations)	\$ 1,000,000.00
Products-Completed Operations Aggregate Limit	\$ 1,000,000.00
Personal and Advertising Injury Limit	\$ 1,000,000.00
Each Occurrence Limit	\$ 1,000,000.00

Your failure to obtain the certificates of insurance as described above will not invalidate the insurance provided by this policy or relieve us of our obligation to you under the terms of this policy except as stated below. However, for the purposes of determining the earned premium at audit, we will apply the rate shown for sales on the COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS against the amount of subcontracted work for which you did not obtain a certificate of insurance.

It is further agreed that 4. Other Insurance and 5. Premium Audit as shown under SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS are amended with the addition of the following additional conditions:

## 4. Other Insurance. Section b. Excess Insurance

This insurance is excess over any other insurance available to you as an additional insured from any independent contractor or subcontractor or on any other basis, whether such insurance is primary, excess, or contingent:

- (1) That is fire, extended coverage, builders risk, installation risk, or similar coverage for "your work";
- (2) That is fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos", or watercraft to the extent not subject to Exclusion g. of COVERAGE A (SECTION I); or
- (4) If the loss arises out of work performed for you or on your behalf or a product manufactured for you or on your behalf by an independent contractor or subcontractor.

The remainder of Condition 4. remains unchanged.

5. Premium Audit

- d. The first named insured must keep copies of all certificates of insurance obtained from all independent contractors or subcontractors in accordance with the Independent Contractors Primary Insurance Schedule.

Policy Number: CA000001043-06

AD 67 19 07 05

Effective Date: 10/02/2007

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

## **CONDOMINIUM CONVERSION EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

It is agreed this insurance does not apply to liability arising in whole or in part, either directly or indirectly, out of any past, present or future job or project performed by or on behalf of any insured or others involving the construction, repair, remodeling, renovation, maintenance, change or modification of any structure, if the structure is or has been converted, changed or modified at any time by or on behalf of any insured or others to condominiums, townhomes or townhouses.

It is further agreed that for any claim or "suit" brought which is excluded under the terms of this endorsement, we will have no obligation to defend, adjust or investigate or pay any cost for investigation, defense, adjustment or attorney fees arising out of or related to such claim or "suit".

All other terms and conditions remain unchanged.

Policy Number: CA000001043-06

AD 67 20 07 05

Effective Date: 10/02/2007

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

**BERYLLIUM EXCLUSION (ABSOLUTE)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
PROFESSIONAL LIABILITY COVERAGE PART

This insurance does not apply to any "bodily injury", "property damage" or "personal and advertising injury" related to actual, alleged or threatened past, present or future claims arising in whole or in part, either directly or indirectly, out of mining, the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation, abatement, replacement or handling of, exposure to, testing for or failure to disclose the presence of beryllium, products containing beryllium, or products designed or used to protect from the inhalation, ingestion, contact with or other exposure to beryllium whether or not the beryllium is or was at any time airborne as a fume, dust, powder, fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to any loss, cost or expense including but not limited to, payment for investigation or defense, fines, penalties, interest and other costs or expenses, arising out of or related to any:

- (1) Clean up or removal of beryllium or products and materials containing beryllium;

- (2) Such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of beryllium or products and material containing beryllium;
- (3) Disposal of beryllium substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result;
- (4) Compliance with any law or regulation regarding beryllium;
- (5) Existence, storage, handling or transportation of beryllium;
- (6) Any supervision, instructions, recommendations, warranties (express or implied), warnings or advice given or which should have been given.

It is further agreed that for any claim made or suit brought which is excluded under the terms of this endorsement the Company shall not have the obligation to defend, adjust, investigate or pay any cost for investigation, defense, attorney fees or adjustment arising out of such claims.

Policy Number: CA000001043-06

AD 67 23 08 05

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****EMPLOYMENT-RELATED PRACTICES EXCLUSION**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART****A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any "wrongful employment act(s)"; or
- (2) The spouse, child, parent, brother, sister or registered domestic partner of that person as a consequence of "bodily injury" to that person at whom any of the "wrongful employment act(s)" described in Paragraph (1) above is directed.

This exclusion applies:

- (1) Whether any insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

This insurance does not apply to:

"Personal and advertising injury" to:

- (1) A person arising out of any "wrongful employment act(s)"; or
- (2) The spouse, child, parent, brother, sister or registered domestic partner of that person as a consequence of "personal and advertising injury" to that person at whom any of the "wrongful employment act(s)" described in Paragraph (1) above is directed.

This exclusion applies:

- (1) Whether any insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

**C. Additional Definitions:**

- (1) "Wrongful employment act(s)" means any of the following actual, alleged or related acts committed

by or on behalf of any insured arising out of an actual or potential employment relationship with any person:

- (a) Discrimination or harassment because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law which results in termination of the employment relationship, or demotion, or failure or refusal to hire or promote, or failure to accommodate an "employee" or potential "employee", or denial of an employment privilege, or the taking of any adverse or differential employment action; or
- (b) Sexual harassment including unwelcome sexual advances, requests for sexual favors or other conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, or creates an intimidating, hostile or offensive work environment that interferes with work performance; or
- (c) Termination, constructive discharge, wrongful failure to hire, wrongful demotion, retaliation, misrepresentation, infliction of emotional distress, defamation, invasion of privacy, humiliation, wrongful evaluation, or breach of an implied contract or agreement relating to employment, whether arising out of any personnel manual, policy statement or oral representation; or
- (d) Training or failing to train any "employee" in accordance with any applicable federal, state or local law, regulation, ordinance, rule, guidance document or policy directive enacted or adopted for the purpose of preventing "wrongful employment act(s)"; or
- (e) Failure to comply with any applicable federal, state or local law, regulation, ordinance, rule, guidance document or policy directive related to the prevention of "wrongful employment act(s)".

Policy Number: CA000001043-06

AD 67 22 08 05

Effective Date: 10/02/2007

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

**RESIDENTIAL CONSTRUCTION ACTIVITIES EXCLUSION  
(EXCEPT APARTMENTS AND REPAIR OR REMODELING  
OF SINGLE-FAMILY DWELLINGS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS - COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY COVERAGE PART

It is agreed this insurance does not apply to liability arising in whole or in part, either directly or indirectly, out of any past, present or future "residential construction activities" performed by or on behalf of any insured or others.

For the purposes of this endorsement, "residential construction activities" means any work or operations related to any job or project involving the construction, repair, remodeling, renovation, maintenance, change or modification of single-family dwellings, multi-family dwellings (other than apartments), condominiums, townhomes, townhouses, and/or cooperatives, whether or not the job or project includes structures or space other than single-family dwellings, multi-family dwellings (other than apartments), townhomes, townhouses or cooperatives.

This exclusion does not apply to repair or remodeling of single-family dwellings which were or are certified for occupancy prior to commencement of such repair or remodeling work performed by you or on your behalf.

It is further agreed that for any claim made or suit brought which is excluded under the terms of this endorsement, we will have no obligation to defend, adjust or investigate or pay any cost for investigation, defense, adjustment or attorney fees arising out of or related to such claims.

All other terms and conditions remain unchanged.

Policy Number: CA000001043-06

AD 67 40 08 07

Effective Date: 10/02/2007

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

## **ABSOLUTE UNSOLICITED COMMUNICATIONS EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
RAILROAD PROTECTIVE LIABILITY COVERAGE PART

This insurance does not apply to liability, injury or damages of any kind, to include but not limited to "bodily injury", "property damage" and "personal and advertising injury", including costs or expenses, actually or allegedly arising out of, related to, caused by, contributed to by, or in any way connected with "unsolicited communications" made by or on behalf of any insured.

"Unsolicited communications" means any form of communication, distribution, or the transmittal or publication of information or material, including, but not limited to facsimile, electronic mail, postal mail, express mail, telephone, internet or web-based advertisement, instant message, SMS message or text message that the recipient has not specifically requested.

"Unsolicited communications" includes, but is not limited to actual or alleged violations of:

1. The Telephone Consumer Protection Act (47 U.S.C. §227), including any amendment of, or addition to, such statute;
2. The Controlling the Assault of Non-Solicited Pornography and Marketing Act (15 U.S.C.

§7701, *et seq.*), including any amendment of, or addition to, such statute; or

3. Any other statute, ordinance or regulation relating to the communication, distribution or transmittal of unwanted content, information or material.

This exclusion also applies to any liability or "bodily injury" or "property damage" or "personal and advertising injury" for which the insured is obligated, or is alleged to be obligated, to pay damages or defend any claim or "suit" by reason of the assumption of liability in an "Insured contract."

This insurance does not apply to any other liability or "bodily injury" or "property damage" or "personal and advertising injury" in any claim or "suit" in which allegations of "unsolicited communications" are also made.

We shall have no duty to defend any insured against any claim or "suit" alleging damages arising out of or related to liability or "bodily injury" or "property damage" or "personal and advertising injury" to which this exclusion applies.



Policy Number: CA000001043-06

AI 07 10 02 07

Effective Date: 10/02/2007

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

## **SERVICE OF SUIT STATE OF CALIFORNIA**

In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America or Canada and will comply with all requirements necessary to give such court jurisdiction and all matters arising hereunder shall be determined in accordance with the law and practice of such Court.

Service of process in such suit in the State of California may be made upon:

Daniel A. MacDonald  
Senior Vice President /Claims  
Admiral Insurance Company  
1255 Caldwell Road  
P.O. Box 5725  
Cherry Hill, New Jersey 08034; or  
C T Corporation System  
818 West 7th Street,  
Los Angeles, CA 90017

In any suit instituted against any one of them upon this contract, we will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on our behalf in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America or province of Canada, which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and we hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Policy Number: CA000001043-06

AI 07 34 01 05

Effective Date: 10/02/2007

## CALIFORNIA DISCLOSURE NOTICE

### NOTICE:

1. THE INSURANCE POLICY THAT YOU HAVE PURCHASED IS BEING ISSUED BY AN INSURER THAT IS NOT LICENSED BY THE STATE OF CALIFORNIA. THESE COMPANIES ARE CALLED "NONADMITTED" OR "SURPLUS LINES" INSURERS.
2. THE INSURER IS NOT SUBJECT TO THE FINANCIAL SOLVENCY REGULATION AND ENFORCEMENT WHICH APPLIES TO CALIFORNIA LICENSED COMPANIES.
3. THE INSURER DOES NOT PARTICIPATE IN ANY OF THE INSURANCE GUARANTEE FUNDS CREATED BY CALIFORNIA LAW. THEREFORE, THESE FUNDS WILL NOT PAY YOUR CLAIMS OR PROTECT YOUR ASSETS IF THE INSURER BECOMES INSOLVENT AND IS UNABLE TO MAKE PAYMENTS AS PROMISED.
4. CALIFORNIA MAINTAINS A LIST OF ELIGIBLE SURPLUS LINE INSURERS APPROVED BY THE INSURANCE COMMISSIONER. ASK YOUR AGENT OR BROKER IF THE INSURER IS ON THAT LIST.
5. FOR ADDITIONAL INFORMATION ABOUT THE INSURER YOU SHOULD ASK QUESTIONS OF YOUR INSURANCE AGENT, BROKER, OR "SURPLUS LINES" BROKER OR CONTACT THE CALIFORNIA DEPARTMENT OF INSURANCE AT THE FOLLOWING TOLL-FREE TELEPHONE NUMBER: 1-800-927-4357.
6. IF YOU, AS THE APPLICANT, REQUIRED THAT THE INSURANCE POLICY YOU HAVE PURCHASED BE BOUND IMMEDIATELY, EITHER BECAUSE EXISTING COVERAGE WAS GOING TO LAPSE WITHIN TWO BUSINESS DAYS OR BECAUSE YOU WERE REQUIRED TO HAVE COVERAGE WITHIN TWO BUSINESS DAYS, AND YOU DID NOT RECEIVE THIS DISCLOSURE FORM AND A REQUEST FOR YOUR SIGNATURE UNTIL AFTER COVERAGE BECAME EFFECTIVE, YOU HAVE THE RIGHT TO CANCEL THIS POLICY WITHIN FIVE DAYS OF RECEIVING THIS DISCLOSURE. IF YOU CANCEL COVERAGE, THE PREMIUM WILL BE PRORATED AND ANY BROKER FEE CHARGED FOR THIS INSURANCE WILL BE RETURNED TO YOU.

Policy Number: CA000001043-06

AI 08 35 09 01

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**MICROORGANISMS, BIOLOGICAL ORGANISMS OR**  
**ORGANIC CONTAMINANTS EXCLUSION**  
**(GENERAL LIABILITY BROAD FORM)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This insurance does not apply to:

- (1) Liability, injury or damages of any kind, to include but not limited to "bodily injury", "property damage", "personal and advertising injury" arising out of, related to, caused by or in any way connected with the exposure to, presence of, formation of, existence of or actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of any microorganisms, biological organisms or organic contaminants, including but not limited to mold, mildew, fungus, spores, yeast or other toxins, allergens, infectious agents, wet or dry rot or rust, or materials of any kind containing them at any time, regardless of the cause of growth, proliferation or secretion.

Or;

- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of microorganisms, biological organisms or organic contaminants, including but not limited to mold, mildew, fungus, spores, yeast, or other toxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.

- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of microorganisms, biological organisms or organic contaminants, including but not limited to mold, mildew, fungus, spores, yeast, or other toxins, allergens, infectious agents, wet or dry rot or rust, or any materials containing them at any time, regardless of the cause of growth, proliferation or secretion.

We shall have no duty to investigate, defend or indemnify any insured against any loss, claim, "suit" or other proceeding alleging injury or damages of any kind, to include but not limited to "bodily injury", "property damage", "personal injury and advertising injury" to which this endorsement applies.

Policy Number: CA000001043-06

AI 09 95 05 06

Effective Date: 10/02/2007

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****AVIAN INFLUENZA A (AVIAN FLU) –  
ABSOLUTE EXCLUSION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
 OWNERS & CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
 PROFESSIONAL LIABILITY COVERAGE PART

## Definitions:

1. As used in this endorsement, "Avian Flu" means any bodily injury, sickness, disease or death caused by any avian influenza virus, and also includes the avian influenza viruses themselves, including any variant or mutation of any avian influenza virus. Avian influenza viruses include all influenza A viruses, as well as all subtypes of these viruses, and any different strains of any subtypes. Avian Flu includes what is known colloquially as the "Bird Flu."

treat, detoxify or neutralize, or in any way respond to, or assess the presence, absence or amount or effects of any disease or sickness including but not limited to Avian Flu at any time.

- b. Claims, "suits," demands or fines by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of Avian Flu or any materials containing Avian Flu at any time; or

This insurance does not apply to:

1. Liability, injury or damages of any kind, to include but not limited to "bodily injury," "property damage," "personal and advertising injury," employers liability, or medical payments actually or allegedly arising out of, related to, caused by, contributed to by, or in any way connected with:
  - a. Avian Flu;
  - b. Exposure to Avian Flu; or
  - c. Use of any Avian Flu contaminated products.
2. The cost or expense of recall, abatement, mitigation, removal, disposal, testing or monitoring of products, stock, feed, feed additives or animals, or of any premises or equipment handling such items, as a result of any known or suspected connection with Avian Flu whether such items are owned by any insured or by others, and whether located at any insured's premises or anywhere else in the world; or
3. Any loss, cost or expense arising out of any:
  - a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain,

4. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with any of the subsections above; or
5. Any obligation to share damages with or repay someone else who must pay damages as described in any of the subsections above; or
6. Any Avian Flu related liability for which the insured is or may be obligated to pay damages by reason of the assumption of liability in a contract or agreement, including any liability assumed by the Insured under an insured contract; or
7. Any Avian Flu related liability regardless of any other cause, event, material or product that contributed concurrently or in any sequence to the Avian Flu related injury, damages, loss, cost or expense.

We shall have no duty to investigate, defend or indemnify any insured against any loss, claim, "suit," demand, fine or other proceeding alleging injury or damages of any kind, to include but not limited to "bodily injury," "property damage," "personal and advertising injury" to which this endorsement applies.

1 ERIC F. HARTMAN, ESQ. (SB # 083571)  
2 LAW OFFICE OF ERIC F. HARTMAN  
3 300 S. FIRST STREET, #210  
4 SAN JOSE, CA. 95113  
5 (408) 297-7254 / Fax (408) 297-0608

MX  
C147653

6 Attorney for Defendant, Wood's Roofing Inc., a California Corporation

7  
8 IN THE TRIBAL COURT OF  
9 BLUE LAKE RANCHERIA  
10

11  
12  
13 MAINSTAY BUSINESS SOLUTIONS, )  
14 Plaintiff, )  
15 vs. )  
16 )  
17 WOOD'S ROOFING INC., a California )  
18 Corporation, LAWRENCE E. WOOD, an )  
19 individual, DOES 1-10. )  
20 Defendants. )  
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CASE NO. C-09-0612-LJM

PROOF OF SERVICE  
RE: SUMMONS AND CROSS-COMPLAINT

**PROOF OF SERVICE**

State of California, County of Santa Clara

I, Johanna R. Hartman, am a resident of an/or employed in the aforesaid county, State of California :

I am over the age of 18 years and not a party to the within action. My business address is 300 S. First Street, #210, San Jose, Ca. 95113. On September 16, 2011, I served the foregoing :

**Summons and Cross-Complaint**

**Re: Mainstay Business Solutions v. Wood's Roofing Inc., et al.**

**Case No. C-09-0612-LJM**

to the interested parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows :

**Admiral Insurance Company**

1255 Caldwell Road  
Cherry Hill, Nj. 08034  
Attn: President

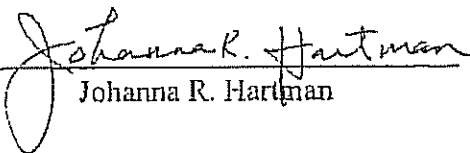
\_\_\_\_\_ **(By Telecopies)** I caused such document to be telecopied to the telephone number shown herein for the addressee attached hereto, and I telephoned the offices of the said addressee and confirmed that the document was received.

  x   **(By Certified Mail)** I caused such envelope with postage thereof fully paid to be placed in the United States mail at San Jose, California.

\_\_\_\_\_ **(By Personal Service)** I caused such envelope to be delivered by hand to the offices of the addressee.

  x   **(State)** I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 16, 2011.

  
\_\_\_\_\_  
Johanna R. Hartman

1 Regan Furcolo [SBN 162956]  
Lynn Trang [SBN 221808]  
2 WALSH MCKEAN FURCOLO LLP  
625 Broadway, Suite 1402  
San Diego, CA 92101-5420  
3 Telephone: (619) 232-8486  
Facsimile: (619) 232-2691  
4

**ENDORSED-FILED**

OCT. 25 2011  
CLERK OF THE TRIBAL COURT  
F. BLUE LAKE RANCHERIA  
*Lester J. Marston*

Attorneys for Cross-Defendant ADMIRAL INSURANCE COMPANY

7  
8 IN THE TRIBAL COURT OF  
9 BLUE LAKE RANCHERIA

10 MAINSTAY BUSINESS SOLUTIONS,

11 Plaintiff,

12 vs.

13 WOOD'S ROOFING INC., a California  
14 Corporation, DOES 1-10.

15 Defendants.

CASE NO. C-09-06212-LJM  
C-09-06212A-LJM

ADMIRAL INSURANCE COMPANY'S  
POINTS AND AUTHORITIES IN  
SUPPORT OF MOTION TO QUASH  
SUMMONS AND DISMISS CROSS-  
COMPLAINT

DATE: December 9, 2011

TIME: 1:30 p.m.

JUDGE: Hon. Lester J. Marston, Chief Judge

16  
17 WOOD'S ROOFING INC., a California  
18 Corporation,

19 Cross-Complainant.

20 vs.

21 UNITED CONTRACTORS INSURANCE  
22 COMPANY, INC., ADMIRAL  
23 INSURANCE COMPANY; ROES 1-100.

24 Cross-Defendants.  
25  
26  
27  
28

COMPLAINT FILED: 6/12/09  
TRIAL DATE: TBD

ADMIRAL INSURANCE COMPANY'S POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO  
QUASH SUMMONS AND DISMISS CROSS-COMPLAINT

Exhibit E

1 Cross-Defendant, Admiral Insurance Company ("Admiral"), hereby makes the following  
 2 special appearance to quash the summons and cross-complaint that has been filed against it in  
 3 this matter on the grounds that said documents have not been properly served and that this Court  
 4 lacks jurisdiction over Admiral and the cross-complaint.

5 **STATEMENT OF FACTS**

6 The first amended complaint ("FAC") in this matter alleges that "[o]n or about June 15,  
 7 2007, Plaintiff and defendant...entered into a written agreement...[which] was renewed on June  
 8 1, 2008." FAC ¶7. "Under the Agreement, Plaintiff assigned its employees to Wood's to work  
 9 at various Wood's worksites in exchange for consideration provided in the Agreement. The  
 10 Agreement established a co-employment relationship between the parties with respect the  
 11 assigned employees." FAC ¶8. Under this contract Wood's Roofing, Inc. ("WRI") is obligated  
 12 to "ensure a safe workplace" which included complying with Mainstay Business Solution's  
 13 ("Mainstay") workplace safety requirements. FAC ¶9. WRI allegedly breached this obligation  
 14 which resulted in injuries to Mainstay's employees on October 24, 2007, December 17, 2007 and  
 15 November 10, 2008. Under the contract, Mainstay was obligated to provide workers'  
 16 compensation benefits in accordance with applicable laws. FAC Exh. 1, Para. A.7.<sup>1</sup> After  
 17 paying out the benefits due to the injured employees, Mainstay filed this lawsuit seeking  
 18 indemnity from WRI for the monies it paid out.

19 Admiral had issued a Commercial General Liability insurance policy, number  
 20 CA000001043-06, to Larry Woods DBA: Woods Roofing for the period of September 28, 2007  
 21 to September 28, 2008. Cross-Complaint ¶4. WRI tendered Mainstay's lawsuit to Admiral who  
 22 denied coverage under this policy. Cross-Complaint ¶9. As a result, WRI filed the instant cross-  
 23 complaint and brought Admiral in as a party to the underlying litigation.  
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LEGAL ARGUMENT

**I. Admiral Has Not Been Properly Served with the Summons and Cross-Complaint**

Rule 14 of the Civil Rules of Procedure for the Tribal Court of the Tribe (“C.R.P.T.C.T.”) requires that “[i]f service must be made off the tribal trust land...services shall be made in accordance with the laws of the State in which the defendant to be served resides.” WRI’s cross-complaint indicates that Admiral is located in New Jersey. Cross-Complaint ¶2; see also, Proof of Service re: Summons and Cross-Complaint. Rule 4:4-4(a)(6) of the New Jersey Rules of Court requires *personal delivery* of a copy of the relevant pleadings “on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to reserve service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof.” Mailing a copy of the summons and cross-complaint to Admiral’s office is insufficient, which is all that WRI has done. WRI has not perfected service of the cross-complaint upon Admiral.

As directed in the Summons and CRPTCT Rule 15, Admiral respectfully denies the entirety of WRI’s cross-complaint and requests that the subject summons be properly quashed. Proper service is required to ensure that the party is on notice of the claims being made against it. As WRI has failed to comply with the service requirements, Admiral cannot be brought before this Court at this time.

**II. The Court Lacks Jurisdiction Over Admiral and the Cross-Complaint**

The Blue Lake Rancheria Tribal Court’s scope of jurisdiction is mandated and controlled by Blue Lake Rancheria Business Council Ordinance No. 07-01 (“Ordinance No. 07-01”). Under the heading subject matter jurisdiction, it states “[t]he Tribal Court shall have civil

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<sup>1</sup> See also, FAC Exh. 1, Second Amendment to the Standard Customer Agreement thereto; FAC Exh. 1, Alternate

1 jurisdiction over all matters in law or in equity which the Business Council *expressly authorizes*  
 2 *by ordinance.*" Section 11.1.1.030(A)(1), emphasis added. Thus, if WRI's cross-complaint does  
 3 not fall within an area the Court is authorized to have jurisdiction over, the cross-complaint must  
 4 also be dismissed due to lack of subject matter jurisdiction.

5 Section 11.1.1.030(2) of Ordinance No. 07-01 outlines the Court's territorial jurisdiction.  
 6 It states: "[t]he Tribal Court shall exercise civil jurisdiction...over all causes of action that arise  
 7 (1) on lands within the exterior boundaries of the Reservation and (2) on all lands owned by the  
 8 United States of America in trust for the Tribe." Clearly, the cross-complaint involves a contract  
 9 which was issued between non-members of the Tribe on non-reservation land. There is no  
 10 connection between the Admiral insurance policy and the Tribe's land. Neither Mainstay's  
 11 complaint nor WRI's cross-complaint involve Tribal land or even an incident which occurred on  
 12 tribal land. It is clear the Court has no territorial jurisdiction over the cross-complaint.  
 13

14 Section 11.1.1.030(3) of Ordinance No. 07-01 identifies the parties over whom the Court  
 15 shall have personal jurisdiction. It states:  
 16

17 The Scope of the Tribal Court's civil jurisdiction shall extend to the following:

- 18 (a) The Tribe;  
 19 (b) Legal entities owned by the Tribe;  
 20 (c) Persons or entities employed by the Tribe or its wholly owned legal  
 entities;  
 21 (d) Persons or entities who have entered into contracts with the Tribe or its  
 wholly owned legal entities;  
 22 (e) Persons or entities doing business within the territorial jurisdiction of the  
 Tribal Court;  
 23 (f) Tribal members;  
 24 (g) Anyone the Tribe formally recognizes as Indian;  
 25 (h) Other Indians;  
 26 (i) Anyone who consents to Tribal Court jurisdiction;  
 (j) Other individuals or entities whose conduct affects the ability of the Tribe  
 to govern itself;

27  
 28 Employer Endorsement Certificate thereto; and FAC Exh. 2, Para. A.6. and 13.

1 (k) All other individuals whose conduct threatens or has some direct effect on  
2 the political integrity, the economic security, or the health and welfare of  
3 the Tribe.

4 Admiral does not fit within any of these categories. It has no association or connection  
5 with the Tribe. Its contract is with WRI and has no bearing on the Tribe's autonomy and  
6 sovereignty. The Tribe has no direct interest in the Admiral insurance policy. Admiral likewise  
7 has done nothing to avail itself to the Tribe or the Tribe's land. Accordingly, the Court lacks  
8 personal jurisdiction over Admiral.

9 This leaves only the Court's ancillary jurisdiction which is found in Blue Lake Rancheria  
10 Business Council Ordinance No. 07-02 ("Ordinance No. 07-02"). Section 11.1.2.030 of this  
11 ordinance states that "[t]he tribal court shall have ancillary jurisdiction over any *non-contract*  
12 *claims* which arise out of the same transaction or occurrence, relate to or arise out of the  
13 contract, or are asserted as counter- or cross-claims in the same action." Emphasis added. The  
14 cross-complaint is clearly a contract dispute between Admiral and WRI. Accordingly, the  
15 court's ancillary jurisdiction does not reach this matter.

16 Moreover, we note that the cross-complaint is not the typical type of claim over which  
17 ancillary jurisdiction would normally exist. The United States Supreme Court explained the  
18 doctrine of ancillary jurisdiction as follows:

19  
20 Generally speaking, we have asserted ancillary jurisdiction (in the very broad  
21 sense in which that term is sometimes used) for two separate, though sometimes  
22 related, purposes: (1) to permit disposition by a single court of claims that are, in  
23 varying respects and degrees, factually interdependent, and (2) to enable a court to  
24 function successfully, that is, to manage its proceedings, vindicate its authority,  
25 and effectuate its decrees. *Fed. Sav. and Loan Ins. Corp. v. Ferrante* (Cal. 2004)  
26 364 F.3d 1037, 1039-1040, citing *Kokkenen v. Guardian Life Ins. Co.* (1994) 511  
27 U.S. 375, 379-380.<sup>2</sup>

28 <sup>2</sup> Section 11.1.1.060 of Ordinance No. 07-01 states that "[i]n the absence of applicable tribal law, the Court shall use as guidance the laws of the State of California, the laws of other federally recognized Tribes and federal law."

1           WRI's cross-complaint does not fall under either criteria. Resolution of any disputes  
2 between WRI and Admiral, on the one hand, and between WRI and Mainstay, on the other, are  
3 wholly independent of each other. Nor will dismissing WRI's cross-complaint make the Court  
4 any less effective in resolving Mainstay's complaint.

5           The only conclusion based on the foregoing is the Court has no jurisdiction over Admiral  
6 or the cross-complaint. "The question whether an Indian tribe retains the power to compel a  
7 non-Indian...to submit to the civil jurisdiction of a tribal court is one that must be answered by  
8 reference to federal law and is a 'federal question' under § 1331." *National Farmers Union Ins.*  
9 *Co. v. Crow Tribe of Indians* (1985) 471 US 845, 852. A review of federal court decisions  
10 makes it clear that the Court is exceeding its jurisdiction in this matter.

11           "Absent express authorization by federal statute or treaty, tribal jurisdiction over the  
12 conduct of nonmembers exists only in limited circumstances." *Strate v. A-1 Contractors* (1997)  
13 520 U.S. 438, 445. "[T]he inherent sovereign powers of an Indian tribe' – those powers a tribe  
14 enjoys apart from expression provision by treaty or statute – 'do not extend to the activities of  
15 nonmembers of the tribe.'" *Id.* at 445-446, citing *Montana v. US* (1981) 450 U.S. 544, 565.  
16 "Montana thus describes a general rule that, absent a different congressional direction, Indian  
17 tribes lack civil authority over the conduct of non-members on non-Indian land...subject to two  
18 exceptions: The first exception relates to nonmembers who enter consensual relationships with  
19 the tribe or its members; the second concerns activities that directly affects the tribe's political  
20 integrity, economic security, health, or welfare." *Id.* at 446. More directly to the point, "a non-  
21 Indian's breach of an independent duty to another non-Indian, occurring off of the reservation,  
22 falls without the nebulous confines of a 'reservation affair' and does not arise on the  
23 reservation." *Stock West Corp. v. Taylor* (9<sup>th</sup> Cir. 1991) 942 F.2d 655, 663.  
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1 The miniscule connection between Admiral and the Tribe does not suffice for purposes of  
2 finding jurisdiction exists. "As the Supreme Court has stated, '[t]he impact must be  
3 demonstrably serious and must imperil the political integrity, the economic security, or the health  
4 and welfare of the tribe.'" *Yellowstone County v. Pease* (Mont. 1996) 96 F.3d 1169, 1177, citing  
5 *Brendale v. Confederated Tribes and Bands of Yakima Indian Nation* (1989) 492 U.S. 408, 431.  
6 The lone fact that Admiral insures a non-Indian who did business with a wholly owned tribal  
7 entity does not meet the only exceptions available under *Montana* to bring Admiral before this  
8 Court. WRI's cross-complaint must be dismissed for lack of jurisdiction.  
9

10 **III. The Court Should Decline to Exercise any Jurisdiction It May Have Over the**  
11 **Cross-Complaint**

12 Assuming jurisdiction exists in this matter, Ordinance No. 07-01 directs that the Court  
13 "may decline to exercise its jurisdiction if it finds any of the following to exist: (1) another court  
14 has the jurisdiction to hear the case and would be more convenient for the parties than the Tribal  
15 Court; (b) One or more of the parties is not a person over which the Tribal Court can exercise its  
16 authority; or (c) The case is of such a nature that the Tribal Court should not hear it." Section  
17 11.1.1.030(1). The cross-complaint filed against Admiral is no better example of a case where  
18 the Court should decline to exercise any jurisdiction it may have over it. The dispute between  
19 Admiral and WRI can properly be heard in another court system where Admiral would be  
20 amenable to service of process. Adjudicating the dispute elsewhere would also be much more  
21 convenient for the parties since there is no connection to the Blue Lake Rancheria area for either  
22 Admiral, WRI or any potential witnesses. Moreover, Admiral fits the description as a party over  
23 which the Court has no authority. It would also not be surprising if co-Cross-Defendant, United  
24 Contractors Insurance Company, also fits the bill as a party over whom the Court cannot exercise  
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1 authority. Without Admiral and United Contractors' presence in the action, the cross-complaint  
2 cannot be resolved.

3 It is also clear that the dispute outlined in the cross-complaint is better served to be  
4 adjudicated in another court system. While this Court is just as skilled as any other court to  
5 resolve a contract dispute, it will nevertheless have to rely on case law from other jurisdictions as  
6 to insurance disputes and the intricacies of interpreting insurance contracts, having no body of  
7 case law of its own to derive from. In fact, the Tribe has acknowledged that it will need to utilize  
8 California law to resolve contract disputes having adopted "the contract law of the State or  
9 California, set forth in California Civil Code §1427 through 1742...as the contract law of the  
10 Blue Lake Rancheria." Ordinance No. 07-02, Section 11.1.2.020. It would quite simply be a  
11 waste of the Court and Tribe's resources to adjudicate a dispute which has no connection with  
12 the Tribe and would inevitably result in an unenforceable verdict.  
13

14 CONCLUSION

15 For all the foregoing reasons, the summons which names Admiral should be quashed and  
16 WRI's cross-complaint against Admiral should be dismissed without leave to amend. Admiral  
17 has not been properly served with the cross-complaint. The Court has no form of jurisdiction to  
18 adjudicate WRI's cross-complaint against Admiral. Lastly, even if jurisdiction exists, the Court  
19 should decline to exercise the same since that would be in the best interests of the parties, the  
20 Court and the Tribe.  
21

22 DATED: October 17, 2011

23 WALSH MCKEAN FURCOLO LLP

24 By: 

25 Regan Furcolo  
26 Lynn Trang  
27 Attorneys for Cross-Defendant  
28 ADMIRAL INSURANCE COMPANY

ENDORSED-FILED

OCT 27 2011  
CLERK OF THE TRIBAL COURT  
BLUE LAKE RANCHERIA  
*Quinta M. Kelly*

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IN THE TRIBAL COURT FOR THE BLUE LAKE RANCHERIA

MAINSTAY BUSINESS SOLUTIONS,	)	Case No. C-09-0612 LJM
	)	
Plaintiff,	)	ORDER AFTER HEARING ESTABLISHING
	)	CASE SCHEDULE
v.	)	
	)	
WOOD'S ROOFING, INC., et al.,	)	
	)	
Defendants.	)	
<hr/>		
WOOD'S ROOFING INC., a California	)	Case No. C-09-0612-A LJM
Corporation;	)	
	)	ORDER AFTER HEARING ESTABLISHING
Cross-Complainant,	)	CASE SCHEDULE
	)	
v.	)	
	)	
UNITED CONTRACTORS	)	
INSURANCE COMPANY INC.;	)	
ADMIRAL INSURANCE COMPANY;	)	
ROES I-100,	)	
	)	
Cross-Defendants.	)	

This matter came on for a mandatory settlement conference on October 6, 2011, at 1:30 p.m., before the Honorable Lester J. Marston, Chief Judge. Eric F. Hartman, attorney, appeared telephonically on behalf of the defendants and cross-complainant, along with his client, Lawrence Woods. Michael A. Peart, attorney, appeared telephonically on behalf of plaintiff, Mainstay Business Solutions, along with his client, Eric Ramos. Cross-defendants, United Contractors Insurance Company Inc. and Admiral Insurance Company, failed to appear.

Exhibit F

1 After considering the representations of the parties that the cross-defendants had been  
2 served with a copy of this Court's August 18, 2011, Order staying proceedings in *Mainstay*  
3 *Business Solutions v. Woods Roofing Inc., et al.*, Case No. C-09-0612 LJM ("Mainstay");  
4 bifurcating *Woods Roofing Inc. v. United Contractors Insurance Company, Inc., et al.*, Case  
5 No. C-09-0612-A LJM ("Woods") from *Mainstay*, and setting a mandatory settlement  
6 conference in both *Mainstay* and *Woods* for October 6, 2011, and good cause appearing  
7 therefor;

8 IT IS HEREBY ORDERED that:

9 1 The parties in *Woods* shall file cross-motions for summary judgment addressing  
10 the following issues: (1) does the Court have personal jurisdiction over the cross-defendants;  
11 (2) does the Court, as a matter of tribal law, have subject matter jurisdiction over the cross-  
12 defendants; (3) does the Court, as a matter of federal law, have subject matter jurisdiction over  
13 the cross-defendants, and (4) do the cross-defendants have an obligation to tender a defense on  
14 behalf of Woods Roofing in this case pursuant to policies of insurance entered into between  
15 cross-complainant and cross-defendants.

16 2. The parties' opening briefs shall be filed with the Court on November 10, 2011.  
17 Opposition briefs shall be filed by the parties on November 25, 2011. Reply briefs shall be  
18 filed by the parties on December 2, 2011. Mainstay Business Solutions may file an amicus  
19 brief on November 10, 2011, as well as a reply brief to any arguments made in any of the  
20 parties' oppositions briefs on December 2, 2011.

21 3. A hearing on the cross-motions for summary judgment is scheduled for  
22 December 9, 2011. The parties shall appear in person at the Blue Lake Tribal Court.

23 4. Any violation of this Order by any party may result in the imposition of  
24 sanctions. All previous orders of this Court issued in *Mainstay* and *Woods* not in conflict with  
25 this Order shall remain in effect.

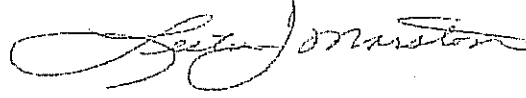
26 5. If any party has an existing conflict with the schedule or dates established in this  
27 Order, they can contact the Clerk of the Court and request a scheduling conference.

28 6. The Clerk of the Court is directed to serve a copy of this Order on all of the



1 parties in both the *Mainstay* and *Woods* cases.

2 DATED: October 26, 2011

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6 LESTER J. MARSTON, Chief Judge  
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1 After considering the representations of the parties regarding the calendaring and setting  
2 of a hearing on the cross-defendant's notice of motion to quash summons and dismiss cross-  
3 complaint, and the parties' response to the briefing schedule established in the Court's order of  
4 October 27, 2011, and good cause appearing therefor:

5 IT IS HEREBY ORDERED that:

6 1. A hearing on Admiral Insurance Company's motion to quash summons and  
7 dismiss cross-complaint ("Motion to Quash") set for December 9, 2011, is vacated. The Court  
8 will set a hearing on the Motion to Quash after the Court hears oral arguments on the  
9 jurisdictional issues set for hearing on February 17, 2012.

10 2. The briefing schedule established in the Court's October 27, 2011, Order to  
11 address the jurisdictional issues and cross-defendants' obligation to tender a defense on behalf  
12 of Woods Roofing in these consolidated cases is vacated.

13 3. The parties in *Woods Roofing Inc., a California corporation, v. United*  
14 *Contractors Insurance Company, Inc.; Admiral Insurance Company; Does 1-100*, Case No. C-  
15 09-0612-A-LJM, shall file cross-motions for summary judgment addressing the following  
16 issues: (1) Does the Court have personal jurisdiction over the cross-defendants?; (2) Does the  
17 Court, as a matter of tribal law, have subject matter jurisdiction over the cross-defendants?; (3)  
18 Does the Court, as a matter of federal law, have subject matter jurisdiction over the cross-  
19 defendants?, and (4) Do the cross-defendants have an obligation to tender a defense on behalf  
20 of Woods Roofing in this case, pursuant to policies of insurance entered into between cross-  
21 complainant and cross-defendants?

22 4. The parties' opening briefs shall be filed with the Court on January 17, 2012.  
23 Opposition briefs shall be filed by the parties on February 3, 2012. Reply briefs shall be filed  
24 by the parties on February 20, 2012. Mainstay Business Solutions may file an amicus brief on  
25 February 3, 2012, as well as a reply brief to any arguments made in any of the parties'  
26 opposition briefs on February 10, 2012.

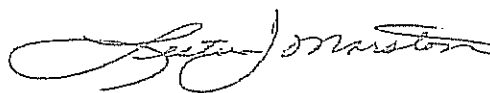
27 5. A hearing on the cross-motions for summary judgment is scheduled for February  
28 17, 2012, at 1:30 p.m. All parties shall appear in person at the Blue Lake Tribal Court located

1 on the Blue Lake Rancheria to present oral argument on the cross-motions for summary  
2 judgment.

3 6. Any violation of this order by any party may result in the imposition of  
4 sanctions. All previous orders of this Court issued in these consolidated cases, not in conflict  
5 with this order, shall remain in effect.

6 7. The Clerk of the Court is directed to serve a copy of this order on all of the  
7 parties in both consolidated cases.

8 DATED: December 20, 2011



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11 LESTER J. MARSTON, Chief Judge

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1 Regan Furcolo (SBN 162956)  
Lynn Trang (SBN 221808)  
2 Christopher M. Lea (207723)  
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Facsimile: (619) 232-2691

ENDORSED-FILED

DEC 21 2011  
CLERK OF THE TRIBAL COURT  
BLUE LAKE RANCHERIA  
*Quinta Delgado*

5 Attorneys for Cross-Defendant ADMIRAL INSURANCE COMPANY

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7  
8 IN THE TRIBAL COURT OF  
9 BLUE LAKE RANCHERIA

10 MAINSTAY BUSINESS SOLUTIONS,

11 Plaintiff,

12 vs.

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14 WOOD'S ROOFING INC., a California  
Corporation, DOES 1-10.

15 Defendants.

16  
17 WOOD'S ROOFING INC., a California  
Corporation,

18 Cross-Complainant.

19 vs.

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21 UNITED CONTRACTORS INSURANCE  
22 COMPANY, INC., ADMIRAL  
INSURANCE COMPANY; ROES 1-100.

23 Cross-Defendants.  
24  
25  
26

CASE NO. C-09-06212-LJM  
C-09-06212A-LJM

EX PARTE APPLICATION OF CROSS-  
DEFENDANT ADMIRAL INSURANCE  
COMPANY FOR AN ORDER  
MODIFYING THE EXISTING HEARING  
DATES FOR ADMIRAL'S MOTION TO  
DISMISS FOR LACK OF JURISDICTION,  
OR IN THE ALTERNATIVE, AN ORDER  
CONTINUING THE CURRENTLY  
SCHEDULED DEADLINE FOR FILING  
MOTIONS FOR SUMMARY JUDGMENT;  
DECLARATION OF LYNN TRANG

[PROPOSED ORDER FILED  
CONCURRENTLY HEREWITH]

DATE: January 6, 2012  
TIME: 1:30 p.m.  
JUDGE: Hon. Lester J. Marston, Chief Judge

COMPLAINT FILED: 6/12/09  
TRIAL DATE: TBD

27  
28  
Exhibit H

EX PARTE APPLICATION OF CROSS-DEFENDANT ADMIRAL INSURANCE COMPANY FOR AN ORDER  
MODIFYING THE EXISTING HEARING DATES FOR ADMIRAL'S MOTION TO DISMISS FOR LACK OF  
JURISDICTION, OR IN THE ALTERNATIVE, AN ORDER CONTINUING THE CURRENTLY SCHEDULED  
DEADLINE FOR FILING MOTIONS FOR SUMMARY JUDGMENT; DECLARATION OF LYNN TRANG

1 TO THE CLERK OF THE COURT, ALL PARTIES HEREIN AND TO THEIR  
2 COUNSEL OF RECORD:

3 PLEASE TAKE NOTICE that Cross-Defendant ADMIRAL INSURANCE COMPANY,  
4 (hereinafter "ADMIRAL"), will specially appear and apply *ex parte* of the above-entitled court,  
5 located at 428 Chartin Road, Blue Lake, CA 95525, on January 6, 2012, at 1:30 p.m.

6 This *ex parte* application is made by Cross-Defendant on the following grounds:

- 7 1. Admiral Insurance Company's Notice of Motion to Quash Summons and Dismiss  
8 Cross-Complaint is a "jurisdictional" issue and needs to be heard prior to filing any  
9 motion for summary judgment. The hearing/briefing schedule ordered by the Court  
10 forces ADMIRAL to expend significant resources to file a motion for summary  
11 judgment when it contends it is not subject to the jurisdiction of this Court. The  
12 Motion to Dismiss was previously filed with this Court on October 18, 2011 and the  
13 original hearing date of December 9, 2011 was just vacated by this Court on  
14 December 8, 2011. The new hearing date for the Motion to Dismiss comes after  
15 Admiral would be required to file a cross-motion for summary judgment. In the  
16 alternative, ADMIRAL seeks an order modifying the briefing schedule this Court set  
17 for filing cross-motions for summary judgment to a date at least 2 weeks after the  
18 hearing on the Motion to Dismiss.

19 This Application is based upon this Notice, Memorandum of Points and Authorities, the  
20 accompanying Declaration of Lynn Trang with attached exhibits, [proposed] order, the papers  
21 and pleadings on file with this Court for which judicial notice is requested, and such other and  
22 further oral and documentary evidence as may be presented at the time of hearing on this matter.

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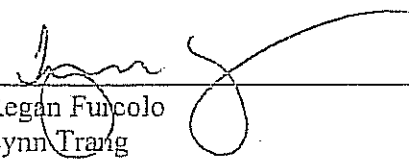
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28 *EX PARTE* APPLICATION OF CROSS-DEFENDANT ADMIRAL INSURANCE COMPANY FOR AN ORDER  
MODIFYING THE EXISTING HEARING DATES FOR ADMIRAL'S MOTION TO DISMISS FOR LACK OF  
JURISDICTION, OR IN THE ALTERNATIVE, AN ORDER CONTINUING THE CURRENTLY SCHEDULED  
DEADLINE FOR FILING MOTIONS FOR SUMMARY JUDGMENT; DECLARATION OF LYNN TRANG

1 DATED: December 20, 2011

WALSH MCKEAN FURCOLO LLP

2  
3 By:   
4 Regan Fulcolo  
5 Lynn Trang  
6 Christopher M. Lea  
7 Attorneys for Cross-Defendant  
8 ADMIRAL INSURANCE COMPANY

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28 *EX PARTE* APPLICATION OF CROSS-DEFENDANT ADMIRAL INSURANCE COMPANY FOR AN ORDER MODIFYING THE EXISTING HEARING DATES FOR ADMIRAL'S MOTION TO DISMISS FOR LACK OF JURISDICTION, OR IN THE ALTERNATIVE, AN ORDER CONTINUING THE CURRENTLY SCHEDULED DEADLINE FOR FILING MOTIONS FOR SUMMARY JUDGMENT; DECLARATION OF LYNN TRANG

WALSH MCKEAN FURCOLO LLP  
625 BROADWAY  
SUITE 1402  
SAN DIEGO, CALIFORNIA  
92101-5470  
PHONE (619) 732-6465

MEMORANDUM OF POINTS AND AUTHORITIES

I. AUTHORITY

In the absence of applicable tribal law, the Court shall use as guidance the laws of the State of California... (Blue Lake Rancheria Business Council Ordinance No. 07-01, Section 11.1.1.060.) The Ordinance is silent on the issue of the Tribal Court's authority to make orders. California Rules of Court, Rule 3.1300, subd. (b) provides that: "The court, on its own motion or on application for an order shortening time supported by a declaration showing good cause, may prescribe shorter times for the filing and service of papers than the times specified in Code of Civil Procedure section 1005." In addition, this Court has power under CCP section 128(8) to "amend and control its process and orders so as to make them conform to law and justice."

II. GOOD CAUSE EXISTS TO MOVE THE HEARING DATES

Cross-Defendant, Admiral Insurance Company ("ADMIRAL"), was brought into the action by Woods Roofing, Inc. ("WRI") in an attempt to seek insurance benefits under the policy of insurance issued by Admiral to WRI. ADMIRAL contends in its Motion to Dismiss that it was not properly served with the complaint and is not subject to the jurisdiction of this Court.

Specifically, Rule 14 of the Civil Rules of Procedure for the Tribal Court of the Tribe ("C.R.P.T.C.T.") requires that "[i]f service must be made off the tribal trust land...services shall be made in accordance with the laws of the State in which the defendant to be served resides." WRI's cross-complaint indicates that Admiral is located in New Jersey. Rule 4:4-4(a)(6) of the New Jersey Rules of Court requires *personal delivery* of a copy of the relevant pleadings "on any officer, director, trustee or managing or general agent, or any person authorized by appointment or by law to reserve service of process on behalf of the corporation, or on a person at the registered office of the corporation in charge thereof." Accordingly, ADMIRAL has not been properly served with the cross-complaint.

Jurisdiction "will involve no arduous inquiry" and both judicial economy and the consideration ordinarily accorded the plaintiff's choice of forum "should impel the federal court



1 to dispose of [those] issue[s] first.” *Ruhrgas*, 526 U.S., at 587–588, 119 S.Ct. 1563. Section  
 2 11.1.1.030(2) of Ordinance No. 07-01 outlines the Court’s territorial jurisdiction. It states: “[t]he  
 3 Tribal Court shall exercise civil jurisdiction...over all causes of action that arise (1) on lands  
 4 within the exterior boundaries of the Reservation and (2) on all lands owned by the United States  
 5 of America in trust for the Tribe.” Clearly, the cross-complaint involves a contract which was  
 6 issued between non-members of the Tribe on non-reservation land. There is no connection  
 7 between the Admiral insurance policy and the Tribe’s land. Neither Mainstay’s complaint nor  
 8 WRI’s cross-complaint involve Tribal land or even an incident which occurred on tribal land. It  
 9 is clear the Court has no territorial jurisdiction over the cross-complaint.

10 Recognizing that ADMIRAL was not properly served and there is no jurisdiction over the  
 11 cross-complaint, on or about October 18, 2011, ADMIRAL filed a Notice of Motion to Dismiss  
 12 the Cross-Complaint. The original hearing date for the Motion to Dismiss was December 9,  
 13 2011. It was not until December 8, 2011 that Admiral received confirmation the Court had  
 14 vacated the December 9, 2011 date and ordered that the Motion to Dismiss would be heard on  
 15 the same date (February 17, 2012) as the hearing for any cross-motions for summary judgment.  
 16 Under this hearing schedule, ADMIRAL would be forced to file its opening brief on its motion  
 17 for summary judgment on January 17<sup>th</sup>. ADMIRAL adamantly disputes that it was properly  
 18 served and that it would be subject to the jurisdiction of this Court. As such, it would be unfair  
 19 to force ADMIRAL to expend significant resources on filing a Motion for Summary Judgment  
 20 on its meritorious coverage defenses when the threshold jurisdictional issue has yet to be  
 21 decided.

### 22 III. CONCLUSION

23 ADMIRAL requests that its Motion to Dismiss for Lack of Jurisdiction be heard prior to  
 24 filing opening briefs on cross-motions for summary judgment. This can be accomplished by  
 25 moving the hearing date for ADMIRAL’s Motion to Dismiss to early January. In the alternative,  
 26 the Court can keep the February 17, 2012 hearing date for the Motion to Dismiss and move the

27  
 28 *EX PARTE* APPLICATION OF CROSS-DEFENDANT ADMIRAL INSURANCE COMPANY FOR AN ORDER  
 MODIFYING THE EXISTING HEARING DATES FOR ADMIRAL’S MOTION TO DISMISS FOR LACK OF  
 JURISDICTION, OR IN THE ALTERNATIVE, AN ORDER CONTINUING THE CURRENTLY SCHEDULED  
 DEADLINE FOR FILING MOTIONS FOR SUMMARY JUDGMENT; DECLARATION OF LYNN TRANG

1 briefing schedule for the motions for summary judgment to a date occurring after the Motion to  
2 Dismiss.

3  
4 DATED: December 20, 2011

WALSH MCKEAN FURCOLO LLP

5  
6 By: 

Regan Furcolo  
Lynn Trang  
Attorneys for Cross-Defendant  
ADMIRAL INSURANCE COMPANY

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28 *EX PARTE* APPLICATION OF CROSS-DEFENDANT ADMIRAL INSURANCE COMPANY FOR AN ORDER  
MODIFYING THE EXISTING HEARING DATES FOR ADMIRAL'S MOTION TO DISMISS FOR LACK OF  
JURISDICTION, OR IN THE ALTERNATIVE, AN ORDER CONTINUING THE CURRENTLY SCHEDULED  
DEADLINE FOR FILING MOTIONS FOR SUMMARY JUDGMENT; DECLARATION OF LYNN TRANG

DECLARATION OF LYNN TRANG

I, Lynn Trang, declare as follows:

1. I am an associate in the law firm of Walsh McKean Furcolo LLP. I am an attorney in good standing and licensed to practice in the State of California, and licensed to practice before the Blue Lake Rancheria Court. I have personal knowledge of the matters stated herein, except where stated on information and belief, and if called as a witness, I could and would testify competently thereto.

2. Walsh McKean Furcolo LLP is counsel of record for ADMIRAL INSURANCE COMPANY (referred to collectively herein as "ADMIRAL") in the instant matter. This declaration is brought in support of ADMIRAL'S ex-parte application for an order modifying the hearing date for ADMIRAL'S Motion to Dismiss, or in the alternative, an order modifying the hearing date for the cross-motions for summary judgment. Timely notice of this ex-parte application was provided to all counsel. (See Exhibit "A" attached hereto, being a true and correct copy of my December 20, 2011 letter to all counsel advising of this *ex parte application*.)

3. On or about October 18, 2011, ADMIRAL filed a Notice of Motion to Dismiss the Cross-Complaint. The original hearing date for the Motion to Dismiss was December 9, 2011. It was not until December 8, 2011 that Admiral received confirmation the Court had vacated the December 9, 2011 date and ordered that the Motion to Dismiss would be heard on the same date (February 17, 2012) as the hearing for any cross-motions for summary judgment. Without regard to the jurisdictional question, ADMIRAL believes its coverage denial is correct and plans on bringing a motion for summary judgment at the appropriate time.

4. Under the current hearing schedule, ADMIRAL would be forced to file its opening brief on a motion for summary judgment by January 17<sup>th</sup>.

5. ADMIRAL adamantly disputes that it was properly served and that it would be subject to the jurisdiction of this Court.



W|M|F

WALSH MCKEAN FURCOLO LLP

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T 619 232 0486  
F 619 232 2691

OF COUNSEL  
FOSTER FURCOLO JR

WRITERS EMAIL  
LTRANG@WMFLLP.COM

WWW.WMFLLP.COM

December 20, 2011

VIA FACSIMILE

Eric F. Hartman, Esq.  
LAW OFFICES OF ERIC F. HARTMAN  
300 S. First Street, Suite 210  
San Jose, CA 95113

VIA EMAIL

Michael A. Peart, Esq.  
MAINSTAY BUSINESS SOLUTIONS  
13389 Folsom Blvd., #300-189  
Folsom, CA 95630

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.  
Blue Lake Case No. : C-09-0612  
Our File No. : ADM.11861-1/17/25

---

Dear Counsel:

Please take notice that Admiral Insurance Company will appear *ex parte* on January 6, 2012 at 1:30 p.m. for an Order Modifying the Existing Hearing Dates for Admiral's Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, an Order Continuing the Currently Scheduled Deadline for Filing Motions for Summary Judgment.

Please advise if you will agree to accept service of the *ex parte* papers by facsimile or email, otherwise, our office will personally serve each party on December 21, 2011.

Very truly yours,

WALSH MCKEAN FURCOLO LLP

  
Lynn H. Trang



It

Exhibit A

625 BROADWAY SUITE 1402  
SAN DIEGO CA 92101  
T 619 232 8486  
F 619 232 2691

W|M|F  
WALSH MCKEAN FURCOLO LLP

**Fax**

<b>To:</b>	Eric F. Hartman, Esq.	<b>From:</b>	Lynn H. Trang
<b>Company:</b>	Law Offices of Eric F. Hartman	<b>Our Phone:</b>	(619) 232-8486
<b>Fax Number:</b>	(408) 297-0608	<b>Our Fax:</b>	(619) 232-2691
<b>Pages:</b>	2	<b>Our Case Name:</b>	Mainstay Business Solutions v. Wood's Roofing, Inc.
<b>Date:</b>	December 20, 2011	<b>Our File No.</b>	ADM.11861-1/17/25

Urgent     For Review     Please Reply     Please call if facsimile is incomplete

**o Comments:**

Please see attached.

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 FAX : 6192322691  
 TEL : 6192328486  
 SER.# : BROM2J878902

DATE, TIME 12/20 12:32  
 FAX NO./NAME 914082970608  
 DURATION 00:00:31  
 PAGE(S) 02  
 RESULT OK  
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625 BROADWAY SUITE 1402  
 SAN DIEGO CA 92101  
 T 619 232 8486  
 F 619 232 2691

W|M|F  
 WALSH MCKEAN FURCOLO LLP

Fax

To:	Eric F. Hartman, Esq.	From:	Lynn H. Trang
Company:	Law Offices of Eric F. Hartman	Our Phone:	(619) 232-8486
Fax Number:	(408) 297-0608	Our Fax:	(619) 232-2691
Pages:	2	Our Case Name:	Mainstay Business Solutions v. Wood's Roofing, Inc.
Date:	December 20, 2011	Our File No.:	ADM.11861-1/17/25

Urgent     For Review     Please Reply     Please call if facsimile is incomplete

Comments:

Please see attached.

Lori Ramsey

---

**From:** Lori Ramsey  
**Sent:** Tuesday, December 20, 2011 11:38 AM  
**To:** 'maplaw@earthlink.net'  
**Subject:** Mainstay v. Wood's Roofing  
**Attachments:** Ex Parte Notice.pdf

Dear Mr. Peart,

Please review the attached letter regarding ex parte notice and acceptance of service via email.

Thank you,

Lori Ramsey  
Legal Assistant to John H. Walsh,  
Dinah McKean and Regan Furcolo  
W|M|F  
WALSH MCKEAN FURCOLO LLP  
625 Broadway, Suite 1402  
San Diego, CA 92101  
(619) 232-8486; Fax: (619) 232-2691  
[lr Ramsey@wmflp.com](mailto:lr Ramsey@wmflp.com)

CONFIDENTIALITY NOTE: THIS E-MAIL AND ANY ATTACHMENTS ARE CONFIDENTIAL AND MAY BE PROTECTED BY LEGAL PRIVILEGE. IF YOU ARE NOT THE INTENDED RECIPIENT, BE AWARE THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR USE OF THIS E-MAIL OR ANY ATTACHMENT IS PROHIBITED. IF YOU HAVE RECEIVED THIS E-MAIL IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY RETURNING IT TO THE SENDER AND DELETE THIS COPY FROM YOUR SYSTEM. THANK YOU FOR YOUR CO-OPERATION.



W|M|F

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OF COUNSEL  
FOSTER FURCOLO JR

WRITER'S EMAIL  
LTRANG@WMFLLP.COM

December 20, 2011

VIA FACSIMILE

Eric F. Hartman, Esq.  
LAW OFFICES OF ERIC F. HARTMAN  
300 S. First Street, Suite 210  
San Jose, CA 95113

VIA EMAIL

Michael A. Peart, Esq.  
MAINSTAY BUSINESS SOLUTIONS  
13389 Folsom Blvd., #300-189  
Folsom, CA 95630

Re: MAINSTAY BUSINESS SOLUTIONS v. WOOD'S ROOFING, INC.  
Blue Lake Case No. : C-09-0612  
Our File No. : ADM.11861-1/17/25

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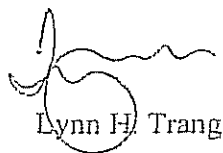
Dear Counsel:

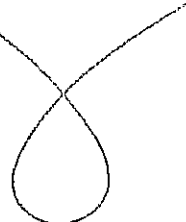
Please take notice that Admiral Insurance Company will appear *ex parte* on January 6, 2012 at 1:30 p.m. for an Order Modifying the Existing Hearing Dates for Admiral's Motion to Dismiss for Lack of Jurisdiction, or in the Alternative, an Order Continuing the Currently Scheduled Deadline for Filing Motions for Summary Judgment.

Please advise if you will agree to accept service of the *ex parte* papers by facsimile or email, otherwise, our office will personally serve each party on December 21, 2011.

Very truly yours,

WALSH MCKEAN FURCOLO LLP

  
Lynn H. Trang



Lori Ramsey

---

From: postmaster@wmflp.com  
Sent: Tuesday, December 20, 2011 11:38 AM  
To: Lori Ramsey  
Subject: Delivery Status Notification (Relay)  
Attachments: ATT02937.txt; Mainstay v. Wood's Roofing

This is an automatically generated Delivery Status Notification.

Your message has been successfully relayed to the following recipients, but the requested delivery status notifications may not be generated by the destination.

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IN THE TRIBAL COURT OF  
BLUE LAKE RANCHERIA

MAINSTAY BUSINESS SOLUTIONS,

Plaintiff,

vs.

WOOD'S ROOFING INC., a California  
Corporation, DOES 1-10.

Defendants.

CASE NO. C-09-06212-LJM  
C-09-06212A-LJM

**[PROPOSED] ORDER MODIFYING THE  
HEARING DATE ON ADMIRAL  
INSURANCE COMPANY'S MOTION TO  
DISMISS**

JUDGE: Hon. Lester J. Marston, Chief Judge

WOOD'S ROOFING INC., a California  
Corporation,

Cross-Complainant.

vs.

UNITED CONTRACTORS INSURANCE  
COMPANY, INC., ADMIRAL  
INSURANCE COMPANY; ROES 1-100.

Cross-Defendants.

**[PROPOSED] ORDER MODIFYING THE HEARING DATE ON ADMIRAL INSURANCE COMPANY'S  
MOTION TO DISMISS**

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GOOD CAUSE HAVING BEEN SHOWN THEREFORE, IT IS ORDERED that Cross-Defendant ADMIRAL INSURANCE COMPANY'S *Ex Parte* application to continue the hearing date on its Motion to Dismiss, or in the alternative, to modify the hearing date for the cross-motions for summary judgment is GRANTED.

The hearing date for ADMIRAL'S Motion to Dismiss is modified from February 17, 2012, to \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m. of the above-entitled court.

*In the Alternative*, The hearing date for the cross-motions for summary judgment currently set for February 17, 2012, is continued to \_\_\_\_\_, 20\_\_\_\_, at \_\_\_\_\_ a.m. in the above-entitled court.

DATED:

\_\_\_\_\_  
The Honorable Lester J. Marston  
JUDGE OF THE COURT

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ENDORSED-FILED  
JAN 9 2012  
CLERK OF TRIBAL COURT  
BLUE LAKE RANCHERIA  
*C. M. M...*

IN THE TRIBAL COURT FOR THE BLUE LAKE RANCHERIA

MAINSTAY BUSINESS SOLUTIONS, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
WOOD'S ROOFING, INC., et al., )  
 )  
Defendants. )

Case No. C-09-0612 LJM  
Case No. C-09-0612-A LJM

MEMORANDUM OF DECISION AND  
ORDER GRANTING CROSS-DEFENDANT'S  
MOTION TO DISMISS AND ESTABLISHING  
NEW BRIEFING SCHEDULE

WOOD'S ROOFING INC., a California )  
Corporation; )  
 )  
Cross-Complainant, )  
 )  
v. )  
 )  
UNITED CONTRACTORS )  
INSURANCE COMPANY INC.; )  
ADMIRAL INSURANCE COMPANY; )  
ROES 1-100, )  
 )  
Cross-Defendants. )

On December 21, 2011, Cross-Defendant, Admiral Insurance Company ("Admiral"),  
filed an ex parte application seeking a hearing on its motion to dismiss the cross-complaint filed  
against it and quashing service of the summons served upon it on the grounds: (1) the summons  
and complaint were not properly served upon Admiral, and (2) the Court lacked subject matter  
jurisdiction over Admiral.

In the alternative, Admiral seeks an order from this Court revising the briefing schedule

MEMORANDUM OF DECISION AND ORDER GRANTING  
CROSS-DEFENDANT'S MOTION TO DISMISS AND  
ESTABLISHING NEW BRIEFING SCHEDULE

1 established by the Court in its December 20, 2011, Order ("Order"). In the Order, the Court  
 2 established a briefing schedule for the filing of cross motions for summary judgment by the  
 3 parties on the issue of whether the Court had personal and subject matter jurisdiction in this  
 4 case and whether Admiral had an obligation to tender a defense on behalf of defendant, Wood's  
 5 Roofing, Inc., ("Wood's") in this case.

6 Having read Admiral's ex parte application and its motion to quash summons and to  
 7 dismiss the cross-complaint filed with the Court on October 25, 2011, the Court, for the reasons  
 8 set forth below, grants Admiral's motion to quash service of the summons in this case.

#### 9 FACTS

10 Admiral did not file a declaration or any affidavit in support of its motion to quash. The  
 11 Court, therefore, can only look to the four corners of the complaint and the pleadings already on  
 12 file with the Court in ruling on Admiral's motion.

13 On October 28, 2011, Wood's filed a proof of service with the Court evidencing that the  
 14 summons and cross-complaint were served on Admiral by certified mail by Johanna R.  
 15 Hartman.

16 Given these facts, the issue before the Court is where service by "certified mail" is  
 17 sufficient notice for this Court to exercise personal jurisdiction over Admiral. For the reasons  
 18 set forth below, the Court holds that it is not.

#### 19 MEMORANDUM OF DECISION

20 Rule 14(c) ("Rule 14(c)") of the Court's Rules of Pleading, Practice, and Procedure of  
 21 the Tribal Court of the Blue Lake Rancheria ("R.P.P.") provides:

22 The summons and complaint shall be served by any person 18 years of age or  
 23 older and not a party to the suit. The summons and complaint shall be served  
 24 together. Service shall be made by delivering a copy of the summons and  
 25 complaint to the defendant personally or by leaving copies thereof at the  
 individual's dwelling, house, or usual place of residency with a person 18 years  
 of age or older residing therein or by appointment or by law to receive service of  
 process. . . .

26 Rule 14(c). Emphasis added.

27 Rule 14(c) is clear and unambiguous. It requires Wood's to serve the summons and  
 28 cross-complaint on Admiral personally. The Rule only authorizes substitute service when

1 “service cannot be accomplished” by personal service, and then “in accordance with the laws of  
2 the state in which the defendant to be served resides.” *Id.*

3 There is nothing in the record by way of declaration, affidavit, or otherwise, showing  
4 that Admiral has been avoiding service of process. Given the limited record before the Court,  
5 and no evidence in the record showing that Admiral has been avoiding service of process,  
6 Admiral’s motion to quash service of the summons is granted on the grounds that service was  
7 not perfected in accordance with Rule 14(c).

8 The Court, having granted Admiral’s motion to quash service of the summons in this  
9 case does not need to address the second argument raised by Admiral in its motion: that the  
10 court lacks subject matter jurisdiction over Wood’s claims against Admiral.

#### 11 ORDER

12 Based upon the foregoing memorandum of decision, it is hereby ordered that:

13 1. Cross-Defendant, Admiral Insurance Company’s, motion to quash service of the  
14 summons and complaint served upon it by certified mail is hereby granted.

15 2. Cross-Complainant, Wood’s Roofing Inc., shall have sixty (60) days from  
16 service by the Clerk of the Court of this Memorandum of Decision and Order on it to file a  
17 proof of service with the Court evidencing that Admiral or its authorized agent was served with  
18 a copy of the summons and complaint in accordance with Rule 14(c) of the R.P.P.P.

19 3. The briefing schedule established by the Court’s December 20, 2011, Order  
20 After Hearing is hereby modified. The parties’ opening briefs shall be filed with the Court on  
21 or before March 15, 2012. Reply briefs shall be filed by the parties on April 2, 2012. Mainstay  
22 Business Solutions may file an amicus brief on March 15, 2012, as well as a reply amicus brief  
23 to any arguments made by any of the parties in their opening briefs on April 2, 2012.

24 4. The hearing on the parties’ cross-motions for summary judgment presently set  
25 for February 17, 2012, is vacated. A new hearing on the parties’ cross-motions for summary  
26 judgment is scheduled for April 16, 2012, at 1:30 p.m. All parties shall appear in person at the  
27 Blue Lake Tribal Court located on the Blue Lake Rancheria to present oral argument on the  
28 cross-motions for summary judgment. If service of the summon and complaint are perfected on

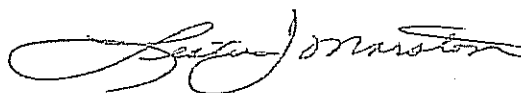
1 Admiral in accordance with paragraph 2 above, Admiral shall comply with paragraphs 3  
2 through 6 of this Order.

3 5. The hearing on Admiral's ex parte application set for January 6, 2012, is  
4 vacated.

5 6. Any violation of this Order by any party may result in the imposition of  
6 sanctions. All previous orders of this Court issued in these consolidated cases, not in conflict  
7 with this Order, shall remain in effect.

8 7. The Clerk of the Court is directed to serve a copy of this order on all of the  
9 parties in both consolidated cases.

10 DATED: January 4, 2012



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LESTER J. MARSTON, Chief Judge

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