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NO. 659464-1

King County Superior Court Cause No. 08-2-27814-0 SEA

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**COURT OF APPEALS  
DIVISION ONE,  
OF THE STATE OF WASHINGTON**

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WEST COAST PIZZA COMPANY INC.,  
Plaintiff/Appellant

v.

NATIONAL CONTINENTAL INSURANCE COMPANY,  
Defendant/Respondent

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**BRIEF OF APPELLANT**

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ORIGINAL

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## INTRODUCTION

Appellant West Coast Pizza Company, Inc. (“West Coast”) files this appeal to obtain the insurance coverage that it paid for to cover its 21 Domino’s Pizza stores. West Coast is owned by three shareholders: Bryan Dobb, Kevin Dobb and Dean Brandt. West Coast procured a \$25,000 general liability policy from Appellee National Continental Insurance Company (“National”) to cover its liability for the actions of its pizza delivery drivers employed at all 21 locations. The premium for this “deductible buy down” policy was based on 100 delivery drivers. Further, the policy itself covers 100 drivers.

West Coast then obtained an “excess” liability million dollar insurance policy from Appellee United National Insurance Company (“United”) to further cover its liability for the actions of its pizza delivery drivers at all 21 locations. West Coast paid a \$60,480 premium for this United policy which incorporated a Schedule of Locations that identified all 21 store locations. West Coast’s \$60,480 premium to United was based on the annual gross dollar volume (5.5 million dollars generated by the 21 store locations).

On May 29, 2007, a driver, Solomon Quito, employed at the Lynnwood store (store number 14) identified on the referenced Schedule of Locations crashed a delivery vehicle into another vehicle causing

significant injuries to a passenger, Joy Tschernega (“Tschernega claim”). Because the pizza driver was technically employed by another corporate entity owned by Bryan Dobb, Mad Pizza Company, Inc. (“Mad Pizza”) rather than West Coast, the Trial Court ruled that neither National nor United is obligated to provide coverage for the Tschernega claim. Although West Coast owns only two of the 21 stores identified in the “Schedule of Locations”, the Trial Court concluded that no coverage exists for the Tschernega claim because only West Coast is named on the policy itself as the insured.

The Trial Court ruling denying coverage for the Tschernega claim ignores the intention of all parties to the National and United insurance policies. The undisputable evidence presented to the Trial Court demonstrated that all parties intended for both policies to cover drivers at all 21 stores, including the Lynnwood store location where Mr. Quito was employed.

In granting United’s Summary Judgment Motion, the Trial Court described the unfairness of the Trial Court’s summary judgment in favor of United as follows (Appendix H):

“I think you can tell I’m struggling with this, because I hear you on the equity. I really do. They paid for this policy. They paid for all of these cars to be covered. They paid for all these locations (emphasis supplied).

And there seems to be something really wrong with letting the insurance company out because the wrong entity was listed. But naming an insured is pretty important. So you see the struggle I'm having?"

At no time has either National or United refunded the premiums that it accepted from West Coast to provide insurance for the drivers employed at all 21 locations identified in the two policies.

West Coast seeks reversal of the Summary Judgment Orders granted by the Trial Court on June 11, 2010 (CP 104) and August 20, 2010 (CP 118). West Coast seeks a Judgment from this Court that National has a duty to defend the Tschernega claim and a duty to indemnify West Coast for any Judgment. Plaintiff also seeks a Judgment against United that United has a duty to indemnify West Coast and Mad Pizza from any judgment obtained against these entities in the Tschernega lawsuit.

### **ASSIGNMENT OF ERROR**

The Trial Court erred in entering the Orders Granting Summary Judgment dated June 11, 2010 (CP 104) as to National and the Order dated August 20, 2010 (CP 118) as to United.

### **ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1) Is National obligated to defend and indemnify Mad Pizza for the Tschernega claim when the insurance contract issued by National covers

all 100 pizza delivery drivers at the 21 locations (including Mr. Quito at the Lynnwood location) identified on the Schedule of Locations?

2) Because Mr. Quito was working from the Lynnwood store for Mad Pizza at the time of the accident, should the Court reform the National and United insurance contracts to state the intended purpose of the parties?

3) Is United obligated to indemnify Mad Pizza for any Judgment entered in the Tschernega claim when the United insurance contract specifically incorporates all 21 locations including the Lynnwood store owned by Mad Pizza?

4) Is West Coast entitled to an award of attorney's fees for pursuing the underlying Declaratory Judgment proceeding and for pursuing this appeal pursuant to the Olympic Steamship case (*Olympic Steamship Co., Inc. v. Centennial Insurance Company*, 117 Wn.2d 37, 811 P.2d 673 (1991))

### **STATEMENT OF THE CASE**

#### **A. Background Of West Coast, Mad Pizza And Related Entities**

West Coast is a Washington entity owned by Bryan Dobb, Kevin Dobb and Dean Brandt (CP 111, ¶2-4; Appendix A). West Coast operates three Domino's franchises in Everett, Washington and one in Duvall, Washington. Id.

Bryan Dobb also owns Mad Pizza, a Washington entity. Mad Pizza operates 11 Domino's pizza stores in the State of Washington (CP 111). Bryan Dobb is also an owner in three other Washington entities, Tiam Pies, Inc. ("Tiam"), Mac Pizza, LLC ("Mac Pizza") and Kappa Pizza, LLC ("Kappa"). There are various shareholders in these entities. Tiam and Mac Pizza both operate one store. Kappa operates four stores. Id.

Bryan Dobb is personally the franchisee for all 21 Domino's Pizza stores operated by West Coast, Mad Pizza, Tiam, Kappa and Mac Pizza (CP 111). All five of these legal entities operate from the same business location in Vancouver, B.C. The mailing address for these five entities is PO Box 187, Point Roberts, Washington 98281. Id.

The 21 stores operated by the above referenced four entities employ approximately 285 employees of which approximately 100 are food delivery drivers (See Exhibit A to CP 74; Appendix B). These drivers use their own vehicles to deliver pizzas.

B. National Insurance Application And Policy

In 2006, Bryan and Kevin Dobb used Gallagher Insurance Company of America, Inc. ("Gallagher") as an agent for West Coast to procure the liability insurance to cover the delivery drivers at the 21 store locations. Gallagher, through its employee David Brink, determined the

store locations qualified for the Washington Commercial Automobile Insurance (“WAIP”) (CP 74, ¶5; Appendix B). National has participated in “WAIP” as a service carrier for over 20 years (CP 13). The WAIP program includes a program for commercial vehicles known as CAIP (CP 13).

On August 16, 2006, Gallagher submitted an insurance application on behalf of West Coast to CAIP along with a premium payment of \$2,500 (CP 74; ¶4 of Appendix B). The deductible was calculated at \$25 per driver for 100 drivers. Id. The policy was to provide West Coast with a “deductible buy down policy” that covered the deductible on the million dollar excess liability policy that West Coast would subsequently obtain from United. Id.

Appellee National is an insurance service carrier that participates in WAIP (CP 21; Appendix C) elected to provide liability coverage for all 100 drivers at the 21 locations. National has a history of providing insurance liability policies for Domino’s Pizza franchises. Id.

Dean Daquila is an employee of National that handled issuance of the National policy through the WAIP program. West Coast initially advised Mr. Daquila of National that it sought to insure 100 drivers. At page 25, lines 6-11, of his deposition, Mr. Daquila testified:

“Q. Okay. Well, what did National Continental do to determine the policy premium was 2,000?”

A. They told us they had a hundred drivers. There’s a rate in the manual per driver. We multiplied the rate in the manual times the number of drivers.” (CP 96)

The West Coast application sought insurance coverage for 100 food delivery drivers (Exhibit A to CP 74; Appendix B). The drivers to be covered by this policy were those employed at the “Schedule of Locations” which is incorporated into the policy by reference on page two of the insurance application. Id. However, the schedule of locations was not initially attached to the application (CP 22).

National issued its policy number 70631156 to West Coast on September 1, 2006 (CP 13; Appendix D). The term for this policy was from September 1, 2006 through September 1, 2007. Id. Under the “Covered Autos” section of the policy declarations page, a reference to category “9” is listed. Page 1 of the Business Auto Coverage Form describes the non-owner autos covered by the policy as follows:

“Only those ‘autos’ you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes ‘autos’ owned by your ‘employees’, partners (if you are a partnership), members (if you are a limited liability company), or members of their

households but only while used in your business or your personal affairs.” Id.

Item Five of the Policy Declarations page is entitled “Schedule for Non-Ownership Liability.” This schedule indicates that “100” employees are to be covered by the policy (CP 13; Appendix D). The named insured on the policy is “West Coast Pizza Company Inc. DBA Domino’s Pizza.” Id.

The National insurance policy includes a duty to defend. Section II entitled “Liability Coverage” provides in paragraph A:

“We have the right and duty (emphasis supplied) to defend any ‘insured’ against a ‘suit’ asking for such damages or a ‘covered pollution cost or expense.’” Id.

On September 14, 2006, Gallagher employee, Christine Lopez faxed National employee, Dean Daquila, the list of store locations to be covered by the policy (Exhibit B to CP 74; Appendix B). The Schedule of Locations identifies all 21 stores including the Lynnwood location of “20815 67<sup>th</sup> Ave W., Lynnwood, WA 98036.” Id.

C. United Application And Policy

West Coast also obtained an “excess” liability policy from United in August of 2006 to cover the drivers at all 21 locations. Gallagher submitted an insurance application on behalf of West Coast to a wholesale

insurance broker, AmWins Brokerage of Washington (“AmWins”) (CP 113; Appendix E). AmWins then submitted the application to the agent for United, International Property and Casualty Insurance Brokers of Nevada, Inc. (“IPC”). Id.

On August 4, 2006, AmWins broker, Joe Constantine, emailed an IPC employee, “Tammy,” and advised her that he would be submitting an insurance application to IPC on behalf of West Coast (CP 113). Mr. Constantine advised IPC that the West Coast Insurance Application would cover the following:

“20 locations;  
5,000,000 in delivery receipts;  
Estimated 79 delivery drivers;  
Location schedule to follow...all  
Washington stores...” (Exhibit A to CP 113;  
Appendix E).

The West Coast application to IPC/United was completed in the name of “West Coast Pizza Company, Inc. DBA Domino’s Pizza” (Exhibit B to CP 113; Appendix E). The application sought one million dollars of coverage for all 21 locations. The Schedule of Locations identifies 21 locations and is attached to the application. The Lynnwood store where Mr. Quito worked is identified as store number 14 on the schedule of locations. Id.

The West Coast application to United indicated that the 21 stores generated total delivery receipts in 2005 of 5.5 million dollars. Id. The two stores owned by West Coast generated only \$1,394,000 in receipts in 2005 (CP 111, ¶11; Appendix A).

The premium for the United policy was \$60,480. According to a “Food Declaration Rate Sheet” provided by United, the premium was determined by multiplying the sum of \$2,880 by 21 locations (Exhibit A to CP 110; Appendix F). The schedule of locations is also attached to the Food Delivery Rate Sheet. Id.

On August 16, 2006, Gallagher issued its Certificate of Insurance to West Coast Pizza Company, Inc. DBA Domino’s Pizza (CP 112). Page 2 of the Certificate of Insurance again lists all 21 store locations (Exhibit B to CP 20).

United issued its policy number XTP79005 to West Coast Pizza Company Inc., DBA Domino’s Pizza, effective September 1, 2006 to September 1, 2007. With the exception of United’s duty to defend, Section I, paragraph 1, of the United policy incorporates all other provisions of the National policy (CP 107; Appendix G).

The United policy specifically incorporates the 21 locations into the policy in the form of an Endorsement. Schedule L provides:

“This Endorsement forms a part of policy number XTP79005.”

All 21 locations to be covered by the policy are identified on Schedule L, including the Lynnwood location where Mr. Quito was employed (CP 107; Appendix G).

D. Automobile Accident Occurring On May 29, 2007 Involving Mad Pizza Driver Solomon Quito And Joy Tschernega

On May 29, 2007, Mr. Quito was employed by Mad Pizza at the Lynnwood store location. This is the same Lynnwood location that is identified in the Schedule of Locations attached to West Coast’s application to National and which is incorporated into the United policy. William and Joy Tschernega subsequently filed a lawsuit against Mr. Quito and Mad Pizza in Snohomish County Superior Court under cause number 08-2-05028-7 alleging that Mr. Quito and Mad Pizza were negligent in causing this automobile accident (CP 107).

E. West Coast Declaratory Judgment Lawsuit And Proceedings In Trial Court

After National refused to tender a defense to the Tschernega Claim, West Coast filed a Declaratory Judgment lawsuit under RCW 7.24.010.

On January 7, 2010, National filed a Summary Judgment Motion arguing that no coverage existed for the Tschernega claim on the basis that

Mr. Quito was employed by Mad Pizza not West Coast. On June 11, 2010, the Trial Court granted National's Motion for Summary Judgment on grounds that only West Coast is named as the insured on the National policy (CP 104). Id.

United then followed suit with its own Motion for Summary Judgment on the same grounds. On August 21, 2010, the Trial Court followed the same analysis and granted the motion. The Trial Court concluded that United has no duty to defend the Tschernega claim since West Coast is the only named insured on the United policy (CP 118).

### **ARGUMENT**

A. Trial Court Has Authority Under Declaratory Judgments Act, RCW 7.24.010, To Determine If Coverage Applies To Mr. Quito At Lynnwood Location.

This Court's review of the Trial Court's two Summary Judgment rulings is to be reviewed on a "De Novo" basis. This Court is to engage in the same inquiry as the Trial Court and view the evidence in a light most favorable to the non-moving party. *Roger Crane & Associates v. Felice*, 74 Wn. App. 769, 773, 875 P.2d 705 (1994).

West Coast filed its lawsuit to declare the rights of the parties to the two insurance contracts under the Declaratory Judgments Act ("DJA") set forth at RCW 7.24.010 which provides in pertinent part:

“Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed.”

The DJA should be literally interpreted in order to facilitate its socially desirable objective of providing remedies not previously countenanced by our law. *Sheng-Yen Lu v. King County*, 110 Wn. App. 92, 98, 38 P.3d 1040 (2002). This principle has long been tempered by the requirement that a justiciable controversy exist before a Court may substantially rule in such an action. A justiciable controversy is:

“(1) ... an actual, present and existing dispute, or the mature seeds of one, as distinguished from a possible, dormant, hypothetical, speculative, or moot disagreement, (2) between parties having genuine and opposing interests, (3) which involves interests that must be direct and substantial, rather than potential, theoretical, abstract or academic, and (4) a judicial determination of which will be final and conclusive.” *Id.*

The rights of parties to insurance contracts are frequently resolved by the Courts through Declaratory Judgment actions. A question of whether an individual or a company is an additional insured under terms of a policy is a proper issue for a Declaratory Judgment lawsuit. *Safeco Ins. Co. v. Dairyland Mut. Ins. Co.*, 74 Wn.2d 669, 446 P.2d 568 (1968).

B. General Rules For Interpreting Insurance Policies

The Washington Supreme Court has decreed that:

“It must not be forgotten that the purpose of insurance is to insure, and that the construction should be taken which will render the contract operative rather than inoperative.” *Phil Schroeder Inc., v. Royal Glove Ins. Co.*, 99 Wn.2d 65, 68, 659 P.2d 509, 511 (1983), reaffirmed in relevant part, 101 Wn.2d 830, 683 P.2d 186 (1984).

Insurance policies must be construed in favor of the insured and strictly against the insurance carrier. *Shotwell v. Transamerica Title*, 91 Wn.2d 161, 588 P.2d 208, 212 (1978). As the *Phil Schroeder* Court explained:

“The language must be construed so as to give the insured the protection which he reasonably had a right to expect; and to that end any doubts, ambiguities and uncertainties arising out of the language used in the policy must be resolved in his favor.” 99 Wn.2d at 69.

When terms are not defined in the policy, they should be given a meaning found in standard English dictionaries. *Boeing Co. v. Aetna Casualty & Surety*, 113 Wn.2d 869, 877, 784 P.2d 507 (1990). As the *Boeing* Court summarized:

“In this state, legal technical meanings have never trumped the common perception of the common man.” Id.

When a policy provision is ambiguous, the construction most favorable to the insured must be applied, even when the insurance company intended another meaning. *Morgan v. Prudential Insurance Co.*, 86 Wn.2d 432, 435, 545 P.2d 1193) (1976). A policy provision is considered “ambiguous” when it is fairly susceptible to two different interpretations, both of which are reasonable. *Id.*

Our Washington Supreme Court held in *Shotwell v. Transamerica Title*, supra at 167-168 (1978), that:

“Where a provision of a policy of insurance is capable of two meanings, or is fairly susceptible of two constructions, the meaning and construction most favorable to the insured must be employed, even though the insurer may have intended otherwise.”

1. The Court Should Consider Extrinsic Experience In Determining The Intent Of The Parties To The Insurance Contracts

In examining the “technical” ownership arguments advanced by National and United, the Court should consider the surrounding circumstances pertaining to the insurance policy. *Berg v. Hudesman*, 115 Wn.2d 657, 661, 801 P.2d 222 (1990) holds that extrinsic evidence is admissible as an aid in determining the parties’ intent to a contract.

C. West Coast Is Entitled To A Ruling Under RCW 7.24.010 That The National Policy Covers The Vehicle Driven By Mad Pizza Employee Solomon Quito

The evidence overwhelmingly shows that the parties intended for the National policy to cover the Lynnwood location where Mr. Quito was employed. The insurance application, the premium paid, the Schedule of Locations provided by West Coast, the number of pizza drivers (100) identified in the National insurance policy and the gross revenues upon which the premium 3 were based all lead to this conclusion. The Trial Court ignored this evidence instead focusing only on the named insured on the policy.

The named insured on the National policy actually supports West Coast's argument that Mr. Quito was a driver covered by the policy. Section V of the Business Auto Coverage Form sets forth the policy definitions (Appendix D). Item G defines the insured as:

“‘Insured’ means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage...”

Section II, item 1 of the policy then defines “Who Is An Insured” under the policy and paragraphs (b) (1) and (2) provide that covered autos include:

“(1) The owner or anyone else from whom you hire or borrow a covered ‘auto’. This exception does not apply if the covered

‘auto’ is a ‘trailer’ connected to a covered ‘auto’ you own.

(2) Your ‘employee’ if the covered ‘auto’ is owned by that ‘employee’ or a member of his or her household.”

The named insured is not simply “West Coast Pizza Company, Inc.” Rather, the named insured is “West Coast Pizza Company, Inc. DBA Domino’s Pizza.” The reference to “Domino’s Pizza” supports West Coast’s position that the parties intended for the policy to cover the drivers at all 21 “Domino’s” locations. The reference to 100 delivery drivers included within the National policy (Appendix D) and the application’s Schedule of Locations further supports West Coast’s position. Given these facts, the Trial Court improperly concluded that the only insured on the National policy was West Coast.

At a minimum, an ambiguity exists regarding whether all drivers at the 21 locations covered by the National policy should be covered as all parties intended. Any such ambiguity must be resolved in favor of the insured. *Schroeder*, supra, at 69. The Trial Court erred in rendering the National policy “inoperative” as opposed to “operative” as required by the *Schroeder* decision referenced herein.

1. The Trial Court’s Ruling That National Had No Duty To Defend Is An Error Given Washington Case Law Applicable To The Duty To Defend

Unlike the United policy, the National policy included a duty to defend West Coast (Appendix D). Washington Courts construe and enforce a liability carrier's duty to defend the insured to be separate from, and broader than, the carrier's duty to eventually indemnify the insured for a judgment eventually resulting from that suit. *Safeco Insurance v. McGrath*, 42 Wn. App. 58, 708 P.2d 657 (1985).

Washington law holds that the liability carrier has a duty to defend whenever there is a possibility of liability within the policy's coverage. *Baugh Construction v. Mission Insurance*, 836 F.2d 1164, 1168 (9<sup>th</sup> Cir. 1988). The carrier has a duty to defend and insure against any alleged claim that potentially falls within the scope of policy coverage. See, also *Waite v. Aetna Casualty & Surety*, 77 Wn.2d 850, 855, 467 P.2d 847 (1970) (insurer is obligated to defend whenever a suit alleges facts which, if proven, would render the insurer liable). As the Washington Supreme Court reiterated in its *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 561, 951 P.2d 1124 (1998) decision:

“The duty to defend arises whenever a lawsuit is filed against the insured alleging facts and circumstances **arguably** (emphasis supplied) covered by the policy.”

Here, National was legally obligated to accept the defense of the Tschernega claim. At a minimum, National had the potential for liability

based on the Schedule of Locations attached to the insurance application, the reference to 100 drivers contained in the policy and its acceptance of a premium for all 100 drivers at the 21 locations (including Mr. Quito). Instead of pursuing this course of action, National simply denied coverage and forced West Coast to file its Declaratory Judgment action.

D. West Coast Is Similarly Entitled To A Ruling Under RCW 7.24.010 That United Has A Duty To Indemnify Mad Pizza From Any Judgment Entered In The Tschernega Lawsuit

For the same reasons that apply to the National policy, West Coast is entitled to an Order that requires United to indemnify West Coast and any Judgment arising from the Tschernega lawsuit. West Coast's position on this issue is even more compelling because the Schedule of Locations is specifically incorporated into the United policy as an Endorsement and because West Coast paid \$60,408 for coverage of its drivers at all 21 locations.

E. The Trial Court Should Have Allowed West Coast To Reform The Insurance Contracts To Add All Delivery Drivers At The 21 Locations

Given the premiums paid by West Coast, the applicability of both policies to 100 drivers and the references to the Schedule of Locations, the Trial Court improperly released National and United from liability for the Tschernega claim. In *Metropolitan Mortgage & Insurance Co. v. Reliable*

*Ins. Co.*, 64 Wash.2d 98, 100-1, 390 P.2d 694 (1964), our Court recognized the absurdity of excusing an insurer from coverage where it would leave a hole in coverage and result in a windfall to the insurer. This case again stands for the often stated proposition that “insurance contracts are construed strictly against the insurer and liberally in favor of the insured...” Id. at p. 100. The Court also ruled that in looking at the intent of the contracting parties, if a party holding an interest is not named, that:

“...equity will decree that the policy be reformed to protect the interest of the true owners.” Id. at p. 101-102.

Further, when recovery on a claim is unavailable under the contract as written but the insured shows the policy does not state the true contract, reformation is an appropriate relief. *Carew, Shaw & Bernasconi v. General Casualty Co. of America*, 189 Wash. 329, 335, 65 P.2d 689 (1937). The decision in *Providence Washington Ins. Co. v. Stanley*, 403 Fed.2d 844, 849, (5<sup>th</sup> Cir. 1969) indicates that where there is an incorrect or insufficient designation of an insured in a casualty policy, that defect may be corrected by the Court:

“Obviously there is no requirement that a person must be described by name in order to be an insured under the policy. It is sufficient if his identify as an insured can be ascertained by applying a description contained in the policy.”

Here, both policies covered 100 drivers and the premiums paid by West Coast were based on insuring 100 drivers. The National policy application and United policy itself incorporate the Schedule of Locations. The \$60,480 premium to United was based on food delivery receipts of 5.5 million dollars which covers all 21 stores not just the two stores owned by West Coast. Lastly, the designation “DBA Domino’s Pizza” in the named insured portion of the declaration, demonstrates that something different was intended there by the parties. Given these facts, it was reasonable for West Coast to believe that it had obtained coverage for Mr. Quito and all other drivers at the 21 locations. At a minimum, an ambiguity is created by “Schedule L” to the United policy, as this Endorsement lists all 21 Domino’s Pizza location sought to be insured by the parties. The Trial Court erred when it declined reformation as a remedy.

West Coast should receive the benefit of the policy that it purchased and paid for. The average person construing the United policy would believe that Plaintiff had obtained coverage for all drivers at the 21 Domino’s store locations. United expected to insure all of these drivers when it issued this policy.

F. West Coast Is Entitled To Its Attorney’s Fees Expended In Pursuing The Declaratory Judgment Action And This Appeal

West Coast is entitled to recover its attorney's fees and costs incurred in compelling National to provide coverage to Plaintiff for the lawsuit filed by Plaintiffs William and Joy Tschernega in Snohomish County Superior Court under Cause No. 08-2-05028-7 ("Tschernega claim"). This award of attorney's fees and costs is required under *Olympic Steamship Co., Inc. v. Centennial Insurance Company*, supra, and was incurred by Plaintiff in compelling insurance coverage in this Declaratory Judgment lawsuit, and all attorney's fees and costs incurred by Plaintiff in defending the Tschernega lawsuit filed in Snohomish County.

Pursuant to RAP 18.1, West Coast requests that the Court award attorney's fees for prosecuting this appeal. Specifically, RAP 18.1(a) authorizes the Court to grant attorney's fees "[i]f applicable law grants to a party the right to recover reasonable attorney's fees or expenses." RAP 18.1(a).

### **CONCLUSION**

National and United should not be allowed to escape coverage for the Tschernega claim based on a "technicality." These Defendants should not be allowed to retain the premiums paid by Appellant but yet not be obligated to provide the coverage that BOTH National and United

expected to provide in the respective policies. Principles of fundamental fairness dictate that National and United be obligated to honor the policies that they issued to West Coast.

RESPECTFULLY SUBMITTED on December 16, 2010.

OSERAN, HAHN, SPRING & WATTS, P.S.

By 

James H. Clark, WSBA #18862

Attorneys for Plaintiff/Appellant West Coast Pizza Company, Inc.

PROOF OF SERVICE

TO: Clerk, Division One, Court of Appeals

AND TO: Defendant/Respondent

PLEASE TAKE NOTICE on the 17<sup>th</sup> day of December, 2010, the Brief of Appellant was filed with Division One, Court of Appeals and served via Gary's Process on the following:

Jeffory E. Adams  
MURRAY, DUNHAM & MURRAY  
200 West Thomas, Suite 350  
Seattle, WA 98119

Andrew S. Kamins  
PATTERSON BUCHANAN FOBES LEITCH & KALZER, PS  
2112 3<sup>rd</sup> Ave Ste 500  
Seattle, WA 98121-2391

Dated this 16<sup>th</sup> day of December, 2010.

  
\_\_\_\_\_  
Leona Bernard, Legal Assistant/Paralegal

# **APPENDIX A**

FILED

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KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 08-2-27814-0 SEA

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Honorable Susan Craighead  
United National Summary Judgment  
Motion: August 20, 2010 at 11:00 a.m.

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

WEST COAST PIZZA COMPANY, INC. dba  
DOMINO'S PIZZA, a Washington corporation, and  
all covered locations,

No. 08-2-27814-0 SEA

Plaintiff,

v.

**DECLARATION OF KEVIN R.  
DOBB IN OPPOSITION TO  
UNITED NATIONAL MOTION  
FOR SUMMARY JUDGMENT**

NATIONAL CONTINENTAL INSURANCE  
COMPANY RE: POLICY NO. CP7063115-6, and  
UNITED NATIONAL INSURANCE COMPANY  
RE: POLICY NO. XTP0079005,

Defendants.

I, Kevin R. Dobb, declare under penalty of perjury under the laws of the state of  
Washington that the following is true and correct:

1. I make this Declaration on the basis of personal knowledge, information and  
belief, am over the age of 18 years, and competent to testify herein.

2. I am an owner of West Coast Pizza Company, Inc., a Washington corporation  
("West Coast"). I am the secretary of the corporation. My brother Bryan Dobb and Dean Brandt

**DECLARATION OF KEVIN R. DOBB IN  
OPPOSITION TO UNITED NATIONAL MOTION  
FOR SUMMARY JUDGMENT - I**

**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 also are shareholders of West Coast. In 2006-2007, West Coast owns only two Domino's Pizza  
2 stores in Everett, Washington.

3 3. I also work for Mad Pizza, Inc. ("Mad Pizza"), a Washington corporation, as the  
4 controller. In August of 2006, Mad Pizza operated 11 stores in the Seattle area. My brother,  
5 Bryan Dobb, is a 100% owner of Mad Pizza Inc.

6 4. I am also the controller for Tiam Pies, Inc., Kappa Pizza, LLC, and Mac Pizza,  
7 LLC. All three of these entities are formed under the laws of the state of Washington. All  
8 together our operation consisted of 21 Domino's Pizza locations in August of 2006. Bryan Dobb  
9 is the sole Domino's franchise for all of these 21 locations. We set up different legal entities  
10 because the shareholders are slightly different in each entity. I have handwritten the entity that  
11 owns each of the 21 locations on Exhibit A hereto.

12 5. All of these entities referenced above operate from one office from the same  
13 business location which is at 118-7198 Vantage Way, Delta, B.C. The mailing address for all  
14 four corporations is Post Office Box 187, Point Roberts, Washington 98281-0187.

15 6. In August of 2006, I managed the office for the 21 stores that belonged to West  
16 Coast Pizza Company, Inc, Mad Pizza Inc., Tiam Pies, Inc., Mac Pizza, LLC and Kappa Pizza,  
17 LLC. My brother, Bryan Dobb, manages the overall business of the dominos franchise business.  
18 In August of 2006, I handled the administration work for all 21 locations of our pizza stores,  
19 including all insurance matters. I am responsible for making sure that each of the stores has  
20 insurance for the pizza drivers that work at the stores.

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**DECLARATION OF KEVIN R. DOBB IN  
OPPOSITION TO UNITED NATIONAL MOTION  
FOR SUMMARY JUDGMENT -2**

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**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 7. In 2006 and 2007, we operated a Domino's Pizza located at 20815 67<sup>th</sup> Ave W. in  
2 Lynnwood, Washington which employed the driver (Mr. Quito) that was involved in the  
3 underlying lawsuit. This store was owned by Mad Pizza, Inc.

4 8. Since 2006, we have utilized the services of a national, publicly traded company,  
5 Arthur J. Gallagher Risk Management Services, Inc. ("Gallagher"), to obtain various insurance  
6 policies, including business liability insurance and non-owned vehicle insurance coverage. Our  
7 agent/producer's name is David Brink who works in Gallagher's Tacoma office. Besides David,  
8 my contact at Gallagher was his assistant, Christine Lopez.

9 9. In August 2006, we pursued an excess liability policy to provide coverage for all  
10 of our 21 locations and drivers employed at these locations. This liability policy is essential to  
11 the operation of our business as we sought liability coverage up to \$1,000,000 to protect the  
12 entities against claims made against the drivers employed at the 21 locations.

13 10. Mr. Brink prepared a Food Delivery Application for the purpose of obtaining an  
14 excess driver's policy that is attached hereto as Exhibit B. Mr. Brink signed my name to the  
15 application.

16 11. While we applied for insurance under West Coast's name only, our application  
17 covered all of our 21 locations and all drivers at these locations. The application lists 5.5 million  
18 in delivery receipts. Our 21 locations generated approximately 5.5 million dollars in delivery  
19 receipts in 2005, as is reflected on the application. The receipts for just the two West Coast  
20 stores in 2005 were only approximately \$1,394,000

21 12. The premium for the United National Policy was \$60,480 exclusive of any  
22 brokerage fees.

**DECLARATION OF KEVIN R. DOBB IN  
OPPOSITION TO UNITED NATIONAL MOTION  
FOR SUMMARY JUDGMENT -3**

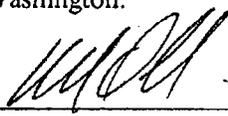
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**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 13. West Coast financed the purchase of the United National Policy through Premium  
2 Assignment Corporation. The Finance Agreement is attached as Exhibit C. We financed  
3 \$69,073 in order to purchase the United National Policy for our drivers. The payments were  
4 made to the finance company. All together, the five entities paid a total of \$ <sup>61,143<sup>01</sup></sup> in premiums  
5 for the United National Policy.

6 14. After we purchased the United National Policy, I reviewed the policy. I saw that  
7 the named insurance was "West Coast Pizza Company, Inc, dba Domino's Pizza." I understood  
8 the reference to "dba Domino's Pizza" meant that all 21 locations would be covered by the  
9 United National Policy. I also saw that Schedule L to the policy actually identified all 21  
10 locations. Based on my review of the policy, I expected that all drivers at the 21 store locations,  
11 including Mr. Quito at the Lynnwood store, would be covered by this liability policy.

12 DATED this \_\_\_ day of July, 2010 at \_\_\_\_\_, Washington.

13   
14 \_\_\_\_\_  
Kevin R. Dobb

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**DECLARATION OF KEVIN R. DOBB IN  
OPPOSITION TO UNITED NATIONAL MOTION  
FOR SUMMARY JUDGMENT -4**

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**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

EXHIBIT A

## SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

### SCHEDULE OF LOCATIONS

LOCATION 1:	118 Ferry Street - <i>MAD PIZZA</i> Sedro Woolley, Washington
LOCATION 2:	360 36 <sup>th</sup> Street - <i>MAD PIZZA (Closed July 2006)</i> Bellingham, Washington
LOCATION 3:	1600 East College Way <i>MAD PIZZA</i> Mount Vernon, Washington
LOCATION 4:	9815 State Avenue <i>MAD PIZZA</i> Marysville, Washington
LOCATION 5:	1301 East Sunset <i>MAD PIZZA</i> Bellingham, Washington
LOCATION 6:	2611 Colby Street <i>WEST COAST PIZZA</i> Everett, Washington
LOCATION 7:	7601 Evergreen Way <i>WEST COAST PIZZA</i> Everett, Washington
LOCATION 8:	270 Southeast Cabot Drive <i>TIAN PIES</i> Oak Harbor, Washington
LOCATION 9:	3131 Smokey Point Drive <i>MAD PIZZA</i> Arlington, Washington
LOCATION 10:	1811 Main Street <i>MAD PIZZA</i> Ferndale, Washington
LOCATION 11:	211 West 5 <sup>th</sup> Street <i>MAC PIZZA</i> Wenatchee, Washington

All other Terms and Conditions remain unchanged.

Page 1 of 1

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## SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

### SCHEDULE OF LOCATIONS

LOCATION 12:	108 Front Street North Issaquah, Washington	<i>MAD PIZZA</i>
LOCATION 13:	15321 Main Street Northeast Suite 201 Duvall, Washington	<i>WEST COAST PIZZA</i>
LOCATION 14:	20815 67 <sup>th</sup> Avenue West Lynnwood, Washington	<i>MAD PIZZA</i>
LOCATION 15:	7639 Southeast 27 <sup>th</sup> Street Suite 4 Mercer Island, Washington	<i>KAPPA PIZZA</i>
LOCATION 16:	15100 Southeast 38 <sup>th</sup> Street Space C Bellevue, Washington	<i>KAPPA PIZZA</i>
LOCATION 17:	462 228 <sup>th</sup> Avenue Northeast Redmond, Washington	<i>KAPPA PIZZA</i>
LOCATION 18:	10575 Northeast 12 <sup>th</sup> Street Bellevue, Washington	<i>KAPPA PIZZA</i>
LOCATION 19:	7320 35 <sup>th</sup> Avenue Northeast Seattle, Washington	<i>MAD PIZZA</i>
LOCATION 20:	3425 Birch Bay Lynden Road Custer, Washington	<i>MAD PIZZA</i>
LOCATION 21:	500 Northwest Market Street Seattle, Washington	<i>MAD PIZZA</i>

All other Terms and Conditions remain unchanged.

Page 1 of 1

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EXHIBIT B



1936 Catharine Court, Gardnerville, NV 89410  
 Phone: (775) 782-6655 Fax: (775) 782-6654  
 www.internationalpropertyandcasualty.com

## FOOD DELIVERY APPLICATION

<b>1. NAMED INSURED:</b> First Name: <u>West Coast Pizza Co. Inc.</u> dba: <u>Dominos Pizza</u> <input type="checkbox"/> See Accord Application <input type="checkbox"/> INDIVIDUAL <input checked="" type="checkbox"/> CORP. <input type="checkbox"/> PART. <input type="checkbox"/> OTHER:	<b>2. MAILING ADDRESS</b> <u>P.O. Box 187</u> <u>Point Roberts, WA 98281</u> <input type="checkbox"/> See Accord Application PHONE NO.: <u>(604) 952-4502</u>
<b>TYPE OF COVERAGE SOUGHT:</b> <input type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-Owned <input type="checkbox"/> Owned (excess of underlying only)	<b>REQUESTED EFFECTIVE DATE:</b> <u>ASAP</u>
<b>LIMIT OF LIABILITY</b> <input type="checkbox"/> \$ 100,000. CSL <input type="checkbox"/> \$ 500,000. CSL <input type="checkbox"/> \$1,500,000. CSL <input type="checkbox"/> \$ 300,000. CSL <input checked="" type="checkbox"/> \$1,000,000. CSL <input type="checkbox"/> _____	<b>Need a Quote:</b> <input type="checkbox"/> Excess of driver's insurance policy. <input checked="" type="checkbox"/> Excess of a primary policy held by this Applicant. Primary Limit: <u>25/50</u> Primary Carrier:

OPERATION DELIVERS:  Pizza     Chinese Food     Other \_\_\_\_\_

Applicant is an:  Independent  Franchise of: Dominos

Number of years in business: 20

Annual Delivery Receipts Last Year: \$ 5,500,000

Annual Delivery Receipts Coming Year: \$ 5,500,000

Total Annual Receipts: \$ 1,000,000

Total Number of Owned Vehicles: # \_\_\_\_\_

Number of Locations needing coverage: 21 are all locations to be scheduled owned by this applicant?  
 List complete addresses for all locations to be scheduled on the policy or attach a separate list to the application.  
See Attached

**\*Attach 5 years of currently valued loss runs from prior carrier\***

Prior Carrier: Scottsdale    Expiring Premium: \_\_\_\_\_

If new in business or no prior coverage give details of experience & include No Known Loss or Claim Letter on Insured's Letterhead.

**DRIVER QUALIFICATIONS**

What auto liability limits are the drivers required to maintain? State Minimums

Do you have driver requirements:  (ATTACH COPY)    Do you have driver safety incentives: \_\_\_\_\_ (ATTACH COPY)

**APPLICANT AGREES TO THE FOLLOWING DRIVER CRITERIA: (attach HGT28 form signed by insured)**

- Driver's MVR's are checked at least every six months and at initial hire to confirm eligibility under insurance policy.
- Driver's auto liability insurance is checked at least every six months and at initial hire to confirm at least minimum financial responsibility limits are held and current
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- Driver must be over 18 & have 2 years driving experience and hold a valid drivers license for the residing state.
- Driver must have no more than two moving violations in 36 months and one at fault accident.
- No major traffic citations or incidents.

**I UNDERSTAND THAT I MAY ONLY EMPLOY A DRIVER THAT MEETS THE ABOVE DRIVER CRITERIA.**

DATE: \_\_\_\_\_ SIGNATURE: [Signature] : APPLICANT

PRINT NAME: Kevin Doss TITLE: Pure

**CONSTRUCTION CONTRACTS**

ADDRESS	Building Limit	Contents Limit	FT Empl.	PT Empl.	Bldg Construction
1 118 Ferry St., Sedro Woolley, WA 98284	\$0.00	\$90,000	3	11	Frame
2 360 36th St., Bellingham, WA 98225	\$0.00	\$90,000	2	13	Masonry
3 1600 E. College Way, Mt. Vernon, WA 98273	\$0.00	\$90,000	3	11	Frame
4 9815 State Ave., Marysville, WA 98270	\$0.00	\$90,000	4	8	Masonry
5 1301 E. Sunset, Bellingham, WA 98226	\$0.00	\$90,000	2	12	Masonry Non-C
6 2911 Colby St., Everett, WA 98201	\$0.00	\$90,000	3	8	Masonry
7 7601 Evergreen Way, Everett, WA 98203	\$0.00	\$90,000	3	18	Masonry
8 270 SE Cabot Drive, Oak Harbor, WA 98227	\$0.00	\$90,000	4	22	Masonry
9 3131 Smokey Point Dr., Arlington, WA 98223	\$0.00	\$80,000	4	10	Frame
10 1811 Main St., Ferndale, WA 98248	\$0.00	\$90,000	2	8	Masonry
11 211 W 6th St., Wenatchee, WA 98801	\$0.00	\$80,000	5	11	Frame
12 108 Front St. N., Issaquah, WA 98027	\$0.00	\$90,000	5	8	Masonry
13 16321 Main St. NE 201, Duvall, WA 98019	\$0.00	\$90,000	3	11	Masonry
14 20815 67th Ave. W, Lynnwood, WA 98036	\$0.00	\$90,000	3	10	Masonry
15 7639 SE 27th St. Sta. 4, Mercer Island, WA 98040	\$0.00	\$90,000	1	8	Masonry
16 15100 SE 38th St. Space C, Bellevue, WA 98006	\$0.00	\$90,000	3	7	Masonry
17 462 228th Ave. NE, Redmond, WA 98053	\$0.00	\$90,000	5	15	Masonry
18 10575 NE 12th St., Bellevue, WA 98004	\$0.00	\$90,000	4	5	Masonry
19 7320 35th Ave. NE, Seattle, WA 98115	\$0.00	\$90,000	2	10	Masonry
20 3425 Birch Bay Lynden Rd., Custer, WA 98240	\$0.00	\$90,000	3	5	Masonry
21 600 NW Market, Seattle, WA 98107	\$0.00	\$90,000	2	10	Masonry

EXHIBIT C

# PREMIUM ASSIGNMENT CORPORATION

## PREMIUM FINANCE AGREEMENT

Washington  
P.O. Box 3066 - 3522 Thomasville Rd.  
Tallahassee, FL 32315  
Phone 850-907-5610

PERSONAL     COMMERCIAL     NEW     AGENCY RENEWAL     ADD'L PREMIUM

THIS AGREEMENT, made effective the 14 day of August 2006, between  
**WEST COAST PIZZA CO., INC.**  
(Name of Borrower/Insured exactly as it appears in financed policies)    SSN OR TAX # \_\_\_\_\_

ADDRESS P.O. BOX 187  
CITY PT ROBERTS    STATE WA    ZIP 98281    PHONE # (604) 952-4500

hereinafter called the Borrower, and Premium Assignment Corporation, a Florida Corporation hereinafter called Lender, for the purpose of financing the purchase of insurance policies described in the Scheduled Policies of Insurance listed in page 3 to this Agreement

TOTAL PRICE OF PREMIUMS	- CASH DOWN PAYMENT	= PRINCIPAL BALANCE OWED ON PREMIUMS	+ DOC STAMPS & SERVICE FEE (if applicable)	= TOTAL AMOUNT FINANCED	+ FINANCE CHARGE (Amount credit costs over term of loan)	= TOTAL OF PAYMENTS (Amount paid if all payments made as scheduled)	ANNUAL INTEREST RATE
92,097.68	23,024.42	69,073.26	0.00	69,073.26	2,664.54	71,737.80	8.33

SELECT BILLING OPTION:  Payment Book  Monthly Invoice    Amount of Monthly Payment    Number of Payments    Date First Payment is Due

**YOUR PAYMENT SCHEDULE WILL BE:**  
Each monthly payment due on same day of each succeeding month until paid in full.    7,173.78    10    9/14/2006

FOR VALUE RECEIVED, BORROWER PROMISES TO PAY to the order of Lender at the address given at the top of this page, the Total Amount Financed and all sums shown above, including interest at the Annual Interest Rate and other charges as described hereinafter, pursuant to the terms stated below and in page 2 of this Agreement.

- SECURITY FOR PAYMENT:** To secure payment of all sums due under this Agreement, Borrower grants Lender a security interest in any unearned premiums or other sums which may become payable under the Scheduled Policies of Insurance shown on page 3
- LIMITED POWER OF ATTORNEY:** BORROWER IRREVOCABLY APPOINTS LENDER AS ATTORNEY-IN-FACT TO CANCEL THE SCHEDULED POLICIES OF INSURANCE AFTER BORROWER DEFAULTS IN MAKING PAYMENTS UNDER THIS AGREEMENT.
- NOTICE TO BORROWER:** (1) Do not sign this Agreement before you read it, or if it contains any blank space (other than as provided on the next page), (2) You are entitled to have and should retain a completely filled in copy of this Agreement, and (3) BY SIGNING BELOW BORROWER AGREES TO THE PROVISIONS ABOVE AND ALL OF THE TERMS WHICH APPEAR ON THE SECOND PAGE OF THIS AGREEMENT AND ACKNOWLEDGES RECEIPT OF COPIES OF PAGES 1, 2 AND 3 OF THIS AGREEMENT.

SIGNATURE OF ALL INSURED[S] NAMED IN POLICIES OR AUTHORIZED AGENT OF INSURED[S], AS PERMITTED BY LAW:

Date \_\_\_\_\_ Name and Title: \_\_\_\_\_ Date \_\_\_\_\_ Name and Title: \_\_\_\_\_

### PRODUCER'S REPRESENTATIONS & WARRANTIES:

The undersigned Producer represents and warrants that: (A) The Cash Down Payment shown above has been paid by or on behalf of the Borrower. (B) The Total Price of Premiums shown above has been or will be used to purchase insurance policies shown in the Scheduled Policies of Insurance on page 3 of this Agreement. Any portion of the Total Price of Premiums received by Producer that is not used to purchase such insurance policies, as well as any refunds or credits on such policies, shall be promptly paid to Lender (C) To the best of the undersigned's knowledge and belief, Borrower is not subject to any bankruptcy or insolvency proceedings and Producer has no reason to believe that Borrower is insolvent. (D) The Borrower's signature(s) is (are) genuine and authorized, or to the extent permitted by applicable law, the Producer has been authorized by Borrower to sign this Agreement on Borrower's behalf. (E) Producer has delivered or will deliver a copy of this Agreement to Borrower. Producer agrees that the Representations & Warranties above, as well as those on page 3 of this Agreement, are a binding contract between Producer and Lender.

### PRODUCER / AGENCY

Name ARTHUR J GALLAGHER/TACOMA  
Address P O BOX 2925  
TACOMA, WA 98401

Date \_\_\_\_\_

PRODUCER'S SIGNATURE

*7/1/06*



IN CONSIDERATION of the payment by Lender of the Principal Balance Owed on Premiums shown on page 1 to the insurance companies named in the Scheduled Policies of Insurance shown on page 3 (or the agents of such companies), the Borrower agrees:

4. **ACCEPTANCE DATE** This Agreement is binding upon its acceptance by Lender. Acceptance shall occur upon payment of the Principal Balance Owed on Premiums to the insurance companies named in the Scheduled Policies of Insurance, or the agents of such companies.
5. **PAYMENTS** Borrower shall make payments directly to Lender in the amounts and at the same time specified on page 1 of this Agreement. Payments shall be made at Lender's address given at the top of page 1 or such other address as Lender may direct in writing. Payments made to any other address, person, firm, corporation or insurance agency (including but not limited to the Producer) shall not constitute payment to Lender. Payments received after cancellation of the Scheduled Policies of Insurance shall be credited to the unpaid balance due under this Agreement and shall not constitute reinstatement of the cancelled policies, nor shall it constitute a waiver by Lender of any rights.
6. **LATE CHARGES** If a payment is more than 5 days late, Borrower agrees to pay a late charge of 5% of the delinquent installment, unless prohibited by applicable law.
7. **DEFAULT/CANCELLATION** A default shall occur if Borrower fails to pay any sums required by this Agreement in a timely manner, including interest and Late Charges, or if Borrower fails to carry out any other obligations under this Agreement. After default, any unpaid balance of the Total Amount Financed shall become immediately due and payable in full and Lender may enforce its security interest and its rights under the Limited Power of Attorney. Interest will continue to accrue on the unpaid balance at the Annual Percentage Rate or maximum rate allowed by applicable law, at the option of Lender, until all balances owed under this Agreement are paid. Lender may request cancellation of all or any of the Scheduled Policies of Insurance at the earliest time after default permitted by applicable law. Should Lender cancel the Scheduled Policies of Insurance, Borrower agrees to pay Lender a cancellation fee of \$5 (less late fee) as permitted by applicable law.
8. **EXCESS INTEREST OR FEES** It is the intent of the Lender that no interest, fee or charge in excess of that permitted by applicable law will be charged, taken or become payable under this Agreement. In the event it is determined that Lender has taken, charged or accrued interest, fees or charges in excess of that permitted under law, such excess shall be returned to Borrower or credited against the sum due Lender hereunder.
9. **REFUNDS** The Borrower will receive a refund of the finance charge if the account is prepaid in full prior to the last installment due date. The refund shall be computed according to applicable law subject to a nonrefundable service charge of \$10.
10. **SHORTAGE OR OVERAGE OF RETURNED PREMIUM** If Lender does not receive unearned premiums or other funds after cancellation or expiration of the Scheduled Policies of Insurance in an amount sufficient to pay the unpaid balance due under this Agreement, Borrower agrees to pay the deficiency to Lender on demand. Interest shall accrue on the deficiency at the Annual Percentage Rate, or the maximum rate allowed by applicable law, at the option of Lender. If the unearned premiums received by Lender are more than the amount due under this Agreement, the excess shall be returned to Borrower within the time allowed by applicable law. Borrower has no right to any excess of less than the minimum amount required to be paid by applicable law.
11. **ATTORNEYS FEES/COURT COSTS** Borrower agrees to pay all attorneys fees, expenses and costs incurred by Lender in collecting amounts due from Borrower under this Agreement, including attorneys fees incurred on appeal and in bankruptcy, unless prohibited or limited by applicable law.
12. **LENDER RELATIONSHIP** Borrower acknowledges that: (a) Lender is not an insurance agent nor an insurance company, (b) This Agreement is a financing agreement and not an insurance policy or guarantee of insurance coverage, (c) Lender has played no part in the selection or structuring of the financed insurance policies, (d) Lender has no obligation to request reinstatement of any insurance policies properly cancelled after a default under this Agreement, and (e) The decision of whether to reinstate insurance coverage is made solely by the insurance companies providing coverage, not Lender.
13. **ADDITIONAL PREMIUMS** Lender may advance to Producer, as Borrower's agent, or to an insurance company any additional premiums that may become due, less normal down payment, adding the advanced amount, plus any finance charge, to Borrower's balance under this Agreement. However, any additional premium which is owed to the insurance company(ies) named in the Scheduled Policies of Insurance as a result of any misclassification of risk which is not paid in full or financed in this Agreement may result in cancellation of the coverage by the insurance company for nonpayment of premium. Lender's payment shall not be applied by the insurer to pay for any additional premium owed by Borrower as a result of any misclassification of risk.
14. **LENDER LIABILITY** Lender is not responsible for any damages resulting from cancellation of the Scheduled Policies of Insurance by Lender, as long as the cancellation was done in accordance with applicable law. Borrower shall be responsible for Lender's reasonable attorneys fees and expenses for any unsuccessful action filed by Borrower seeking damages for improper cancellation. Lender's liability for breach of this Agreement shall be limited to the Principal Balance Financed under this Agreement, if permitted by applicable law.
15. **RETURNED CHECKS** Borrower agrees to pay a returned check fee of \$20, as allowed by applicable law, for each of Borrower's checks returned to Lender for insufficient funds or because the insured has no account in the payor bank.
16. **WARRANTIES OF BORROWER** Borrower warrants that: (a) Each of the Scheduled Policies of Insurance have been issued or a binder has been issued; (b) Borrower has not and will not assign or encumber any unearned premium of the Scheduled Policies of Insurance or grant a power of attorney to cancel the Scheduled Policies of Insurance to anyone other than Lender until all sums due under this Agreement are paid in full; (c) Lender may assign all its rights under this Agreement as allowed by applicable law; (d) No proceeding in bankruptcy or insolvency has been instituted by or against Borrower or is contemplated by Borrower, and (e) No insurance financed by this Agreement was purchased for personal, family or household purposes, unless so indicated on page 1.
17. **INTEREST CALCULATION** Interest is computed on an annual basis of 12 months of 30 days on the balance of the Total Amount Financed, from the effective date of the earliest insurance policy for which premiums are being advanced to the date when all sums due under this Agreement are paid.
18. **BLANK SPACES** Borrower agrees that if any policy financed by this Agreement has not been issued at the time the Agreement is signed, the names of the insurance companies issuing the financed policies, the policy numbers and the due date of the first installment may be inserted in the Agreement after it is signed.
19. **GOVERNING LAW** The Parties agree that the law of the state in which this Agreement is executed shall control the interpretation of the Agreement and the rights of the parties, unless the Agreement is executed in a state without premium finance laws, in which case the law of the State of Florida shall govern.
20. **SAVINGS CLAUSE** The Parties agree that if one or more portions of this Agreement are found to be invalid or unenforceable for any reason, the remaining portions shall remain fully enforceable.
21. **FINANCING OPTION** Entry into this financing arrangement is not a condition of obtaining insurance. You may opt to pay the premium for such insurance without financing such premium, or to obtain financing from some other source if you choose.



**SCHEDULED POLICIES OF INSURANCE**

V7.1a(0)N15.60

WEST COAST PIZZA CO, INC.  
P.O. BOX 187  
PT ROBERTS, WA 98281  
(604) 952-4500

ARTHUR J GALLAGHER/TACOMA 17589  
P O BOX 2925  
TACOMA, WA 98401  
(253) 627-7183

Premium	Down Payment	Unpaid Balance	Doc Stamps/Fees	Amt. Financed	Finance Charges	Total / Payments
92,097.68	23,024.42 (25.00 %)	69,073.26	0.00	69,073.26	2,664.54	71,737.80
Payment	Payments	Rate	First Due	Type	Status	Contract Type
7,173.78	10	8.33 %	9/14/2006	INVOICE	NEW	COMMERCIAL

EFF DATE	EXP DATE	COMPANY / BROKER	CITY	ST	CO. #	TYPE MEP	POLICY NO.	TOTAL PREMIUM
8/14/2006		CO: OREGON MUTUAL INS CO	CONCORD	CA	86235	BOP		20,382.00
8/14/2007		MGA:				0.00 %		
							Taxes/Fees	1,700.00
							Total	22,082.00
8/14/2006		CO: UNITED NATIONAL INS CO	ADA	MI	87020	EXCS		60,480.00
8/14/2007		MGA: AMWINS BROKERAGE OF WASHIN	Seattle	WA		25.00 %		
							Taxes/Fees	7,035.68
							Total	67,515.68
8/14/2006		CO: PROGRESSIVE CAS	CLEVELAND	OH	82789	BA		2,500.00
8/14/2007		MGA:				0.00 %		

Created By: 17589cl

Auth Code:

**ADDITIONAL REPRESENTATIONS & WARRANTIES OF PRODUCER**

(F) All information provided above is complete and correct in all respects and the policies listed above are or will be in force on the stated Effective Date and delivered by Producer to the Borrower, except for assigned risk or residual market policies.

(G) If any information listed above is or becomes incomplete or inaccurate, Producer shall promptly provide correct information to Lender.

(H) The Producer is an authorized policy issuing agent of the companies issuing the policies listed above or is the authorized agent of the MGA or broker placing the coverage directly with the insuring company, except those policies indicated with an "X".

(I) None of the policies listed above are subject to reporting or retrospective rating provisions. All policies subject to audit, minimum or fully earned premium provisions are indicated below:

Policy No and Prefix No: \_\_\_\_\_

(J) Except as indicated above, all Scheduled Policies of Insurance can be cancelled by Borrower or Lender on 10 days notice and the unearned premiums will be computed pro rata or on the standard short rate table

(K) If any Scheduled Policies of Insurance are subject to audit, Producer and Borrower have made good faith determination that the deposit, provisional or initial premiums are not less than the anticipated premiums to be earned for the full term of the policy(ies).

(L) Upon cancellation of any of the Scheduled Policies of Insurance, Producer shall remit to Lender the full amount of the unearned premium, including unearned commission, as well as any other payments or credits received by Producer, up to the unpaid balance due under this Agreement, within 15 days of receipt from the insuring company.

**DOCUMENTARY STAMPS REQUIRED BY LAW IF ANY ARE AFFIXED TO MONTHLY JOURNAL AND CANCELLED.**

# **APPENDIX B**

FILED

10 JAN 25 PM 3:30

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 08-2-27814-0 SEA

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

WEST COAST PIZZA COMPANY, INC. dba  
DOMINOES PIZZA, a Washington corporation,  
and all covered locations,

No. 08-2-27814-0 SEA

Plaintiff,

v.

**SUPPLEMENTAL  
DECLARATION OF  
DAVID W. BRINK**

NATIONAL CONTINENTAL INSURANCE  
COMPANY RE: POLICY NO. CP7063115-6, and  
UNITED NATIONAL INSURANCE COMPANY  
RE: POLICY NO. XTP0079005,

Defendants.

I, David W. Brink, declare under penalty of perjury under the laws of the state of  
Washington that the following is true and correct:

1. I make this Declaration on the basis of personal knowledge, information and  
belief, am over the age of 18 years, and competent to testify herein.

2. As I indicated in my first declaration submitted to the court, I am the Regional  
Director/Area Vice President for Arthur J. Gallagher Risk Management Services, Inc.  
("Gallagher"). I have held this position for eight years. I have been a Certified Insurance  
Counselor ("CIC") for over eleven years and have worked in the insurance industry in for twenty

**SUPPLEMENTAL DECLARATION OF DAVID W.  
BRINK-1**

OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

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oc 1/25/10 (d) #28100.002

1 five years. I presently work in Gallagher's Tacoma office located at 1015 A Street, Suite 800  
2 Tacoma, WA 98402.

3 3. I have been the agent/producer for the Domino's Pizza franchises owned by  
4 Kevin and Bryan Dobb and Dean Brandt since 2006. These Domino's Pizza franchises are  
5 owned and operated by four (4) legal entities -- West Coast Pizza Company, Inc., Mad Pizza  
6 Company, Inc., Tiam Pies, Inc., and Mac Pizza, LLC.

7 4. In August 2006, I determined that the franchises referenced above qualified for  
8 the Washington assigned risk insurance pool, which would save them a substantial amount of  
9 money in insurance deductibles. My assistant, Chris Lopez worked with Kevin Dobb on the  
10 application for insurance. Attached hereto as Exhibit A is a true and correct copy of the

11 application. On August 15, 2006, we submitted the application to the Washington Commercial  
12 Automobile Insurance Plan ("CAIP"), along with a check for \$2,500. The deductible was  
13 calculated at \$25.00 per driver/100 drivers. This was a deductible buy down policy. For \$2,500,  
14 we removed a \$25,000 deductible. We submitted the application only in West Coast's name  
15 because in the application we identified all of the employees and drivers of the 21 store locations  
16 operated by Bryan Dobb, Kevin Dobb and Dean Brandt.

17 5. In mid-September, my office received a call from Dean Daquila, an underwriter  
18 for National Continental Insurance Company ("National"). Apparently, he had not received the  
19 location schedule for Domino's Pizza. On September 14, 2006, Chris Lopez sent the schedule to  
20 Mr. Daquila via facsimile. Attached hereto as Exhibit B is a true and correct copy of the location  
21 schedule sent by my office. Although I have no firsthand knowledge of whether my office  
22 and/or my assistant Christine Lopez sent a request to National to add Domino's as an additional  
insured, Gallagher did issue a Certificate of Insurance to West Coast that identified Domino

SUPPLEMENTAL DECLARATION OF DAVID W.  
BRINK-2

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oc 1/25/10 (d) #28100.002

OSERAN HAHN SPRING STRAIGHT & WATTS P.S.  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 Pizza, LLC as an additional insured. It is common practice in the insurance industry that fast  
2 food franchisees are required to name their franchisors as additional insureds on whatever  
3 liability policy is required by the franchisor. National Continental is one of the main insurance  
4 providers for the Washington Commercial Automobile Insurance program which makes liability  
5 insurance available to fast food delivery risks.

6 6. The National Continental policy was purchased through the Washington  
7 Automobile Insurance Plan ("WAIP"). This plan includes a commercial section known as the  
8 Commercial Automobile Insurance Plan ("CAIP"). At no time did I send a copy of the WAIP to  
9 either Bryan or Kevin Dobb. There would be no reason for me to send either plan to them as  
10 their policy with National Continental or any other carrier would not be subject to the terms of  
11 either WAIP or CAIP. Moreover, at no time did I advise either Kevin or Bryan Dodd that their  
12 policy with National would be subject to either WAIP or CAIP.

13 7. My understanding of WAIP and CAIP is that they are agreements between the  
14 various insurers concerning how insurance policies can be offered to "at risk" insured companies  
15 such as fast food delivery companies. I did not understand that the terms of these plans are  
16 incorporated into the actual policy sold to the insured, in this case West Coast. I am not aware of  
17 the language in the policy that allows National to terminate the policy based on a failure to return  
18 the audit questionnaires.

19 8. I have also attached, as part of Exhibit B, a copy of a screen print of Gallagher's  
20 database. In reviewing the Gallagher files on this matter, I was able to determine that the other  
21 insurance companies listed in the screen print who also issued policies to West Coast at some  
22 point, United National and Oregon Mutual did list Dominos Pizza, LLC as an additional insured

1 on their respective policies issued to West Coast so our office was successful in telling these  
2 companies to add Dominos Pizza, LLC as an additional insured.

3 9. With respect to the Declaration of Christine Lopez, she states that she cannot  
4 recall if she asked National to name Dominos Pizza, LLC as an additional insured on the  
5 National Policy issued to West Coast. Although I cannot remember specifically instructing Ms.  
6 Lopez to name Domino's Pizza, LLC as an additional insured because three and a half years  
7 have passed since the policy was issued, my standard practice in 2006 was to ask Ms. Lopez to  
8 make sure that the franchisor was listed as an additional insured on the policy. I have no way of  
9 knowing whether she actually did that or not in September of 2006 but I assumed that it was  
10 done when Gallagher used the Certificate of Insurance to West Coast. It is standard practice for

11 Gallagher to send a copy of the Certificate of Insurance to respective insurance carriers. Here,  
12 Gallagher sent copies of the Certificate of Insurance to Oregon Mutual and United National. It  
13 would have also been our standard practice to also send the Certificate to National.

14 10. Attached hereto as Exhibit C is a true and correct copy of a letter I sent to  
15 National on August 29, 2007 asking National to reinstate Domino's Pizza's coverage.

16 11. In response to my letter, I received a letter dated September 6, 2007 from National  
17 refusing to reinstate the policy, which is attached hereto as Exhibit D. In the letter, National  
18 alleges that they mailed two questionnaires on September 25, 2006 and October 24, 2006. They  
19 also alleged that they mailed, on December 15, 2006, an Underwriting Cancel for failure to  
20 comply and that they mailed, on January 25, 2007, a Cancel Declaration.

21 12. My review of Gallagher's records indicates that as the producer of record, we  
22 never received a copy of the 2006 questionnaires or the cancel notices. At Gallagher, all  
incoming mail is organized by customer and by policy. If any of these documents had been

1 mailed to our office, the documents would have been routed to the account manager for this  
2 particular account. As long as the policy number and the client are identified on the incoming  
3 document, the account managers will receive the particular mailing. If National had sent us the  
4 questionnaires or the cancel notices, as they allege, they would be in our file system. I would  
5 have received a copy of any termination notice within days of its receipt by my office and I did  
6 not receive any such notice in December 2006.

7 DATED this 25 day of January, 2010 in TACOMA, Washington.

8   
9 \_\_\_\_\_  
10 David W. Brink

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**SUPPLEMENTAL DECLARATION OF DAVID W.  
BRINK-5**

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oc 1/25/10 (d) #28100.002

**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

# **Exhibit A**

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9-1  
7063-115  
\* 3115-3, \$  
12/07  
2500<sup>00</sup>

**COMMERCIAL APPLICATION  
WASHINGTON AUTOMOBILE INSURANCE**

**NOTICE: PRODUCER MUST READ THIS STATEMENT BEFORE PROCEEDING**  
 Applicants requiring filings or a limit of liability in excess of \$500,000 Combined Single Limits will be subject to a 15 day delay in the effective date as specified in Section 23 of the Washington Automobile Insurance Plan.

Producer Last Name/Agency Name <b>Arthur J. Gallagher RMS, Inc.</b>		Producer First Name		MI
Mailing Address <b>P.O. Box 2925</b>		Sta./Apt. #	City <b>Tacoma</b>	State <b>WA</b>
Year 1 or Social Security # <b>8421004487</b>	Producer License # <b>247654</b>	Telephone # (inc. area code) <b>253-627-7183</b>	Fax # (inc. area code) <b>253-572-1430</b>	
<i>(Complete if this producer completing and signing this application differs from Section 1.)</i>				
Last Name <b>Brink</b>	First Name <b>David</b>	MI	Signing Producer License # <b>5854</b>	
Last Name <b>West Coast Pizza Co. Inc.</b>		First Name		MI
D/B/A <b>Domino's Pizza</b>				Self Employed <input type="checkbox"/> Yes <input type="checkbox"/> No
Home Telephone # (inc. area code)	Business Telephone # (inc. area code) <b>604-952-4502</b>	Tax ID # <b>91-1959977</b>		
Street Address <b>P.O. Box 187</b>	Sta./Apt. #	City <b>Pt. Roberts</b>	State <b>WA</b>	Zip Code <b>98281</b>
Headquarters Street Address (if different from above)		Sta./Apt. #	City	State Zip Code
Business of Applicant/Kind of Operation <b>Pizza take out &amp; Delivery</b>				
Organized/Incorporated as: <input checked="" type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Sole Proprietor		State of Incorporation: <b>WA</b>	Date of Incorporation: <b>2001</b>	Date actual operations commenced
<b>Other</b>				
<b>Management, Ownership and Control (List names of principals and also anyone with more than a 10% ownership interest.)</b>				
President <b>BRYAN DUBS</b>	Date in Position <b>12/10/01</b>	Percent Ownership <b>51%</b>		
Vice President <b>KEVIN DUBS</b>	Date in Position <b>10/10/01</b>	Percent Ownership <b>33%</b>		
Secretary <b>DEAN BELAND</b>	Date in Position <b>10/10/01</b>	Percent Ownership <b>16%</b>		
Treasurer				
General Manager				
Other				
List of related companies				

Staple check here:  
→

Send original, signed application with check/money order and required attachments to:

Western Association of Automobile Insurance Plans  
PO Box 7917  
San Francisco, CA 94120-7917

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SECTION 5. OPERATOR INFORMATION				(List all full-time, part-time, and all other operators that usually drive a vehicle.)		TOTAL OPERATORS	
Last Name	First Name	MI	Birth Date Mo./Day/Yr.	Driver's License #	State		

**For applicants with more than four operators, all additional operators must be listed on an AIP 3502 Supplemental Operator Schedule and mailed with the original application to the Plan.**

SECTION 6. ACCIDENTS							
Has applicant, or anyone who usually drives the applicant's vehicle(s), been involved, either as owner or operator, in ANY motor vehicle accident during the past THIRTY-SIX months? <input type="checkbox"/> Yes <input type="checkbox"/> No. If "Yes", complete the following.							
Name of Operator	Accident Date Mo./Day/Yr.	Code*	Place of Accident		Bodily Injury or Death	Prop. Damage (incl. your own) Amount	Penalty Points
			City	State			
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	
					<input type="checkbox"/> Yes <input type="checkbox"/> No	\$	

- \*Accident Codes
1. Applicant's motor vehicle lawfully parked.
  2. Damaged by "Hit and Run" driver and accident reported to police within 24 hours from time of accident.
  3. Applicant reimbursed by or on behalf of person responsible for the accident or has judgment against such person.
  4. Other person involved in accident was convicted. Applicant or operator was not convicted.
  5. Police or Fire Department or First Aid Squad responding to an emergency call.
  6. Other type of accident - non-chargeable under provisions of the Plan. Describe accident in space provided below.

SECTION 7. CONVICTIONS							
Has the applicant or anyone who usually drives the applicant's vehicle(s) been CONVICTED or FORFEITED BAIL at any time during the immediately preceding THIRTY-SIX months? Convicted <input type="checkbox"/> Yes <input type="checkbox"/> No Forfeited Bail <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", for either item, complete the following. NOTE: A paid ticket or fine is an admission of guilt and therefore constitutes a conviction.							
Name of Operator	Date of Conviction or bail forfeiture Mo./Day/Yr.	Did Conviction Arise as a Result of an Accident?	Nature of Conviction	Place of Conviction		Penalty Points	Was License Suspended or Revoked?
				City	State		
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> Yes <input type="checkbox"/> No					<input type="checkbox"/> Yes <input type="checkbox"/> No

SECTION 8. HAZARDOUS MATERIALS TRANSPORT Identify any hazardous materials, waste or substances being hauled. *N/A*

Identify radius of operations: (Number of straight line, air miles from garage to furthest destination to which vehicle travels in one direction on a regular basis. "Regular" is defined as two or more trips per month per vehicle.) *5 Mile Radius*

Trip From Place of Origin To Place of Destination	% of Revenues	# per Month	Principal Cities entered	Commodities Carried
<i>Vis. See attached Sched. of Locations</i>	<i>80%</i>	<i>Vis</i>	<i>See Loc. Schedule</i>	<i>Pizza</i>

SECTION 9. GROSS REVENUES (Required for Motor Carriers of Property or Passengers whether or not the policy is to be written on Trip Receipts basis)					
Gross Receipts	Current Year	1st Prior Year	2nd Prior Year	3rd Prior Year	4th Prior Year
Other than Truckers	\$	\$	\$	\$	\$
Truckers including receipts from trip leased equipment	\$	\$	\$	\$	\$



**SECTION 11.1. SELECTION OF UNDERINSURED AND UNDERINSURED MOTORIST COVERAGE LIMIT** **DO NOT SIGN UNTIL YOU READ.**

Uninsured/Underinsured Motorist Coverage - BI	<input type="checkbox"/> I ACCEPT	<input type="checkbox"/> I REJECT
Uninsured Motorist Coverage - PD	<input type="checkbox"/> I ACCEPT	<input type="checkbox"/> I REJECT
Basic Personal Injury Protection	<input type="checkbox"/> I ACCEPT	<input type="checkbox"/> I REJECT
Added PIP	<input type="checkbox"/> I ACCEPT	<input type="checkbox"/> I REJECT
Work Loss Option	<input type="checkbox"/> WITH	<input type="checkbox"/> WITHOUT
Optional Basic PIP	<input type="checkbox"/> I ACCEPT	<input type="checkbox"/> I REJECT
Work Loss Option	<input type="checkbox"/> WITH	<input type="checkbox"/> WITHOUT

**NOTE:** Your designated insurer will send you a disclosure form that fully explains all of the above listed options for your signature prior to policy issuance.

I understand and agree that selection of any of the above options applies to my liability insurance policy and future renewals or replacements of such policy, which are issued at the same Bodily Injury Liability Limits. If I decide to select another option at some future time, I must let the Company or my producer know in writing.

Applicant's Signature \_\_\_\_\_ Date: \_\_\_\_\_ Hour: \_\_\_\_\_  AM  PM

**SECTION 11.2. EMPLOYER'S NON-OWNERSHIP LIABILITY**

Are any other vehicles owned by the Applicant?  Yes  No  
 If "Yes" complete the following.

Name of Insurance Company \_\_\_\_\_ Policy # \_\_\_\_\_ Name of Firm/Carrier For Insd

Address of Insurance Company \_\_\_\_\_ Type of Business Delivering Pizza

Description of any owned, leased, hired, and non-owned vehicles, which are not to be insured.

Year	Trade Make	Body Type	Vehicle Identification #

Total # Employees <u>285</u>	What % of the applicant's employees operate their vehicles in the business? <u>35%</u>	FAST FOOD DELIVERY ONLY	Total # Drivers <u>100</u>
---------------------------------	---	-------------------------	-------------------------------

**SECTION 11.3. HIRE/AUTO COVERAGE**

<input type="checkbox"/> Check here if desired.	Estimated Annual Cost of Hire	Rates Per \$100		Estimated Premium	
		B.I.	P.D.	B.I.	P.D.

(For policies rated under Trustee's Cost of Hire.) All rates for which a broad form filing or MCS-90 endorsement has been issued

	Current Year	1st Prior Year	2nd Prior Year	3rd Prior Year	4th Prior Year
Indicate the total Cost of Hire, including cost and wages, for vehicles leased or hired on a long-term basis (over 6 months) and specifically insured by applicant as an owned automobile.	\$	\$	\$	\$	\$
Indicate the total Cost of Hire, including cost and wages, for automobiles, which are not specifically insured by the applicant as an owned vehicle but are to be insured as hired automobiles.	\$	\$	\$	\$	\$
Cost of Hire - Represents Total Long and Short Term Cost of Hire.	\$	\$	\$	\$	\$

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**SECTION 22 - FILINGS OR NOTIFICATIONS**

NOTE: All owned and operated vehicles must be described in this application. All risks for which a filing has been made (except SR-22) are subject to cost of hire rating and employer's non-ownership coverages. If a filing is requested here, the Cost of Hire and Employer's Non-Ownership Liability sections must be completed. Applicant's name must be identical to name as it appears on ICC or Dept. of Public Safety (DPS) permit to avoid rejection.

Is filing of specific limit(s) of liability needed?  Yes  No. If "Yes" to comply with:  
 Motor Carrier Act of 1980 Type:  1  2  3  4  Bus Regulatory Act of 1982  ICC Regulation - Docket # \_\_\_\_\_  
 Local Ordinance (attach copy)  State Regulation  U. S. DOT # \_\_\_\_\_  Other \_\_\_\_\_  
 If block(s) are checked, list state(s) and city(ies) requiring filings or limits of liability required by law.

Is applicant required to file evidence of financial responsibility (SR-22)?  Yes  No. If "Yes", complete the following.

Last Name \_\_\_\_\_ First Name \_\_\_\_\_ (AI) Tax Identification # \_\_\_\_\_

Type of Filing:  Owner's (operation of owned vehicles)  Operator's (operation of non-owned vehicles)  Both

State where filing required \_\_\_\_\_ Case or file # \_\_\_\_\_ Reason for Filing \_\_\_\_\_

Name of any party requiring a certificate of insurance or additional insured endorsement \_\_\_\_\_

**SECTION 23 - PREMIUM FINANCE** GROSS DEPOSIT PREMIUMS MUST BE SUBMITTED WITH APPLICATION.

Option 1 - Full Annual Premium  
 Option 2 - Premium Deposit With Billing Bill Balance  
 Option 3 - Installment Premium Payments\*  
 \* \$4.00 per installment charge  
 Premium to be Financed - Name of Premium Finance Company\*\*

Payable by:  Cash  Check  Check/Order # \_\_\_\_\_  
 Total Estimated Premium \$ 2,500  
 Amount Submitted with Application \$ \_\_\_\_\_

\* Not Available on Premium Financed Policies.  
 \*\* Attach a copy of Premium Finance contract.

**NOTICE TO PREMIUM FINANCE COMPANY - Unsecured Premium is based on actual premium, not estimated premium.**

**SECTION 24 - PREVIOUS AUTOMOBILE INSURANCE CARRIER**

Information for the past three years. (If a user, information for the past five years required.) Attach loss statements from previous carrier.

Name of latest carrier \_\_\_\_\_ Policy # \_\_\_\_\_ Termination date \_\_\_\_\_

Was coverage through Plan?  Yes  No. If "Yes", give reason terminated.

Complete the following for Carriers of property and passengers.

	Policy #	Policy Period From	To	Name of Insurance Company
1st Prior				
2nd Prior				
3rd Prior				
4th Prior				

**SECTION 25 - WAIVER OF INSURANCE AND REQUESTED EFFECTIVE DATE OF COVERAGE**

The Applicant hereby authorizes any insurer that may previously have provided coverage to the Applicant or to additional named insureds to provide records, data or information concerning prior coverage to the Plan or any carrier designated by the Plan. The Applicant agrees that a reproduction of this authorization shall be considered as effective and valid as the original.

- The application must be fully completed and duly executed.
- Specific applicants requiring financial responsibility filings or a limit of liability in excess of \$500,000 CSL will be subject to a 15-day delay in the effective date. Coverage under this evidence of automobile insurance for these specific applicants is to be effective for a period not to exceed 30 days from the effective date of coverage.
- Otherwise, coverage under this evidence of automobile insurance is to be effective for a period not to exceed 30 days from the effective date and time stated herein. Within such 30 day period coverages under this evidence of automobile insurance will terminate immediately upon: (a) the issuance of the policy applied for, (b) the issuance of any policy affording similar insurance, or (c) the cancellation of the coverages of insurance afforded hereunder in accordance with the rules of the Washington Automobile Insurance Plan.
- A premium charge will be made for these coverages if the policy, when and as issued, is not accepted by the Insured.
- The insurance afforded hereunder shall be subject to all the terms and conditions of the Plan and the Policy Form prescribed for use.
- The Producer of Record must forward this application to the Plan Office no later than the first working day after the application is written.

NOTE: In the event there is no U.S. postmark (a metered mail postmark, electronic stamp, or other postage service or stamp are not considered a U.S. postmark), coverage will become effective no earlier than 12:01 a.m. on the day following receipt in the Plan Office.

**Applicants requiring filings or a limit of liability in excess of \$500,000 Combined Single Limits will be subject to a 15 day delay in the effective date as specified in Section 23 of the Washington Automobile Insurance Plan.**

Requested Effective Date and Time: \_\_\_\_\_  
 Example: 09/01/2002 11:30 AM

IN NO EVENT SHALL COVERAGE BE EFFECTIVE PRIOR TO THE DATE AND HOUR OF COMPLETION OF THIS APPLICATION.

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 SEP 05 2006

I hereby certify that I am a licensed broker/agent of the State of Nevada. I have read the Washington Automobile Insurance Plan and have explained the provisions to the applicant. I acknowledge that I am acting on behalf of the applicant in submitting this application and have no authority to establish or revise the terms or conditions of coverage. This application includes all required information given to me by the applicant. In the event of cancellation or change to this policy resulting in a reduction of premium, I agree to return the unearned premium to the insured (not of my minimum premium due the carrier) and also to return to the carrier unearned compensation for this insurance received by me as required by the Plan.

My signature hereon represents certification of the Producer of Record Statement AND I certify this application is submitted pursuant to the effective date provisions contained in the Washington Automobile Insurance Plan.

\_\_\_\_\_  
 Date: 8/14/06 Hour: 2:00  AM  PM

1. The Applicant, declares and certifies that:
  2. I have had and held in effect automobile insurance in this state within the preceding 90 days.
  3. To the best of my knowledge and belief all statements contained in this application are true and that these statements are offered as an inducement to the Company to issue the policy for which I am applying.
  4. I realize that any misleading information or failure to disclose required information will not be considered good faith on my part and may void the application or cause cancellation of my coverage.
  5. I hereby agree to pay all premiums when due.
  6. I hereby certify that I do not own any insurance company for automobile premiums due or contracted.
  7. I designate as Producer of Record for this insurance the producer or firm named in this application. I may designate a substitute producer at any time and, upon designation, shall be the Producer of Record. I understand that any designated Producer cannot act as an agent of the Washington Automobile Insurance Plan or any carrier for the purpose of this insurance and that the Producer has no authority to establish other or amend terms or conditions of coverage.
  8. I duly authorize the undersigned to execute this application on my behalf if the Applicant is not a natural person.
  9. I agree that no coverage will be in effect if the premium remittance, which accompanies this application, is justifiably dishonored by any financial institution.
  10. I understand that the premiums shown on this application are estimated premiums. The carrier reserves the right to adjust the premium either prior to or after the issuance of the policy, whenever applicable.
  11. I understand that if I owe money for a prior Washington Automobile Insurance Plan policy which I have not formally appealed to the Washington Automobile Insurance Plan Governing Committee, the money that I submit with this application for a new Washington Automobile Insurance Plan policy will be applied to that prior policy, and I am not entitled to a refund of the money I have submitted with this application, even if coverage for this new policy is terminated, until I pay the full amount owed for all current and prior Washington Automobile Insurance Plan policies.
  12. When the insurance is to be written on a basis requiring final adjustment of the premium after expiration of the policy I will maintain a complete record of its financial transactions in any reasonable form and manner as the insurer may require. I will also make this record available for inspection by the insurer at a designated place and at all reasonable times.
- \_\_\_\_\_  
 Date: 8/14/06 Hour: \_\_\_\_\_  AM  PM

In the event that coverage is not received within 30 days, notify the Plan Office at PO Box 7347, San Francisco, CA 94120

It is a crime to knowingly provide false, incomplete, or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines, and denial of insurance benefits.

In addition to routine verification of information pertinent to the insurance applied for, if the application is by an individual for insurance primarily for personal or family purposes, the insurer to which it is assigned may have an investigative consumer report made including information bearing on character, general reputation, personal characteristics or mode of living and, upon the individual's written request, will disclose in writing the nature and scope of the investigation requested, if such report is procured.

RECEIVED SEP 05 2006

# **Exhibit B**

---

# Facsimile Transmittal



Arthur J. Gallagher  
Risk Management Services, Inc.

Date:	September 14, 2006
Total Pages:	2 (including this cover sheet)
To:	Dean Dukwill
Fax #:	888-482-5144
From:	Christine Lopez, Account Manager Arthur J. Gallagher Risk Management Services, Inc. P.O. Box 2925, Tacoma, WA 98401-2925
Phone:	(253) 627-7183 Ext. #1134    Email Chris_lopez@ajg.com
Fax:	(253) 572-1430
Re:	Westcoast Pizza -- CPW7063115

Message: Dean:

Per our conversation, enclosed is the location schedule for West Coast Pizza.

Let me know if you have any questions.

Thank you.

*Chris*  
Chris

This fax contains confidential information for the named recipient only. Any other distribution, copying or disclosure is strictly prohibited. If you have received this fax in error, please notify us immediately by phone (253.627.7183) and return this fax to us by mail to: AJG, PO Box 2925, Tacoma, WA 98401-2925.

CAIP INMAIL

SEP 15 2006

IMS

**LOCATION SCHEDULES - WEST COAST PIZZA**

21

**ADDRESS**

- 118 Ferry St., Sedro Woolley, WA 98284
- 360 36th St., Bellingham, WA 98225
- 1600 E. College Way, Mt. Vernon, WA 98273
- 9815 State Ave., Marysville, WA 98270
- 1301 E. Sunset, Bellingham, WA 98226
- 2611 Colby St., Everett, WA 98201
- 7601 Evergreen Way, Everett, WA 98203
- 270 SE Cabot Drive, Oak Harbor, WA 98227
- 3131 Smokey Point Dr., Arlington, WA 98223
- 1811 Main St., Ferndale, WA 98248
- 211 W 5th St., Wenatchee, WA 98801
- 108 Front St. N., Issaquah, WA 98027
- 15321 Main St. NE 201, Duvall, WA 98019
- 20815 67th Ave. W, Lynwood, WA 98036
- 7639 SE 27th St. Ste. 4, Mercer Island, WA 98040
- 15100 SE 38th St. Space C, Bellevue, WA 98006
- 462 228th Ave. NE, Redmond, WA 98053
- 10575 NE 12th St., Bellevue, WA 98004
- 7320 35th Ave. NE, Seattle, WA 98115
- 3425 Birch Bay Lynden Rd., Custer, WA 98240
- 500 NW Market, Seattle, WA 98107

\*

CAIP INMAIL

SEP 15 2006

IMS

**CERTIFICATE OF LIABILITY INSURANCE - AIRCRAFT - COMMERCIAL**

**INSURANCE COVERAGE**

Policy No.	
Effective Date	
Expiry Date	
Insured Name	
Address	
City	
State	
Zip	

**EXCESS INSURANCE COVERAGE - Coverage of the difference between \$25,000,000/\$50,000,000 and \$1,000,000.**  
**Insured's Excess L&C is an additional insured with respect to their interest only.**

**INSURANCE COMPANY**

**CERTIFICATE OF LIABILITY INSURANCE - AIRCRAFT - COMMERCIAL**

**INSURANCE COVERAGE**

Policy No.	
Effective Date	
Expiry Date	
Insured Name	
Address	
City	
State	
Zip	

**INSURANCE COVERAGE**

INS	General Liability Insurance
ACC	Automobile Liability Insurance
AW	Aircraft Liability Insurance

*Handwritten signature or initials*

Policy: Westcoast Pizza Co. Inc.

CERTIFICATE OF LIABILITY INSURANCE - ACORD 25-S (2001/06) - WESTP-1-1

**CERTIFICATE HOLDERS**

Effective Date: 02/02/07

Name: Domino's Pizza LLC

Address: 30 Frank Lloyd Wright Dr., Ann Arbor, MI 48106

Additional Insured:  General Liability  Products  Contractual  Automobile  Other

**\*Excess Automobile Coverage - Coverage is the difference between \$25,000/\$50,000/\$10,000 and \$1,000,000. Domino's Pizza LLC is an additional insured with respects to their interest only.**

Policy: Westcoast Pizza Co. Inc.

CERTIFICATE OF LIABILITY INSURANCE - ACORD 25-S (2001/06) - WESTP-1-1

Effective Date: 03/07/06

**INSURED**

Insured: MAD Pizza Co., West Coast Pizza, Inc., Tam Pies, Mac Pizza

Insured: dba Domino's Pizza, P.O. Box 187, Pt Roberts, WA 98281

**COMPANIES AFFORDING COVERAGE**

Company A	ORM	Oregon Mutual Insurance
Company B	XNC	National Continental Ins
Company C	XUJ	United National Insurance Co.
Company D		
Company E		

Customer Activation Tracking - WESTP-4 on 09/14/2006 by akhazipade

Name Westcoast Pizza Co. Inc. Client # WESTP-4 Ph-R  
Attn dba Domino's Pizza Conglom# DOMIN-2 Ph-B 604-952-4500  
Street POB 187 Agency 1 Ph-F 604-952-4502  
City Pt Roberts St WA Branch 1 Note cell 604 841 7184  
Zip 98281 Broker  
Hdg Brian Dobb or Kevin Csr 68 Code RS Pr DWB Ocp PIZZA DELIVERY

Thursday, 09/14/2006 09:22 AM  
Amount 0 Co ORM Success Y Action NO on 09/14/2006  
Plan Closed 09/14/2006  
Desc Domino's Corporate

Notes   
faxed to insd via fax advantage

WESTP-4

# **Exhibit C**

---



Arthur J. Gallagher Risk Management Services, Inc.

August 29, 2007

National Continental Insurance Company  
PO Box 94762  
Cleveland, OH 44101  
Attention: Cindy Fedai

RE: Improper Cancellation of National Continental Policy # CPW 7063115-6

Dear Cindy;

We are very concerned about the improper cancellation of our insureds policy.

After a careful review, we cannot find proper notice of audit, cancellation to the client, or to our office.

We did receive the second request for audit; letter dated March 27, 2007. When we received it, we had the client complete it and return it to you. The audit form states that Failure to fill this out would result in cancellation. However, this policy had already been cancelled by National Continental Insurance Company on January 16, 2007.

I am at this time formally requesting you reinstate coverage on this account.

Sincerely,

David Brink

---

PO Box 2925  
Tacoma, WA 98401-2925  
Direct 253.627.7183  
Toll Free 800.334.1634  
Fax 253.572.1430  
www.ajg.com

# **Exhibit D**

---

National Continental/Progressive  
625 Alpha Drive  
Highland Heights, OH 44143  
P. O. Box 94762  
Cleveland, OH 44101-4762  
phone 800-937-2247  
fax 888-240-6630

**PROGRESSIVE\***

September 6, 2007

Arthur J Gallagher Risk Management Services, Inc  
Attn: David Brink  
PO Box 2925  
Tacoma, WA 98401-2925

Re: CPW7063115-6

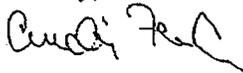
Dear David:

Our company has reviewed the above policy. We have canceled this in compliance with Plan and state rules. Here is what occurred on the policy after the new business was mailed:

September 25, 2006 – Mailed the first premium audit questionnaire. (Exhibit A)  
October 25, 2006 – Mailed the second premium audit questionnaire. (Exhibit B)  
December 15, 2006 – Mailed the Underwriting Cancel for failure to comply, this was sent record of mail. (Exhibit C)  
January 25, 2007 – Mailed the cancel declaration which showed the policy canceled on 011607. (Exhibit D)  
February 9, 2007 – Mailed the refund for the policy which was cashed by the insured on 022107. (Exhibit E)  
February 12, 2007 – Mailed the final premium notice which shows the policy canceled with a refund. (Exhibit F)  
February 26, 2007 – Mailed the premium audit questionnaire after cancel (Exhibit G)  
March 27, 2007 – Mailed the second premium audit questionnaire after cancel which was answered on 042407. (Exhibit H)

We sent several pieces of mail which reflected the cancellation and the refund was cashed by the insured. There will not be a reinstatement on this policy.

Sincerely,



Cindy Fedai  
Underwriting Manager

# **APPENDIX C**

**FILED**

09 JUN 15 PM 4:30

KING COUNTY  
SUPERIOR COURT CLERK  
SEATTLE, WA

Honorable Monica J. Benton  
Trial Date: 2/8/2010

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

WEST COAST PIZZA COMPANY, INC. dba  
DOMINO'S PIZZA, a Washington corporation, and  
all covered locations,

Plaintiff,

v.

NATIONAL CONTINENTAL INSURANCE  
COMPANY RE: POLICY NO. CP7063115-6, and  
UNITED NATIONAL INSURANCE COMPANY  
RE: POLICY NO. XTP0079005,

Defendants.

No. 08-2-27814-0 SEA

**DECLARATION OF JAMES H.  
CLARK IN SUPPORT OF  
PLAINTIFF'S RESPONSE TO  
NATIONAL CONTINENTAL  
INSURANCE COMPANY'S  
MOTION FOR SUMMARY  
JUDGMENT**

I, James H. Clark, declare under penalty of perjury under the laws of the state of

Washington that the following is true and correct:

1. I am the attorney representing plaintiff Domino's Pizza in this lawsuit. I make  
this Declaration on the basis of personal knowledge and review of the records.

2. Attached hereto as Exhibit 1 are excerpt pages 8-10, 18, 21, 28-29 32-34. from  
the Deposition of Dean Daquila taken on April 24, 2009.

3. Attached hereto as Exhibit 2 is a true and correct copy of a letter produced in  
discovery in this litigation, dated December 6, 2007 from National to the Office of Insurance

**DECLARATION OF JAMES H. CLARK IN SUPPORT  
OF PLAINTIFF'S RESPONSE -1**

F:\JHC\clients\Mad Pizza\National Continental\NSJ.Decl.Clark.docx  
6/15/09 (GE) #28100.002

**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**

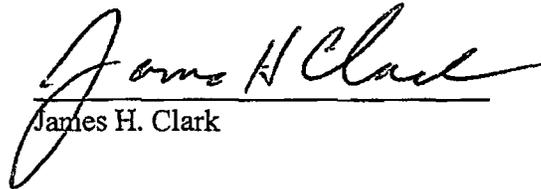
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

**ORIGINAL**

1 Commissioner for the State of Washington. National acknowledges in the letter that they  
2 received audit responses on April 24, 2007 and May 7, 2007 from Domino's Pizza.

3 4. Attached hereto as Exhibit 3 is a true and correct copy of a letter produced in  
4 discovery in this litigation dated June 13, 2008 from Domino's Pizza LLC to MAD Pizza  
5 Company, with a copy to National Continental Insurance Company. The letter acknowledges  
6 that Domino's Pizza LLC is an additional insured on the automobile liability insurance policy  
7 issued by National.

8 DATED this 15<sup>th</sup> day of June, 2009 at Bellevue, Washington.

9  
10   
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

---

# **Exhibit 1**

---

**In The Matter Of:**  
*West Coast Pizza Company, Inc., etc. v.*  
*National Continental Insurance Company, etc.*

---

*Dean Daquila*  
*April 24, 2009*

---

MEHLER  HAGSTROM  
Court Reporters

1750 Midland Building	720 Akron Centre
101 Prospect Avenue, West	50 South Main Street
Cleveland, Ohio 44115-1081	Akron, Ohio 44308-1828
216.621.4984 800.822.0650	330.535.7300 800.562.7100
fax 216.621.0050	330.535.0050 fax

---

Schedule@MandH.com    www.MandH.com

*Original File 090424DD.txt*  
*Min-U-Script® with Word Index*

1 DEAN DAQUILA, of lawful age, called by the  
2 Plaintiff for the purpose of cross-examination,  
3 as provided by the Rules of Civil Procedure,  
4 being by me first duly sworn, as hereinafter  
5 certified, deposed and said as follows:

6 CROSS-EXAMINATION OF DEAN DAQUILA

7 BY MR. CLARK:

8 Q. Could you please state your full name and give us  
9 your business address.

10 A. Dean Eric Daquila, 625 Alpha Drive, Highland  
11 Heights, Ohio.

12 Q. And, sir, how old are you?

13 A. 55.

14 Q. My name is Jim Clark and I represent the  
15 plaintiff West Coast Pizza in this case. I'm  
16 going to ask you some questions today about the  
17 case.

18 Just a couple basic ground rules. When you  
19 answer the questions, try to answer audibly so  
20 Margaret can take down a response, and then  
21 secondly, if you don't understand my question,  
22 feel free to ask me to rephrase it and I'll do  
23 the best that I can do.

24 A. Okay.

25 Q. Have you had your deposition taken before?

1 A. There probably isn't such a thing as a typical  
2 sort, but it runs from fast food and the pickup  
3 truck owned and operated by a plumber or an  
4 electrician or a contractor of some sort up to  
5 fleets of a couple hundred vehicles that may be  
6 truck fleets or bus fleets. We've had armored  
7 cars.

8 Q. I take it pizza delivery vehicles would fall  
9 within this area of plans that you look at?

10 A. Yes. It falls within the hired and nonowned  
11 portion of what we look at. It also includes  
12 things frequently like couriers, messenger  
13 services.

14 Q. When you say nonowned automobiles, what are you  
15 referring to?

16 A. We will insure a company who utilizes vehicles in  
17 their business that they don't own.

18 Q. And is Dominoes a customer of Progressive?

19 A. No.

20 Q. Do you know are any Dominoes franchisees  
21 customers of Progressive?

22 A. I don't know for certain that right at the moment  
23 we have any, but I believe we do.

24 MR. ADAMS: Just for the record,  
25 when we're talking about Progressive, this

1 case is National Continental. I don't know  
2 if that's going to be confusing later on,  
3 but --

4 MR. CLARK: Good point, Jeff.

5 Q. Can you explain the relationship between National  
6 Continental and Progressive or that might take  
7 days I understand.

8 A. It could take days. National Continental is  
9 wholly owned by Progressive and I believe the  
10 actual company name is a hundred years old. It's  
11 primarily used by Progressive to handle this  
12 commercial assigned risk business.

13 Q. The policy that is at issue in this litigation,  
14 was it issued by National Continental?

15 A. Yes, it was.

16 Q. Okay. Can you tell me, Dean, just briefly what  
17 did you do to prepare for this deposition?

18 A. Reviewed the file, had some conversations with  
19 Jeff.

20 Q. And when you say reviewed the file, this is  
21 National Continental's file for this matter?

22 A. Correct.

23 Q. All right.

24 A. I should be specific. It's the underwriting  
25 file, not the claims file.

1 Q. And are you aware that there were discovery  
2 questions sent by West Coast Pizza to National  
3 Continental in this case?

4 A. I believe I actually responded to those  
5 questions.

6 Q. Oh, you did. So were you involved in putting the  
7 documents together in response to the first  
8 interrogatories and request for production that  
9 West Coast Pizza served on National Continental?

10 A. I believe -- I'm guessing and I probably  
11 shouldn't do that. I don't think it was me. I  
12 think it was my manager.

13 Q. Okay. When you looked at the file, can you just,  
14 and I don't want to go through every document,  
15 but just tell me generally what's in the file.

16 A. The new business application, the cancelled dec,  
17 we refer to it as dec, cancelled declarations, my  
18 request to have the policy cancelled for lack of  
19 underwriting information. There's a fax from the  
20 insured -- I'm sorry, from the producer giving us  
21 all of the location addresses, documentation, my  
22 original call to him to make sure that all of the  
23 locations were in the State of Washington, copies  
24 of I believe the first bill that indicates that  
25 they were overpaid, and there might be some blank

1 form. I think he's testified they didn't  
2 have a choice to approve it or not, but go  
3 ahead with that proviso.

4 A. We don't advise the producer that we're issuing  
5 the policy. We issue the policy and they get a  
6 copy of it. In this case, there was some  
7 communication prior to us issuing the policy  
8 because that list of locations was not attached.  
9 I called to inquire about it.

10 Q. Do you remember who you called?

11 A. The producer's office.

12 Q. And did they produce a list of locations?

13 A. Yes, they faxed it.

14 Q. Do you remember how many locations were on the  
15 list?

16 A. No.

17 Q. Okay. Did you find the list when you were  
18 reviewing your file for this deposition?

19 A. Yes.

20 Q. Okay. I don't want you to speculate or guess,  
21 but do you remember approximately how many stores  
22 were on the location list?

23 A. Well, if I give you an answer, it will be a  
24 speculation and a guess.

25 Q. All right.

1 also again includes plumbers, electricians, so on  
2 with their pickup trucks, and when we issue hired  
3 and nonowned policies, they're generally given  
4 the risk type 6.

5 Q. Exhibit 2, this declarations page, is this a  
6 document that would have been prepared internally  
7 by National Continental?

8 A. Yes, with a caveat. Our computer system is a  
9 leased system and actually it's headquartered  
10 somewhere up in Canada. The dec actually, the  
11 declarations papers did produce in Ohio and we  
12 mailed them from here.

13 Q. Okay. In your experience since you've been at  
14 National Continental, has National Continental  
15 written, underwritten a policy for a Dominoes  
16 Pizza franchise before?

17 A. Yes.

18 Q. Okay. In the State of Washington?

19 A. I'm not sure.

20 Q. Okay. Would you consider this to be a common  
21 type of commercial policy that National  
22 Continental would issue?

23 A. Yes.

24 Q. And under the term, Covered autos, first let me  
25 ask you, to you what does that term mean, covered

1 Q. Where would one find the manual?

2 A. On line.

3 Q. Okay.

4 A. The specific site, www.aipso.com.

5 Q. A little light reading I'm sure, huh?

6 I take it you're familiar with the terms of  
7 this policy?

8 A. Define terms.

9 Q. Have you read this policy?

10 A. Yes.

11 Q. Okay. There's a reference that I just asked you  
12 about, the reference to the audit and premium  
13 adjustment. Is there any language in this policy  
14 that you're aware of that would tell the insured  
15 what happens if they don't respond to an audit  
16 request?

17 A. The policy itself, I don't think so.

18 Q. All right.

19 MR. ADAMS: I'll object. The  
20 document speaks for itself.

21 Q. Does National Continental have any policy  
22 concerning whether or not to cancel a policy if  
23 the insured fails to respond to an audit?

24 A. It's National Continental's policy. It's within  
25 the plan manual.

- 1 Q. So is it your understanding the plan manual  
2 requires --
- 3 A. In --
- 4 Q. Let me finish -- - requires the canceling of a  
5 policy if the insured fails to respond to an  
6 audit request?
- 7 A. If the insured fails to respond to two requests  
8 for underwriting information.
- 9 Q. Does the manual actually say that?
- 10 A. Yes.
- 11 Q. Do you know what section?
- 12 A. Not offhand.
- 13 Q. That's okay. All right. Does National  
14 Continental at the time the policies are issued  
15 or any other time provide the insured with a copy  
16 of the manual?
- 17 A. No.
- 18 Q. Now, if you would turn with me to, I'm still on  
19 Exhibit 2, but I'm close to the back of Exhibit  
20 2, and it's the document called Washington Common  
21 Policy Conditions, and I'm looking at Page 1 of  
22 4.
- 23 A. The form number on the bottom left-hand corner  
24 and in the top right, IL 01 46 09 03?
- 25 Q. Yes. We're on the same page?

1 A. It's a premium audit questionnaire.

2 Q. And is it a document that was sent to West Coast?

3 A. I certainly believe so.

4 Q. Okay. And this Exhibit 3, is this the request  
5 for audit information that you've previously  
6 testified to?

7 A. Yes.

8 MR. ADAMS: We are looking at the  
9 first page of Exhibit 3 for clarification?

10 MR. CLARK: Yes.

11 Q. And is this a document that typically you would  
12 have generated as part of your duties or would  
13 someone else be responsible for this?

14 A. I actually request that it go out, but I don't  
15 mail it myself.

16 Q. Okay. In looking at the second page, is there a  
17 way to tell who sent this, which person from your  
18 underwriting division sent this because the copy  
19 that I have is not signed?

20 A. It wouldn't be signed. The signature would be  
21 from the insured.

22 Q. Where it says, Respectively CAIP?

23 A. Oh, under there. No, there's no way of knowing  
24 specifically which person sent it.

25 Q. What are the initials CAIP?

1 A. Commercial Automobile Insurance Procedure.

2 Q. And I see that Arthur J. Gallagher. The  
3 reference to Arthur J. Gallagher, does that mean  
4 that the producer has been CC'd with this?

5 A. Yes.

6 Q. And does National Continental have any kind of an  
7 internal procedure to track whether this document  
8 has been mailed to the producer?

9 A. Clarify, as opposed to the insured?

10 Q. Well, let me ask you it this way. When National  
11 Continental mailed this Exhibit 3 to West Coast,  
12 did National Continental do any kind of an  
13 affidavit of mailing?

14 A. No.

15 Q. All right. So there's no procedure whereby  
16 National Continental does an affidavit of mailing  
17 in connection with mailing these audit requests?

18 A. No.

19 Q. Okay. And is this audit request sent by regular  
20 mail?

21 A. Yes.

22 Q. You just got two pages there?

23 A. No.

24 Q. Oh, there's four, okay. For the record, I'm  
25 going to remove the final two pages of Exhibit 3

1 and make that Exhibit 4.

2

- - - -

3

4

5

6

(Thereupon, Plaintiff's Exhibit 4, National Continental/Progressive Premium Questionnaire Second Request, was marked for purposes of identification.)

7

- - - -

8

Q. Exhibit 4 is the October 25th, 2006 document which I'll hand to you now, Dean.

9

10

A. Thank you.

11

Q. Is Exhibit 4 the second audit request that was sent by National Continental?

12

13

A. Yes.

14

Q. And does National Continental prepare any type of affidavit of mailing in connection with making a second audit request to the insured?

15

16

17

A. No.

18

Q. Is there any type of internal procedure that National Continental has that would verify that this second audit request was received by the insured?

19

20

21

22

A. No.

23

Q. How about by the producer?

24

A. No.

25

Q. It looks like Exhibit 3 and Exhibit 4 are

---

# **Exhibit 2**

---

National Continental/Progressive  
625 Alpha Drive  
Highland Heights, OH 44143  
P.O. Box 94762  
Cleveland, OH 44101-4762  
phone 800-937-2247  
fax 888-240-6630

**PROGRESSIVE®**

December 6, 2007

Mr. Frank Retherford, Insurance Policy and Compliance Analyst  
State of Washington  
Office of Insurance Commissioner  
P.O. Box 40256  
Olympia, Washington 98504-0256

Insured: West Coast Pizza Co. Inc.  
Consumer: Kevin Dobbs DBA West Coast Pizza Inc.  
Policy #: CPW 7063-115-6  
Company: National Continental Insurance Company  
NAIC #: 10243  
OIC Case No. #: 1011520

Dear Mr. Retherford:

We completed our review of the insured's November 14, 2007 complaint. It is our position the complaint is invalid. Proper notice of cancellation was provided to the producer and insured.

National Continental Insurance Company issued the policy pursuant to an assignment from the Washington Commercial Automobile Insurance Plan. The producer is not the agent of National Continental Insurance Company nor WA CAIP with respect to this policy.

We issued the new business policy on September 21, 2006, effective September 1, 2006, providing Employer's Non-ownership coverage for 21 locations and 100 drivers for the insured's fast food operation. We issued the new business policy with an annual premium of \$2,000.

On September 25, 2006 we mailed a Premium Audit Questionnaire to the insured and producer in order to confirm details about the insured's business operation. We did not receive a response. We mailed a second request on October 25, 2006 indicating a response was required within 10 days in order to avoid cancellation of the policy. We did not receive a response. Therefore, on December 15, 2006 we mailed a Notice of Cancellation to the insured and producer, effective January 16, 2007, for failure to respond to our request for pertinent underwriting information, in accordance with Section 27. Cancellations, of the Washington Automobile Insurance Plan Manual.

**COPY**

WCP

0006

The Notice of Cancellation was mailed Record of Mail (copy attached). Cancellation declaration pages were mailed to the producer and insured on January 25, 2007. Our records indicate we did not receive any mail returned as undeliverable for the insured or producer.

Based on the annual premium of \$2,000, the policy earned \$750 for the period of September 6, 2007 through January 1, 2007. We received payments totaling \$2,500. An initial refund of \$500 was mailed to the insured on October 23, 2006 and the unearned cancellation refund of \$1,250 was mailed to the insured on February 12, 2007. (A copy of the cashed draft is attached).

On February 12, 2007 and February 26, 2007 we mailed a Premium Audit Questionnaire in order to confirm details of the insured's business operation for the expired policy term. We received responses from the insured on April 24, 2007 and May 7, 2007. Based on the response, we made no changes to the expired policy. The policy remained cancelled effective January 16, 2007.

Please note, on July 31, 2007 the insured reported a May 29, 2007 loss. Since the policy cancelled prior to the date of loss, coverage for the claim was denied and a coverage denial letter was mailed to the insured on September 28, 2007.

Please contact Jill Richards at (440) 683-8392 if additional information is required.

Sincerely,



William T. Cassella  
Commercial Auto Manager  
National Continental Insurance Company

Cc: West Coast Pizza Co. Inc.  
DBA Domino's Pizza  
P.O. Box 187  
Pt Roberts, WA 92881

Arthur J Gallagher  
RMS Inc.  
PO Box 2925  
Tacoma, WA 98401



WCP

00007

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# **Exhibit 3**

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Domino's Pizza Legal Department  
30 Frank Lloyd Wright Drive  
P.O. Box 997  
Ann Arbor, Michigan 48106-0997  
Telephone: 734-930-3987  
Facsimile: 734-327-8877

Scott H. Mandel  
Corporate Counsel

June 13, 2008

VIA FACSIMILE  
AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

MAD Pizza Company, Inc.  
Post Office Box 187  
Point Roberts, Washington 98281

Attention: Bryan Dobb

Re: William Tschernega, et al. vs. Domino's Pizza LLC, et al.  
Date/Loss: May 29, 2007  
Store No: 7134-F  
Our File No: 5394

Dear Mr. Dobb:

As corporate counsel for Domino's Pizza LLC, I am enclosing a copy of a Complaint recently served on Domino's Pizza LLC in the above captioned matter. Domino's Pizza LLC has been incorrectly named as a defendant because, according to our investigation, the allegations in this suit pertain to a claimed act or omission by you or your employees or because of the operation of your Domino's Pizza store. Under these circumstances you have agreed in your Standard Franchise Agreement with Domino's Pizza LLC to indemnify and hold Domino's Pizza LLC (and its related companies) harmless against all judgments, settlements, and expenses (including attorney's fees) incurred in connection with the investigation or defense of this matter. By this letter Domino's Pizza LLC is tendering its defense to the franchisee and the guarantors under the Standard Franchise agreement with Domino's Pizza LLC for the store referenced above. This letter shall serve as formal notice that the franchisee and the guarantors will be expected to indemnify and hold Domino's Pizza LLC harmless against any judgment, settlement and expense (including attorney's fees) incurred in this matter.

Our records indicate Domino's Pizza LLC is named as an additional insured on the automobile liability insurance policy issued by National Continental Insurance Company to the franchisee which operates the store referenced above. As a result, a copy of this letter is being sent to National Continental Insurance Company and that copy of this letter shall serve as Domino's Pizza LLC's formal request to National Continental Insurance Company for National Continental Insurance Company to defend and indemnify Domino's Pizza LLC for this lawsuit under the automobile liability policy. Nevertheless, you should IMMEDIATELY contact National Continental Insurance Company and provide them with a copy of this letter and the Complaint for Damages.

CONFIDENTIAL

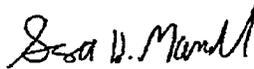
GAL 01590

Because Domino's Pizza LLC has been named as a defendant, it is necessary for an attorney to timely appear in this lawsuit on behalf of Domino's Pizza LLC. In an effort to minimize expenses, we will refrain from hiring local counsel for a reasonable period of time to allow your insurance company to review this matter. It is our understanding that the Answer or other responsive pleading must be filed with the court on or before June 25, 2008. If an attorney is not retained to represent Domino's Pizza LLC in time to allow for the preparation and filing of responsive pleadings, we will be forced to hire an attorney and the fees and costs so incurred will be items covered by the indemnity provision in the franchise agreement.

If any questions ever arise, please do not hesitate to call the undersigned.

Thank you for your cooperation and prompt attention to this important matter.

Very truly yours,



Scott H. Mandel

SHM/kjp

Enclosures

Cc: (National Continental Insurance Company -- via Certified Mail)  
Joe Paweski  
Dan Lusch -- Sedgwick CMS  
Kathy S. Hayl - Aon

CONFIDENTIAL

GAL 01591

# **APPENDIX D**

DECLARATIONS FOR A BUSINESS AUTO

Page

CANCEL PRO RATA CC 0 16/07  
 ITEM ONE Named Insured and Address  
 WEST COAST PIZZA CO INC  
 DBA DOMINO'S PIZZA  
 PO BOX 187  
 PT ROBERTS WA 98281

Policy No: CPW 7063115 6  
 Producer Name and Address  
 ARTHUR J GALLAGHER  
 RMS INC  
 PO BOX 2925  
 TACOMA WA 98401

Producer Code: .100

Broker:

Report Basis: ANNUAL

Policy Period: From 09/01/06 to 09/01/07 at 12:01 A.M. Standard Time at your mailing address shown above.

Insurer Company and Code: NATIONAL CONTINENTAL

Named Insured's Business: 6 RESTAURANT/DELIVERY

Form of Business: INDIVIDUAL

\*RETURN PREMIUM

\$1,250-

\*This policy may be subject to final audit.

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

ITEM TWO

SCHEDULE OF COVERAGES AND COVERED AUTOS

This policy provides only those coverages where a charge is shown in the premium column on the covered autos schedule. Each of these coverages will apply only to those "autos" shown as covered "autos." "Autos" are shown as covered "autos" for a particular coverage by the entry of one or more symbols from the COVERED AUTO Section of the Business Auto Coverage Form next to the name of the coverage.

COVERAGES	COVERED AUTOS (Entry of one or more of the symbols from the COVERED AUTOS Section of the Business Auto Coverage Form shows which autos are covered autos)	LIMIT THE MOST WE WILL PAY FOR ANY ONE ACCIDENT OR LOSS
LIABILITY BODILY INJURY PROPERTY DAMAGE	9	25,000 PER PERSON 50,000 PER ACCIDENT 10,000 PER ACCIDENT
OPTIONAL INJURY PROTECTION (Equivalent No-fault coverage)		Separately stated in each PIP endorsement
ADDED PERSONAL INJURY PROTECTION (or equivalent added No-fault coverage)		Separately stated in each added PIP endorsement
PROPERTY PROTECTION INSURANCE (Michigan only)		Separately stated in the P.P.I. endorsement
AUTO MEDICAL PAYMENTS		
UNINSURED MOTORISTS	<b>CERTIFIED COPY</b> THIS WILL CERTIFY THAT THE ATTACHED IS A TRUE AND COMPLETE COPY OF THE ORIGINAL <i>Dea E. D. [Signature]</i>	
UNDERINSURED MOTORISTS (When not included in Uninsured Motorists Coverage)		
PHYSICAL DAMAGE COMPREHENSIVE COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$ Ded. FOR EACH COVERED AUTO. BUT NO DEDUCTIBLE APPLIES TO LOSS CAUSED BY FIRE OR LIGHTNING. See ITEM FOUR for hired or borrowed "autos."
PHYSICAL DAMAGE SPECIFIED CAUSES OF LOSS COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$ Ded. FOR EACH COVERED AUTO FOR LOSS CAUSED BY MISCHIEF OR VANDALISM. See ITEM FOUR for hired or borrowed "autos."
PHYSICAL DAMAGE COLLISION COVERAGE		ACTUAL CASH VALUE OR COST OF REPAIR, WHICHEVER IS LESS MINUS \$ Ded. FOR EACH COVERED AUTO. See ITEM FOUR for hired or borrowed "autos."
PHYSICAL DAMAGE TOWING AND LABOR (Variable in California)		\$ for each disablement of a private passenger auto.

POLICY CANCELED PER UNDERWRITING FOR FAILURE TO COMPLETELY WITH PREMIUM AUDIT QUESTIONNAIRE

JAN 25 2007

TERMS AND ENDORSEMENTS CONTAINED IN THIS POLICY AT ITS INCEPTION: SEE SCHEDULE ATTACHED

FILINGS

OTHER CHARGES INCLUDED WITH POLICY TOTAL PREMIUM

COUNTERSIGNED 01/16/07 BY

Policy No. CPW 7063115 6

ITEM FOUR

SCHEDULE OF HIRED OR BORROWED COVERED AUTO COVERAGE AND PREMIUMS.

Liability Coverage - Rating Basis, Cost of Hire							EFFECTIVE			
STATE	CLASS CODE	EST. COH EACH STATE	RATE OF EACH \$100 COST OF HIRE	PRO/SHORT RATE	BI	PD	PREMIUM			
EXP LIAB FCTR	COMP DED	COLL DED			COMP	COLL				

Cost of hire means the total amount you incur for the hire of "autos" you don't own (not including "autos" you borrow or rent from your partners or employees or their family members). Cost of hire does not include charges for services performed by motor carriers of property or passengers.

ITEM FIVE

SCHEDULE FOR NON-OWNERSHIP LIABILITY

EFFECTIVE 01/16/07

Named Insured's Business	Class Code	Rating Basis	Number	Pro/Short Rate	Premium		UM	UMPD
					BI	PD		
Other than a Social Service Agency	660600	Number of Employees	100.00	.625	750-	500-		
Social Service Agency		Employees						
EXP LIAB FCTR								

VI SIX

SCHEDULE FOR GROSS RECEIPTS OR MILEAGE BASIS - LIABILITY COVERAGE - PUBLIC AUTO OR LEASING RENTAL CONCERNS

ESTIMATED YEARLY GROSS RECEIPTS	RATES Per \$100 of Gross Receipts	CLASS CODE	TOTAL PREM.	MINIMUM PREM.

When used as a premium basis:

FOR PUBLIC AUTOS

Gross Receipts means the total amount to which you are entitled for transporting passengers, mail or merchandise during the policy period regardless of whether you or any other carrier originate the transportation. Gross Receipts does not include:

- A. Amounts you pay to railroads, steamship lines, airlines and other motor carriers operating under their own ICC or PUC permits.
- B. Advertising Revenue.
- C. Taxes which you collect as a separate item and remit directly to a governmental division.
- D. C.O.D. collections for cost of mail or merchandise including collection fees.

Mileage means the total live and dead mileage of all revenue producing units operated during the policy period.

FOR RENTAL OR LEASING CONCERNS

Gross receipts means the total amount to which you are entitled for the leasing or rental of "autos" during the policy period and includes taxes except those taxes which you collect as a separate item and remit directly to a governmental division.

Mileage means the total of all live and dead mileage developed by all the "autos" you leased or rented to others during the policy period.

STAT CODES

Auto No	BI	PD	Med Pay	No Fault	Addl N-F	UM	State Exc	Comp	Spec Peril	Coll	Pip Ded	Sound Equip	Loss Use	Poll Bi					
	46	02																	

CA DS 03 02 04

POLICY ABSTRACT

NATIONAL CONTINENTAL

Page 5

Policy No: CPW 7063115 6

Policy Type: BUSINESS AUTO

Report Date: 09/21/06

Policy Eff: 09/01/06

Original Eff: 09/01/06

Filing:

Report Basis: ANNUAL

Name and Address

WEST COAST PIZZA CO INC  
DBA DOMINO'S PIZZA  
PO BOX 187  
PT ROBERTS WA 98281

Mailing Address

WEST COAST PIZZA CO INC  
DBA DOMINO'S PIZZA  
PO BOX 187  
PT ROBERTS WA 98281

POLICY LIMITS

Liability Insurance

Combined Bodily Injury and Property Damage

Bodily Injury 25,000 PER PERSON  
50,000 PER ACCIDENT

Property Damage 10,000 PER ACCIDENT

~~UNINSURED AND/OR UNDERINSURED MOTORISTS~~

Designated State:

Medical Payments

Auto Medical Payments

Garage Locations and Operations and Auto Medical Payments

Garage Locations and Operations Medical Payments

FINANCE COMPANY AND ADDRESS

Policy No: CPW 7063115 6

The following endorsements with X entered in the box are attached to this policy.

- |                          |                |   |
|--------------------------|----------------|---|
| <input type="checkbox"/> | AP 62 12 12 93 | Out of State Coverage Extensions  |
| <input type="checkbox"/> | AP 70 08 10 02 | Changes in Truckers Endorsement   |
| <input type="checkbox"/> | AP 90 52 10 96 | Farm Labor Contractors - Limited  |
| <input type="checkbox"/> | AP 90 53 10 96 | Farm Labor Contractors  |
| <input type="checkbox"/> | CA 02 38 12 93 | Reinstatement of Insurance  |
| <input type="checkbox"/> | CA 02 40 10 01 | Suspension of Insurance   |
| <input type="checkbox"/> | CA 20 54 10 01 | Employee Hired Autos  |
| <input type="checkbox"/> | CA 23 20 10 01 | Truckers Endorsement  |
| <input type="checkbox"/> | CA 23 26 09 00 | Washington Truckers - Intermodal Interchange Uniform<br>Endorsement Form UIIE-1 |

Policy No: CPW 7063115 6

Forms and endorsements contained in this policy at its inception:

<u>Form Number</u>	<u>Form Name</u>
CA DS03 0204	Declarations and Schedules - Business Auto Policy
ISI 0005	Policy Abstract
0555	Quick Reference Business Auto
ISI 0484	Policyholder Notice
CA 0001 1001	Business Auto Coverage Form
AP 9007 0682	Commercial Automobile Insurance Procedure Mandatory Endorsement
AP 9046 0103	Split Liability Limits
AP 2012 1293	Changes - Common Policy Conditions
AP 2041 0205	Washington Changes
AP 6215 1002	Changes in Commercial Auto Coverage Form
CA 2304 1001	Rolling Stores
CA 9917 1001	Individual Named Insured
CA 2392 0106	Washington Exclusion of Terrorism
	Fast Food Service - ENO Coverage
IL 0146 0903	Common Policy Conditions

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Policy No: CPW 7063115 6

Forms and endorsements contained in this policy at its inception:

Form Number

Form Name

IL 0021 0702

**Nuclear Energy Liability Exclusion Endorsement  
(Broad Form)**

## POLICYHOLDER NOTICE

Premium is written on an estimated basis based on underwriting information available at this time and is subject to change following further underwriting including final audit.

1484

\* \* \* POLICYHOLDER NOTICE \* \* \*

FAST FOOD SERVICE  
EMPLOYER'S NON-OWNERSHIP COVERAGE

PLEASE READ CAREFULLY

Your policy has been classified and rated as a "Fast Food Service."

This coverage is subject to audit and premium adjustment. Additional premium may become due if the original policy estimates are understated.

Proof of insurance must be provided to the auditor verifying primary coverage was in force for each employee as of their date of employment. The proof of insurance must be a copy of the Declarations page or Certificate of Insurance identifying the auto by vehicle identification number and the employee or family member as a Named Insured.

You are encouraged to contact your Producer for clarification of the Automobile Insurance Plan's rating rule for Employer's Non-Ownership Coverage.

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

AP 9007

COMMERCIAL AUTOMOBILE INSURANCE PROCEDURE  
MANDATORY ENDORSEMENT

This Policy is issued on behalf of the WASHINGTON  
Plan.

( Commercial Automobile Assigned Risk )

Edition June 1982

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

AP 90 46 01 03

SPLIT LIABILITY LIMITS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

Endorsement Effective: 09/01/06	
Named Insured: WEST COAST PIZZA CO INC DBA DOMINO'S PIZZA	Countersigned By:

(Authorized Representative)

SCHEDULE

"Bodily Injury" Liability	\$	25,000	Each Person
	\$	50,000	Each "Accident"
"Property Damage" Liability and "Covered Pollution Cost or Expense" Combined:	\$	10,000	Each "Accident"

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

The Limit of insurance provision in Section II - Liability Coverage is replaced by the following:

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the limit of insurance is as follows:

- The most we will pay for all damages resulting from "bodily injury" to any one person caused by any one "accident", including all damages claimed by any one person or organization for care, loss of services or death resulting from the "bodily injury", is the limit of "Bodily Injury" Liability shown in the Schedule for each person.
- Subject to the limit for each person, the most we will pay for all damages resulting from "bodily injury" caused by any one "accident" is the limit of "Bodily Injury" Liability shown in the Schedule for each "accident".

- The most we will pay for all damages and "covered pollution cost or expense" combined, resulting from the total of "property damage" caused by any one "accident" is the limit of "Property Damage" Liability and "Covered Pollution Cost or Expense" Combined shown in the Schedule.

All "bodily injury", "property damage", and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

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**BUSINESS AUTO COVERAGE FORM**

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

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

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

**SECTION I—COVERED AUTOS**

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos".

**A. Description Of Covered Auto Designation Symbols**

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
2	Owned "Autos" Only	Only those "autos" you own (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" you acquire ownership of after the policy begins.
3	Owned Private Passenger "Autos" Only	Only the private passenger "autos" you own. This includes those private passenger "autos" you acquire ownership of after the policy begins.
4	Owned "Autos" Other Than Private Passenger "Autos" Only	Only those "autos" you own that are not of the private passenger type (and for Liability Coverage any "trailers" you don't own while attached to power units you own). This includes those "autos" not of the private passenger type you acquire ownership of after the policy begins.
5	Owned "Autos" Subject To No-Fault	Only those "autos" you own that are required to have No-Fault benefits in the state where they are licensed or principally garaged. This includes those "autos" you acquire ownership of after the policy begins provided they are required to have No-Fault benefits in the state where they are licensed or principally garaged.
6	Owned "Autos" Subject To A Compulsory Uninsured Motorists Law	Only those "autos" you own that because of the law in the state where they are licensed or principally garaged are required to have and cannot reject Uninsured Motorists Coverage. This includes those "autos" you acquire ownership of after the policy begins provided they are subject to the same state uninsured motorists requirement.
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Liability Coverage any "trailers" you don't own while attached to any power unit described in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households.
9	Nonowned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes "autos" owned by your "employees", partners (if you are a partnership), members (if you are a limited liability company), or members of their households but only while used in your business or your personal affairs.

**B. Owned Autos You Acquire After The Policy Begins**

1. If Symbols 1, 2, 3, 4, 5 or 6 are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, if Symbol 7 is entered next to a coverage in Item Two of the Declarations, an "auto" you acquire will be a covered "auto" for that coverage only if:
  - a. We already cover all "autos" that you own for that coverage or it replaces an "auto" you previously owned that had that coverage; and
  - b. You tell us within 30 days after you acquire it that you want us to cover it for that coverage.

**C. Certain Trailers, Mobile Equipment And Temporary Substitute Autos**

If Liability Coverage is provided by this Coverage Form, the following types of vehicles are also covered "autos" for Liability Coverage:

1. "Trailers" with a load capacity of 2,000 pounds or less designed primarily for travel on public roads.
2. "Mobile Equipment" while being carried or towed by a covered "auto".
3. Any "auto" you do not own while used with the permission of its owner as a temporary substitute for a covered "auto" you own that is out of service because of its:
  - a. Breakdown;
  - b. Repair;
  - c. Servicing;
  - d. "Loss"; or
  - e. Destruction.

**SECTION II—LIABILITY COVERAGE**

**A. Coverage**

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident"

and resulting from the ownership, maintenance or use of a covered "auto".

We will also pay all sums an "insured" legally must pay as a "covered pollution cost or expense" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of covered "autos". However, we will only pay for the "covered pollution cost or expense" if there is either "bodily injury" or "property damage" to which this insurance applies that is caused by the same "accident".

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

**1. Who Is An Insured**

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
  - (1) The owner or anyone else from whom you hire or borrow a covered "auto". This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
  - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.
  - (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
  - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or

a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".

- (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

## 2. Coverage Extensions

### a. Supplementary Payments

In addition to the Limit of Insurance, we will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgement in any "suit" against the "insured" we defend, but our duty to pay interests ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

### b. Out-Of-State Coverage Extensions

While a covered "auto" is away from the state where it is licensed we will:

- (1) Increase the Limit of Insurance for Liability Coverage to meet the limits specified by a compulsory or financial responsibility law of the jurisdiction where the covered "auto" is being used. This extension does not apply to the limit or limits specified by any law governing motor carriers of passengers or property.
- (2) Provide the minimum amounts and types of other coverages, such as no-fault, required of out-of-state vehicles by the jurisdiction where the covered "auto" is being used.

We will not pay anyone more than once for the same elements of loss because of these extensions.

## B. Exclusions

This insurance does not apply to any of the following:

### 1. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the "insured".

### 2. Contractual

Liability assumed under any contract or agreement.

But this exclusion does not apply to liability for damages:

- a. Assumed in a contract or agreement that is an "insured contract" provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- b. That the "insured" would have in the absence of the contract or agreement.

### 3. Workers' Compensation

Any obligation for which the "insured" or the "insured's" insurer may be held liable under any workers' compensation, disability benefits or unemployment compensation law or any similar law.

#### 4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### 5. Fellow Employee

"Bodily injury" to any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business.

#### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

#### 7. Handling Of Property

"Bodily injury" or "property damage" resulting from the handling of property:

- a. Before it is moved from the place where it is accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After it is moved from the covered "auto" to the place where it is finally delivered by the "insured".

#### 8. Movement Of Property By Mechanical Device

"Bodily injury" or "property damage" resulting from the movement of property by a mechanical device (other than a hand truck) unless the device is attached to the covered "auto".

#### 9. Operations

"Bodily injury" or "property damage" arising out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

#### 10. Completed Operations

"Bodily injury" or "property damage" arising out of your work after that work has been completed or abandoned.

In this exclusion, your work means:

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

Your work includes warranties or representations made at any time with respect to the fitness, quality, durability or performance of any of the items included in Paragraphs a. or b. above.

Your work will be deemed completed at the earliest of the following times:

- (1) When all of the work called for in your contract has been completed.
- (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

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

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

## 11. Pollution

"Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration or escape of "pollutants":

- a. That are, or that are contained in any property that is:
- (1) Being transported or towed by, handled, or handled for movement into, onto or from, the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured"; or
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto";
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly

from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and

- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. and 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above of this exclusion do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

## 12. War

"Bodily injury" or "property damage" due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

## 13. Racing

Covered "autos" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply while that covered "auto" is being prepared for such a contest or activity.

## C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or

expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations:

All "bodily injury", "property damage" and "covered pollution cost or expense" resulting from continuous or repeated exposure to substantially the same conditions will be considered as resulting from one "accident".

No one will be entitled to receive duplicate payments for the same elements of "loss" under this Coverage Form and any Medical Payments Coverage Endorsement, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

### SECTION III—PHYSICAL DAMAGE COVERAGE

#### A. Coverage

1. We will pay for "loss" to a covered "auto" or its equipment under:

- a. **Comprehensive Coverage**

From any cause except:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

- b. **Specified Causes of Loss Coverage**

Caused by:

- (1) Fire, lightning or explosion;
- (2) Theft;
- (3) Windstorm, hail or earthquake;
- (4) Flood;
- (5) Mischief or vandalism; or
- (6) The sinking, burning, collision or derailment of any conveyance transporting the covered "auto".

- c. **Collision Coverage**

Caused by:

- (1) The covered "auto's" collision with another object; or
- (2) The covered "auto's" overturn.

2. **Towing**

We will pay up to the limit shown in the Declarations for towing and labor costs

incurred each time a covered "auto" of the private passenger type is disabled. However, the labor must be performed at the place of disablement.

3. **Glass Breakage—Hitting A Bird Or Animal—Falling Objects Or Missiles**

If you carry Comprehensive Coverage for the damaged covered "auto", we will pay for the following under Comprehensive Coverage:

- a. Glass breakage;
- b. "Loss" caused by hitting a bird or animal; and
- c. "Loss" caused by falling objects or missiles.

However, you have the option of having glass breakage caused by a covered "auto's" collision or overturn considered a "loss" under Collision Coverage.

4. **Coverage Extensions**

- a. **Transportation Expenses**

We will pay up to \$20 per day to a maximum of \$600 for temporary transportation expense incurred by you because of the total theft of a covered "auto" of the private passenger type. We will pay only for those covered "autos" for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses incurred during the period beginning 48 hours after the theft and ending, regardless of the policy's expiration, when the covered "auto" is returned to use or we pay for its "loss".

- b. **Loss Of Use Expenses**

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver, under a written rental contract or agreement. We will pay for loss of use expenses if caused by:

- (1) Other than collision only if the Declarations indicate that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicate that Specified Causes Of Loss Coverage is provided for any covered "auto"; or
- (3) Collision only if the Declarations indicate that Collision Coverage is provided for any covered "auto".

However, the most we will pay for any expenses for loss of use is \$20 per day, to a maximum of \$600.

**B. Exclusions**

- 1. We will not pay for "loss" caused by or resulting from any of the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss".

**a. Nuclear Hazard**

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

**b. War Or Military Action**

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

- 2. We will not pay for "loss" to any covered "auto" while used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We will also not pay for "loss" to any covered "auto" while that covered "auto" is being prepared for such a contest or activity.

- 3. We will not pay for "loss" caused by or resulting from any of the following unless caused by other "loss" that is covered by this insurance:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

- 4. We will not pay for "loss" to any of the following:

- a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
- b. Any device designed or used to detect speed measuring equipment such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed measurement equipment.
- c. Any electronic equipment, without regard to whether this equipment is permanently installed, that receives or transmits audio, visual or data signals and that is not designed solely for the reproduction of sound.
- d. Any accessories used with the electronic equipment described in Paragraph c. above.

Exclusions 4.c. and 4.d. do not apply to:

- a. Equipment designed solely for the reproduction of sound and accessories used with such equipment, provided such equipment is permanently installed in the covered "auto" at the time of the "loss" or such equipment is removable from a housing unit which is permanently installed in the covered "auto" at the time of the "loss", and such equipment is designed to be solely operated by use of the power from the "auto's" electrical system, in or upon the covered "auto"; or

b. Any other electronic equipment that is:

(1) Necessary for the normal operation of the covered "auto" or the monitoring of the covered "auto's" operating system; or

(2) An integral part of the same unit housing any sound reproducing equipment described in a. above and permanently installed in the opening of the dash or console of the covered "auto" normally used by the manufacturer for installation of a radio.

5. We will not pay for "loss" to a covered "auto" due to "diminution in value".

#### C. Limit Of Insurance

1. The most we will pay for "loss" in any one "accident" is the lesser of:

a. The actual cash value of the damaged or stolen property as of the time of the "loss"; or

b. The cost of repairing or replacing the damaged or stolen property with other property of like kind and quality.

2. An adjustment for depreciation and physical condition will be made in determining actual cash value in the event of a total "loss".

3. If a repair or replacement results in better than like kind or quality, we will not pay for the amount of the betterment.

#### D. Deductible

For each covered "auto", our obligation to pay for, repair, return or replace damaged or stolen property will be reduced by the applicable deductible shown in the Declarations. Any Comprehensive Coverage deductible shown in the Declarations does not apply to "loss" caused by fire or lightning.

The following conditions apply in addition to the Common Policy Conditions:

#### A. Loss Conditions

##### 1. Appraisal For Physical Damage Loss

If you and we disagree on the amount of "loss", either may demand an appraisal of the "loss". In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and amount of "loss". If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser, and

b. Bear the other expenses of the appraisal and umpire equally.

If we submit to an appraisal, we will still retain our right to deny the claim.

##### 2. Duties In The Event Of Accident, Claim, Suit Or Loss

We have no duty to provide coverage under this policy unless there has been full compliance with the following duties:

a. In the event of "accident", claim, "suit" or "loss", you must give us or our authorized representative prompt notice of the "accident" or "loss". Include:

(1) How, when and where the "accident" or "loss" occurred;

(2) The "insured's" name and address; and

(3) To the extent possible, the names and addresses of any injured persons and witnesses.

b. Additionally, you and any other involved "insured" must:

(1) Assume no obligation, make no payment or incur no expense without our consent, except at the "insured's" own cost.

(2) Immediately send us copies of any request, demand, order, notice, summons or legal paper received concerning the claim or "suit".

#### SECTION IV—BUSINESS AUTO CONDITIONS

- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit".
  - (4) Authorize us to obtain medical records or other pertinent information.
  - (5) Submit to examination, at our expense, by physicians of our choice, as often as we reasonably require.
- c. If there is "loss" to a covered "auto" or its equipment you must also do the following:
- (1) Promptly notify the police if the covered "auto" or any of its equipment is stolen.
  - (2) Take all reasonable steps to protect the covered "auto" from further damage. Also keep a record of your expenses for consideration in the settlement of the claim.
  - (3) Permit us to inspect the covered "auto" and records proving the "loss" before its repair or disposition.
  - (4) Agree to examinations under oath at our request and give us a signed statement of your answers.

### 3. Legal Action Against Us

No one may bring a legal action against us under this Coverage Form until:

- a. There has been full compliance with all the terms of the Coverage Form; and
- b. Under Liability Coverage, we agree in writing that the "insured" has an obligation to pay or until the amount of that obligation has finally been determined by judgment after trial. No one has the right under this policy to bring us into an action to determine the "insured's" liability.

### 4. Loss Payment—Physical Damage Coverages

At our option we may:

- a. Pay for, repair or replace damaged or stolen property;

- b. Return the stolen property, at our expense. We will pay for any damage that results to the "auto" from the theft; or
- c. Take all or any part of the damaged or stolen property at an agreed or appraised value.

If we pay for the "loss", our payment will include the applicable sales tax for the damaged or stolen property.

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

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

## B. General Conditions

### 1. Bankruptcy

Bankruptcy or insolvency of the "insured" or the "insured's" estate will not relieve us of any obligations under this Coverage Form.

### 2. Concealment, Misrepresentation Or Fraud

This Coverage Form is void in any case of fraud by you at any time as it relates to this Coverage Form. It is also void if you or any other "insured", at any time, intentionally conceal or misrepresent a material fact concerning:

- a. This Coverage Form;
- b. The covered "auto";
- c. Your interest in the covered "auto"; or
- d. A claim under this Coverage Form.

### 3. Liberalization

If we revise this Coverage Form to provide more coverage without additional premium charge, your policy will automatically provide the additional coverage as of the day the revision is effective in your state.

#### 4. No Benefit To Bailee—Physical Damage Coverages

We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing or transporting property for a fee regardless of any other provision of this Coverage Form.

#### 5. Other Insurance

a. For any covered "auto" you own, this Coverage Form provides primary insurance. For any covered "auto" you don't own, the insurance provided by this Coverage Form is excess over any other collectible insurance. However, while a covered "auto" which is a "trailer" is connected to another vehicle, the Liability Coverage this Coverage Form provides for the "trailer" is:

(1) Excess while it is connected to a motor vehicle you do not own.

(2) Primary while it is connected to a covered "auto" you own.

b. For Hired Auto Physical Damage Coverage, any covered "auto" you lease, hire, rent or borrow is deemed to be a covered "auto" you own. However, any "auto" that is leased, hired, rented or borrowed with a driver is not a covered "auto".

c. Regardless of the provisions of Paragraph a. above, this Coverage Form's Liability Coverage is primary for any liability assumed under an "insured contract".

d. When this Coverage Form and any other Coverage Form or policy covers on the same basis, either excess or primary, we will pay only our share. Our share is the proportion that the Limit of Insurance of our Coverage Form bears to the total of the limits of all the Coverage Forms and policies covering on the same basis.

#### 6. Premium Audit

a. The estimated premium for this Coverage Form is based on the exposures you told us you would have when this policy began. We will compute the final premium due when we determine your actual exposures.

The estimated total premium will be credited against the final premium due and the first Named Insured will be billed for the balance, if any. The due date for the final premium or retrospective premium is the date shown as the due date on the bill. If the estimated total premium exceeds the final premium due, the first Named Insured will get a refund.

b. If this policy is issued for more than one year, the premium for this Coverage Form will be computed annually based on our rates or premiums in effect at the beginning of each year of the policy.

#### 7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

a. During the policy period shown in the Declarations; and

b. Within the coverage territory.

The coverage territory is:

a. The United States of America;

b. The territories and possessions of the United States of America;

c. Puerto Rico;

d. Canada; and

e. Anywhere in the world if:

(1) A covered "auto" of the private passenger type is leased, hired, rented or borrowed without a driver for a period of 30 days or less; and

(2) The "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico, or Canada or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

#### 8. Two Or More Coverage Forms Or Policies Issued By Us

If this Coverage Form and any other Coverage Form or policy issued to you

by us or any company affiliated with us apply to the same "accident", the aggregate maximum Limit of Insurance under all the Coverage Forms or policies shall not exceed the highest applicable Limit of Insurance under any one Coverage Form or policy. This condition does not apply to any Coverage Form or policy issued by us or an affiliated company specifically to apply as excess insurance over this Coverage Form.

## SECTION V—DEFINITIONS

- A. "Accident" includes continuous or repeated exposure to the same conditions resulting in "bodily injury" or "property damage".
- B. "Auto" means a land motor vehicle, "trailer" or semitrailer designed for travel on public roads but does not include "mobile equipment".
- C. "Bodily injury" means bodily injury, sickness or disease sustained by a person including death resulting from any of these.
- D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. Any request, demand, order or statutory or regulatory requirement; or
2. Any claim or "suit" by or on behalf of a governmental authority demanding

that the "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. That are, or that are contained in any property that is:
  - (1) Being transported or towed by, handled, or handled for movement into, onto or from the covered "auto";
  - (2) Otherwise in the course of transit by or on behalf of the "insured";
  - (3) Being stored, disposed of, treated or processed in or upon the covered "auto"
- b. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are

accepted by the "insured" for movement into or onto the covered "auto"; or

- c. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraph a. above does not apply to fuels, lubricants, fluids, exhaust gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "auto" or its parts, if:

- (1) The "pollutants" escape, seep, migrate, or are discharged, dispersed or released directly from an "auto" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants"; and
- (2) The "bodily injury", "property damage" or "covered pollution cost or expense" does not arise out of the operation of any equipment listed in Paragraphs 6.b. or 6.c. of the definition of "mobile equipment".

Paragraphs b. and c. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- E. "Diminution in value" means the actual or perceived loss in market value or resale value which results from a direct and accidental "loss".
- F. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
- G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to

each insured who is seeking coverage or against whom a claim or "suit" is brought.

H. "Insured contract" means:

1. A lease of premises;
2. A sidetrack agreement;
3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
5. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another to pay for "bodily injury" or "property damage" to a third party or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
6. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

An "insured contract" does not include that part of any contract or agreement:

- a. That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnels, underpass or crossing; or
- b. That pertains to the loan, lease, or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or
- c. That holds a person or organization engaged in the business of

transporting property by "auto" for hire harmless for your use of a covered "auto" over a route or territory that person or organization is authorized to serve by public authority.

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

J. "Loss" means direct and accidental loss or damage.

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

1. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
2. Vehicles maintained for use solely on or next to premises you own or rent;
3. Vehicles that travel on crawler treads;
4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - a. Power cranes, shovels, loaders, diggers or drills; or
  - b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
5. Vehicles not described in Paragraphs 1., 2., 3., or 4. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - b. Cherry pickers and similar devices used to raise or lower workers.
6. Vehicles not described in Paragraphs 1., 2., 3. or 4. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile

equipment" but will be considered "autos":

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

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

M. "Property damage" means damage to or loss of use of tangible property.

N. "Suit" means a civil proceeding in which:

- 1. Damages because of "bodily injury" or "property damage"; or
- 2. A "covered pollution cost or expense", to which this insurance applies, are alleged.

"Suit" includes:

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

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

P. "Trailer" includes semitrailer.

## CHANGES - COMMON POLICY CONDITIONS

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
GARAGE COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

Paragraph B. CHANGES of the COMMON POLICY CONDITIONS is replaced by the following:

### B. CHANGES

#### 1. Premium Changes

The premium for this policy is based on information we have received from you or other sources. You agree:

- a. that if any of this information material to the development of the policy premium is incorrect, incomplete or changed, we may adjust the premium accordingly during the policy period.
- b. to cooperate with us in determining if this information is correct and complete, and to advise us of changes in this information.

Any adjustment of your premium will be made using the rules in effect at the time of the change.

Premium adjustment may be made as the result of a change in:

- a. autos insured by the policy, including changes in use.

- b. drivers, driver's age or driver's marital status.
- c. coverages or coverage limits.
- d. rating territory.
- e. eligibility for discounts or other premium credits.

#### 2. Coverage Changes

We may revise your policy coverages to provide more protection without additional premium charge. If we do this and you have the coverage which is changed, your policy will automatically provide the additional coverage as of the date the revision is effective in your state. Otherwise, this policy contains all of the coverage agreements between you and us. Its terms may not be changed or waived except by an endorsement issued by us.

Paragraph D. INSPECTIONS AND SURVEYS of the COMMON POLICY Condition is changed by adding the following:

### D. INSPECTIONS AND SURVEYS

You agree to comply with reasonable safety requirements recommended during the time period which we specify.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### WASHINGTON CHANGES

For a covered "auto" licensed or principally garaged in Washington, this endorsement modifies insurance provided under the following:

#### BUSINESS AUTO COVERAGE TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement

#### A. Changes In Liability Coverage

The **Employee Indemnification And Employer's Liability** Exclusion applies only to "bodily injury" to any "employee" of the insured whose employment is not subject to the Industrial Insurance Act of Washington (Washington Revised Code Title 51).

With respect to "bodily injury" to "employees" of the insured whose employment is subject to the Industrial Insurance Act of Washington, the **Employee Indemnification And Employer's Liability** Exclusion is replaced with the following:

This insurance does not apply to "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. Any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the insured under an "insured contract." A domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

#### B. Changes In Physical Damage Coverage

1. The lead-in to Paragraph B.1 is replaced by the following:  
We will not pay for "loss" caused directly or indirectly by any of the following.
2. The Limit of Insurance provision with respect to repair or replacement resulting in better than like kind or quality is replaced by the following, and supersedes any provision to the contrary:

3. We may deduct for betterment for parts normally subject to repair and replacement during the useful life of the "auto". In this event, deductions shall be limited to the lesser of:
  - a. An amount equal to the proportion that the expired life of the part to be repaired or replaced bears to the normal useful life of that part; or
  - b. The amount which the resale value of the "auto" is increased from the repair or replacement.

3. The following is added to the **Limit Of Insurance**:

We will not pay for a loss which is paid under Underinsured Motorists Coverage.

#### C. Changes In Conditions

1. The **Appraisal For Physical Damage Loss** Condition is replaced by the following:

#### APPRAISAL FOR PHYSICAL DAMAGE LOSS

If you and we disagree on the amount of "loss," either may demand an appraisal of the "loss." In this event, each party will select a competent appraiser. The two appraisers will select a competent and impartial umpire. The appraisers will state separately the actual cash value and the amount of "loss." If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

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

Neither we nor you shall be held to have waived any rights by any act relating to appraisal.

2. **The Transfer Of Rights Of Recovery Against Others To Us** Condition is replaced by the following:

- a. If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us for that payment.

That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

- b. We are entitled to recovery only after the person or organization has been fully compensated for damages by another party.

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**Instructions**

The provisions of this endorsement must be attached to, incorporated in, or overprinted upon every applicable policy issued in accordance with the provisions of the Washington Automobile Insurance Plan.

POLICY NUMBER:

COMMERCIAL AUTO

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**CHANGES IN COMMERCIAL AUTO COVERAGE FORM**

This endorsement modifies insurance provided under the following:

- BUSINESS AUTO COVERAGE FORM
- GARAGE COVERAGE FORM
- TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

Endorsement Effective:	Countersigned By:  (Authorized Representative)
Named Insured:	

**A. SECTION II—LIABILITY COVERAGE**

**Coverage Extensions** under **Coverage** is changed as follows:

**Coverage Extensions**

The **Supplementary Payments** provision is replaced by the following:

**a.—Supplementary Payments**

In addition to the Limit of Insurance, we will pay for the "insured":

- (1) All expenses we incur.
- (2) Up to \$250 for cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.
- (3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance
- (4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to \$100 a day because of time off from work.
- (5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.
- (6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the

"insured" we defend, but our duty to pay interest ends when we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

**B. Changes In Conditions**

**Policy Period, Coverage Territory** under **General Conditions** is replaced by the following:

**General Conditions**

**Policy Period, Coverage Territory**

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage Territory.

The coverage territory is:

- a. The United States of America;
- b. The territories and possessions of the United States of America;
- c. Puerto Rico; and
- d. Canada.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

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COMMERCIAL AUTO

**Instructions**

The provisions of this endorsement must be attached to, incorporated in, or overprinted upon every applicable policy issued in accordance with the provisions of an Automobile Insurance Plan or JUA.

Refer to Index for state(s) in which this form is applicable.

POLICY NUMBER:

COMMERCIAL AUTO  
CA 23 04 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### **ROLLING STORES**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

LIABILITY COVERAGE for a covered "auto" that is a rolling store is changed by adding the following exclusion:

This insurance does not apply to:

"Bodily injury" or "property damage" resulting from the handling, use or condition of any item the "insured" makes, sells or distributes if the injury or damage occurs after the "insured" has given up possession of the item.

### **Instructions**

The provisions of this endorsement must be attached to, incorporated in, or overprinted upon every applicable policy affording coverage for rolling stores issued in accordance with the provisions of an Automobile Insurance Plan or JUA.

Refer to Index for state(s) in which this form is applicable.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

If you are an individual, the policy is changed as follows:

#### A. Changes In Liability Coverage

1. The Fellow Employee Exclusion does not apply to "bodily injury" to your or any "family member's" fellow employees.

#### 2. Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under Liability Coverage:

- a. The following is added to **Who Is An Insured**:

"Family members" are "insureds" for any covered "auto" you own of the "private passenger type" and any other "auto" described in Paragraph 2.b. of this endorsement.

- b. Any "auto" you don't own is a covered "auto" while being used by you or by any "family member" except:

- (1) Any "auto" owned by any "family members".

- (2) Any "auto" furnished or available for your or any "family member's" regular use.

- (3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".

- (4) Any "auto" other than an "auto" of the "private passenger type" used by you or any of your "family members" while working in any other business or occupation.

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad

Form), does not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos":

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its termination upon its exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or any of their successors. This exclusion does not apply to "autos" registered or principally garaged in New York.

#### B. Changes In Physical Damage

##### PERSONAL AUTO COVERAGE

If any "auto" you own of the "private passenger type" is a covered "auto" under Physical Damage Coverage, a "non-owned auto" will also be considered a covered "auto".

However, the most we will pay for "loss" to a "non-owned auto" which is a "trailer" is \$500.

#### C. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

2. The words "you" and "your" include your spouse if a resident of the same household except for notice of cancellation.

3. When the phrase "private passenger type" appears in quotation marks it includes any covered "auto" you own of the pick-up or van type not used for business purposes, other than farming or ranching.
4. "Non-owned auto" means any "private passenger type" "auto", pick-up, van or

"trailer" not owned by or furnished or available for the regular use of you or any "family member", while it is in the custody of or being operated by you or any "family member".

#### Instructions

The provisions of this endorsement must be attached to, incorporated in or overprinted upon every applicable policy when affording coverage for an Individual Named Insured issued in accordance with an Automobile Insurance Plan or JUA.

Refer to Index for state(s) in which this form is applicable.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## WASHINGTON EXCLUSION OF TERRORISM

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
BUSINESS AUTO PHYSICAL DAMAGE COVERAGE FORM  
GARAGE COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
SINGLE INTEREST AUTOMOBILE PHYSICAL DAMAGE INSURANCE POLICY  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury, damage, loss or expense, are enclosed in quotation marks:

1. "Terrorism" means activities against persons, organizations or property of any nature:
  - a. That involve the following or preparation for the following:
    - (1) Use or threat of force or violence; or
    - (2) Commission or threat of a dangerous act; or
    - (3) Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
  - b. When one or both of the following applies:
    - (1) The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or
    - (2) It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or express opposition to) a philosophy or ideology.

2. "Any injury, damage, loss or expense" means any injury, damage, loss or expense covered under any Coverage Form or Policy to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal injury", "personal and advertising injury", "loss", loss of use, rental reimbursement after "loss" or "covered pollution cost or expense", as may be defined under this Coverage Form, Policy or any applicable endorsement.

B. Except with respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage – Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

### EXCLUSION OF TERRORISM

We will not pay for "any injury, damage, loss or expense" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or

2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. 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
6. 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.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the thresholds in Paragraphs B.5. and B.6. are exceeded.

With respect to this Exclusion, Paragraphs B.5. and B.6. describe the thresholds used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

- C. With respect to Physical Damage Coverage, Trailer Interchange Coverage, Garagekeepers Coverage, Garagekeepers Coverage – Customers' Sound Receiving Equipment or the Single Interest Automobile Physical Damage Insurance Policy, the following exclusion is added:

#### **EXCLUSION OF TERRORISM**

We will not pay for any "loss", loss of use or rental reimbursement after "loss" caused directly or indirectly by "terrorism", including action in hindering or defending against an actual or expected incident of "terrorism". **But this exclusion applies only when one or more of the following are attributed to an incident of "terrorism":**

1. The "terrorism" is carried out by means of the dispersal or application of radioactive material, or through the use of a nuclear weapon or device that involves or produces a nuclear reaction, nuclear radiation or radioactive contamination; or
2. Radioactive material is released, and it appears that one purpose of the "terrorism" was to release such material; or
3. The "terrorism" is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
4. Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials; or
5. 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.

Multiple incidents of "terrorism" which occur within a 72-hour period and appear to be carried out in concert or to have a related purpose or common leadership will be deemed to be one incident, for the purpose of determining whether the threshold in Paragraph C.5. is exceeded.

With respect to this Exclusion, Paragraph C.5. describes the threshold used to measure the magnitude of an incident of "terrorism" and the circumstances in which the threshold will apply, for the purpose of determining whether this Exclusion will apply to that incident. When the Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Form, Policy or any applicable endorsement.

D. In the event of any incident of "terrorism" that is not subject to the Exclusion in Paragraphs B. or C., coverage does not apply to "any injury, damage, loss or expense" that is otherwise excluded under this Coverage Form, Policy or any applicable endorsement.

### **Instructions**

The provisions of this endorsement must be attached to, incorporated in, or overprinted upon every commercial policy issued in accordance with the provisions of an Automobile Insurance Plan or JUA.

## WASHINGTON COMMON POLICY CONDITIONS

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

The conditions in this endorsement replace any similar conditions in the policy that are less favorable to the insured.

### 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 and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for the cancellation, to the last mailing address known to us, at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 45 days before the effective date of cancellation if we cancel for any other reason;

except as provided in Paragraphs 3. and 4. below.

3. We may cancel the Commercial Property Coverage Part and the Capital Assets Program (Output Policy) Coverage Part, if made a part of this policy, by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation at least 5 days before the effective date of cancellation for any structure where 2 or more of the following conditions exist:
  - a. Without reasonable explanation, the structure is unoccupied for more than 60 consecutive days, or at least 65% of the rental units are unoccupied for more than 120 consecutive days unless the structure is maintained for seasonal occupancy or is under construction or repair;
  - b. Without reasonable explanation, progress toward completion of permanent repairs to the structure has not occurred within 60 days after receipt of funds following satisfactory adjustment or

adjudication of loss resulting from a fire;

- c. Because of its physical condition, the structure is in danger of collapse;
  - d. Because of its physical condition, a vacation or demolition order has been issued for the structure, or it has been declared unsafe in accordance with applicable law;
  - e. Fixed and salvageable items have been removed from the structure, indicating an intent to vacate the structure;
  - f. Without reasonable explanation, heat, water, sewer, and electricity are not furnished for the structure for 60 consecutive days; or
  - g. The structure is not maintained in substantial compliance with fire, safety and building codes.
4. If:
    - a. You are an individual;
    - b. A covered auto you own is of the "private passenger type"; and
    - c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards;

we may cancel the Commercial Automobile Coverage Part by mailing or delivering to the first Named Insured and the first Named Insured's agent or broker written notice of cancellation, including the actual reason for cancellation, to the last mailing address known to us:

- a. At least 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. At least 10 days before the effective date of cancellation for any other reason if the policy is in effect less than 30 days; or
- c. At least 20 days before the effective date of cancellation for other than

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.

#### **G. Nonrenewal**

1. We may elect not to renew this policy by mailing or delivering written notice of nonrenewal, stating the reasons for nonrenewal, to the first Named Insured and the first Named Insured's agent or broker, at their last mailing addresses known to us. We will also mail to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of nonrenewal. We will mail or deliver these notices at least 45 days before the:
  - a. Expiration of the policy; or
  - b. Anniversary date of this policy if this policy has been written for a term of more than one year.

Otherwise, we will renew this policy unless:

- a. The first Named Insured fails to pay the renewal premium after we have expressed our willingness to renew, including a statement of the renewal premium, to the first Named Insured and the first Named Insured's insurance agent or broker at least 20 days before the expiration date;
- b. Other coverage acceptable to the insured has been procured prior to the expiration date of the policy; or
- c. The policy clearly states that it is not renewable, and is for a specific line, subclassification, or type of coverage that is not offered on a renewable basis.

#### **2. If:**

- a. You are an individual;
- b. A covered auto you own is of the "private passenger type"; and
- c. The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards;

the following applies to nonrenewal of the Commercial Automobile Coverage Part in place of **G.1.**:

- a. We may elect not to renew or continue this policy by mailing or delivering to you and your agent or broker written notice at least 20 days before the end of the policy period including the actual reason for nonrenewal. If the policy period is more than one year, we will have the right not to renew or continue it only at an anniversary of its original effective date. If we offer to renew or continue and you do not accept, this policy will terminate at the end of the current policy period. Failure to pay the required renewal or continuation premium when due shall mean that you have not accepted our offer.
- b. We will not refuse to renew Liability Coverage or Collision Coverage solely because an "insured" has submitted claims under Comprehensive Coverage or Towing and Labor Coverage.

nonpayment if the policy is in effect 30 days or more; or

- d. At least 20 days before the effective date of cancellation if the policy is in effect for 60 days or more or is a renewal or continuation policy, and the reason for cancellation is that your driver's license or that of any driver who customarily uses a covered "auto" has been suspended or revoked during the policy period.
5. We will also mail or deliver to any mortgage holder, pledgee or other person shown in this policy to have an interest in any loss which may occur under this policy, at their last mailing address known to us, written notice of cancellation, prior to the effective date of cancellation. If cancellation is for reasons other than those contained in Paragraph **A.3.** above, this notice will be the same as that mailed or delivered to the first Named Insured. If cancellation is for a reason contained in Paragraph **A.3.** above, we will mail or deliver this notice at least 20 days prior to the effective date of cancellation.
  6. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
  7. 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 will be at least 90% of the pro rata refund unless the following applies:
    - a. For Division Two—Boiler and Machinery, if the first Named Insured cancels, the refund will be at least 75% of the pro rata refund.
    - b. If:
      - (1) You are an individual;
      - (2) A covered auto you own is of the "private passenger type";
      - (3) The policy does not cover garage, automobile sales agency, repair shop, service station or public parking place operations hazards; and
      - (4) The first Named Insured cancels;

the refund will be not less than 90% of any unearned portion not exceeding \$100, plus 95% of any unearned portion over \$100 but not exceeding \$500, and not less than 97% of any unearned portion in excess of \$500.

The cancellation will be effective even if we have not made or offered a refund.

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

## **B. Changes**

The 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. Inspection 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

- c. If we fail to mail or deliver proper notice of nonrenewal and you obtain other insurance this policy will end on the effective date of that insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## NUCLEAR ENERGY LIABILITY EXCLUSION 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.

#### Instructions

The provisions of this endorsement must be attached to, incorporated in or overprinted upon every applicable policy issued in accordance with the provisions of an Automobile Insurance Plan or JUA. Refer to Index for state(s) in which this form is applicable.

# **APPENDIX E**

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**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

WEST COAST PIZZA COMPANY, INC. dba  
DOMINOES PIZZA, a Washington corporation,  
and all covered locations,

Plaintiff,

v.

NATIONAL CONTINENTAL INSURANCE  
COMPANY RE: POLICY NO. CP7063115-6, and  
UNITED NATIONAL INSURANCE COMPANY  
RE: POLICY NO. XTP0079005,

Defendants.

No. 08-2-27814-0 SEA

**DECLARATION OF JOE  
CONSTANTINE**

I, Joe Constantine, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I make this Declaration on the basis of personal knowledge, information and belief, am over the age of 18 years, and competent to testify herein.

2. I am currently employed by AmWins Brokerage of Washington. I have worked as an insurance broker for AmWins since 2002. I became an insurance broker in 2000.

1 3. AmWins is known in the insurance industry as a "wholesale" insurance broker.  
2 We assist retail insurance brokers such as Arthur J. Gallagher Insurance Company ("Gallagher")  
3 in locating insurance policies for their commercial clients.

4 4. In July or August of 2006, I was contacted by David Brink of Gallagher Insurance  
5 to assist Gallagher in locating an excess driver's liability policy for several Domino's Pizza  
6 franchises that operated 21 store locations within the state of Washington. I have considerable  
7 experience in locating excess liability insurance policies for fast food franchises.

8 5. In August of 2006, I contacted International Property and Casualty Insurance  
9 Brokers of Nevada, Inc. ("IPC"). IPC is an agent or representative of United National Insurance  
10 Company. IPC is known in the insurance industry as a managing general underwriter for United  
11 National. It is my understanding that IPC can issue excess liability policies on behalf of United  
12 National.

13 6. On August 4, 2006, I sent an email to Tammy at IPC to discuss the West Coast  
14 Pizza Application. Tammy is an owner of IPC. A copy of my August 4, 2006 email is attached  
15 hereto as Exhibit A.

16 7. I worked with an associate broker in my office, Karen Soderstrom, on this project.  
17 On September 25, 2006, Karen sent IPC the Food Delivery Application completed by West  
18 Coast. A copy of Karen's September 25, 2006 email and Food Application is attached hereto as  
19 Exhibit B.

20 8. The key information contained within any Food Delivery Application is the  
21 number of locations of the business as well as the dollar volume of delivery receipts generated by  
22 the business. This information is critical because the insurance carrier determines the amount of  
the premium based on the number of locations and delivery receipts generated by the insured.

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9. In August of 2006, IPC issued a Certificate of Insurance to West Coast Pizza Company. A copy of this Certificate of Insurance is attached hereto as Exhibit C.

DATED this 9<sup>th</sup> day of August, 2010 in Seattle, Washington.

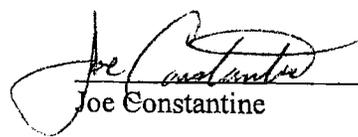
  
\_\_\_\_\_  
Joe Constantine

EXHIBIT A

EXHIBIT B



601 Union Street  
Suite 2425  
Seattle, WA 98101

T 206.922.1800  
F 206.922.1819

[amwins.com](http://amwins.com)

MEMO

To: IPC of Nevada  
Attn: Peggy Thiessen

Date: September 25, 2006

From: Karen Soderstrom  
AmWINS Brokerage of Washington

Re: West Coast Pizza – Policy #XTP79005

---

Peggy –

Attached please find the following:

- Signed original Food Delivery Application
- Signed Endorsement #HGT28-07/98

These should take care of the remaining subjectivities on this account.

Let me know if you have any questions.

Thank you.

Karen Soderstrom  
Associate Broker  
AmWINS Brokerage of Washington  
[karen.soderstrom@amwins.com](mailto:karen.soderstrom@amwins.com)



International Property & Casualty Insurance Brokers of Nevada, Inc.

1936 Catherine Court, Gardnerville, NV 89410  
Phone: (775) 782-6655 Fax: (775) 782-6654  
www.internationalpropertyandcasualty.com

### FOOD DELIVERY APPLICATION

1. NAMED INSURED: First Name: <u>West Coast Pizza Co. Inc.</u> dba: <u>Dominos Pizza</u> <input type="checkbox"/> See Accord Application <input type="checkbox"/> INDIVIDUAL <input checked="" type="checkbox"/> CORP. <input type="checkbox"/> PART. <input type="checkbox"/> OTHER:		2. MAILING ADDRESS <u>P.O. Box 187</u> <u>Point Roberts, WA 98281</u> <input type="checkbox"/> See Accord Application PHONE NO.: <u>(604) 952-450-</u>	
TYPE OF COVERAGE SOUGHT: <input type="checkbox"/> Hired <input checked="" type="checkbox"/> Non-Owned <input type="checkbox"/> Owned (excess of underlying only)		REQUESTED EFFECTIVE DATE: <u>ASAP</u>	
LIMIT OF LIABILITY <input type="checkbox"/> \$ 100,000. CSL <input type="checkbox"/> \$ 500,000. CSL <input type="checkbox"/> \$1,500,000. CSL <input type="checkbox"/> \$ 300,000. CSL <input checked="" type="checkbox"/> \$1,000,000. CSL <input type="checkbox"/> _____		Need a Quote: <input type="checkbox"/> Excess of driver's insurance policy. <input checked="" type="checkbox"/> Excess of a primary policy held by this Applicant. Primary Limit: <u>25/50</u> Primary Carrier:	

OPERATION DELIVERS:  Pizza  Chinese Food  Other \_\_\_\_\_

Applicant is an:  Independent  Franchise of: Dominos

Number of years in business: 20

Annual Delivery Receipts Last Year: \$ 5,500,000

Annual Delivery Receipts Coming Year: \$ 5,500,000

Total Annual Receipts: \$ 7,000,000

Total Number of Owned Vehicles: # \_\_\_\_\_

Number of Locations needing coverage: 21 are all locations to be scheduled owned by this applicant?  
List complete addresses for all locations to be scheduled on the policy or attach a separate list to the application.  
See Attached

*\*Attach 5 years of currently valued loss runs from prior carrier\**

Prior Carrier: Scottsdale Expiring Premium: \_\_\_\_\_

If new in business or no prior coverage give details of experience & include No Known Loss or Claim Letter on Insured's Letterhead.

#### DRIVER QUALIFICATIONS

What auto liability limits are the drivers required to maintain? State Minimums

Do you have driver requirements:  (ATTACH COPY) Do you have driver safety incentives: \_\_\_\_\_ (ATTACH COPY)

APPLICANT AGREES TO THE FOLLOWING DRIVER CRITERIA: (attach HGT28 form signed by insured)

- Driver's MVR's are checked at least every six months and at initial hire to confirm eligibility under insurance policy.
- Driver's auto liability insurance is checked at least every six months and at initial hire to confirm at least minimum financial responsibility limits are held and current
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- Driver must be over 18 & have 2 years driving experience and hold a valid drivers license for the residing state.
- Driver must have no more than two moving violations in 36 months and one at fault accident.
- No major traffic citations or incidents.

I UNDERSTAND THAT I MAY ONLY EMPLOY A DRIVER THAT MEETS THE ABOVE DRIVER CRITERIA.

DATE: \_\_\_\_\_ SIGNATURE: [Signature] :APPLICANT

PRINT NAME: Kevin Dobbs TITLE: Prop

RECEIVED  
SEP 25 2006

**CONSTRUCTION CONTRACTS**

ADDRESS	Building Limit	Contents Limit	FT Empl.	PT Empl.	Bldg Construction
1 118 Fany St., Sedro Woolley, WA 98284	\$0.00	\$90,000	3	11	Frams
2 360 36th St., Bellingham, WA 98225	\$0.00	\$90,000	2	13	Masonry
3 1600 E. College Way, Mt. Vernon, WA 98273	\$0.00	\$90,000	3	11	Frame
4 9815 State Ave., Marysville, WA 98270	\$0.00	\$90,000	4	8	Masonry
5 1501 E. Sunset, Bellingham, WA 98228	\$0.00	\$90,000	2	12	Masonry Non-C
6 2611 Colby St., Everett, WA 98201	\$0.00	\$90,000	3	8	Masonry
7 7601 Evergreen Way, Everett, WA 98203	\$0.00	\$90,000	3	18	Masonry
8 270 SE Cabot Drive, Oak Harbor, WA 98227	\$0.00	\$90,000	4	22	Masonry
9 3131 Smokey Point Dr., Arlington, WA 98223	\$0.00	\$90,000	4	10	Frame
10 1811 Main St., Ferndale, WA 98248	\$0.00	\$90,000	2	8	Masonry
11 211 W 5th St., Wenatchee, WA 98801	\$0.00	\$90,000	5	11	Frame
12 108 Front St. N., Issaquah, WA 98027	\$0.00	\$90,000	5	8	Masonry
13 15321 Main St. NE 201, Duvall, WA 98019	\$0.00	\$90,000	3	11	Masonry
14 20815 87th Ave. W, Lynnwood, WA 98036	\$0.00	\$90,000	3	10	Masonry
15 7839 SE 27th St. Sta. 4, Mercer Island, WA 98040	\$0.00	\$90,000	1	8	Masonry
16 15100 SE 38th St. Space C, Bellevue, WA 98006	\$0.00	\$90,000	3	7	Masonry
17 462 228th Ave. NE, Redmond, WA 98053	\$0.00	\$90,000	5	15	Masonry
18 10575 NE 12th St., Bellevue, WA 98004	\$0.00	\$90,000	4	5	Masonry
19 7320 35th Ave. NE, Seattle, WA 98115	\$0.00	\$90,000	2	10	Masonry
20 3425 Birch Bay Lynden Rd., Custer, WA 98240	\$0.00	\$90,000	3	5	Masonry
21 500 NW Market, Seattle, WA 98107	\$0.00	\$90,000	2	10	Masonry

ENDORSEMENT

This Endorsement forms a part of the Policy: By: *United National Insurance Company*

SPECIAL RESTRICTIONS FOR THE OPERATION OF  
AUTOMOBILES

The Named Insured has made the following disclosures as a part of the application for the insurance afforded by this policy:

The Named Insured has a high "turn over" of drivers in his business; and/or,  
The Named Insured must rely on retail delivery of his product.

In reliance upon the application for the Insurance afforded by this policy and with the understanding of the above disclosures by the Named Insured, the Named Insured and the Company have agreed as follows:

**NO INSURANCE IS AFFORDED BY THIS POLICY IF THE NAMED INSURED FAILS TO COMPLY WITH THE FOLLOWING CONDITIONS LISTED ON BOTH PAGES OF THIS ENDORSEMENT:**

1. The Named Insured agrees to cooperate with his Insurance Agent in screening all drivers or prospective drivers who will be called upon to operate an automobile on behalf of the Named Insured; and,
2. The Named Insured agrees the screening referred to in the foregoing paragraph will include the review of each driver's or prospective driver's automobile driving record as published by the home "state" of the prospective driver every six months or, in the case of a new driver before the prospective driver drives on behalf of the Named Insured; and,
3. The Named Insured agrees that no driver or prospective driver will be allowed to operate an automobile on behalf of the Named Insured if said driver or prospective driver does not have a valid automobile driver's license and an insurance ID card or some other form of acceptable proof of financial responsibility for the operation of a motor vehicle; and,
4. The Named Insured agrees that no driver or prospective driver will be allowed to operate an automobile on behalf of the Named Insured if said driver or prospective driver has any one or more of the following citations, violations, accidents, or combinations thereof.

VIOLATIONS

No more than two moving violations in 36 months and one at fault accident;

No major traffic citations or incidents. Majors Citations are as follows:

- Driving Under the Influence
- Driving While Impaired
- Driving in Possession of Alcohol or Drugs
- Refusal to submit a blood, urine, or breath test
- Driving with a suspended or revoked license
- A Felony in which a vehicle is used. (i.e. Vehicular Manslaughter, Vehicular Homicide, Vehicular Assault, Hit & Run, eluding a peace officer)
- Reckless Driving
- Careless Driving
- Driving over 100 MPH; Speed Contest; Racing

5. OTHER CONSIDERATIONS: The Named Insured agrees that no employee or prospective employee will be allowed to operate an automobile on behalf of the Named Insured if the said employee or prospective employee does not comply with the following:

- Driver must be at least 18 years of age with a minimum of two years driving experience and hold a valid drivers license for the residing state.
- If the driver has a violation for driving without current vehicle registration, a current license, or current insurance; then that driver must have the insurance checked every 3 months for 2 years.
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- No driver shall under any circumstance carry passenger's in/on the vehicle during deliveries.
- A driver charged with any MAJOR citation will be suspended from driving duties until all charges have been dismissed or a judgment is entered in favor of the driver. Until this is resolved, the driver may not drive.
- Any driver observed driving in an unsafe manner or driving an unsafe vehicle will be barred immediately from driving duties.

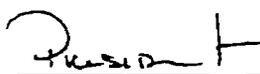
6. The Named Insured agrees he/she does not advertise to the buying public or stipulate to his drivers that the delivery be accomplished within a specified time of receiving an order.

7. The Named Insured agrees he/she/or appointed party will keep accurate records of delivery receipts.

I have read this SPECIAL RESTRICTION OF COVERAGE in its entirety and agree on behalf of all insured, to comply with all of its terms and conditions:

  
 \_\_\_\_\_  
 Signature of Insured or Officer of Insured Entity

  
 \_\_\_\_\_  
 Print Name

  
 \_\_\_\_\_  
 Title

Date: \_\_\_\_\_

EXHIBIT C

CERTIFICATE OF INSURANCE  
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685  
West Coast Pizza Company, Inc.; DBA: Domino's Pizz  
P.O. Box 187  
Point Roberts, WA 98281

Page 1 of 4  
CERTIFICATE NBR: GV060446  
FROM: 12:01 a.m. 08-16-06  
TO: 12:01 a.m. 09-15-06

PRODUCER: 10877  
Joe Constatine  
AmWins Brokerage of Washington  
601 Union Street Ste 2425  
Seattle, WA 98101  
  
(206)922-1818 FAX: (206)922-1819

INSURANCE COMPANY:  
United National Insurance Company

POLICY NBR: KTF79005  
EFFECTIVE: 08-16-06  
EXPIRES: 08-16-07

DESCRIPTION OF OPERATION:  
Food Delivery

LIMITS:  
PER BELOW

International Property & Casualty certifies that, per your request, the following insurance has been effected with the insurance company shown above. Please note all terms and conditions and notify us immediately if there are any discrepancies. Terms and conditions bound may not be as specified on the application. In the event of a claim, notify International Property & Casualty.

TERMS & CONDITIONS

\*\*\*\*\*  
PLEASE NOTE: IF THIS QUOTE BINDS, THAN THE EXCESS HIRED & NON-OWNED AUTO POLICY, FOR WHICH THE BINDER IS PREPARED, WILL TAKE EFFECT AT 12:01AM STANDARD TIME AS OF THE DATE OF THE PRIMARY POLICY LISTED HEREIN BECOMES EFFECTIVE, OR THE DATE SHOWN ON THE BINDER, WHICHEVER IS LATER.  
\*\*\*\*\*

PLEASE FORWARD

SUBJECT TO: Currently valued MVRs for the following drivers: Quien Paul Michael, Jeremy John Allison, Jason Chambers, Jonathon William Reach & Kim Rick Kee.

ORIGINAL SIGNED APPLICATION AND HGT29 DUE WITHIN TWO WEEKS.

25% of the annual minimum and deposit premium plus fees.

Copy of Underlying Dec Page.

RENEWAL OF: New

COVERAGE: Excess Hired and Non-Owned Auto (any employed driver)

LIMIT: Difference between 25/50/10 and \$1,000,000 CSL

ANNUAL MINIMUM & DEPOSIT: H/NOA: \$60,480.00  
\*Policy Minimum Premium = \$5,040.00

CERTIFICATE OF INSURANCE  
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685  
West Coast Pizza Company, Inc.; DBA: Domino's Pizz  
P.O. Box 187  
Point Roberts, WA 98281

Page 2 of 4  
CERTIFICATE NBR: GV060446  
FROM: 12:01 a.m. 08-15-06  
TO: 12:01 a.m. 09-15-06

\*Location Minimum Premium = \$2,880.00

FULLY EARNED PREMIUM: 25% of the annual minimum and deposit

PAYMENT TERMS: DUE IN 30 DAYS. PLEASE USE OUR BINDER AS YOUR INVOICE.

RATE: \$10.00 per \$1,000 of delivery receipts

ESTIMATED ANNUAL DELIVERY RECEIPTS: \$5,500,000.00  
\*NOTE: Insured must keep accurate records of delivery receipts

# OF COVERED LOCATIONS: 21

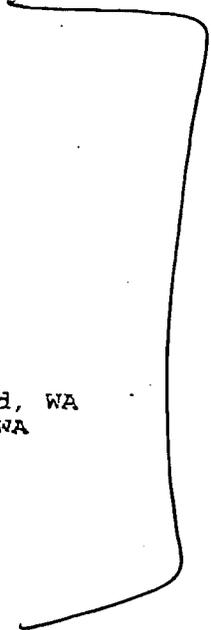
- COVERED LOCATION(S):
- 1) 118 Ferry Street, Sedro Woolley, WA
  - 2) 360 36th Street, Bellingham, WA
  - 3) 1600 East College Way, Mount Vernon, WA
  - 4) 9815 State Avenue, Marysville, WA
  - 5) 1301 East Sunset, Bellingham, WA
  - 6) 2611 Colby Street, Everett, WA
  - 7) 7601 Evergreen Way, Everett, WA
  - 8) 270 SE Cabot Drive, Oak Harbor, WA
  - 9) 3131 Smokey Point Drive, Arlington, WA
  - 10) 1811 Main Street, Ferndale, WA
  - 11) 211 West 5th Street, Wenatchee, WA
  - 12) 108 Front Street North, Issaquah, WA
  - 13) 15321 Main Street NE 201, Duvall, WA
  - 14) 20815 67th Avenue West, Lynwood, WA
  - 15) 7639 SE 27th Street, Ste. 4, Mercer Island, WA
  - 16) 15100 SE 39th Street, Space C, Bellevue, WA
  - 17) 462 228th Avenue NE, Redmond, WA
  - 18) 10575 NE 12th Street, Bellevue, WA
  - 19) 7320 35th Avenue NE, Seattle, WA
  - 20) 3425 Birch Bay Lynden Road, Custer, WA
  - 21) 500 NW Market, Seattle, WA

ADDITIONAL INSUREDS: Domino's Pizza, LLC and its subsidiaries  
P.O. Box 997  
Ann Arbor, MI 48106-0997

SERVICE FEE: \$1,000.00

UNDERLYING: TBD

PAPER: United National Insurance Company



<b>CERTIFICATE OF INSURANCE</b> <b>EVIDENCING PLACEMENT OF COVERAGE</b>
--

INSURED: 30106/36555  
 West Coast Pizza Company, Inc.; DBA: Domino's Pizz  
 P.O. Box 187  
 Point Roberts, WA 98281

Page 3 of 4

CERTIFICATE NBR: GV060446  
 FROM: 12:01 a.m. 08-16-06  
 TO: 12:01 a.m. 09-15-06

COMMISSION: 15.0%

EXCLUSIONS: Cross suit liability, Medical Payments, Personal Injury Protection (P.I.P.), Uninsured Motorists, Underinsured Motorists laws or statutes, Owned Auto, Absolute Pollution exclusion, Per Underlying, War & Terrorism, Electronic Data and Cyber Risk Exclusion

TERMS & CONDITIONS:

- \*Coverage applies only to: 1) the entities, 2) the locations and 3) the specified operations as scheduled on the policy.
- \*No flat cancellation allowed
- \*If coverage is bound please convey to all parties involved that no one may issue binders, endorsements, certificates of insurance or additional insured endorsements, unless this office has given written approval.

\*Special restriction-Warranty of application and operators of Insured's Vehicle endorsement applies:

- ^Must be over 18 and have 2 years driving experience and hold a valid drivers license for the residing state.
- ^No more than 2 moving violations in 36 months and one at fault accident.
- ^No major citations:
  - Driving under the influence
  - Driving while impaired
  - Driving in possession of alcohol or drugs
  - Refusal to submit to a blood, urine or breath test
  - Driving with a suspended or revoked license
  - A felony in which a vehicle is used (i.e. Vehicular Manslaughter, Vehicular Homicide, Vehicular Assault, Hit & Run, eluding a peace officer)
  - Reckless Driving
  - Careless Driving
  - Driving over 100 MPH; Speed Contest; Racing
- ^Insured is responsible for checking motor vehicle records semi-annually.
- ^Insured must verify that the employed driver has insurance coverage
- ^Underlying effective/expiration dates must be concurrent. Effective date will be either the effective date of the primary policy or the effective date of the binder, whichever comes later. Policy will be adjusted as necessary.
- ^A copy of the underlying dec must be forwarded to the company before the policy can be issued.

\*\*\* YOUR OFFICE IS RESPONSIBLE FOR THE SURPLUS LINES FILINGS AND PAYMENT OF

CERTIFICATE OF INSURANCE  
EVIDENCING PLACEMENT OF COVERAGE

INSURED: 30106/36685  
West Coast Pizza Company, Inc.; DBA: Domino's Pizz  
P.O. Box 187  
Pcint Roberts, WA 99281

Page 4 of 4  
CERTIFICATE NBR: GV060446  
FROM: 12:01 a.m. 08-16-06  
TO: 12:01 a.m. 09-15-06

TAXES AND FEES \*\*\*

IN ORDER TO BIND COVERAGE I WILL NEED THE FOLLOWING LETTER COMPLETED:

This policy is being written on a Surplus Lines basis, in a state where the insurance carrier is approved but not admitted. As a Surplus Lines Broker, it is your responsibility to arrange for the payment of the state taxes and/or stamping fee on the policy; and, make whatever filing is necessary with the appropriate authority.

Please acknowledge that you are arranging for the payment of all taxes and fees due and have handled all appropriate filing by signing in the space provided below, and sending the original signed copy to us within 10 days.

We are responsible for the payment of state taxes and fees on this policy. Arrangements have been made for such payment and the necessary filing(s).

(Signed/Accepted)

Name of individual making the filings: JOSEPH CONSTANTINE  
Surplus Lines Broker License or FEIN #: AMWINS IB941VA  
Agency Name: AMWINS BROKERAGE  
Agency Address: 601 UNION STREET SEATTLE WA 98101

PREMIUM: \$60,480.00  
SERVICE FEE: 1,000.00  
TOTAL: \$61,480.00

\* PLEASE REVIEW THIS CERTIFICATE CAREFULLY AS IT MAY  
\* NOT PROVIDE THE COVERAGES OR TERMS YOU REQUESTED

08-16-06

P.O. Box 1150  
Gardnerville, NV 89410

Tammy D. Sunderland  
(775) 782-6655 Fax: (775) 782-6654

plc

# **APPENDIX F**

FILED

10 AUG 09 AM 11:57

KING COUNTY  
SUPERIOR COURT CLERK  
E-FILED  
CASE NUMBER: 08-2-27814-0 SEA

Honorable Monica J. Benton  
Trial Date: 2/8/2010

**SUPERIOR COURT OF WASHINGTON FOR KING COUNTY**

WEST COAST PIZZA COMPANY, INC. dba  
DOMINO'S PIZZA, a Washington corporation, and  
all covered locations,

No. 08-2-27814-0 SEA

Plaintiff,

**DECLARATION OF JAMES H.  
CLARK**

v.

NATIONAL CONTINENTAL INSURANCE  
COMPANY RE: POLICY NO. CP7063115-6, and  
UNITED NATIONAL INSURANCE COMPANY  
RE: POLICY NO. XTP0079005,

Defendants.

I, James H. Clark, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

1. I am the attorney representing plaintiff West Cost Pizza Company, Inc. dba Domino's Pizza in this lawsuit. I make this Declaration on the basis of personal knowledge and review of the records.

2. As part of this case, plaintiff sent discovery questions to United National Insurance Company. In response to these discovery questions United National produced certain

**DECLARATION OF JAMES H. CLARK IN SUPPORT  
OF PLAINTIFF'S RESPONSE -1**

F:\JHC\clients\Mad Pizza\National  
Continental\SJ.Dec.clark.8.3.10.docx 8/3/10 (LB) #28100.002

**OSERAN HAHN SPRING STRAIGHT & WATTS P.S.**  
10900 NE Fourth Street #850  
Bellevue WA 98004  
Phone: (425) 455-3900  
Facsimile: (425) 455-9201

1 documents. Attached hereto as Exhibit A are documents with United National bate stamped  
2 numbers 000030004. This document is entitled "Food Delivery Rate Sheet."

3  
4 DATED this 3 *August* day of ~~July~~, 2010 at Bellevue, Washington.

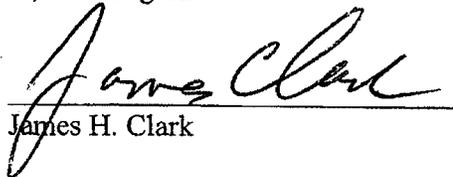
5   
6 James H. Clark

EXHIBIT A

DETAIL/INSURED #: 36685/30106 New

Name: West Coast Pizza Co., Inc.; DBA: Domino's Pizza

**FOOD DELIVERY RATE SHEET**

City: (see attached)  
 State: WA  
 Territory: (see attached)  
 Delivery Receipts: \$5,500,000  
 Number of Locations: 21 \* \$2,880 = \$60,480  
 Number of Owned Units: 0

U/L Limit: \$25/50/10  
 S.I.R.: NA  
 Desired Limit: \$1,000,000

**DIFFERENCE TO \$1,000,000**

Manual H/N Rate: \$4.521 (see attached)  
 Manual Owned Rate: NA  
 Manual Premium: \$24,866

**\$500,000 EXCESS of \$1,000,000 RATE**

H/N Manual Rate: NA  
 Manual Owned Rate: NA  
 Premium: NA

**TOTAL COMBINED MANUAL RATE FOR \$1,500,000**

Total Combined Manual Rate: H/N: NA O: NA  
 Total Combined Manual Premium: NA

**TOTAL CHARGED**

Rate Charged: H/N = \$10.00 O = NA  
 Premium Charged: H/N = \$55,000 O = NA  
 Total Prem: \$55,000 (\$60,480 MP)

**UNG's PRIOR LOSS HISTORY**

<u>Year</u>	<u>Policy Number</u>	<u># of Claims</u>	<u>Amt. Paid/Rsvd</u>	<u>Open/Close</u>
<u>05-06</u>	<u>Scottsdale</u>	<u>0</u>		
<u>04-05</u>	<u>Scottsdale</u>	<u>4</u>	<u>\$3,217</u>	<u>Closed</u>
<u>03-04</u>	<u>Scottsdale</u>	<u>2</u>	<u>\$5,931</u>	<u>Closed</u>
<u>02-03</u>	<u>Scottsdale</u>	<u>0</u>		

Completed By: MRR Given to Tammy: 8/9/2006 Rcvd fr: Tammy: \_\_\_\_\_

Location	City	Territory	Rate @ 1 Million
1	Woolley	030	\$ 3.972
2	Bellingham	011	\$ 3.731
3	Mt. Vernon	030	\$ 3.972
4	Marysville	030	\$ 3.972
5	Bellingham	011	\$ 3.731
6	Everett	012	\$ 4.306
7	Everett	012	\$ 4.306
8	Oak Harbor	030	\$ 3.972
9	Arlington	030	\$ 3.972
10	Ferndale	030	\$ 3.972
11	Wenatchee	024	\$ 3.257
12	Issaquah	021	\$ 4.863
13	Duvall	001	\$ 5.874
14	Lynwood	022	\$ 4.863
15	Mercer Island	001	\$ 5.874
16	Bellevue	021	\$ 4.863
17	Redmond	021	\$ 4.863
18	Bellevue	021	\$ 4.863
19	Seattle	001	\$ 5.874
20	Custer	030	\$ 3.972
21	Seattle	001	\$ 5.874
<b>Totals</b>		<b>NA</b>	<b>\$ 4.521</b>

# **APPENDIX G**

COMMERCIAL EXCESS  
DECLARATIONS

36685/30106

Renewal of Number: NEW

Policy No.: XTP79005

Named Insured and Mailing Address:

West Coast Pizza Company, Inc.

d.b.a. Domino's Pizza

P.O. Box 187

Point Roberts, Washington 98281

Policy Period: From ~~08/16/06~~ <sup>9/1/06</sup> To ~~08/16/07~~ <sup>9/1/07</sup> see end #1  
at 12:01 AM Standard Time at your Mailing Address shown above

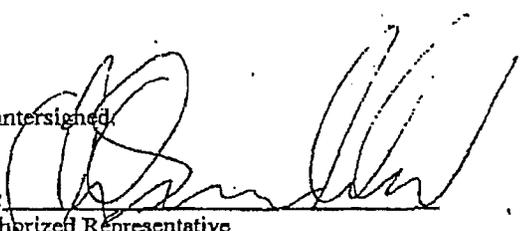
United National Insurance Company  
Three Bala Plaza East, #300  
Bala Cynwyd, PA 19004

Producer Number: 06574

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.

<b>DESCRIPTION OF INSURANCE AFFORDED HEREUNDER:</b>		
EXCESS HIRED & NON-OWNED AUTO (ANY EMPLOYED DRIVER)		
<b>LIMITS OF INSURANCE</b>		
Limits of this policy	\$Per HGT101	
EXCESS OF:		
Underlying Limits	\$Per HGT101	
<b>PREMIUM</b>		
Annual Minimum & Deposit Premium	\$60,480.00	Policy Fee: <u>1,000.00</u>
Minimum & Deposit premium for the Policy Period	\$60,480.00	Brokerage Fee: <u>4,500.00</u>
Adjustable at a rate of \$10.00 per \$1,000 of delivery receipts based on \$5,500,000.00 delivery receipts		Inspection Fee: _____
		Filing Fee: _____
		State Tax: <u>1,319.60</u>
		Stamping Fee: <u>164.95</u>
Minimum Earned Premium	25% of the Annual Minimum & Deposit Premium.	
<b>FORMS AND ENDORSEMENTS</b>		
Forms and Endorsements applying to this Coverage Part and made part of this Policy at time of issuance: PER SCHEDULE F		

Countersigned:

BY:   
Authorized Representative

Countersigned: Gardnerville, Nevada  
August 18, 2006  
UN100-03/96

"This contract is registered and delivered as a surplus line coverage under the insurance code of the State of Washington, enacted in 1947. It is not issued by a company regulated by the Washington State Insurance Commissioner and is not protected by any Washington State Guaranty fund law."

CANCELLATION  
OF POLICY

36685/IELL64002

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGE NUMBER: 2  
COMPANY: United National Insurance Company  
POLICY NBR: XTP79005  
POLICY CHANGE EFFECTIVE: 06-15-07

NAMED INSURED: West Coast Pizza Company, Inc.; DBA: Domino's Pizza

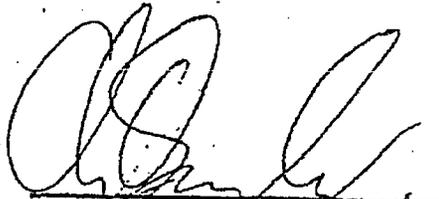
IN CONSIDERATION OF A RETURN PREMIUM OF \$<9,253.00>

IT IS AGREED THIS POLICY IS CANCELLED EFFECTIVE 06-15-07

CANCELLATION COMPUTED: Short-rate FACTOR: .153

REASON FOR CANCELLATION:

Insured's Request

  
AUTHORIZED REPRESENTATIVE

Policy Fee: \_\_\_\_\_  
Brokerage Fee: \_\_\_\_\_  
Inspection Fee: \_\_\_\_\_  
Filing Fee: \_\_\_\_\_  
State Tax: (185.06)  
Stamping Fee: (23.13)

RETURN PREMIUM <\$9,253.00>  
TOTAL <\$9,253.00>

07-17-07

MLT

UN 00067

POLICY  
CHANGE

36685

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGE NUMBER: 1  
COMPANY: United National Insurance Company  
POLICY NBR: XTP79005  
POLICY CHANGE EFFECTIVE: 08-16-06

NAMED INSURED: West Coast Pizza Company, Inc.; DBA: Domino's Pizza

\*\*\*CHANGES\*\*\*

It is hereby understood and agreed that the policy period is amended as follows:

Inception: 09/01/06  
Expiration: 09/01/07

Please refer to form HGT101-1/97, page 3 of 5, Part 1 - Insuring Agreements Section 1-Policy Period: Termination of Underlying Insurance.

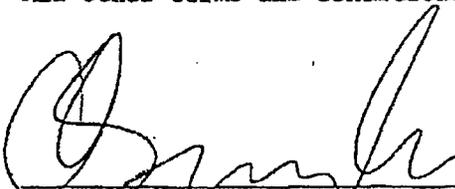
Due to the policy wording, we are therefore amending the effective dates to give you a one year policy that is concurrent with your underlying policy.

It is further agreed that form HGT101-01/97 - Excess Third Party Liability Policy under section A is amended to read as follows:

Insurer: National Continental  
Policy Number: CPW 7063115 6

It is further agreed that Hired coverage is deleted from the policy and that the Restriction of Coverage Endorsement, form HGT98-05/95 is deleted and replaced by the Restriction of Coverage Endorsement, form HGT98-05/95A, attached.

All other terms and conditions remain unchanged



Authorized Representative

ENDORSEMENT

This Endorsement forms a part of Policy #: XTP79005

By: UNITED NATIONAL INSURANCE CO.

RESTRICTION OF COVERAGE ENDORSEMENT

In consideration of the payment of the premium charged, it is understood and agreed that no insurance, whether primary or excess, is afforded by this policy for liability, claims expense or supplementary payments arising from:

- 1. Medical Payments
- 2. Personal Injury Protection (P.I.P), Added P.I.P. or any other similar laws or statutes available under any state or federal "Automobile Reparations Act"
- 3. Uninsured Motorists or Underinsured Motorists laws or statutes
- 4. Hired Autos
- 5. Non-Ownership Liability
- 6. Owned Autos

The above listed coverages, with an "x" placed within the bracket "[ ]", are excluded from coverage as provided by this policy.

If this is an excess policy and the underlying insurance provides coverage for one or more of the coverages excluded by this policy, the underlying limits of insurance shall not be reduced due to the payment of any coverages excluded by this policy.

# SCHEDULE F

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

JPA-100 (7/98)  
EAA100-3/06  
UN100-03/96  
SCHEDULE F  
SCHEDULE L  
CSI11-01/86  
EPA-144(3/05)  
HGT07-02/94  
HGT101-01/97  
HGT98-05/95  
HGT108-01/97  
HGT28-7/98  
NAA143-01/06

EAA-146  
EAA-147  
EAA-182-11/03  
EXA-408 2/04  
CSI 502-7/92A

UNITED NATIONAL - POLICY JACKET  
IN WITNESS CLAUSE  
COMMERCIAL EXCESS DECLARATIONS  
SCHEDULE OF FORMS  
SCHEDULE OF LOCATIONS  
NUCLEAR EXCLUSION  
SERVICE OF SUIT CLAUSE  
CROSS SUIT LIABILITY EXCLUSION  
DUAL TO COMBINED LIMITS OUTLINE  
RESTRICTION OF COVERAGE  
ADDITIONAL INSURED AND AMENDED POLICY TERMS  
SPECIAL RESTRICTIONS  
DISCLOSURE PURSUANT TO TERRORISM RISK  
INSURANCE ACT OF 2002  
TERRORISM EXCLUSION  
WAR EXCLUSION  
ELECTRONIC DATA AND CYBER RISK EXCLUSION  
TRANSFER OF RIGHTS AS TO UNDERLYING INSURERS  
RESTRICTED COVERAGE FORM



All other Terms and Conditions remain unchanged.

Page 1 of 1

## SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

### SCHEDULE OF LOCATIONS

LOCATION 1:	118 Ferry Street Sedro Woolley, Washington
LOCATION 2:	360 36 <sup>th</sup> Street Bellingham, Washington
LOCATION 3:	1600 East College Way Mount Vernon, Washington
LOCATION 4:	9815 State Avenue Marysville, Washington
LOCATION 5:	1301 East Sunset Bellingham, Washington
LOCATION 6:	2611 Colby Street Everett, Washington
LOCATION 7:	7601 Evergreen Way Everett, Washington
LOCATION 8:	270 Southeast Cabot Drive Oak Harbor, Washington
LOCATION 9:	3131 Smokey Point Drive Arlington, Washington
LOCATION 10:	1811 Main Street Ferndale, Washington
LOCATION 11:	211 West 5 <sup>th</sup> Street Wenatchee, Washington

All other Terms and Conditions remain unchanged.

Page 1 of 1

UN 00071

## SCHEDULE L

This Endorsement forms a part of Policy #: XTP79005

By: United National Insurance Company

### SCHEDULE OF LOCATIONS

LOCATION 12: 108 Front Street North  
Issaquah, Washington

LOCATION 13: 15321 Main Street Northeast  
Suite 201  
Duvall, Washington

\*\* LOCATION 14: 20815 67<sup>th</sup> Avenue West  
Lynnwood, Washington

LOCATION 15: 7639 Southeast 27<sup>th</sup> Street  
Suite 4  
Mercer Island, Washington

LOCATION 16: 15100 Southeast 38<sup>th</sup> Street  
Space C  
Bellevue, Washington

LOCATION 17: 462 228<sup>th</sup> Avenue Northeast  
Redmond, Washington

LOCATION 18: 10575 Northeast 12<sup>th</sup> Street  
Bellevue, Washington

LOCATION 19: 7320 35<sup>th</sup> Avenue Northeast  
Seattle, Washington

LOCATION 20: 3425 Birch Bay Lynden Road  
Custer, Washington

LOCATION 21: 500 Northwest Market Street  
Seattle, Washington

All other Terms and Conditions remain unchanged.

Page 1 of 1

UN 00072

**EXCESS THIRD PARTY LIABILITY POLICY**  
**SCHEDULES**

A. Schedule of Underlying Insurance: (Insurer & Policy Number)

To Be Determined  
\*\*\*\*

B. Schedule of Limits of Insurance: Limit(s) of the Company's liability shall be as stated below in Column I, subject to all the terms of this policy having reference thereto:

***Company's (Insurer's) Limit(s) of Insurance:***

COLUMN I IN EXCESS OF	COLUMN II =	COLUMN III	AS RESPECTS COVERAGE(S)
<i>Company Limits</i>	<i>Underlying Limits</i>	<i>Total Limits</i>	
The difference between the total limits shown in Column III and the underlying limits shown in Column II	(1) \$25,000 Each Person \$50,000 Each Accident	\$1,000,000 Bodily Injury and Property Damage Combined Single Limit each accident or loss.	(1) Bodily Injury Automobile
	(2) \$10,000 Each Accident		(2) Property Damage Automobile

Named Insured: West Coast Pizza Company, Inc.  
DBA: Domino's Pizza

Policy Number: XTP79005

The Company agrees with the named Insured, in consideration of the payment of the premium and subject to the provisions of this policy:

**PART I - INSURING AGREEMENTS**

1. **Excess Liability Indemnity**

To indemnify the Insured for the amount of loss which is in excess of the applicable limits of liability of the underlying insurance inserted in Column II of item B. in the Schedule; provided that this policy shall apply only to those coverages for which a limit of liability is inserted in Column I; provided further that the limit of the Company's liability under this policy shall not exceed the applicable amount inserted in Column I.

\* [ The provisions of the immediate underlying policy are incorporated as a part of this policy except for any obligation to investigate and defend and pay for costs and expenses incident to the same, the amount of the limits of liability, and "other insurance" provision and any other provisions therein which are inconsistent with the provisions of this policy.

2. **Policy Period: Termination of Underlying Insurance**

If the immediate underlying policy is canceled, this policy likewise is canceled effective on the same date at the same time and without notice to the Insureds. If the immediate underlying policy otherwise ceases to apply, this policy likewise ceases to apply to the same extent on the same date at the same time and without notice to the Insureds.

**PART II - DEFINITIONS**

1. **Immediate Underlying Policy**

"Immediate Underlying Policy" means the policy of the underlying insurance which provides the layer of coverage, whether primary or excess, immediately preceding the layer of coverage provided by this policy.

2. **Loss**

"Loss" means the sums paid as damages in settlement of a claim or in satisfaction of a judgment for which the Insured is legally liable after making deductions for all recoveries, salvages and other insurances (whether recoverable or not) other than the underlying insurance and excess insurance purchased specifically to be in excess of this policy.

"Loss" does not include investigation, adjustment, defense or appeal costs and expenses nor costs and expenses incident to any of the same, notwithstanding that the underlying insurance may provide insurance for such costs and expenses.

3. **Underlying Insurance**

"Underlying Insurance" means the insurance policies listed in item A. in the Schedule and includes any renewal or replacement of such policies only if such renewal or replacement does not provide coverage which is more broad or greater in scope than the policies listed in item A. in the Schedule.

**PART III - CONDITIONS**

1. **Underlying Insurance - Changes During this Policy Period**

Any change in coverage in the underlying insurance shall be promptly reported to the Company and the Insured shall, upon request, furnish the Company with copies of such changes.

Any change in the premium for the underlying insurance shall be promptly reported to the Company and the premium for this policy subject to the minimum premium, may be adjusted in accordance with the rules and

HGT101-1/97

rates of the company then in effect.

2. Maintenance of Underlying Insurance

Insurance afforded by the underlying policies described in Item A. of the Schedule with limits of liability not less than as stated in Item B. Of the Schedule (or renewals or replacements thereof) shall be in full effect at the inception of this policy and shall be maintained during the period of this policy. If such underlying insurance is not maintained in full effect by the Insured, or if any limits of liability of an underlying policy are less than that stated in Item B. Of the Schedule, or if there is any broadening or expansion of the scope of coverage under any primary insurance, the insurance afforded by this policy shall apply in the same manner as though such underlying policies and limits of liability as stated in Item B. had been in effect, so maintained and unchanged.

X {

BANKRUPTCY

- 1) Bankruptcy, insolvency, or receivership of the Insured, the Insured's estate or of any "underlying Insurer" will not relieve us of our obligations under this policy.
- 2) With regard to bankruptcy, insolvency, or receivership of any "underlying Insurer", this policy will not apply as a replacement of such bankrupt or insolvent Insurer's policy and our Limits of Insurance will apply only in excess of the required Limit(s) of Insurance stated in Item 5 of the Declarations of this policy.
- 3) This insurance will not apply to any obligation of any Insured to pay any "self-insured retention" or coinsurance portion of any "underlying insurance", whether or not such obligation becomes invalid, suspended, unenforceable or uncollectible for any reason including bankruptcy or insolvency of any person or organization.

3. Impairment of Underlying Limits due to Excluded Losses

If there are losses paid by underlying policies which are not covered by this policy for any reason (other than the amount of loss being less than the underlying limit or the added cost of supplementary payments or defense costs within the underlying limits), this policy shall apply in the same manner as though such underlying policies and limits of liability as stated in Items A. and B. of the Schedule had not covered such losses and had not been reduced by such losses which are not covered by this policy.

4. Application of the Permanent Self-Insured Retention

A. If an underlying limit of liability is reduced and if this policy (after application of all its other terms and conditions) applies in excess of such reduced underlying limit of liability, such insurance as may be afforded by this policy applies in excess of the greater of:

- 1) any deductible, self-insurance or self-insured amounts and provisions applying to the underlying insurance policy; or
- 2) the Permanent Self-Insured Retention shown in Item B. (9) of the Schedule, if any.

B. The amount shown as a Permanent Self-Insured Retention applies to each accident after the underlying limit is exhausted. After such underlying limit exhaustion, the amount shown as a Permanent Self-Insured Retention is the total amount of all loss, otherwise covered under this policy, which the Insured shall pay first as self-insurance arising from all injury or damage to, or suffered by, any one person, one organization or one entity arising from any one subsequent accident

For the purposes of applying the underlying limit of liability aggregate and the subsequent Permanent Self-Insured Retention amounts:

HGT101-1/97

- 1) If this policy is written on an "injury or destruction" or "occurrence" basis, the injury, destruction, or occurrences covered hereunder shall be considered in chronological order by date of injury, destruction or occurrence regardless of date of discovery, report to the Company or actual loss payment.
- C. As respects settlements or judgments for loss within the Permanent Self-Insured Retention, the Insured will pay such amounts directly to the claimant in compliance with the terms of the settlement or judgment. The Company is not liable to pay these Permanent Self-Insured Retention amounts to the claimant. All such loss within the Permanent Self-Insured Retention shall be paid promptly by the Insured when incurred, due and payable.
- D. The Company may, at its sole option, pay any part or all of the Permanent Self-Insured Retention to effect settlement of any claim or suit and, upon notification of the action taken, the Named Insured shall promptly reimburse the Company for such part of the Self-Insured Retention as has been paid by the Company.
- E. As respects any defense or claims expenses or costs incurred by the Company, the Insured will reimburse the Company within ten (10) working days from the date billed. If the Insured is billed directly, the Insured will pay within the terms of the billing.

5. Notice of Loss; Participation in Defense by the Company

Notice of an accident which appears likely to involve this policy shall be given by or on behalf of the Insured to the Company as soon as practicable. The Company, at its own option, may, but is not required to, participate in the investigation, settlement or defense of any claim or suit against the Insured.

6. Action Against the Company

No action shall lie against the Company unless, as a condition precedent thereto, the Insured shall have fully complied with all the terms of this policy.

Any person or organization or the legal representative thereof who has secured a judgment against the Insured shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy. Nothing contained in this policy shall give any person or organization any right to join the Company as a co-defendant in any action against the Insured to determine the Insured's liability. Any payments by the Company shall discharge the Company's obligation to the Insured to the extent of such payments.

7. Rights of Recovery

In the event of any payment under this policy, the Company shall be subrogated to all the Insured's rights of recovery therefor against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after the accident to prejudice such rights.

Because this policy affords excess coverage, the Insured's right of recovery cannot always be exclusively subrogated to the Company. It is, therefore, agreed that the Company shall act in concert with all other interests concerned, including the Insured, in the enforcement of any subrogation rights or in the recovery of amounts by any other means.

The apportioning of any amounts so recovered shall follow in the principle that any interest including the Insured, that shall have paid an amount over and above any payment under this policy shall first be reimbursed up to the amount paid by such interest; the Company shall then be reimbursed out of any balance then remaining up to the amounts paid as the result of loss covered under this policy; and lastly, the interests, including the Insured, of whom this coverage is in excess are entitled to claim any residue remaining. Expenses and costs necessary to the recovery of any such amount shall be apportioned between the interests concerned, including the Insured, in the ratio of their respective recoveries or, in the event of a totally

HGT101-1/97

unsuccessful attempt to recover, in the ratio of the respective amounts sought to be recovered.

8. Other Insurance

This condition does not apply with respect to the scheduled underlying insurance or excess insurance purchased specifically to be in excess of this policy.

If, with respect to a loss covered hereunder, the Insured has other insurance, whether on a primary, excess or contingent basis, there shall be no insurance afforded hereunder as respects such loss; provided, that if the applicable limit of liability of this policy is greater than the applicable limit of liability provided by other insurance, this policy shall afford excess insurance over and above such other insurance in an amount sufficient to give the Insured, as respects the layer of coverage afforded by this policy, a total limit of liability equal to the applicable limit of liability afforded by this policy.

9. Cancellation

This policy may be canceled by the Named Insured by mailing to the Company written notice stating when thereafter the cancellation shall be effective. This policy may be canceled by the Company by mailing to the Named Insured at the address shown in the Declarations written notice stating when not less than ten (10) days thereafter such cancellation shall be effective. The mailing of notice as aforesaid shall be sufficient proof of notice. The effective date of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Named Insured or by the Company shall be equivalent to mailing.

If the Named Insured cancels, earned premium or minimum premium, whichever is greater, shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium or minimum premium, whichever is greater, shall be computed pro rata. Premium adjustment may be made either at the time cancellation is effected or as soon as practicable after cancellation becomes effective, but payment or tender of unearned premium is not a condition of cancellation.

10. First Named Insured

The insured first named in Item 1 in the Declarations is authorized to act on behalf of all Named Insureds and other Insureds with respect to the giving and receiving of Notice of Cancellation and to receiving any return premium that may become payable under this policy. The Insured first named in Item 1 in the Declarations is responsible for the payment of all premiums but the other Named Insureds jointly and severally agree to make such premium payments in full if the Insured first named in Item 1 fails to pay the amount due within thirty days after the Company gives a written demand for payment to the Insured first named in Item 1.

ENDORSEMENT

This Endorsement forms a part of Policy #: XTP78005

By: UNITED NATIONAL INSURANCE CO.

**RESTRICTION OF COVERAGE ENDORSEMENT**

In consideration of the payment of the premium charged, it is understood and agreed that no insurance, whether primary or excess, is afforded by this policy for liability, claims expense or supplementary payments arising from:

- 1. Medical Payments
- 2. Personal Injury Protection (P.I.P), Added P.I.P. or any other similar laws or statutes available under any state or federal "Automobile Reparations Act"
- 3. Uninsured Motorists or Underinsured Motorists laws or statutes
- 4. Hired Autos
- 5. Non-Ownership Liability
- 6. Owned Autos

The above listed coverages, with an "x" placed within the bracket "[ ]", are excluded from coverage as provided by this policy.

If this is an excess policy and the underlying insurance provides coverage for one or more of the coverages excluded by this policy, the underlying limits of insurance shall not be reduced due to the payment of any coverages excluded by this policy.

This endorsement, effective 08/16/06 (12:01 a.m. standard time),  
forms a part of Policy # : XTP79005

Issued To: West Coast Pizza Company, Inc. By: United National Insurance Company  
*D.B.A.: Domino's Pizza*

**ADDITIONAL INSURED AND AMENDED POLICY TERMS**

The paragraphs marked "yes" below apply to such insurance as is afforded by this policy.

A.  yes  no **ADDITIONAL INSURED(S):**

Subject to all its terms, conditions and endorsements, such insurance as is afforded by the policy shall also apply to the following entity(ies) as an Additional Insured, but only as respects liability arising from (1) premises owned by or occupied by the Named Insured, (2) the contract entered into by the Named Insured, or (3) the work or business activities performed by or for the Named Insured as specified under "as respects" below.

**Additional Insured Entity (ies)**  
Domino's Pizza, Inc.  
30 Frank Lloyd Wright Drive  
P.O. Box 997  
Ann Arbor, MI 48106-0997

B.  yes  no **WAIVER OF SUBROGATION:**

Where required by contract and agreed to by the Named Insured, the Company shall not have any rights of recovery against any Additional Insured Entity(ies) named in item A. above.

C.  yes  no **CANCELLATION:**

Any policy condition or agreement relating to cancellation (Paragraph A. of Common Policy Conditions, GU267 (11-85), and wherever found anywhere else in the policy) is deleted in its entirety and the following applies instead:

This policy may only be canceled by the Named Insured by mailing to the Company or its representatives and to the additional insured(s) shown in paragraph A. above, written notice stating when not less than Thirty (30) days thereafter such cancellation shall be effective. This policy may only be canceled by the Company by mailing to the Named Insured at the address shown in this policy and to the additional insured(s) shown in paragraph A. above, written notice stating when not less than Thirty (30) days thereafter such cancellation shall be effective, the mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery, with receipt, of such written notices either by the Named Insured or by the Company shall be equivalent to mailing.

**ENDORSEMENT**

*This Endorsement forms a part of the Policy;*

*By: United National Insurance Company*

**SPECIAL RESTRICTIONS FOR THE OPERATION OF  
AUTOMOBILES**

The Named Insured has made the following disclosures as a part of the application for the insurance afforded by this policy:

- The Named Insured has a high "turn over" of drivers in his business; and/or,
- The Named Insured must rely on retail delivery of his product.

In reliance upon the application for the insurance afforded by this policy and with the understanding of the above disclosures by the Named Insured, the Named Insured and the Company have agreed as follows:

**NO INSURANCE IS AFFORDED BY THIS POLICY IF THE NAMED INSURED FAILS TO COMPLY WITH THE FOLLOWING CONDITIONS LISTED ON BOTH PAGES OF THIS ENDORSEMENT:**

1. The Named Insured agrees to cooperate with his Insurance Agent in screening all drivers or prospective drivers who will be called upon to operate an automobile on behalf of the Named Insured; and,
2. The Named Insured agrees the screening referred to in the foregoing paragraph will include the review of each driver's or prospective driver's automobile driving record as published by the home "state" of the prospective driver every six months or, in the case of a new driver before the prospective driver drives on behalf of the Named Insured; and,
3. The Named Insured agrees that no driver or prospective driver will be allowed to operate an automobile on behalf of the Named Insured if said driver or prospective driver does not have a valid automobile driver's license and an insurance ID card or some other form of acceptable proof of financial responsibility for the operation of a motor vehicle; and,
4. The Named Insured agrees that no driver or prospective driver will be allowed to operate an automobile on behalf of the Named Insured if said driver or prospective driver has any one or more of the following citations, violations, accidents, or combinations thereof.

**VIOLATIONS**

No more than two moving violations in 36 months and one at fault accident;

No major traffic citations or incidents. Majors Citations are as follows:

- ▶ Driving Under The Influence
- ▶ Driving While Impaired
- ▶ Driving in Possession of Alcohol or Drugs
- ▶ Refusal to submit a blood, urine, or breath test
- ▶ Driving with a suspended or revoked license
- ▶ A Felony in which a vehicle is used. (i.e. Vehicular Manslaughter, Vehicular Homicide, Vehicular Assault, Hit & Run, eluding a peace officer)
- ▶ Reckless Driving
- ▶ Careless Driving
- ▶ Driving over 100 MPH; Speed Contest; Racing

5. **OTHER CONSIDERATIONS:** The Named Insured agrees that no employee or prospective employee will be allowed to operate an automobile on behalf of the Named Insured if the said employee or prospective employee does not comply with the following:

- Driver must be at least 18 years of age with a minimum of two years driving experience and hold a valid drivers license for the residing state.
- If the driver has a violation for driving without current vehicle registration, a current license, or current insurance; then that driver must have the insurance checked every 3 months for 2 years.
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- No driver shall under any circumstance carry passengers in/on the vehicle during deliveries.
- A driver charged with any **MAJOR** citation will be suspended from driving duties until all charges have been dismissed or a judgement is entered in favor of the driver. Until this is resolved, the driver may not drive.
- Any driver observed driving in an unsafe manner or driving an unsafe vehicle will be barred immediately from driving duties.

6. The Named Insured agrees he/she does not advertise to the buying public or stipulate to his drivers that the delivery be accomplished within a specified time of receiving an order.

7. The Named Insured agrees he/she/or appointed party will keep accurate records of delivery receipts.

I have read this **SPECIAL RESTRICTION OF COVERAGE** in its entirety and agree on behalf of all insured, to comply with all of its terms and conditions:

\_\_\_\_\_  
Signature of Insured or Officer of Insured Entity

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

5. **OTHER CONSIDERATIONS:** The Named Insured agrees that no employee or prospective employee will be allowed to operate an automobile on behalf of the Named Insured if the said employee or prospective employee does not comply with the following:

- Driver must be at least 18 years of age with a minimum of two years driving experience and hold a valid drivers license for the residing state.
- If the driver has a violation for driving without current vehicle registration, a current license, or current insurance; then that driver must have the insurance checked every 3 months for 2 years.
- All vehicles driven on behalf of the Insured meet the state's safety requirements.
- No driver shall under any circumstance carry passenger's in/on the vehicle during deliveries.
- A driver charged with any **MAJOR** citation will be suspended from driving duties until all charges have been dismissed or a judgment is entered in favor of the driver. Until this is resolved, the driver may not drive.
- Any driver observed driving in an unsafe manner or driving an unsafe vehicle will be barred immediately from driving duties.

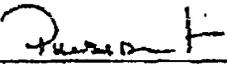
6. The Named Insured agrees he/she does not advertise to the buying public or stipulate to his drivers that the delivery be accomplished within a specified time of receiving an order.

7. The Named Insured agrees he/she/or appointed party will keep accurate records of delivery receipts.

I have read this **SPECIAL RESTRICTION OF COVERAGE** in its entirety and agree on behalf of all Insured, to comply with all of its terms and conditions:

  
 \_\_\_\_\_  
 Signature of Insured or Officer of Insured Entity

  
 \_\_\_\_\_  
 Print Name

  
 \_\_\_\_\_  
 Title

Date: \_\_\_\_\_

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT  
(Broad Form)**

This endorsement modifies insurance provided under all the COVERAGE FORMS attached to this 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 the "hazardous properties" of "nuclear material", if:

(1) The "nuclear material"

(a) is at any "nuclear facility" owned by, or operated by or on behalf of, an "insured" or

(b) has been discharged or dispersed therefrom;

(2) The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an "insured"; or

(3) The "bodily injury" or "property damage" arises out of the furnishing by an "insured" of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any "nuclear facility", but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (3) applies only to "property damage" to such "nuclear facility" and any property there at

2. As used in this endorsement:

"Hazardous properties" include radioactive, toxic or explosive properties;

"Nuclear material" means "source material", "special nuclear material" or "by-product material";

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

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

"Waste" means any waste material

(a) containing "by-product material" other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its "source material" content, and

(b) resulting from the operation by any person or organization of any "nuclear facility" included under the first two paragraphs of the definition of "nuclear facility".

"Nuclear facility" means:

(a) Any "nuclear reactor";

(b) Any equipment or device designed or used for

(1) separating the isotopes of uranium or plutonium,

(2) processing or utilizing "spent fuel", or

(3) handling, processing or packaging "waste";

(c) Any equipment or device used for the processing, fabricating or alloying of "special nuclear material" if at any time the total amount of such material in the custody of the "insured" at the premises where such equipment or device is located consists 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.

(The attaching clause need be completed only when this endorsement is issued subsequent to preparation of the policy)

This endorsement, effective at 12:01 a.m. standard time, forms a part of

Policy #:

Issued to:

By:

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

**SERVICE OF SUIT - WASHINGTON**

This endorsement modifies insurance provided under the following:

*ALL COVERAGE PARTS IN THE POLICY*

We appoint the Insurance Commissioner of the State of Washington and his successor or successors in office and his and their duly authorized deputies, as our true and lawful attorney in and for the State of Washington, upon whom all lawful process may be served in any action, "suit" or proceeding instituted in the State of Washington by or on behalf of any insured or beneficiary against the us, arising out of this insurance policy.

---

Authorized Representative

ENDORSEMENT

This Endorsement Forms a Part of the Policy.

By: United National Insurance Company

**CROSS LIABILITY EXCLUSION**

This insurance does not apply to liability arising from claims or suits brought by:

1. One "Insured" against another "Insured";
2. Any parent company or parent corporation of any "Insured", or any subsidiary company or subsidiary corporation of any "Insured"
3. Any other company or corporation owned by any of the entities described in 1. or 2. above.
4. Any division or department of any of the entities described in 1., 2., or 3. above.
5. Any officer, director or employee of any of the entities described in 1., 2., 3. or 4. above.

Policy Number: XTP79005

NAA143(01/2006)

THIS NOTICE is attached to and made part of your policy in RESPONSE TO the disclosure requirements of the terrorism risk insurance act of 2002. This notice does not grant any coverage or change the terms and conditions of any coverage under THE POLICY.

**DISCLOSURE PURSUANT TO TERRORISM RISK INSURANCE ACT OF 2002**

**SCHEDULE\***

Terrorism Premium (Certified Acts)      \$EXCLUDED

Additional Information, if any, concerning terrorism premium:

\* Information required to complete this Schedule, if not shown on this notice, will be shown in the Declarations.

**A. Disclosure Of Premium**

In accordance with the federal Terrorism Risk Insurance Act of 2002, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to coverage for terrorist acts certified under that Act. The portion of your premium attributable to such coverage is shown in the Schedule of this notice or in the policy Declarations.

**B. Disclosure Of Federal Participation In Payment Of Terrorism Losses**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share is 90% for 2006 and 85% for 2007, of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

(The attaching clause need be completed only when this endorsement is issued subsequent to preparation of the policy)

This endorsement, effective on \_\_\_\_\_ at 12:01 A.M. standard time, forms a part of

Policy No.:

Issued To:

By:

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

## **TERRORISM EXCLUSION**

This endorsement modifies insurance provided under the following:

### **ALL PARTS OF THE POLICY**

Notwithstanding any other provision of this policy to the contrary, this insurance does not apply to any loss, cost, expense, damage, injury or economic detriment, whether arising by contract, operation of law or otherwise whether or not concurrent or in any sequence with any other cause or event, that in any way, form or manner, directly or indirectly, arises out of, results from or is caused by "terrorism", and also including any action taken in hindering or defending against "terrorism".

"Terrorism" means any act of force or violence or other illegal means, whether actual, alleged or threatened, by any person, persons, group, private or governmental entity or entities, or any other type of organization of any nature whatsoever, whether the identity of which is know or unknown, that appears to be for political, religious, racial, ethnic, ideological, ecological or social purposes, objectives or motives and that causes or appears to be intended to cause:

1. alarm, fright, fear of danger, concern or apprehension for public safety;
2. the interference or disruption of an electronic, communication, information or mechanical system;
3. the intimidation or coercion of the civilian population, or any governmental body;  
or
4. the alteration of the policies, foreign or domestic of any governmental body,

This exclusion does not affect the applicability of, and is in addition to, any exclusion of war, warlike or military action, whether or not specifically denominated as such.

(The attaching clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on At 12:01 A.M. standard time, forms a part of the

Policy No.:

Issued To:

By:

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

### **WAR EXCLUSION**

**This endorsement modifies insurance provided under the following:**

#### **ALL LIABILITY COVERAGE OF THE POLICY**

**Any exclusion for war, warlike or military action whether or not specifically denominated as such, is deleted and replaced by the following:**

**Notwithstanding any provision of this policy to the contrary, this insurance does not apply to injury, damage, loss, cost or expense, due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion, revolution or action taken by governmental authority in hindering or defending against any of these.**

**This exclusion does not affect the applicability of, and is in addition to, any exclusion of terrorism, whether or not specifically denominated as such.**

(The attaching clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on at 12:01A.M. standard time, forms a part of

Policy No:

Issued To:

By:

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

**ELECTRONIC DATA AND CYBER RISK EXCLUSION**

We will not pay for injury or damage, directly or indirectly, arising out of, caused by, contributed to by or resulting form any:

1. Functioning, nonfunctioning, malfunctioning, availability or nonavailability of:
  - a. the Internet or similar facility; or
  - b. any Intranet or private network or similar facility; or
  - c. any website, bulletin board, chat room, search engine, portal or similar third party application service.
  
2. Alteration, corruption, destruction, distortion, erasure, theft or other loss of or damage to data, software, information repository, microchip, integrated system or similar device in any computer equipment or non-computer equipment or any kind of programming or instruction set;
  
3. Loss of use or functionality, whether partial or entire, of data, coding, program, software, any computer or computer system or other device dependent upon any microchip or embedded logic and any ensuing inability or failure of the insured to conduct business.

This exclusion supplements any exclusion elsewhere in the policy.

(The attaching clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

This endorsement, effective on \_\_\_\_\_ at 12:01 A.M. standard time, forms a part of

Policy No.:

Issued To:

By:

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

**TRANSFER OF RIGHTS AS TO UNDERLYING INSURERS**

The following Condition is added:

It is in your interest to preserve the amount of insurance available under this policy, by having a "claim" or "suit" concluded within the limit of insurance of any "underlying insurance." To the extent that you have the right in the absence of this policy, to make a demand on any "underlying insurer" to settle a "claim" or "suit" within its limit of insurance, you will, at our request, make that demand or transfer and assign that right to us. We will be entitled to exercise that transferred or assigned right as if this policy did not exist.

# RESTRICTED COVERAGE FORM

## SPECIAL EXCLUSIONS, RESTRICTIONS OF COVERAGE OR AMENDMENTS WHICH APPLY TO YOUR POLICY

### READ CAREFULLY AND DISCUSS WITH YOUR INSURANCE BROKER

#### 1. Absolute Pollution and Contamination Exclusion.

All policy provisions which limit, delete or exclude coverage for liability arising out of, resulting from, or in any way related to, pollution or contamination are hereby deleted in their entirety.

Notwithstanding any other provisions of each COVERAGE PART or form to the contrary, this insurance does not apply to:

"bodily injury" or "personal injury," or "property damage" (actual, alleged, or threatened) arising out of the discharge, dispersal, release, or escape of smoke, vapors, soot, fumes, acids, alkalis, oil or other petroleum substance, toxic substances or chemicals, "waste materials" or other irritants, contaminants or pollutants whether solids, liquids or gases, into or upon land, the atmosphere or any watercourse or body of water.

Further, this policy does not apply to any "loss", cost, defense or expense arising out of any governmental direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize such irritants, contaminants or pollutants referred to above.

For purposes of this exclusion only, the term "waste materials" includes (but is not limited to) materials to be recycled, reconditioned or reclaimed.

#### 2. The COVERAGES section of each COVERAGE FORM is amended to include the following EXCLUSIONS:

This insurance does not apply to:

- a. Fines, penalties, exemplary or punitive damages.
- b. "Bodily injury" or "personal injury" arising out of or resulting

from real or alleged acts of sexual abuse, sexual harassment, or licentious, immoral or sexual behavior intended to lead to, or culminating in any sexual act, whether caused by, or at the instigation of, or at the direction of, or omission by, you, your employees, or patrons. This insurance does not apply to, or provide, SUPPLEMENTARY PAYMENTS arising from any of the above.

c. "Bodily injury" or "personal injury" arising from alleged or real acts of discrimination by you whether such discrimination is based on age, health, illness, sex, sexual preference, race, country of origin or religion. This insurance does not apply to, or provide, SUPPLEMENTARY PAYMENTS arising from any of the above.

d. "Advertising injury," "bodily injury," "personal injury" or "property damage" arising from a "prior event" which was first discovered by any insured or known to any insured before the policy period or arising out of new claims, new plaintiffs or new (or subsequent) injury or damage based on, or arising from a "prior event" if such "prior event":

- (1) Was known to have caused or could reasonably have caused injury or damage prior to this policy period, or
- (2) Could reasonably be expected to result in injury or damage during this policy period, or
- (3) Could reasonably be expected to result in a claim against you or any other insured, or

- (4) Is covered by other insurance or which would have been covered but for exhaustion of the amount of insurance applicable to such "prior event".
  - (5) Was reported by any insured to another insurance company prior to the policy period, or
  - (6) Is listed on the application for insurance submitted to us, including related correspondence and attachments.
- e. "Advertising injury", "bodily injury", "personal injury", or "property damage" arising from claims or "suits" brought by:
- (1) One insured against another insured;
  - (2) Any parent company or parent corporation of any insured, or any subsidiary company or subsidiary corporation of any insured;
  - (3) Any other company or corporation owned by any of the entities described in (1) or (2) above;
  - (4) Any division or department of any of the entities described in (1), (2), or (3) above; or
  - (5) Any officer, director or employee of any of the entities described in (1), (2), (3), or (4) above.

l. "Asbestos liability".

This policy does not cover any obligation on your part to indemnify any party for "asbestos liability"; or, to any "asbestos liability" assumed under contract.

Coverage for SUPPLEMENTARY PAYMENTS or claims, if any, as defined in this policy, does not apply to any "loss", claim or "suit" directly or indirectly resulting from, caused by or alleged to be caused by "asbestos" or "asbestos liability."

Any obligation or duty on our part to investigate or defend claims or "suits," if any, does not apply to any, "loss", claim or "suit" directly or indirectly resulting from, caused by or alleged

to be caused by, "asbestos" or "asbestos liability."

If a "loss", claim, or "suit" arises which alleges that "asbestos liability" is one of two or more causes of a "loss":

- (1) We will have no obligation to participate in or to assume charge of the investigation, defense, or settlement of such "loss", claim, or "suit" brought against you, but we will have the right and be given the opportunity to associate with you and your defense counsel in defense and control of any such "loss", claim or "suit". We, at our sole discretion, may elect to assume control and defense of any or all such "loss", claim, or "suit" which, in our opinion, may involve this policy under coverages or hazards that are not otherwise excluded.
- (2) Unless we elect otherwise, you will be solely responsible for the investigation, defense, settlement, and final disposition of any such "loss", claim, or "suit" brought against you. You must use due diligence and prudence to settle all such "losses", claims and "suits" which, in the exercise of sound judgement, should be settled; provided however, that you will not make or agree to any settlement for any sum, which would involve this insurance without our prior written approval.
- (3) If such "loss", claim or "suit" results in a judgement or settlement based solely on "asbestos liability," then no "loss", damages or SUPPLEMENTARY PAYMENTS will be payable by us.
- (4) If such "loss", claim or "suit" results in a final judgement or settlement based in part upon "asbestos liability" and in part upon "loss" otherwise covered by this policy, we will reimburse you for that portion of the "loss" which is otherwise covered by the policy.
- (5) If this policy also provides defense and/or coverage for SUPPLEMENTARY PAYMENTS, subject to all the terms, conditions and provisions applicable to such coverage, we will also reimburse you

for the portion of SUPPLEMENTARY PAYMENTS which is allocated to that portion of the "loss" which is otherwise covered by this policy. Such allocation will be in the same proportion that our payment for covered "loss" under the policy bears to the total final settlement or judgement. This agreement is subject to any provision in this policy which includes SUPPLEMENTARY PAYMENTS within the LIMIT(S) OF INSURANCE, if any.

- (6) If the final settlement or judgement does not specify the sums attributable to each of the various causes of the "loss" and if we and you cannot agree on an allocation for purposes of "loss", defense costs and SUPPLEMENTARY PAYMENTS reimbursement, the dispute will be submitted to Binding Arbitration as described elsewhere in this policy.
- (7) If this policy applies subject to a deductible or "self insured retention" or if this policy applies as excess insurance over other or underlying insurance, such insurance as is afforded by this policy will apply as if such deductible, "self insured retention," other insurance or underlying insurance did not include "loss" caused by "asbestos liability."

For purposes of this exclusion only, the following words and phrases are added as definitions:

- (1) "Asbestos" includes, but is not limited to, asbestos products, asbestos fibers, asbestos particles, asbestos dust, or any product or goods containing "asbestos" in any form.
- (2) "Asbestos liability" means any liability arising directly or indirectly from "loss, injury or damage" caused by the "handling, use, misuse or existence" of "asbestos."
- (3) "Loss, injury or damage" includes but is not limited to:
  - (a) "Bodily injury," sickness, disease, occupational disease, death, shock, disability, mental anguish, mental injury, emotional upset, asbestosis, any trauma, suffered or alleged to be suffered by any person or entity;

(b) Damage to tangible or intangible

property;

(c) Loss of, or loss of use of, tangible or intangible property;

(d) Loss of, loss of use of or interference with property rights.

(4) "Handling, use, misuse or existence" includes, but is not limited to, the manufacture, mining, use, sale, installation, distribution, removal, encapsulation, transportation, or presence of "asbestos". It includes the inspection for and exposure to "asbestos". It includes the failure to perform, or inadequate performance in said "handling, use, misuse or existence".

3. The SUPPLEMENTARY PAYMENTS provisions of all COVERAGE FORMS attached to this Policy are deleted in their entirety and the following is substituted therefore:

**SUPPLEMENTARY PAYMENTS - ALL COVERAGES**

Within our LIMIT(S) OF INSURANCE we will pay with respect to any claim or "suit" we cover:

- a. All expenses we incur, including "claims expenses".
- 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(S) OF INSURANCE. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by you at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$100 a day because of time off from work.
- e. All costs taxed against you in the "suit."

i. Pre-judgment interest awarded against you. If we make an offer to pay our applicable LIMIT(S) OF INSURANCE, we will not pay any pre-judgment interest based on that period of time after our offer.

**THESE PAYMENTS WILL REDUCE THE LIMIT(S) OF INSURANCE.**

4. All provisions of each COVERAGE FORM regarding OTHER INSURANCE are amended to include the following additional provision:

**OTHER INSURANCE.**

Such insurance as is afforded by this policy will not apply to "accidents", "occurrences", or "losses" arising out of operations performed by independent contractors unless:

- a. such independent contractors have, in force at the time of such "accident", "occurrence", or "loss", insurance of the types provided by this policy and the LIMIT(S) OF INSURANCE for such insurance are equal to or greater than the LIMIT(S) OF INSURANCE provided by this policy; and,
- b. such independent contractors have held you harmless under contract as respects liability arising from their negligence.

If conditions a. and b. above are met, this policy shall be excess over the independent contractors' insurance.

5. All provisions of each COVERAGE FORM regarding PREMIUM AUDIT are deleted in their entirety and the following is substituted therefore:

**PREMIUM AUDIT.**

- a. We will compute all premiums for the Coverage Part in accordance with terms and conditions of this policy.
- b. Premium shown in this policy as advance premium is a deposit premium. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit

premiums paid for the policy term is greater than the earned premium, we will return the excess to the first Named Insured, subject to the minimum and absolute minimum premiums described below.

- c. In no event will the final premium retained by us be less than the minimum premium shown in the policy. IF NO OTHER PREMIUM IS DESIGNATED SPECIFICALLY AS A MINIMUM PREMIUM, THE ADVANCE PREMIUM SHOWN IN THE DECLARATIONS IS THE MINIMUM PREMIUM. Such minimum premium is subject to short rate or prorate adjustment according to policy provisions in case of cancellation of the policy.
- d. This policy is also subject to an ABSOLUTE minimum earned premium of 25% of the minimum premium shown in the policy. Such ABSOLUTE minimum earned premium is not subject to prorate or short rate adjustment in the event of cancellation by you and we shall retain no less than this ABSOLUTE minimum earned premium regardless of policy term. Cancellation of the policy for non-payment of premium shall be deemed a request by you for cancellation of this policy thereby invoking the ABSOLUTE minimum earned premium unless pro rata calculation earns more than the ABSOLUTE minimum earned premium.
- e. 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. The CONDITIONS section of each COVERAGE FORM is amended to include:

**a. Good Faith Clause.**

Both you and we have the same duty to handle claims and other matters under a covenant of good faith and fair dealing between each other. Reasonable settlements considering the probable liabilities and interest of both parties shall be made whether involving your retention, costs of defense, our LIMIT(S) OF INSURANCE or any combination thereof.

**b. Binding Arbitration Clause.**

- (1) Both you and we agree that in the event of any difference arising between us with reference to this policy, such difference will be referred to three disinterested arbitrators, one being chosen by you, one chosen by us and the third chosen by the two aforesaid arbitrators before they enter into arbitration.
- (2) In case the first two arbitrators so chosen do not agree as to the third arbitrator within four (4) weeks after both shall have accepted service, the third arbitrator shall be chosen by a judge of a court of record in the County in which the arbitration is pending.
- (3) Such arbitration shall take place in a County in the Continental United States, chosen by us at our sole discretion. The expense of the arbitration shall be borne and paid as directed by the arbitrators.
- (4) In default of any party hereto qualifying its arbitrator within four (4) weeks after receipt of written notice from the other party, requesting party may name both arbitrators and they shall proceed in all respects as stipulated herein.
- (5) The arbitrators may abstain from juridical formality and from following strictly the rules of law at their sole option.
- (6) Each party shall submit its case to the Court of Arbitration within four (4) weeks of the close of the choice of the arbitrators.
- (7) The decision of the majority of arbitrators shall be final and binding on both parties.

**c. Premium Financing And Cancellation of Premium Financed Policy.**

- (1) When a premium finance company notifies us that they have advanced the premium on this policy to, or for, your account, we will acknowledge receipt of the premium finance agreement to the finance company on our own form and will not vary, waive, alter or extend this policy.

- (2) When we otherwise become aware that you financed all or part of this policy's premium, regardless of whether or not we receive a notice of premium financing, we will not be bound, as respects coverage we provide, by the terms of your finance agreement. This policy alone governs coverage.
- (3) When you sign a premium finance agreement, you are giving the premium finance company the right, under certain conditions, to cancel this policy on your behalf. When we receive notice of cancellation from the finance company, we will recognize termination of this insurance and we will pay any return premium as directed by the premium finance company. The return premium will be calculated on a pro rata basis. The premium finance company will usually require that payment of any return premium be made directly to them and we will honor that request. If the termination date set by the premium finance company conflicts with other policy provisions or the operation of law, we will comply with the policy provisions and/or applicable law. You must resolve any resulting premium differences directly with the finance company.
- (4) The twenty-five percent (25%) absolute minimum earned premium described in 5. d. above may not be financed as it is not returnable.

**d. Insured's Warranty Of Application And Loss Information**

You through your insurance brokers, have provided information to us which has induced us to issue this insurance policy. Included in the information provided is an application and other correspondence including your claim or "loss" history. This information is considered to be a part of this policy.

You should review this information carefully as the truth of this information was of paramount importance in influencing our decision to issue this policy.

You, for all insureds under this policy, do

warrant the truth of such information to the best of your and their knowledge AT THE EFFECTIVE DATE OF THIS POLICY. You declare that you and they know of no incident, "occurrence", event, circumstance, or claim which has taken place or become known prior to the effective date of this policy which may render inaccurate, untrue, incomplete or misleading any information or statement made in the application or the information which was provided.

The Insured understands that if such information is now false or misleading it may cause denial of coverage under the policy.

e. Your Consent to Settle

We will not settle any claim without the Insured's prior written consent.

If the Insured refuses to give consent to a settlement amount recommended by us in writing and for which the claim could have been settled, and by such refusal to give consent elects to pursue the litigation at the trial or appellate level, then our liability for that claim shall not exceed:

- (1) the amount for which the claim could have

been settled, and

- (2) the claim expense we incurred up to the date of your refusal to give consent to settle.

7. The DEFINITIONS section of each COVERAGE FORM is amended to include:

a. "Claims expenses" means all costs of investigation, adjustment and defense of claims, including court costs, premiums on bonds and legal fees arising indirectly from claims covered by this policy (but excluding the expense of:

- (1) salaried employees of,
- (2) counsel on retainer by and
- (3) office expenses of

either you or us) provided such "claims expenses" are incurred by us or with our prior written permission.

b. "Prior event" means an act, error, omission, claim, "suit", offense, event, "occurrence", condition or circumstance which began, happened or occurred before the policy period.

# **APPENDIX H**

1 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

2 IN AND FOR THE COUNTY OF KING

3  
4 WEST COAST PIZZA, )

5 Plaintiff, )

6 vs. )

7 UNITED NATIONAL GROUP, )

8 Defendant. )

ORIGINAL

No. 08-2-27814-0 SEA

9  
10 VERBATIM REPORT OF PROCEEDINGS

11 AUGUST 20, 2010

12  
13 PROCEEDINGS HAD IN THE ABOVE-ENTITLED CAUSE BEFORE  
14 THE HONORABLE SUSAN CRAIGHEAD, SUPERIOR COURT JUDGE, ON  
15 AUGUST 20, 2010, AT SEATTLE, WASHINGTON.

16  
17 APPEARANCES:

18  
19 Mr. James H. Clark, representing the  
20 Plaintiff;

21  
22 Mr. Andrew Kamins, representing the Defendant.

23  
24  
25 REPORTED BY: Jodi R. Dean, CCR#1985,RPR,CRR,CCP

1 Seattle, Washington; Friday, August 20, 2010

2 --oOo--

3 THE COURT: We are here again in West Coast Pizza versus  
4 National Continental, et al. Please tell me this is the last  
5 summary judgment I have to deal with.

6 MR. KAMINS: If you grant it, it is, Your Honor.

7 THE COURT: That's extra pressure you're giving me.

8 I normally give 15 minutes per side. You can argue.

9 MR. KAMINS: Andrew Kamins representing United National.  
10 I don't have a whole lot to add to our pleadings. If the  
11 Court has any particular questions -- I can make an argument,  
12 but if the Court has anything in particular that you have a  
13 question about.

14 THE COURT: The main thing is there are some -- your  
15 fundamental argument is you were in the same position as  
16 National Continental.

17 MR. KAMINS: That is correct, Your Honor.

18 THE COURT: It appears to me this is a little bit of a  
19 closer case than the National Continental was, simply because  
20 of all the specificity that was in the application and in the  
21 actual policy about all of the locations, etc. that were  
22 covered and how the premiums were calculated and so forth.

23 But it is similar in the sense that the wrong named  
24 insured is on the insurance. So I get what you are saying,  
25 but I want to address that specific definition.

1 MR. KAMINS: What West Coast Pizza is trying to do here,  
2 I believe, is to do two things. They are trying to say that  
3 the policy is ambiguous. And they are also trying to say  
4 that on this motion there is a disputed issue of material  
5 fact. And I don't think they have succeeded on either one.

6 In the first instance, for the ambiguity in the policy,  
7 they are trying to say that the location, the list of  
8 locations creates an ambiguity in the policy, but that simply  
9 is not true.

10 If you look at the definition of an insured, it only  
11 references the corporate entity. It does not reference the  
12 location, simply because there is a list of 20 locations,  
13 and, I'll add, that list of locations was provided by West  
14 Coast Pizza.

15 So, to the extent there is any error, it's not an error  
16 on the part of the insurer. It's not error on part of United  
17 National and not an ambiguity in the policy. It's -- if it  
18 is an ambiguity at all, it's one that is created by the  
19 misrepresentation by West Coast Pizza that they owned all of  
20 those stores, which they did not.

21 It's important to understand that, under Washington  
22 corporation law, they are separate corporations. They have  
23 separate ownerships. One is owned strictly by Brian Dobb,  
24 West Coast Pizza. The other entities are owned by different  
25 groups of people.

1           So on this issue, for example, they are asking for  
2 indemnity to Mad Pizza. West Coast Pizza is owned strictly  
3 by Brian Dobb plus other people. Mad Pizza -- I might have  
4 those backwards. I don't remember on those ownerships how  
5 they go.

6           So what they are trying to do is conflate the two  
7 entities. And these are not -- these are not unsophisticated  
8 parties. This is a party that owns 21 stores, that knows how  
9 to make different corporate entities, to take the benefits  
10 offered under the law, the tax benefits, the limited  
11 liability benefits that the law offers.

12           And so this is not somebody who simply came at it and  
13 said, oh, well, dba Dominos, that means everything must be  
14 covered. They knew they had different stores. They knew  
15 they had different entities, and they knew they had different  
16 entities they needed covered.

17           And then when they went to their insurance broker,  
18 Gallagher, Gallagher certainly knew. That is a sophisticated  
19 entity who certainly knew that an insured, a named insured is  
20 the one that is covered by the policy.

21           And if you look back at their summary judgment  
22 motions -- well, actually it was National Continental's  
23 summary judgment motion. I think the first was not argued to  
24 you. It was argued to Judge Mack. And the last were argued  
25 to you. But they submitted that screen shot that showed that

1 they were attempting to add Mad Pizza onto the policy. So  
2 that right there disputes any sort of testimony that they are  
3 now offering that says they understood that Mad Pizza was  
4 already an insured under the policy. Because, if that was  
5 true, why would they need to go ahead and add them later on?

6 As the Court ruled, that screen shot never got  
7 communicated to the insurers, so there was no evidence that  
8 anybody had ever asked for those entities to be added to the  
9 policies.

10 So, on the first point, they have failed to raise  
11 ambiguity, because the policy is very clear. On the second  
12 point, they failed to raise a disputed issue of material fact  
13 with regards to what their intention was.

14 It was clear they intended to cover West Coast Pizza,  
15 and it was clear to United National at the time. To now come  
16 back and, by their own testimony, which is in dispute with  
17 their former testimony, use that to try to raise a material  
18 issue of fact, that's not an allowable material issue of fact  
19 that is in dispute. They simply cannot get insurance for  
20 another entity on an insurance policy to West Coast Pizza.  
21 And that's really all that I have.

22 THE COURT: I think the issue is pretty clear.

23 MR. KAMINS: Thank you, Your Honor.

24 MR. CLARK: Good morning. Jim Clark, again.

25 THE COURT: I'm ready to move on to another issue,

1    though it's nice to see you again.

2           MR. CLARK:  My comments -- we have summarized our  
3 arguments pretty well.  I do think we are talking about  
4 different issues, different applications, different policies.  
5 We do have different issues that are created here, as the  
6 Court has indicated.

7           The application itself, Your Honor, that was attached to  
8 Mr. Kamins' declaration, the application was for 20  
9 locations.  It was for locations that conducted or did  
10 business with 5.5 million to 7 million in receipts in the  
11 year before the application was submitted.

12           And, as we know from the declaration submitted by Joe  
13 Constantine, he was the broker at AM WINS that sent this  
14 application on to IPC, who is the agent of United National.  
15 They were the broker that did this for United National.  That  
16 is the key information that the insurance company uses to  
17 determine what the premium is.

18           So the critical information is how many locations are we  
19 covering by this pizza delivery business?  What is the annual  
20 revenue?  That is what United National used to determine the  
21 \$60,000 premium that my clients paid for.  That application  
22 attached the schedule of locations.  It was sent to United  
23 National.

24           The interpretation that United National wants the Court  
25 to accept here doesn't make sense, because we paid \$60,000

1 for 20 locations. If our premium only covered three  
2 locations, our application would have indicated a much  
3 smaller volume of receipts. Those three stores only did  
4 maybe a million-three in receipts, so it's clear we are  
5 asking for all 20 locations to be covered in the application.

6 And then the policy, Your Honor, I want to take -- I  
7 know the Court's looked at this, but I'm looking at Exhibit B  
8 to Mr. Kamins' declaration. And they are arguing, well, the  
9 policy -- there is no ambiguity in the policy.

10 It's our position this policy makes it clear that this  
11 -- that the Tschergna claim is a covered event. If the  
12 Court's not inclined to go there, I think, at a minimum,  
13 there is an ambiguity created. The reason I say that is  
14 because the first page of the Commercial Excess declaration  
15 page, it says -- right in the middle of the page it says,  
16 Excess hired non-owned autos, any employed driver. It's  
17 under the term description of insurance afforded hereunder.  
18 So this policy is covering non-owned autos, any employed  
19 driver.

20 Then you go down a little further, Your Honor, and it  
21 says at the end of the box here, forms and endorsements  
22 applying to this coverage and made part of this policy at  
23 time of issuance, and it references schedule F. So all of  
24 schedule F is part of this policy.

25 And then turn back -- Your Honor, if you turn back --

1 I'm looking at the Bates stamps on the bottom of the page.  
2 It's United National Bates stamp 71 about four pages later.  
3 Or -- excuse me. Bates stamp 70. It's schedule F. Schedule  
4 F incorporates -- if you look down the page, it incorporates  
5 schedule L, schedule of locations. Right above it says, this  
6 endorsement forms a policy, a part of policy XTP 79005.

7 Turn the page, Your Honor, and there is schedule L and  
8 our location. And the very top of schedule L says, this  
9 endorsement forms a part of the policy. And location 14 is  
10 the Lynnwood location.

11 I would submit to the Court, at a very minimum, that at  
12 least creates an ambiguity as to whether the non-owned autos  
13 that were driven by the pizza drivers at these locations was  
14 covered by this Excess policy.

15 And, as the Court knows, the test we know here in  
16 construing this policy is basically what would -- how would  
17 an average person read this insurance policy. We know that  
18 from the Weyerhaeuser case, how would an average person  
19 construe this policy.

20 I would submit to the Court the average person that  
21 reads this policy would think, okay, we have coverage for all  
22 of our 20 locations and all of the drivers who are driving  
23 vehicles that are not owned by the insured. The average  
24 person would think, okay, we have coverage for all of these  
25 locations. That is the plain reading of this policy.

1           And the key fact, too, I think, Your Honor, is that we  
2 paid for that. We paid, and they kept our money. United  
3 National never refunded any of the money of our \$60,000  
4 premium that we paid for coverage for all of these locations.

5           Your Honor, that fact, I think, is referenced in -- we  
6 cited the Metro Mortgage case in our materials, which is 64  
7 Wn.2d 99. The Court talks in that case about where it  
8 appears that the intent of the contracting parties was to  
9 insure the whole interest. And if one holding an interest is  
10 not named, equity will decree that the policy be reformed to  
11 protect the interest of the true owners.

12           Then it goes on later in footnote 3, Your Honor, and it  
13 says, where an insurance company has received its premium and  
14 the property has been destroyed, it ought not in good  
15 conscience avoid paying the loss on a mere technicality.

16           And that is exactly what we have here. It is strictly a  
17 technicality. At a minimum, there is ambiguity. Intent of  
18 all the parties to this insurance contract was that all of  
19 the drivers at these 20 locations be covered. They are  
20 trying to get out on this technicality.

21           I think the facts are different with respect to this  
22 United National policy. And why this is significant, Your  
23 Honor, is because even we think it's a covered event. If  
24 it's a covered event, Your Honor, we think there is still  
25 coverage for the United National policy.

1           Just because the National Continental policy is out, we  
2 think the language of this policy keeps United National on  
3 the hook. And I think -- and this is paragraph 2. And we  
4 quoted this language in our materials. It's Bates stamp 75.  
5 It talks about the policy maintenance of underlying  
6 insurance.

7           If you read that paragraph closely, it doesn't say, if  
8 the National Continental policy goes away, that that  
9 automatically makes this United National policy go away.  
10 It's very ambiguous language. I read it as saying they don't  
11 have to pay the first 50 grand that National Continental  
12 would have had to pay, but they are still on the hook for the  
13 coverage under their policy.

14           So I would -- as the Court knows, the Court's obligation  
15 is to determine there is at least an ambiguity here. And, if  
16 there is an ambiguity, which we submit, at a minimum, there  
17 is, then, Your Honor, that ambiguity should be resolved by a  
18 trial.

19           THE COURT: So it's clear there's no ambiguity as to who  
20 is the named insured under the policy. The question is what  
21 is being insured. Your argument is everybody knew what was  
22 being insured. They didn't necessarily know who was being  
23 insured. Is that accurate?

24           MR. CLARK: It's very accurate. And there is actually a  
25 document that supports that, Your Honor, and that is this --

1 United National policy incorporates National Continental's  
2 policy. And we included -- and I know there is a sea of  
3 paperwork in front of the Court, but there is a declaration  
4 page to the National Continental policy that actually  
5 references 100 drivers.

6 Well, we would submit, Your Honor, that that reference  
7 to 100 drivers, 100 employees that are covered, means that  
8 the automobiles driven by those pizza drivers at the  
9 locations which is about -- was about 100 drivers at those 20  
10 locations, that that means those drivers are covered.

11 So there may not be an ambiguity as to who is named as  
12 the insured, but there is certainly an ambiguity as to what  
13 non-owned automobiles are covered by this policy. And,  
14 again, the average person would certainly think we bought  
15 coverage for all of our locations, based on this.

16 The other point, too, Your Honor, is IPC issued a  
17 certificate of insurance that we attached to Joe  
18 Constantine's declaration. This is United National's agent  
19 issuing a certificate of insurance that also incorporates all  
20 of these locations.

21 So they are telling us, here is your certificate of  
22 insurance so that your drivers at all these locations are  
23 covered. And they are certainly bound by their  
24 representations of their agent. It's Exhibit C to Mr.  
25 Constantine's declaration. Under those circumstances, I

1 think that United National has a duty to indemnify.

2 And, at a minimum, lastly, Your Honor, if there is an  
3 issue about whether the autos at this Lynnwood location were  
4 covered, I think, at a minimum, that's an ambiguity that Mad  
5 Pizza -- that the insured is entitled to have resolved by  
6 trial.

7 THE COURT: Now, this is a declaratory judgment action,  
8 though, right?

9 MR. CLARK: It is.

10 THE COURT: How exactly would that happen?

11 MR. CLARK: I would ask the Court to issue a trial date  
12 for the purpose of resolving that issue, that there is a --  
13 to ask the Court to find there is a genuine issue of material  
14 fact as to whether the auto that was driven by Mr. Quito at  
15 the time of the accident, whether that was a covered auto  
16 under the policy.

17 THE COURT: I'm still struggling with how it can be --  
18 it may have been a covered automobile, but its owner wasn't  
19 an insured. That's -- the employer wasn't insured, is the  
20 way to put it.

21 MR. CLARK: Except, if all of the locations that are  
22 operated by the insured are covered, it's our position that  
23 it is covered, that all of the -- identifying all of the  
24 locations, the premium for all the locations, and it's not as  
25 if we didn't identify the locations.

1 THE COURT: We have all that.

2 MR. CLARK: We got the name of every -- we have the  
3 address of every location. So maybe we don't have the name  
4 of the corporation that operates that location, but we have  
5 the name of the corporation, the address of the location of  
6 that store. Every driver that works at that store, at that  
7 location should be covered by the policy.

8 THE COURT: Suppose I have home owner's insurance  
9 coverage and it's got the right address on it but it is  
10 somebody else's name, and so does the insurer have to pay  
11 when my house burns down if it's -- if the policy is in the  
12 name of somebody else?

13 MR. CLARK: I think what happens there is just what  
14 should happen in the Metro Mortgage case where the Court says  
15 equity will reform the policy to protect the interest of the  
16 true owner. If there is a mistake about who the owner is on  
17 the policy, the Court has the authority to reform the policy  
18 to make sure the actual true owner who paid the premium, paid  
19 for the protection, is covered by the policy.

20 THE COURT: And you're saying that could happen --  
21 reformation can happen at this point? It was not even pled  
22 though, right?

23 MR. CLARK: We argued in the first motion.

24 THE COURT: I remember that.

25 MR. CLARK: If I -- certainly, if I need to do -- well,

1 we haven't pled it except for as part of the summary judgment  
2 hearing in the first proceeding on National Continental.

3 THE COURT: If I were to grant the motion for summary  
4 judgment, is the plan to go to the Court of Appeals? I was  
5 trying to make sure this gets resolved. What is the next  
6 step for you?

7 MR. CLARK: I would have to talk to my client about  
8 that. The case is still going on, the Tschergna case. We  
9 are defending that case, which we would now have the burden  
10 to do. I would have to talk to them about the costs and all  
11 that is involved of going to the Court of Appeals. So I'm  
12 really not in a position to say one way or another.

13 THE COURT: We still have a couple of issues -- I just  
14 wonder if once we are done with this, this particular case is  
15 over with. If I were to grant the motion, you would be in a  
16 position to appeal, if you want to.

17 I think you can tell I'm struggling with this, because I  
18 hear you on the equity. I really do. They paid for this  
19 policy. They paid for all of these cars to be covered. They  
20 paid for all these locations. And there seems to be  
21 something really wrong with letting the insurance company out  
22 because the wrong entity was listed. But naming an insured  
23 is pretty important. So you see the struggle I'm having?

24 MR. CLARK: Yeah.

25 THE COURT: Let me just let opposing counsel talk about

1 it.

2 MR. KAMINS: Your Honor, I think there seems to be a  
3 fundamental disconnect about what the purpose of this  
4 insurance was, and it's the difference between first party  
5 property insurance and third party liability insurance.

6 This is a liability policy. We insured liability. We  
7 did not insure property. We did not insure locations. We  
8 did not insure automobiles. We insured liability.

9 Now, to the extent that the argument is that we should  
10 be paying for the liability that Mad Pizza incurs, then we  
11 have a problem under Civil Rule 17, because West Coast Pizza  
12 does not have -- is never going to have liability here that  
13 needs to be insured. So their -- they are really not the  
14 real party in interest, in any event.

15 Your home owner's insurance hypothetical was  
16 particularly interesting, because home owner's insurance is a  
17 combination of property insurance and liability insurance.  
18 So, for example, on a home owner 's policy, if you insured  
19 someone else's house by accident under your name, and their  
20 house burned down, well, under the property portion they may  
21 have an argument that their house was covered.

22 But if somebody tripped in their house and fell and sued  
23 them, I don't think they would have an argument that your  
24 insurance would have to pay for it, because that portion of  
25 -- the liability portion which goes to you flows to a

1 different person than the location.

2 I would also like to say, I also understand the equity  
3 issue that the Court is struggling with. The fact is that  
4 nobody has ever asked for the premium to be returned. They  
5 told us they had 20 locations, and that's the story they  
6 stuck with the whole time. So it's not like they then came  
7 up to United National afterwards and said, oops, we only have  
8 three locations, now readjust the premium. I mean, that just  
9 never happened.

10 As far as the equity part, I would like to point the  
11 Court to AASDMP Management, which is 115 Wn.App. 833. It's  
12 -- there they talk about the negligence broker. I understand  
13 that -- I don't think that West Coast Pizza is an  
14 unsophisticated party, but, frankly, they did present  
15 evidence that they did ask Gallagher to add some additional  
16 insurance. Gallagher is the one who never transmitted that  
17 information to the insurers.

18 If you look in the case, it says, because a broker is  
19 not employed by the insurer, his or her breach will not  
20 support an action for reformation. Rather, when a broker's  
21 negligence leads to inadequate coverage, he or she is liable  
22 for money damages to the insured for the resulting loss.

23 They added Gallagher into this lawsuit as a defendant,  
24 and then they dismissed them. And we don't know why, but  
25 they did. But, really, if anybody is liable in this

1 instance, it's Gallagher. I mean, we took the information  
2 that we had and we issued the liability insurance that we  
3 were asked to issue. And we judged the policy -- the premium  
4 by the information that we were given.

5 We didn't have an independent duty to go out and  
6 investigate whether or not West Coast Pizza actually did own  
7 21 locations. And, frankly, this all might have been  
8 resolved had they filled out those audit questionnaires from  
9 National Continental which never got filled out.

10 So there is a lot of -- there were a lot of mistakes  
11 that were made, but there is no mistake as to the identity of  
12 the insured. The identity of the insured is West Coast  
13 Pizza.

14 And as far as the issue of if the National Continental  
15 policy is canceled, that doesn't mean United National policy  
16 is canceled, which is what we are saying is an ambiguity.  
17 That is not the argument we are raising on this.

18 That was a previous reason for denying coverage, because  
19 when we thought that National Continental was denying  
20 coverage based on the fact their policy had been canceled, we  
21 also were denying coverage based on the fact our policy was  
22 simultaneously canceled.

23 Since the Court has already ruled the National  
24 Continental policy was not canceled or that the cancelation  
25 was ineffective and did cover that time period, we can see it

1 also covered that time period, we reserve the right to make  
2 that argument in the event that an appeals court changes that  
3 or on subsequent remand that issue gets redisputed.

4 But on this motion, the issue isn't the time period that  
5 we are covering. The issue is the entity we are covering.  
6 We are covering West Coast Pizza, not Mad Pizza.

7 THE COURT: Let me make sure I've got this right. This  
8 is a hypothetical I was thinking about last night. Let's say  
9 we have a liability policy to insure a bunch of motorcycles.  
10 And the person whose name is on the policy is sort of a calm,  
11 retired biker dude, but actually it's Evil Knievel who is  
12 driving the motorcycle.

13 It seems to me that the insurer would have a different  
14 viewpoint as to how much to charge and whether or not to  
15 issue a policy at all, depending on whether the named insured  
16 is Evil Knievel versus the calm, retired biker dude. Am I  
17 getting it?

18 MR. KAMINS: That is absolutely right. It's a different  
19 risk to insure one entity versus two entities.

20 And, again, not to be too picky about your hypothetical,  
21 but, under a liability policy, it wouldn't be the motorcycles  
22 themselves we would be insuring. It would be Evil Knievel or  
23 Tom or whoever.

24 Similar to that, also, I would like to point out in this  
25 particular case, if you look at the definition of the

1 non-employer owned automobiles, it specifically says they are  
2 insured only when being driven in the course of employment  
3 for the insured. And in this case, there is no dispute.  
4 They were not being driven in the course of employment for  
5 West Coast Pizza.

6 So even if we said, okay, well, here is a list of  
7 automobiles we'll potentially cover. If, for example, West  
8 Coast Pizza had to call up Mad Pizza and say, hey, we need a  
9 couple of your drivers to come over and deliver our pizzas,  
10 then those automobiles would be insured. You know, I could  
11 imagine that particular scenario, but in this scenario they  
12 were being driven for Mad Pizza, not West Coast Pizza.

13 And so even under the argument that is being made here  
14 as non-employer owned automobiles, they still wouldn't be  
15 covered, just because they aren't being used for the purpose  
16 that's specified in the policy.

17 THE COURT: Well, you know, as I analyze this case, I  
18 realize I don't know what is going on in the underlying case,  
19 but there are real people who are being affected by these  
20 disputes. I want everybody to understand I get that.

21 Whether it's these business owners or whether it's  
22 someone who is injured in an accident, I realize they are  
23 real people at the other end. So that's part of the reason  
24 why this is such a struggle, because I see the equity  
25 arguments being made. I recognize that that saying there is

1 no insurance has huge implications.

2       So just please understand, when I get right down to it,  
3 I can't see an ambiguity as to who is the named insured, and  
4 I think that that is really important when we are talking  
5 about a liability policy, as illustrated by my Evil Knievel  
6 example.

7       It just appears to me that a horrible mistake was made,  
8 apparently, by the broker, and Mad Pizza was not on this  
9 policy. And so even though all those locations were listed  
10 and a very substantial premium was paid that would be far  
11 beyond what would have been paid if it were just three  
12 locations, I can't find there is an ambiguity as to who is  
13 the named insured.

14       So with a very heavy heart, I'm going to go ahead and  
15 grant the motion for summary judgment.

16       (Recess taken.)

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