

COPY

NO. 62604-3-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

HEIDI R. COFFEE, as assignee to claims and
rights held by William E. Clark (d/b/a
William Clark General Contractor) and
Brian W. Campbell,

Appellant.

v.

CONTRACTORS BONDING &
INSURANCE COMPANY, a Washington corporation,

Respondent/Cross-Appellant.

BRIEF OF RESPONDENT/CROSS-APPELLANT
CBIC

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A. INTRODUCTION

This is a classic lost load case. While William Clark and Brian Campbell were driving down Interstate 5 in Clark's pickup truck, metal shelving fell out of the bed of the pickup causing a collision that killed Gavin Coffee.

Contractors Bonding & Insurance Company ("CBIC") was the commercial general liability ("CGL") insurance carrier for William Clark dba William Clark General Contractor. Clark carried automobile liability insurance for his truck through Allstate, and Campbell, his grandson, carried his auto insurance with Safeco.¹ The insurance agent for Clark's contracting business offered to sell Clark commercial auto coverage for his work truck, but Clark declined such coverage. As a result, Clark paid no premium and obtained no coverage under his CGL policy for liability "arising out of" the "use" of an automobile.

When Heidi Coffee ("Coffee") sued Clark/Campbell, the suit was tendered to, and defended by, Allstate and Safeco, who later also tendered the claim to CBIC to contribute to Clark/Campbell's defense and to indemnify them for the claim. CBIC responded promptly and retained competent, experienced coverage counsel who advised CBIC correctly

¹ Clark and Campbell will be referred to as "Clark/Campbell" throughout this brief unless an individual reference is necessary.

and unequivocally that there was no coverage under CBIC's CGL policy for Coffee's claim against Clark/Campbell.

Coffee released Clark/Campbell from liability for the death of her husband in exchange for their Allstate and Safeco auto insurance policy limits, and an assignment of their rights against CBIC. Although there was no coverage under CBIC's policy for the accident, and although CBIC's insureds were fully defended, released from liability, and suffered no damages from this lack of coverage, Coffee attempts to set up an insurance bad faith claim against CBIC in an effort to obtain \$15,000,000, which Coffee claims in the settlement agreement with Clark/Campbell were the damages they caused.

The coverage advice CBIC received was clearly correct under Washington law, and CBIC reasonably relied upon this advice in declining to participate with Allstate and Safeco in the defense or indemnity of Clark/Campbell. Clark very simply chose not to obtain commercial auto coverage from CBIC. Even had auto coverage been provided by the CBIC policy, which it was not, CBIC only provided excess coverage above the primary coverage of Allstate and Safeco, and had no duty to defend Clark/Campbell.

CBIC did not act in bad faith toward Clark/Campbell where there was no coverage for them under its CGL policy and it appropriately handled the Coffee claim.

B. ASSIGNMENTS OF ERROR²

CBIC acknowledges Coffee's assignments of error, but believes that the issues on appeal are more appropriately formulated as follows:

1. Was the trial court correct in concluding under Washington law that an unambiguous exclusion in a CGL policy for automobile claims arising out of the ownership, maintenance, use, or entrustment to others of an automobile did not require an insurer to defend or indemnify an insured where the complaint plainly indicated that a person's death occurred in a "lost load" auto accident, involving "use" or "loading and unloading" of a vehicle?

2. Was the trial court correct in determining that the assignee of an insured failed to establish bad faith on the part of a CGL carrier as a matter of law where there was no coverage under the policy and, thus, no duty to defend based on unequivocal legal advice from reputable and experienced outside coverage counsel, and the carrier's handling of its

² Coffee has not presented argument or assigned error to the trial court's finding that CBIC had no duty to indemnify. Br. of Appellant at 2, 17, 49. Coffee's assignments of error relate solely to the duty to defend and to bad faith. *Id.*

insured's claim was competent and professional, and violated no Insurance Commissioner claims handling regulations?

C. STATEMENT OF THE CASE³

William Clark was the owner of, and a passenger in, a pickup truck that lost its load on I-5, resulting in the multi-vehicle collision which killed Gavin Coffee, Heidi Coffee's husband. Clark did business as William Clark General Contractor. CP 906. Brian Campbell, Clark's grandson, was driving the pickup at the time of the accident. CP 661, 907. It is undisputed that Clark/Campbell loaded a metal shelving unit onto their truck and it fell out of the truck while they were driving down the freeway in north Seattle. CP 661, 907. Witnesses observed the shelf falling off Clark's pickup and skidding down the highway, resulting in a multi-vehicle collision. CP 661, 683. Gavin Coffee was traveling behind the Clark pickup, talking on his hand held cell phone at the time of the accident. CP 687, 690-91, 1048, 1050, 1217-18. Coffee died in this

³ Coffee's statement of the case is replete with argumentative characterizations and partial truths about the record. For example, she asserts, that CBIC "quickly decided to deny coverage." Br. of Appellant at 5. The sentence beginning with "In other words," *id.* at 6, is plainly argument. The sentences beginning with "As can be seen," and "As can be expected," *id.* at 7, are undisguised argument. The sentence beginning with "In other words," *id.* at 9, the sentence quoting authority, *id.* at 10, the sentence beginning with "Yet despite ...," *id.* at 11-12, are obviously argumentative. Such arguments are out of place in a statement of the case. Similarly, the argumentative captions in the statement of the case are entirely inappropriate. Br. of Appellant at 4, 9. Coffee's statement of the case is far from a "fair recitation of the facts, without argument," required by RAP 10.3(a)(5). It should be disregarded by this Court.

accident. CP 907. Clark/Campbell each pleaded guilty to criminal charges of failure to secure a load in the first degree under RCW 46.61.655. CP 665-703, 908.

(1) The Auto Policies

Clark carried automobile liability insurance for his pickup truck from Allstate with \$50,000 limits. CP 935, 1207. Campbell carried auto insurance with Safeco with \$50,000 limits and, as a permissive driver, also qualified as an insured under the Allstate policy. CP 935, 1207.⁴ In addition to liability policies covering Clark and Campbell, the Coffees carried automobile liability insurance from USAA with underinsured motorist (“UIM”) coverage with \$25,000 limits, CP 697, which USAA paid Coffee.

(2) The CBIC Policy

William Clark General Contractor carried commercial general liability insurance (“CGL”) with CBIC. CP 764-807. The policy did not include commercial auto coverage. CP 764. Clark’s business insurance agent, Dale Gilbertson, specifically offered to add commercial auto coverage for Clark’s pickup to his business policies on several occasions, but Clark declined to purchase it because insuring his pickup through

⁴ Allstate and Safeco paid their policy limits on behalf of Clark/Campbell. CP 451, 935.

Allstate with \$50,000 limits was less expensive.⁵ Clark paid no premium for auto coverage to CBIC. CP 764. Instead, for an annual premium of \$754, CBIC provided commercial general liability coverage with \$1,000,000 limits for Clark's construction business that specifically excluded coverage for bodily injury "arising out of" the "use" of an automobile. *Id.* For the purpose of the motions below, as a purported employee, CBIC acknowledged Campbell as an "insured" under the CBIC policy. The policy also contained an "other insurance" clause making its coverage, including the duty to defend, excess over other applicable insurance. CP 764-807.

The main insuring form of the CBIC policy is form CG 00 01 01 96, a widely-used CGL form published by the Insurance Services Office

⁵ Dale Gilbertson testified that Clark was his client "for many years" and that he specifically inquired if he wanted vehicle coverage for his business:

The CBIC Policy does not include auto coverage. At various times I have inquired of Mr. Clark whether he wanted auto coverage through me, and he responded that he preferred to keep his auto coverage with his personal lines agent. If Mr. Clark had purchased auto coverage through me as part of his commercial coverage, the premium for that auto coverage would have been many times higher than through a personal lines carrier. Owned auto coverage is not even offered by CBIC in the particular policy package Mr. Clark purchased through me in 2006.

CP 446.

("ISO"). CP 777-89.⁶ CBIC's insuring agreement promises to pay "those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' to which this insurance applies." CP 777. Bodily injury must be caused by an "occurrence." *Id.*⁷

However, the CBIC CGL policy also contains the standard ISO auto exclusion g., which excluded coverage for:

"Bodily injury" . . . arising out of the ownership, maintenance, use or entrustment to others of any . . . "auto" . . . owned or operated by or rented or loaned to any insured. Use includes operation and "loading and unloading".

CP 779. The policy further defined loading or unloading within the meaning of exclusion g. as the handling of property:

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

but "loading or unloading" does not include the movement of property by means of a mechanical

⁶ ISO "is an insurance industry trade association which develops standard form insurance policies and often secures regulatory approval for their insurance." *American Star Ins. Co. v. Grice*, 121 Wn.2d 869, 878 n.19, 854 P.2d 622 (1993).

⁷ Coffee repeatedly uses the phrase "covered peril" in referring to various legal theories she has against Clark/Campbell. Br. of Appellant at 14, 31. This term found was nowhere in CBIC's policy. It is a concept alien to liability coverage here where it is the instrumentality being used, not the "peril" which determines coverage.

device, other than a hand truck, that is not attached to the . . . "auto."

CP 787-88.

Although the CBIC policy's insuring agreement contains duty to defend language, form CBGL 00 06 04 05 amends the policy and substitutes the following language regarding duty to defend:

4. Other Insurance

This insurance does not apply to "bodily injury," . . . which is covered by any other valid and collectable [sic] insurance issued by any other insurer . . .

* * *

Prior to the exhaustion of all other applicable insurance, *we will have no duty under COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY . . . to defend the insured against any "suit" if any other insurer has a duty to defend, and is defending, the insured against that "suit".*

* * *

CP 807 (emphasis added).

(3) Pre-suit Tenders and Responses

After the accident, Clark/Campbell each immediately informed their auto insurers, Allstate and Safeco. CP 450-51. On January 31, 2007, before any suit was filed against Clark or Campbell, Campbell's auto insurer Safeco, tendered the claim to Allstate. CP 434-36. At that time, Safeco also asked CBIC to evaluate whether CBIC's policy covered the August 18, 2006 accident. CP 863-64. In the tender to CBIC, Safeco

acknowledged its coverage for Campbell and Allstate's coverage for Clark. CP 434.⁸

There is no evidence in the record of any tender to CBIC until January 31, 2007, when the adjuster for Safeco, Campbell's auto insurer, inquired whether allegations of improper loading might be covered under the CBIC policy.⁹ CP 1203. CBIC adjuster Barbara Cochrane received Safeco's tender on February 1, 2007 and by February 2, 2007 she had alerted the vice president of claims and CBIC's general counsel. CP 129. The record shows that CBIC gave immediate attention to the loss. *See* Appendix.

While CBIC immediately recognized the likely applicability of the exclusion g., CP 1221, it nonetheless undertook an investigation of the facts and law surrounding the claim before making a decision regarding coverage. For the factual investigation, CBIC commissioned independent

⁸ As you are aware, Safeco Insurance Company of Illinois provides coverage to Brian Campbell through a policy issued to his parents, William and Connie Campbell. We recently withdrew all previous coverage reservations and concluded that coverage is in order. I understand that Allstate provides liability coverage to Brian's grandfather, Bill Clark and that coverage extends to Brian while he is a permissive user of Bill Clark's truck on the date of the accident.

CP 434.

⁹ Contrary to the suggestion at Br. of Appellant at 5, there is no evidence in the record that Coffee's attorney, John Hollinrake, contacted CBIC any earlier than late January, 2007. *See* CP 447-48 ("I contacted CBIC *in January 2007* and requested that it pay its limits . . .) (emphasis added).

adjuster, John Colvard, to interview Clark and obtain the police reports relevant to the accident. CP 162, 884. For the legal aspect of the investigation, CBIC retained the services of Ronald S. Dinning, an experienced and highly-regarded coverage attorney. CP 893, 992-93, 1223, 1329.¹⁰ Dinning advised CBIC unequivocally that based on controlling Washington precedent, the CBIC policy excluded coverage for the Coffee claim against Clark/Campbell. CP 893, 897-99, 1225-26. He based his analysis on CBIC's policy language and on controlling Washington precedent holding that lost load accidents necessarily "arise out of" the "use" of a vehicle, and that efficient proximate cause arguments do not apply to "arising out of" policy exclusions. CP 1003-08, 1225-26. Dinning testified in his deposition that he was familiar with the coverage analysis for lost load accidents, having analyzed a similar claim within the prior year, including successfully taking that case through appeal to this Court. CP 1331-32. Dinning relied on numerous specific Washington cases, including ones in which he had been counsel, in arriving at his opinion. CP 1225-26, 1330-32.

Based on Dinning's advice, CBIC sent a denial letter to Clark on March 12, 2007, noting that no tort lawsuit had been filed, but asking

¹⁰ Dinning's independence is demonstrated by the fact that in a previous auto coverage case CBIC sent to Dinning, he found an error in CBIC's analysis and advised the company to reverse its denial, advice which CBIC followed. CP 1093-95, 1101-02.

Clark to forward suit papers for review if he was ever served with a lawsuit. CP 904. CBIC expressly reserved the right to rely on additional applicable policy provisions. *Id.*

Subsequent to issuance of the March 12, 2007 coverage letter, Coffee retained counsel. On March 20, 2007, attorney Michael Wampold wrote CBIC and requested a copy of the March 12 denial letter and Clark's CBIC policy. CP 1235. CBIC confirmed with Wampold that no suit had yet been filed against the insured. CP 1236. After first obtaining the written permission of the insured, CP 1238, CBIC sent a copy of the March 12 letter and a certified copy of Clark's policy to Wampold. CP 1242.

(4) The Wrongful Death Suit and Responses Thereto

After receiving CBIC's denial letter and insurance policy, Coffee's counsel filed a wrongful death complaint against Clark/Campbell in the King County Superior Court on April 18, 2007. CP 906-09. Coffee's attorney told Safeco that "he was primarily filing suit to see whether CBIC will accept the tender of defense for Clark's business, Wm Clark Construction Company." CP 440. The complaint made numerous allegations confirming that Gavin Coffee's death was due to a load being lost while the pickup was being used on the freeway. CP 907-08. *See* Appendix.

Clark/Campbell tendered their defense of the suit to Allstate and Safeco, but not initially to CBIC. Campbell tendered his defense to Safeco on April 26, and Safeco took immediate steps to prevent a default. CP 438, 440. Allstate accepted the defense of Clark/Campbell without reservation, CP 451, and had a notice of appearance filed for both Clark/Campbell on May 7, 2007. CP 424.

Although Safeco and Allstate acknowledged that they covered Clark/Campbell and provided them a defense, CP 450-51, they tendered the loss to CBIC. On May 10, 2007, Safeco adjuster Doug Lueken tendered the claim against Campbell to CBIC. CP 860-61, 1244-45. On May 16, 2007, attorney David Wieck, the defense counsel Allstate retained to defend both Campbell and Clark, joined in tendering Campbell/Clark's defense to CBIC. CP 1265. These tenders both acknowledged that Safeco and Allstate auto policies applied to the loss and that Allstate was defending both insureds. CP 1245, 1265.

CBIC promptly acknowledged the tenders, CP 1267-68, and asked Dinning to advise the company regarding the tenders. CP 1041. Dinning specifically reviewed the allegations of the wrongful death complaint, aware that Coffee's counsel had attempted to draft the complaint to trigger CGL coverage. CP 1270. Nonetheless, relying on clear and controlling Washington authority, Dinning concluded that taking the

allegations of the complaint as true, there was no coverage, nor even a potential for coverage, for Coffee's claim against Clark/Campbell under the CBIC policy, and thus there was no duty to defend. CP 1270-78. With CBIC's consent, Dinning prepared and signed a letter for CBIC to Wieck declining to participate with Allstate and Safeco in defense of the wrongful death action. CP 1280-86.¹¹ That May 31, 2007 denial letter also specifically reserved the right to rely on any applicable coverage defenses or policy language, whether or not contained in the letter. CP 1284.

In an abundance of caution, CBIC sought a second opinion from another competent coverage attorney, Michael Rogers of the Reed McClure law firm. CP 1008. He unequivocally agreed with Dinning that the complaint triggered no duty to defend. CP 1335.

Despite the unequivocal advice CBIC had received regarding coverage, in an effort to protect the insureds without waiving policy terms and without forcing the insureds to defend a declaratory relief action,

¹¹ Dinning did not cite CBIC's "other insurance" endorsement in the denial letter. As he explained in his deposition, Dinning did not believe that the wrongful death complaint triggered even potential coverage under CBIC's policy, thus there was no reason to discuss how the CBIC policy would interact with other insurance: "[M]y opinion then and today is that the correct analysis was that the complaint did not trigger the duty to defend, *without even discussing whether or not CBIC would have had a primary duty to defend, which I don't believe they would have in any event.* But because the duty wasn't triggered in the first place, there was . . . no reason to go there." CP 1337 (emphasis added).

CBIC took the extraordinary step of sending a letter on June 26, 2007 offering to waive any liability defenses to Coffee's claim, if Coffee would confine her claim to the insurance limits available to Clark/Campbell. CP 1286-87.

Coffee declined the offer. CP 1289. Instead, Coffee entered into a settlement which released Clark/Campbell from all liability in exchange for their \$100,000 in automobile insurance limits, an assignment of their rights against CBIC, and their agreement to a \$15 million stipulated judgment collectable only against CBIC. CP 937-38.

Coffee commenced the present action in the King County Superior Court on December 6, 2007 as the assignee of the Clark/Campbell insurance claims against CBIC. CP 1-8. The case was ultimately assigned to the Honorable Catherine Shaffer.

Coffee moved for partial summary judgment, asking the trial court to rule as a matter of law that the auto exclusion in CBIC's policy did not apply and that CBIC breached a duty to defend Clark/Campbell. CP 171-95. CBIC opposed the motion and requested partial summary judgment in its favor because its CGL policy excluded coverage for damages "arising out of" the "use" of any auto, CP 351-82, and because its policy was excess over Allstate and Safeco given the other insurance provision in its policy. CP 28-47.

The parties stipulated at the hearing that the court could grant summary judgment for either party under the auto exclusion. CP 619.¹² The trial court ruled in favor of CBIC based on application of the auto use exclusion. CP 475-77. The trial court stated that even interpreting the allegations of the complaint broadly in favor of the insured, the policy exclusion nonetheless applied and barred any duty to defend. CP 646-48, 650-51.

The Court denied plaintiff's motion for reconsideration on the duty to defend. CP 618-19. In addition to granting summary judgment to CBIC on the issue of duty to defend, the Court also dismissed, with prejudice, all remaining claims, including bad faith claims, on October 17, 2008. CP 1119-20. Coffee appealed the rulings on duty to defend and bad faith. CP 1124-35. CBIC cross-appealed denial of its "other insurance" motion. CP 1136-56.

D. SUMMARY OF ARGUMENT

CBIC had no duty to defend Clark/Campbell because its exclusion g. for liability arising out of the maintenance, use, or entrustment to others of a vehicle applied unambiguously to Clark/Campbell's use of a pickup

¹² The stipulation is reflected in the trial court's order. Contrary to Coffee's claim that the Clerk's Papers contain the full report of proceedings, br. of appellant at 26 n.8; the Clerk's Papers here only contain the trial court's *rulings*, not the argument of counsel.

belonging to William Clark General Contractor. This exclusion was consistent with the fact Clark declined coverage for his business vehicles in his CBIC CGL policy. The use of that vehicle was the cause of Gavin Coffee's death. A load came loose from the back of the pickup while the vehicle was being operated on I-5, causing the accident in which Coffee was killed. There was no coverage under CBIC's CGL policy for this incident.

CBIC's decision was legally correct. Coverage under auto and CGL policies are designed to be mutually exclusive and application of the auto use exclusion is consistent with Clark's repeated rejection of offers to purchase commercial auto coverage for his pickup truck.

The case law interpreting the term "arising out of" in an insurance policy is unambiguous under Washington law. Lost load accidents "arise out of" the "use" of the vehicle from which the load was lost. Moreover, adding a negligent supervision theory to the complaint does nothing to create the potential for coverage since regardless of the legal theory alleged, the injury still "arises out of" the "use" of the vehicle.

Since CBIC's decision regarding its duty to defend was legally correct, CBIC is not liable for bad faith for not agreeing to participate with the auto insurers in the defense of Clark/Campbell from Coffee's claim. However, even if CBIC's decision was found to be incorrect, it is clear

from the record that CBIC's decision was not made in bad faith. CBIC properly relied on the advice of two experienced and competent coverage attorneys.

CBIC also properly handled Coffee's claim against Clark/Campbell as a matter of law. Coffee alleges no violations of insurance claims handling regulations by CBIC as to Clark/Campbell. She relies instead on impugning the motives of CBIC personnel during phases of the investigation which were not even germane to CBIC's analysis of the four corners of the Coffee complaint. Clark/Campbell suffered no harm from CBIC's claims handling because they were being fully defended by their auto insurance carriers and were released completely from all liability.

Finally, CBIC's "other insurance" endorsement rendered the CBIC policy excess to the coverage and defense provided to Clark/Campbell by Allstate and Safeco. Under that endorsement, CBIC had no duty to defend Clark/Campbell since they were already being defended by Allstate and Safeco.

E. ARGUMENT¹³

¹³ The case was decided on a series of summary judgment motions. Under well-developed principles of Washington law, this Court reviews orders on summary judgment, particularly those involving insurance coverage, *de novo*. *Daley v. Allstate Ins. Co.*, 135 Wn.2d 777, 782, 958 P.2d 990 (1998). The interpretation of insurance policies is a question of law. *Kitsap County v. Allstate Ins. Co.*, 136 Wn.2d 567, 575, 964

(1) Principles for Interpretation of an Insurance Contract

Insurance policies are contracts, and courts seek to determine the intent of the contracting parties. *Eurick v. Pemco Ins. Co.*, 108 Wn.2d 338, 340-41, 738 P.2d 251 (1987).¹⁴ Courts look to the whole insurance contract in interpreting it, giving the contract a “fair, reasonable, and sensible construction” as understood by the average person purchasing insurance. *Am. Nat’l Fire Ins. Co. v. B & L Trucking & Constr. Co., Inc.*, 134 Wn.2d 413, 427, 951 P.2d 250 (1998); *E-Z Loader Boat Trailers, Inc. v. Travelers Indem. Co.*, 106 Wn.2d 901, 907, 726 P.2d 439 (1986). In effect, courts look to the context of the policy’s purchase so that their interpretation of the insurance contract avoids strained, absurd or nonsensical consequences. *Transcon. Ins. Co. v. Wash. Pub. Utils. Dists.’ Util. Sys.*, 111 Wn.2d 452, 457, 760 P.2d 337 (1988).¹⁵ The court must

P.2d 1173 (1998); *Weyerhaeuser Co. v. Aetna Cas. & Sur. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). Applying the controlling law to the undisputed facts of this case demonstrates that there are no genuine issues of material fact, and that the summary judgment dismissal of Coffee’s complaint should be affirmed.

¹⁴ The contract must be interpreted in a commercially reasonable fashion. Washington contract law provides that where two business entities enter into an agreement, that agreement will be given “a commercially reasonable construction.” *Wilson Court Ltd. P’ship v. Tony Maroni’s, Inc.*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998).

¹⁵ In the insurance context, treatise author Thomas Harris states that the context of the parties’ negotiations for insurance coverage leading to the issuance of an insurance policy is important for the courts’ interpretation of that policy. Thomas V. Harris, *Washington Insurance Law* (2d ed.) (hereinafter “Harris”) § 6.1-6.2 at 6-1 to 6-7. A court’s focus in interpreting an insurance policy is to determine what the parties intended at the time of contracting. *Queen City Farms, Inc. v. Central Nat’l Ins. Co. of Omaha*,

look to the plain meaning of the contract to determine coverage. *Kitsap County*, 136 Wn.2d at 576.

While exclusionary clauses are to be construed against the insurer who drafted them, *Tewell, Thorpe & Findlay, Inc., P.S. v. Cont'l Cas. Co.*, 64 Wn. App. 571, 575, 825 P.2d 724 (1992), exclusions are appropriate where they are bargained for by the parties or they address increased risk to the insurer. *Mendoza v. Rivera-Chavez*, 140 Wn.2d 659, 666-67, 999 P.2d 29 (2000). Courts must enforce exclusionary provisions as written if the exclusionary language is unambiguous.¹⁶ *Allstate Ins. Co. v. Peasley*, 131 Wn.2d 420, 424, 932 P.2d 1244 (1997). A court may not create ambiguities by its policy interpretation. *Tyrrell v. Farmers Ins. Co. of Wash.*, 140 Wn.2d 129, 133, 964 P.2d 1173 (1998); *City of Everett v. Am. Empire Surplus Lines Ins. Co.*, 64 Wn. App. 83, 87, 823 P.2d 1112 (1991) (“the court may not modify the contract or create an ambiguity where none exists”).

126 Wn.2d 50, 78-79, 882 P.2d 703 (1994); *Eurick*, 108 Wn.2d at 340. As Harris notes, the context of the parties’ negotiations leading to the policy, including their conduct, and the structure of the policy, should be viewed as sources of the parties’ intent. Harris, *id.* at 6-3.

¹⁶ An ambiguity is generally defined as language susceptible to two different reasonable interpretations. *Weyerhaeuser*, 123 Wn.2d at 897.

The premium paid by the insured is particularly relevant to coverage. *Lynott v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa.*, 123 Wn.2d 678, 690, 871 P.2d 146 (1994).

These interpretative principles are not merely an academic exercise. They prevent Coffee, as the assignee of Clark/Campbell, CBIC's actual insureds, from arguing for the existence of ambiguity in the terms "arising out of" or "use" in a standard auto use exclusion when the Washington courts have repeatedly held such terms to be unambiguous," and when Clark had specifically rejected commercial auto coverage. As succinctly stated by the trial judge: "Mr. Clark clearly had the chance to cover the vehicle he was using in his business under his commercial insurance policy and he chose not to." CP 1165.

(2) CGL Policies and Auto Liability Policies Provide Mutually Exclusive Coverage

Auto liability coverage and general liability coverage are mutually exclusive. To erase or blur this fundamental distinction would have profound impacts on the pricing and availability of insurance.¹⁷

¹⁷ Auto liability premiums are typically higher than general liability premiums for the same limit of liability. If courts judicially add auto coverage to general liability policies, the price of general liability policies will necessarily increase significantly, thus putting CGL coverage out of reach for smaller contractors such as Clark. This would be socially and economically counterproductive.

A widely-used insurance text,¹⁸ describing the ISO approach to its CGL form CG 00 01 (the main policy form in the CBIC policy, of which the auto exclusion is a part), notes that auto and general liability coverages are intended to be mutually exclusive. Malecki, 6th ed. at 3.12-13, 3.29, 3.37. *See also, Harris* at § 24.2 (“Accidents involving the use of automobiles are a distinct risk for which a specific premium can be calculated.”).

Washington courts have expressly recognized this “mutual exclusivity.” *See, e.g., Aetna Ins. Co. of Hartford v. Kent*, 85 Wn.2d 942, 948, 540 P.2d 1383 (1975) (“the parties intended each policy to provide mutually exclusive coverage[.]”); *Toll Bridge Authority v. Aetna Ins. Co.*, 54 Wn. App. 400, 403, 773 P.2d 906 (1989) (“The purpose of these [exclusionary] endorsements [on the CGL policies] is to avoid overlapping coverage because incidents arising out of the use of the ferries are covered by the fleet policy.”). *See also, Essex Ins. Co. v. City of Bakersfield*, 154 Cal. App. 4th 696, 710, 65 Cal. Rptr.3d 1 (2007), *review denied*, (2007) (an auto exclusion in a CGL policy “is an exclusion designed to limit coverage

¹⁸ D. Malecki, A. Flitner, J. Trupin, *Commercial Liability Risk Management and Insurance*, 6th Ed. (American Institute for Chartered Property & Casualty Underwriters, 2005) (hereinafter “Malecki, 6th ed.”).

for risks normally covered by other insurance. ‘To cover these risks, the insured must purchase separate insurance.’”¹⁹

Here, Clark was offered the opportunity to purchase commercial auto coverage on several occasions. CP 446. He affirmatively declined to do so. *Id.* Clark understood that he had not purchased coverage for automobile risks from CBIC. Coffee did not present any declaration from Clark claiming he had such coverage. The mutual understanding of the parties here is clear – this accident was covered by the Allstate and Safeco auto policies, not the CBIC CGL policy.

(3) CBIC Had No Duty to Defend Because the Complaint Does Not Allege Facts which if Proven Could Impose Liability on the Insured Within the Policy’s Coverage

Insurers who have reserved the right and duty to defend must look to the allegations of the complaint to determine whether that obligation has been triggered. *Woo v. Firemen’s Fund Ins. Co.*, 161 Wn.2d 43, 53, 164 P.3d 454 (2007). While the insurer must defend if the allegations of the complaint, liberally construed, allege facts that would result in coverage if proven, *id.* at 52-53, the insurer has no duty to defend if the facts alleged in the complaint are clearly not covered by the policy. *Id.* at

¹⁹ The Legislature has created an insurance safety net for victims of auto accidents where the tortfeasor carried no auto liability insurance or insufficient auto liability insurance limits, by requiring auto insurers to offer underinsured motorist (“UIM”) coverage. RCW 48.22.060(2) (UIM coverage must be offered in connection

53. Our Supreme Court has explained this guiding principle, the “four corners rule,” as follows:

The general rule is that insurers ... are obliged to defend any suit which alleges facts wherein, if proven, would render the insurer liable. However, alleged claims which are not clearly covered by the policy, relieve the insurer of its right and duty to defend.

State Farm Gen. Ins. Co. v. Emerson, 102 Wn.2d 477, 486, 687 P.2d 1139 (1984) (citations omitted). Only if the complaint is ambiguous or inadequate to allow determination of coverage, or in conflict with facts known or readily ascertainable by the insurer must the insurer look outside the complaint. *Truck Ins. Exch. v. Vanport Homes, Inc.*, 147 Wn.2d 751, 760, 58 P.3d 276 (2002).

Alleged claims against the insured which are clearly not covered by the policy do not trigger a duty to defend. *Kirk v. Mt. Airy Ins. Co.*, 134 Wn.2d 558, 561, 951 P.2d 1124 (1998); *Truck Ins. Exch.*, 147 Wn.2d at 760; *Campbell v. Ticor Title Ins. Co.*, ___ Wn.2d ___, ___ P.3d ___ (No. 80999-2, June 17, 2009).

No exceptions to the “four corners rule” apply to the complaint in this case. Exclusion g. to CBIC’s CGL policy clearly applied to the facts of the complaint. Even interpreting the allegations of the complaint

with policies insuring against loss “arising out of the ownership, maintenance, or use of a motor vehicle.”). This statute *specifically exempts* “general liability policies.” *Id.*

broadly in favor of the insured, the trial court stated that exclusion g. nonetheless applied and barred any duty to defend:

It is hard for me to see something that would fall more squarely within the auto use exclusion than this set of facts. I mean, the puzzle the Court had in reviewing plaintiff's opposition on this motion was what one could surmise from the complaint that would not place these facts within the language of this auto exclusion.

The only way this metal shelving unit got in the position where Mr. Coffee had to swerve to avoid it and thereby died, is because it came off the pickup truck in which it had been placed without being properly secured.

It is not that the vehicle was an incident, a static spot, where this incident occurred that the vehicle just happened to be in a locale. Which is the case in some of the cases that have been cited to me. The vehicle was the very instrumentality which caused the shelving unit to be on the roadway and force Mr. Coffee to swerve to avoid it and thereby die.

All of the cases that have been cited to me say that the critical inquiry for the Court is whether or not something that is connected to the vehicle, or the motor vehicle itself, is an essential part of the chain of causation that caused the accident at issue. And here, no truck in which there is an unsecured load; no death. It is as simple as that.

I agree with the plaintiffs about the facts that the courts are to review the complaint just as broadly as the insurance company is suppose to. I agree with them that if there were some way to construe the complaint in this case to find coverage despite the language of the auto exclusion that I would have to find at least that there is a fair argument for trial on the breach of duty to defend. If not finding a breach. But on this record, I would have to ignore the language of the policy and the language of the complaint to

find an issue of fact or to find a breach of the duty to defend.

So, it seems to me that in this case based on the auto exclusion only, for the reasons I have outlined, that CBIC is entitled to judgment as a matter of law. And I grant summary judgment to CBIC.

CP 646-48, 650-51.²⁰

In her brief, Coffee focuses on the loading and unloading aspect of the CBIC exclusion, purposely ignoring the whole language of the exclusion which also includes “use” and “operation” of a vehicle. Br. of Appellant at 15-36. As so aptly stated by the trial court, Coffee’s complaint unambiguously alleged facts demonstrating that Gavin Coffee’s death arose out of the use and operation of Clark’s pickup while the truck was traveling on I-5.²¹ To argue that the allegations of the Coffee

²⁰ Coffee states that “the trial court concluded that it was Ms. Coffee’s burden to establish that the ... exclusion does not exclude coverage...” and that “... the trial court here assigned the burden of proof to the wrong party.” Br. of Appellant at 28. Although it really has no bearing here because this court reviews the issues presented de novo, a fair reading of the trial court’s oral ruling shows that court did nothing of the kind. The trial court merely explains how she had analyzed the issues, trying to imagine any conceivable scenario by which CBIC should have concluded under the facts of the complaint that coverage could be provided. The trial court could not think of one and was merely pointing out that Coffee had not raised one either.

²¹ ¶ 3.2 of the complaint confirmed this fact:

On January 19, 2007, defendant Brian Campbell pled guilty under RCW 46.61.655 for failing to secure a load in the first degree. In his statement on plea of guilty, Mr. Campbell stated as follows:

On August 18, 2006, I loaded and assisted in operating a motor vehicle on a public roadway in King County, WA and my vehicle was carrying a metal shelving unit, that was not properly secured,

wrongful death complaint could somehow fall outside of the CBIC auto use exclusion, would distort Washington law beyond all recognized boundaries. Coffee's argument requires this Court to believe that for a premium of \$754, Clark received *both* CGL and automobile liability coverage. That position is unreasonable.

(a) Washington Law Construes "Arising Out of" and "Use" Broadly

Coffee attempts in her brief to raise an ambiguity in exclusion g. by focusing solely on the loading/unloading language, referencing a negligent supervision claim against Clark, and surfacing the efficient proximate rule. Br. of Appellant at 18-34.²² The essence of Coffee's

and as a result, the unit fell from my vehicle, causing substantial bodily injury and death to Gavin Coffee.

CP 908. RCW 46.61.655 provides, in relevant part, that "No person may operate on any public highway any vehicle with any load unless the load . . . is securely fastened to prevent the . . . load from becoming loose, detached, or in any manner a hazard to other users of the highway." A violation of that statute is evidence of negligence. *Skeie v. Mercer Trucking Co.*, 115 Wn. App. 144, 150, 61 P.3d 1207 (2003).

The guilty pleas specifically acknowledged – with criminal consequences – that Campbell loaded the pickup, operated the pickup, and that such operation and "loading and unloading," "caus[ed] substantial bodily injury and death to Gavin Coffee." Although Clark's similar guilty plea and conviction are not alleged in the complaint, Clark's use of the pickup, his participation in the loading, and his negligent entrustment of the driving to Campbell are specifically alleged and similarly fall directly within the exclusion.

²² Coffee states that "[N]o Washington court has ever addressed in a published opinion an insurer's duty to defend in a matter involving the automobile exclusion at issue here." Br. of Appellant at 24. This statement is plainly wrong. See *Krempl v. Unigard Sec. Ins. Co.*, 69 Wn. App. 703, 850 P.2d 533 (1993).

argument is found in her brief at 18 where she attempts to evade Clark/Campbell's "use" of the business vehicle. She contends that Clark/Campbell were negligent in failing to secure the shelf *after* loading the truck and before operating it, and Clark was negligent in failing to supervise Campbell. The obvious flaw in Coffee's argument is that *all of this conduct arises out of Clark/Campbell's use of the Clark pickup and such conduct is excluded under exclusion g. of CBIC's policy.*

Coffee's attempt to evade the fact that her complaint asserted claims against Clark/Campbell "arising out of" the "use" of the business pickup is not surprising. Washington law is *unambiguous* in reading "arising out of" or "use" or "loading/unloading" *broadly* both in the context of an insuring agreement *or* an exclusion. Coffee *ignores* the fact that the policy's exclusion g. pertains not only to loading/unloading, *but to any use of the Clark business pickup truck.*

Coffee has never contested the fact that Washington courts have specifically held that the phrase "'arising out of' is unambiguous and has a broader meaning than 'caused by' or 'resulted from.'" *Toll Bridge Authority*, 54 Wn. App. at 404. The phrase is understood to mean

Coffee also states that "Because the duty to defend is broader than the duty to indemnify, CBIC cannot properly rely on cases addressing indemnity." Br. of Appellant at 45. This statement too, is wrong in light of the fact that the duty to defend is based solely on whether there would be a duty to indemnify if all the allegations in the complaint are presumed to be true.

“originating from,” “having its origin in,” “growing out of,” or “flowing from.” *Id.* Indeed, the phrase has a much broader application than “proximate cause.”

To construe “arising out of” as requiring finding of “proximate cause” ... does violence to the plain language of the policy. “Arising out of” and “proximate cause” describe two different concepts.

Id. at 407 (holding that, where the policy contains “arising out of” language, “[a] determination of proximate cause is not a necessary precedent to determination of coverage.”). This term is unambiguous in Washington law. *Fidelity & Deposit Co. of Maryland v. Dally*, 148 Wn. App. 739, 744, 201 P.3d 1040 (2009).

Similarly, there is little question under Washington law that the term “use” is unambiguous and is broadly construed. “The term ‘use’ usually is construed to include *all proper uses of an automobile.*” (emphasis added). *Transamerica Ins. Group v. United Pac. Ins. Co.*, 92 Wn.2d 21, 26, 593 P.2d 156 (1979), *overruled on other grounds*, *State v. Olson*, 126 Wn.2d 315, 893 P.3d 629 (1995).

In the specific application of the terms “arising out of” and “use” to vehicles, the Washington cases are legion in construing such terms very broadly. It is important to note that this language is relevant both to insuring agreements and exclusions. When addressing virtually identical

language in a coverage grant and an exclusion, the language must be interpreted consistently. *Aetna Ins. Co.*, 85 Wn.2d at 947; *Harris*, at § 24-3 to 24-4. *See also, Quadrant Corp. v. Am. States Ins. Co.*, 154 Wn.2d 165, 172, 110 P.3d 733 (2005) (explaining that although “exclusions should be strictly construed against the drafter, a strict application should not trump the plain, clear language of an exclusion such that a strained or forced construction results”).

As the trial court correctly understood, CP 648, the critical inquiry for the Court is whether the vehicle itself was more than the mere situs of the accident:

As our Supreme Court recently reaffirmed, an accident “arises out of the use” of a vehicle if “the vehicle itself or permanent attachments to the vehicle causally contributed in some way to produce the injury.” The phrase “arising out of” means “originating from,” “having its origin in,” “growing out of,” or “flowing from.” It is not necessary that the use of the vehicle be the proximate cause of the accident. Instead, “[i]t is only necessary that there be a causal connection between the use and the accident.”

McCauley v. Metro. Prop. & Cas. Ins. Co., 109 Wn. App. 628, 633, 36 P.3d 1110 (2001). *See also, Detweiler v. J.C. Penney Cas. Ins. Co.*, 110 Wn.2d 99, 109, 751 P.2d 282 (1988); *Transamerica Ins. Group*, 92 Wn.2d at 26; *Krempl*, 69 Wn. App. at 706-07; *Toll Bridge Auth.*, 54 Wn. App. at 404; *Avemco Ins. Co. v. Mock*, 44 Wn. App. 327, 329, 721 P.2d 34 (1986);

State Farm Mut. Auto Ins. Co. v. Centennial Ins. Co., 14 Wn. App. 541, 543, 543 P.2d 645 (1975), *review denied*, 87 Wn.2d 1003 (1976).

Washington courts have upheld applicability of the auto use exclusion even in cases with attenuated connections to the actual operation of the auto. In *Beckman v. Connolly*, 79 Wn. App. 265, 898 P.2d 357 (1995), the Court of Appeals rejected coverage under a CGL policy based on the auto use exclusion. In that case, a cigarette lit in the cab of a truck caused an explosion that forced the pickup over an embankment. In denying coverage under the auto use exclusion, the Court of Appeals stated:

... the phrase means that the claimed injury must have originated from, had its origin in, grown out of, or flowed from, the use of the vehicle. In alternative terms, “the vehicle must contribute in some fashion toward producing the injury; the vehicle must be more than the coincidental place in which the injury occurred.” This is the only causal connection required, and the “use” need not be a “proximate” cause of the occurrence or injury.

Id. at 273-74 (citations omitted). There was no coverage because the truck was more than the mere situs of the injury,²³ but rather the accident would not have happened but for the use of the truck. *Id.* at 274.

²³ Compare *Culp v. Allstate Ins. Co.*, 81 Wn. App. 664, 915 P.2d 1166, *review denied*, 130 Wn.2d 1009 (1996) (passenger injured from shooting while standing next to vehicle was not covered because injury did not arise out of the use of the vehicle).

Most recently, in the context of an insuring agreement, our Supreme Court reiterated its commitment to a very broad analysis of “arising out of” and “use” in connection with autos. In *Butzberger v. Foster*, 151 Wn.2d 396, 89 P.3d 689 (2004), the Court held that a Good Samaritan killed while attempting to rescue a driver of overturned pickup truck on the highway was covered under the driver’s UIM provision as well as under the policy covering the vehicle the Good Samaritan drove to the site. In its opinion, the Court analyzed its jurisprudence on “arising out of” and “use,” and distilled that jurisprudence to a three-part test:

(1) there must be a causal relation or connection between the injury and the use of the insured vehicle; (2) the person asserting coverage must be in reasonably close geographic proximity to the insured vehicle, although the person need not be actually touching it,²⁴ and (3) the person must also be engaged in a transaction essential to the use of the vehicle at the time.

Id. at 410. There can be little doubt but that the death of Gavin Coffee arose out of Clark/Campbell’s use of the Clark pickup truck within the meaning of *Butzberger*.

²⁴ In *Greene v. Young*, 113 Wn. App. 746, 54 P.3d 734 (2002), the Court held that a husband’s emotional trauma in coming upon an accident scene where his injured wife was being carried away on a stretcher and his son was crying uncontrollably in a stranger’s arms, “arose out of” “use” of a motor vehicle despite the fact that he arrived after the incident had concluded and he was not even personally involved in the accident. Interpreting the causal requirement associated with “arising out of” use of an auto, the Court stated, “We see no reason to restrict causal connection to accident situations where the vehicle actually touches the victim. Accordingly, the vehicle here causally contributed to produce [the husband’s] injuries.” *Id.* at 754.

In summary, Coffee's contention that injuries resulting from a load lost from a truck being operated on the highway do not "arise out of" "use" of the vehicle from which the load was lost is unreasonable and contrary to Washington. As a matter of law, the allegations of the Coffee wrongful death complaint fall squarely within CBIC's exclusion g.

(b) Loading and Unloading Provides an Additional, Not Primary Basis for Finding No Duty to Defend

Coffee asserts that CBIC breached its duty to defend because the term "loading and unloading" is somehow ambiguous. Br. of Appellant at 26-30. Neither the trial court nor CBIC, however, relied on the meaning of "loading and unloading" in finding that the Coffee complaint failed to allege facts which could conceivably give rise to a duty for CBIC to defend Clark/Campbell. This case is not a "loading and unloading" coverage dispute where the vehicle was not otherwise in use so coverage turns solely on whether the proffered activity constituted "loading and unloading." In this case, a load fell out of a moving vehicle which was undisputedly being operated on I-5. The pickup was in "use" under the terms of the policy because use is defined as including "operation" and "loading and unloading." A finding that the injury also arose out of

“loading and unloading” is *an additional* basis for application of the auto use exclusion.²⁵

Our Supreme Court has also held as a matter of law that lost load accidents necessarily “arise out of” the “use” of the vehicle from which the load was lost. In *McDonald Indus., Inc. v. Rollins Leasing Corp.*, 95 Wn.2d 909, 641 P.2d 947 (1981) a tractor trailer lost its load in traffic. The Court found it to be “apparent” and “without question” that the accident arose out of the “use” of the vehicle. *Id.* at 912.

Similarly, in *Aetna Ins. Co. of Hartford, supra*, an injury was caused when a rock fell from the bed of a truck, bounced on the road, and crashed through the car windshield striking the passenger. The insurer admitted coverage for the incident under the auto policy but denied coverage under the general liability policy. The Supreme Court concluded the coverages were “mutually exclusive” and found no coverage under the general liability policy for the incident. *Id.* at 947-48.

Clark’s pickup was being used to transport construction debris from Clark’s jobsite to the dump. As in *McDonald*, Clark/Campbell’s “use” of the truck was necessarily “a causative factor in the accident,” just

²⁵ Coffee’s cites to internal CBIC e-mails questioning whether the “loading and unloading” phrase applied to this loss, are entirely consistent with CBIC’s position that coverage was excluded under the “operation” aspect of vehicle “use.” Br. of Appellant at 5-6.

as the trial court observed: “The vehicle was the very instrumentality which caused the shelving unit to be on the roadway and force Mr. Coffee to swerve to avoid it and thereby die.” CP 648.

Coffee’s citation of *McDonald Indus.* in support of her “loading and unloading” ambiguity argument is not well taken. In that case, the meaning of “loading and unloading” was important because that policy covered vehicle “use,” but excluded vehicle “loading and unloading”. Thus, the Court had to determine first whether the injury “arose out of” vehicle “use,” and then whether the “loading and unloading” exclusion applied.²⁶ Here, the operative holding from *McDonald Indus.* is that “it is apparent” and “without question” that the lost load accident “arose out of” the “use” of an auto. 95 Wn.2d at 912. It is irrelevant whether the *McDonald Indus.* court also found the undefined “loading and unloading” term in that case to have been ambiguous.

The lack of a policy definition for “loading and unloading” has, in other cases, required courts to construe the phrase broadly or narrowly, according to its use in the policy and possible reasonable meanings. See, e.g., *McDonald Indus., supra; Transamerica Ins., supra; Fiscus Motor Freight, Inc. v. Universal Sec. Ins. Co., 53 Wn. App. 777, 770 P.2d 679,*

²⁶ Exclusion g. in CBIC’s policy excluded both “use” and “loading/unloading” as an aspect of “use.” CP 779.

review denied, 113 Wn.2d 1003 (1989). By contrast, the “loading and unloading” clause in the CBIC policy, exclusion g. broadly defines “loading and unloading.” CP 787-88. *Nowhere* is its scope limited to injury that occurs “during” loading and unloading. The exclusion applies to injuries that “arise out of” “loading and unloading” (in addition to other aspects of “use”). As discussed above, “arising out of” requires only a broad causal connection. Consequently, Coffee’s arguments about whether or when loading and unloading was “complete” are unavailing to her.

To bring the loading and unloading aspect of exclusion g. to bear here, there must be a causal connection between the “loading and unloading” and the resulting injury to Gavin Coffee. The Coffee complaint contains many allegations of a causal connection between Gavin Coffee’s injury and the activities within the scope of “loading and unloading.”

- ¶ 2.4: “The metal shelving unit which fell from the pickup had been *placed into the rear of the vehicle . . .* by Clark and Campbell. The unit was not tied down or secured in any way.”
- ¶ 3.1: Campbell and Clark “were negligent in failing to *secure the metal shelving unit* before operating the pickup.”
- ¶ 3.2: Campbell “*loaded . . . a motor vehicle*”, the shelving “was not properly secured,” and this caused injury to Coffee.

- ¶ 3.3: “The failure to secure the metal shelving unit contributed to and was the efficient proximate cause of the death of Gavin Coffee.”

CP 907-08 (emphasis added). Each of these allegations falls within the definition of “loading and unloading” and is included within the broader concept of “use” of the pickup. As these assertions in the complaint demonstrate, Gavin Coffee’s death “arose out of” loading and unloading, and operation or use of the Clark pickup. The complaint itself establishes the requisite causal connection between the excluded activities and Gavin Coffee’s death. Thus, the “loading and unloading” aspect of exclusion g. in the CBIC policy also applies.

(c) The Negligent Supervision Allegation in the Complaint Does Not Create a Separate Covered Claim

In an effort to avoid the application of exclusion g., Coffee argues that Clark’s alleged “negligence in failing to supervise” Campbell created a duty to defend this separate theory of liability, and cites a Montana case in support of that proposition. Br. of Appellant at 18. This, however, is not the law in Washington. Creative drafting of theories for recovery cannot circumvent clear policy exclusions. In *Stouffer & Knight v. Continental Cas. Co.*, 96 Wn. App. 741, 982 P.3d 105 (1999), *review denied*, 139 Wn.2d 1018 (2000), a professional liability policy contained a dishonest employee exclusion. The court held that the exclusion

precluded coverage even in the face of an allegation by the insured attorney that his secretary's embezzlement arose out of his negligent failure to supervise her. *Id.* at 751 n.13 (“[A]greeing with Knight’s arguments would effectively eliminate the exclusion because whenever an employee commits a dishonest/criminal act, allegations framed in negligence can always be claimed against the employee’s superiors.”). *See also, Nat’l Clothing Co., Inc. v. Hartford Cas. Ins. Co.*, 135 Wn. App. 578, 585, 145 P.3d 394 (2006), *review denied*, 161 Wn.2d 1006 (2007) (exclusion for damage arising from insured’s product applied, regardless of the litigation theory under which a claim was pursued); *Transport Indem. Co. v. Sky-Kraft, Inc.*, 48 Wn. App. 471, 740 P.2d 319 (1987) (auto-boat-aircraft use exception applied as well to negligent instruction theory); *Farmers Ins. Group v. Johnson*, 43 Wn. App. 39, 715 P.2d 144, *review denied*, 106 Wn.2d 1010 (1986) (auto-boat-aircraft use exclusion applied to “negligent entrustment” cause of action).

Regardless of any negligent supervision allegation, Coffee’s death nonetheless still *arose out of* Clark/Campbell’s *use of the pickup*. Although negligent supervision may be a legal theory for recovery, the “bodily injury” still “arose out of” the use of the pickup and falls squarely within the scope of exclusion g. in CBIC’s policy.

(d) The Efficient Proximate Cause Rule Is Inapplicable Here

Coffee also makes an odd, half-hearted argument²⁷ that her assignors Clark/Campbell benefitted from the application of principles of efficient proximate cause. Br. of Appellant at 30-33. She does not set out efficient proximate cause as a distinct issue for this Court's consideration. Br. of Appellant at 2.²⁸

Washington law specifically rejects application of the efficient proximate cause analysis to liability policy exclusions containing the language "arising out of" because "arising out of" and "proximate cause" describe two different concepts. *Toll Bridge Authority*, 54 Wn. App. at 407.²⁹ See also, e.g., *Mut. of Enumclaw Ins. Co. v. Patrick Archer*

²⁷ Later in her brief at 32, Coffee states that this Court does not even need to decide if efficient proximate cause applies to an exclusion with "arising out of" language.

²⁸ The traditional formulation of the rule is where an unbroken causal chain of events produces a loss, a court must look to the preponderant or efficient cause of the loss, *i.e.*, the one that set the others in motion, to determine if there is coverage or if an exclusion applies. *Kish v. Ins. Co. of N. Am.*, 125 Wn.2d 164, 170-72, 883 P.2d 308 (1994) (no coverage under policy exclusion where flood was predominant cause of loss, despite fact that rain was a covered peril). The rule applies principally to first party coverage. *Harris* at § 44.2 (rule adopted to address causation issues in first-party homeowners cases).

²⁹ The *Krempl* court also rejected the "joint causation" rule for auto use exclusions which is applied in some jurisdictions, 69 Wn. App. at 535, concluding that the joint causation rule is inapplicable in Washington because the phrase 'arising out of' in an exclusion "precludes an inquiry into the causation of an accident."

Even, however, if a court were to adopt the "concurrent causation" approach, there is still no duty to defend the complaint in this case. In *Allstate Ins. Co. v. Jones*, 139 Cal. App. 3d 271, 188 Cal. Rptr. 557 (1983), a California "lost load" case decided under the "concurrent causation" approach, the court ruled that a general liability policy

Constr., Inc., 123 Wn. App. 728, 739, 91 P.3d 751 (2004); *Stouffer & Knight*, 96 Wn. App. at 752-53 (injury “arising out of” use of auto excluded despite allegation that negligent supervision was efficient proximate cause of accident); *City of Everett*, 64 Wn. App. at 88-89.

Coffee cites *Key Tronic Corp. v. Aetna (Cigna) Fire Underwriters Ins. Co.*, 124 Wn.2d 618, 881 P.2d 201 (1994) for the proposition that there is some split of authority regarding the applicability of the “efficient proximate cause” approach to “arising out of” exclusions. Br. of Appellant at 31-32. That is not true. The statement in *Key Tronic* that the efficient proximate cause rule “cannot be circumvented by an exclusionary clause” was merely explaining what the efficient proximate cause rule is, so the court could reject the appellant in that case’s request to expand it. *Key Tronic* neither addressed the “arising out of” language nor applied the efficient proximate cause rule in that case. It did not mention nor distinguish any of the numerous liability insurance cases rejecting application of efficient proximate cause to “arising out of” exclusions. No reported case dealing with “arising out of” exclusions which came after *Key Tronic* has ever mentioned it.

that excluded coverage for injuries “arising out of the . . . use” of auto did not provide coverage when rebar that was inadequately secured on the insured’s pickup truck killed the driver of another vehicle. *Id.* at 277.

Coffee's next attempts to circumvent the body of law dealing with "arising out of" liability exclusions by citing *American Best Food, Inc. v. Alea London, Ltd.*, 138 Wn. App. 674, 158 P.3d 119 (2007), review granted, 163 Wn.2d 1039 (2008). Br. of Appellant at 22-24. *American Best Food* was a suit over allegedly separate or aggravated injuries caused by transporting and dumping a patron on the ground after he had suffered an earlier assault in a restaurant; the policy excluded an insured's liability arising from an assault and battery. The present case, however, does not involve a situation where separate bodily harm could be attributed to different covered and uncovered events. Here, Gavin Coffee did not suffer separate injuries from both covered and uncovered events. Coffee simply argues that separate covered and uncovered events combined to cause the injury which occurred. This type of causation inquiry, however, in the context of an "arising out of" exclusion is precisely what has been rejected by the line of cases following *Toll Bridge Authority*. *American Best Food* does nothing to undermine this body of law. If anything, *American Best Food* supports CBIC's position as it cites favorably the numerous cases upholding "arising out of" exclusions where, as here, separate acts combine to produce an excluded injury.

Gavin Coffee's death "arose out of" Clark/Campbell's *use and operation of the pickup truck*, and this is precisely what was excluded

from coverage by exclusion g., regardless of allegations about efficient proximate cause. Even if a “cause” of Gavin Coffee’s death was Clark/Campbell’s failure to secure the shelving unit, br. of appellant at 30; CP 537, as coverage counsel Dinning correctly noted, this is “legally irrelevant under Washington case law,” CP 1334, since the accident still arose out of the “use” and “operation” of the pickup.³⁰ In any event, even an efficient proximate cause analysis does not help Coffee as any failure to secure was necessarily a failure to secure the unit *to the pickup truck*. See *Allstate Ins. Co.*, 139 Cal. App.3d at 277 (under causation-based analysis insured’s failure to secure a lost load was necessarily failure to secure *to pickup truck* and thus was excluded by auto use exclusion).

³⁰ The cases cited by Coffee do not help her. See *Wright v. Safeco Ins. Co. of America*, 124 Wn. App. 263, 109 P.3d 1 (2004). This Court held that a construction defect exclusion to a homeowners policy foreclosed coverage for mold damage that resulted from construction-caused water damage. *Id.* at 274-75. *Wright* supports CBIC’s position here.

Similarly, in *Eide v. State Farm Fire & Cas. Co.*, 79 Wn. App. 346, 901 P.2d 1090 (1995), this Court refused to apply the efficient proximate cause rule where the Court determined in a claim involving a landslide occasioned by heavy rainfall that exclusions for earth movement and water damage applied as well to “weakened soil” and “rising groundwater.”

Finally, Coffee’s citation of *Krempl* is entirely misplaced. This Court *rejected* application of the rule where “arising out of” language is present. This Court also noted that the rule was inapplicable in any event to the facts of the case because the covered event did not set in motion an uncovered event. 69 Wn. App. at 705-06. In fact, in that case, the precipitating event was uncovered. See also, *McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 735, 837 P.2d 1000 (1992) (efficient proximate cause only comes into play when initial peril is a covered peril).

The efficient proximate cause rule does not support Coffee's argument on the duty to defend.

(4) CBIC Did Not Owe a Duty to Clark/Campbell to Indemnify

A party claiming benefits under an insurance policy has the burden of proving a claim is within the terms of the policy. *Waite v. Aetna Cas. & Sur. Co.*, 77 Wn.2d 850, 853, 467 P.2d 847 (1970); *E-Z Loader Boat Trailers*, 106 Wn.2d at 906; *Overton v. Consolidated Ins. Co.*, 145 Wn.2d 417, 431, 38 P.3d 322 (2002). Unlike the duty to defend which focuses on whether the policy conceivably covers the complaint's allegations, the duty to indemnify focuses on whether the policy *actually* covers the complaint's allegations. *Woo*, 161 Wn.2d at 53. Here, for all of the reasons set forth above, liability for the death of Gavin Coffee does not fall within the coverage available to Clark/Campbell under the CBIC policy. In addition, Coffee has not assigned error to or presented argument on the trial court's determination that CBIC did not owe Clark/Campbell indemnification under its policy. Br. of Appellant at 1. Thus, Coffee *concedes* that Clark/Campbell were not covered under CBIC's policy.

(5) Clark/Campbell's Bad Faith Claims against CBIC Do Not Create a Material Issue of Fact and Were Properly Dismissed by the Trial Court

Coffee makes a very general argument concerning CBIC's alleged bad faith. Br. of Appellant at 36-48. Her principal argument appears to be that CBIC was automatically liable for bad faith if it denied Clark/Campbell a defense. She also asserts as Clark/Campbell's assignee that CBIC did not properly handle her claim against Clark/Campbell, but she notably ignores CBIC's June 26, 2007 letter in which CBIC offered to waive any liability defenses to Coffee's claims if she agreed to confine her recovery to available insurance limits. CP 1286-87. Coffee misstates Washington law on bad faith, and ignores CBIC's efforts to protect Clark. Her bad faith contentions are baseless.

To succeed on a bad faith claim, an insured must show that the insurer breached the insurance contract, and that the breach was "unreasonable, frivolous, or unfounded." *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 485, 78 P.3d 1274 (2003) (quoting *Overton*, 145 Wn.2d at 433). As the Supreme Court stated:

If the insurer can point to a reasonable basis for its action, this reasonable basis is significant evidence that it did not act in bad faith and may even establish that reasonable minds could not differ that its denial of coverage was justified.

Id. at 486.

For the reasons set forth above, CBIC did not breach its insurance contract when it failed to participate with the auto insurers in the defense

of Clark/Campbell. Even, however, were CBIC incorrect in its determination regarding its duty to defend, no reasonable person could conclude that the decision was made in bad faith or that the insureds suffered any damages as a result. In fact, the record shows an affirmative *absence* of any harm to Clark/Campbell.

Coffee's legal arguments about bad faith are similarly erroneous. Coffee incorrectly argues that alleged procedural errors in claim handling could justify coverage by estoppel, ignoring the Washington Supreme Court's express holding to the contrary in *St. Paul Fire & Marine Ins. Co. v. Onvia, Inc.*, 165 Wn.2d 122, 196 P.3d 664 (2008). The factual record here is fully developed. No reasonable person could find bad faith in this case. The dismissal should be affirmed.

Although bad faith is generally a question of fact, where, as here, the record is detailed and clear and the nonmoving party relies purely on speculation and argumentative assertions, bad faith claims can and should be dismissed. *Rizzuti v. Basin Travel Service of Othello, Inc.*, 125 Wn. App. 602, 615, 105 P.3d 1012 (2005) (resolving bad faith on summary judgment; "questions of fact may be determined as a matter of law if reasonable minds could reach but one conclusion."). *Accord, Smith*, 150 Wn.2d at 485. Here, as in *Rizzuti*, Coffee cannot establish a genuine issue of material fact on bad faith.

(a) CBIC Correctly Declined to Defend Clark/
Campbell

Coffee's substantive bad faith claim is very limited: Coffee's only allegation of substantive bad faith is that CBIC acted in bad faith by "refusing to defend Clark and Campbell, even under a reservation of rights, after filing of the Wrongful Death Complaint." CP 7. In other words, Coffee alleges that refusing to defend Clark/Campbell constituted bad faith.

To succeed on such a bad faith claim, the insured first must show that the insurer, in fact, breached the insurance contract. *See Smith*, 150 Wn.2d at 484 ("To succeed on a bad faith claim, *the policyholder must show the insurer's breach of the insurance contract* was 'unreasonable, frivolous, or unfounded.'"). A correct denial of defense, as occurred here, necessarily defeats Coffee's bad faith claim. When claims in a complaint are clearly outside a policy's coverage, an insurer has no duty to investigate or otherwise look outside the complaint. *Campbell, supra; Holly Mountain Resources Ltd. v. Westport Ins. Co.*, 130 Wn. App. 635, 649, 104 P.3d 725 (2005); *Unigard Ins. Co. v. Leven*, 97 Wn. App. 417, 425-26, 983 P.2d 1155 (1999), *review denied*, 140 Wn.2d 1009 (2000).³¹

³¹ Coffee criticizes the trial court for not reaching the issue of bad faith after finding no duty to defend. Br. of Appellant at 14, 48. However, attorney Michael Goldfarb conceded at oral argument that if the trial court found no duty to defend, then it need not to reach the issue of bad faith.

(b) CBIC's Decision on the Duty to Defend Was Reasonable

Even if CBIC's decision to deny Clark/Campbell a defense was erroneous (which it was not) such decision does not constitute bad faith unless the breach was "unreasonable, frivolous, or unfounded." *Smith*, 150 Wn.2d at 485.³² "Bad faith will not be found where a denial of coverage or a failure to provide a defense is based upon a reasonable interpretation of the insurance policy." *Kirk*, 134 Wn.2d at 560-61.

CBIC's denial of a defense to Clark/Campbell was reasonable. CBIC received unequivocal legal advice from two outside coverage

Coffee now attempts to avoid proving a breach of contract by arguing that, "if bad faith exists, then coverage is legally irrelevant." Br. of Appellant at 15. However, this ignores the fact that a breach of the insurance contract is a necessary element to establish substantive bad faith in the first place.

Further, for a bad faith claim involving the handling of a claim, where coverage is not a necessary element, the Supreme Court has specifically disavowed coverage by estoppel as a remedy; the insured must prove actual harm. *St. Paul v. Fire & Marine Ins. Co.*, 165 Wn.2d at 133.

³² *Accord, Rizzuti*, 125 Wn. App. at 617; *Castle & Cooke, Inc. v. Great Am. Ins. Co.*, 42 Wn. App. 508, 518, 711 P.2d 1108, *review denied*, 105 Wn.2d 1021 (1986); *Smith v. Ohio Cas. Ins. Co.*, 37 Wn. App. 71, 74-75, 678 P.2d 829 (1984); *Miller v. Indiana Ins. Cos.*, 31 Wn. App. 475, 479, 642 P.2d 769 (1982).

In fact, in order to establish bad faith, the insurer's conduct must be egregious. *See Anderson v. State Farm Mut. Ins. Co.*, 101 Wn. App. 323, 2 P.3d 1029 (2000), *review denied*, 142 Wn.2d 1017 (2001) (insurer failed to disclose existence of UIM coverage to insured); *Truck Ins. Exch., supra* (insurer denied coverage and failed to defend the insurer without explanation and then offered a tardy, after-the-fact explanation with a laundry list of exclusions without any analysis or correlation to the particular claims; the insurer also lied about conducting a thorough investigation or the claim and did not respond to request for meetings from the insured).

attorneys that controlling Washington law and the unambiguous allegations of Coffee's complaint meant exclusion g. applied. Dinning was specifically aware of another "lost load" case that was on "all fours" with this case, both factually and legally, in which his legal analysis had prevailed at trial. CP 1328-29. Dinning had litigated an "arising out of" case at trial and on appeal that presented similar issues. CP 1331-32. Dinning, further relied on a multitude of published Washington cases discussing "arising out of," efficient proximate cause, and the "use" of autos. CP 1329-32.

Unlike in the situation in *Woo*, a case cited by Coffee, there was no "equivocation" in the advice received by CBIC that a denial of defense was proper. In *Woo*, the coverage attorney expressly acknowledged that cases he relied upon were "not entirely on point" and that a court reviewing them might conclude they relate only to cases involving sexual assault, as opposed to a practical joke in a dentist's office. 161 Wn.2d at 60. Here, in contrast, Dinning relied on multiple published cases precisely discussing "use" and "loading or unloading" of autos, discussing efficient proximate cause and the auto use exclusion, and even on his direct

CBIC was not required to ignore the language of its policy or to cover risks for which Clark paid no premium.

Washington appellate experience with an auto “lost load” case where the victim sought proceeds from the insured’s general liability insurance policy. As a matter of law, CBIC’s refusal to defend Clark/Campbell was reasonable.

(c) CBIC Properly Handled Coffee’s Claim Against Clark/Campbell

Recognizing the weakness of her coverage arguments, Coffee also suggests that CBIC acted in bad faith in its investigation of Clark’s claim. Br. of Appellant at 36-49. She misstates the law, contending that coverage by estoppel is invariably the remedy for bad faith. Br. of Appellant at 39. That is clearly incorrect given that our Supreme Court has specifically held that coverage by estoppel is *not* the remedy for bad faith unless the duty to defend, settle, or indemnify is at issue. *St. Paul Fire & Marine Ins. Co.*, 165 Wn.2d at 133.

Subsequent to the trial court’s dismissal of all remaining claims in this case, our Supreme Court issued *St. Paul Fire & Marine Ins. Co.*, 165 Wn.2d at 131-32, which recognizes a cause of action for bad faith in the handling of a claim is distinct from a claim for bad faith arising out of the insurer’s breach of the duty to defend, settle, or indemnify. For bad faith arising out of claims handling, the Court held: “the insured in this circumstance is not entitled to a presumption of harm or coverage by

estoppel, but *must prove all elements of the claim*, including actual damages.” *Id.* at 126 (emphasis added). The Court restated the elements of a common law bad faith claim: “. . . duty, breach of that duty, and damages proximately caused by any breach of duty.” *Id.* at 130. As with any other tort, the burden of proving each of these elements rested on Coffee. *Id.* at 126. Coffee did not meet this high burden.

Coffee cites a number of bad faith cases in her brief without demonstrating that *any* of them apply to the facts here. For example, she cites *Truck Ins. Exchange and Indus. Indem. Co. of the Northwest, Inc. v. Kallevig*, 114 Wn.2d 907, 792 P.2d 520 (1990), both cases relating to investigation of a claim, but investigation is not at issue here given the fact that CBIC had no duty to defend based on Coffee’s complaint. Coffee also cites *Besel v. Viking Ins. Co. of Wisc.*, 146 Wn.2d 730, 49 P.3d 887 (2002), a case pertaining to an insurer’s refusal to settle the insured’s case. Settlement of Coffee’s claim is not even at issue here.

If Coffee’s suit can be interpreted to include a claim for bad faith in the handling of her claim against Clark/Campbell, the only arguably “procedural” claim asserted in that complaint is that CBIC “den[ied] Clark and Campbell a defense before having done a reasonable investigation into the claims leveled against them and the factual basis for those claims[.]”

CP 7.³³ But, as previously noted, this claim fails as a matter of law because Washington strictly follows the “four corners” rule for determining duty to defend. *See Truck Ins. Exchange*, 147 Wn.2d at 760-61. An insurer must evaluate duty to defend based solely on *the allegations of the complaint*. “[A]n insurer may not rely on facts extrinsic to the complaint in order to *deny* its duty to defend[.]” *Id.* at 761 (Court’s emphasis).

There are certain exceptions to the rule that the duty to defend must be determined only from the complaint, *id.* at 761 (exceptions are where coverage is not clear from face of complaint or complaint’s allegations are ambiguous or inadequate), but those exceptions do not help Clark/Campbell. First, as is apparent from the face of Coffee’s complaint, its allegations were neither ambiguous nor inadequate. The complaint was extremely precise in alleging that Gavin Coffee was killed in an auto accident and that the improper loading and operation of the pickup caused his death. CP 3-7. It even alleged Campbell’s criminal guilty plea based on those very facts. CP 5. The allegations were unambiguous. No duty existed here to go outside the complaint. Second, as the trial court discussed in its oral ruling on duty to indemnify, the facts outside the

³³ Unlike *St. Paul Fire & Marine Ins. Co.*, there is no claim here that CBIC was untimely in its responses. *See* CP 5-7 (alleging prompt response times). Nor would the factual record support such a claim. *See* Appendix.

complaint *increased* the amount of factual detail demonstrating that Gavin Coffee's death *did, in fact*, "arise out of" the use of Clark's pickup. CP 1167-68.

Thus, a more extensive investigation (despite the fact that CBIC's pre-suit investigation was sufficient) before responding to the May, 2007 tender of defense *would have countermanded a duty to defend*. Not only does *Truck Ins. Exch.* belie any basis for going outside this complaint to evaluate duty to defend, its prohibition on relying on facts outside the complaint to deny a duty to defend would have precluded CBIC from considering the results of further investigation in any event.

Coffee's allegation that it was bad faith for CBIC to decide its duty to defend without a more extensive investigation, CP 7, is meritless.

On the extensive record in this case, Coffee failed to present any evidence from which a court could find either bad faith or actual resulting harm to the insureds. Discovery below was extensive and complete. CP 1046. CBIC produced its complete underwriting and predeclaratory lawsuit claim files. CP 1046.³⁴ *See Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, 421-22, 161 P.3d 406 (2007), *review denied*, 163 Wn.2d 1055 (2008) (insurer liable for bad faith for failing to provide

³⁴ There were minor redactions in the claim file that did not relate to claim handling or to the decisions on defense or indemnity. CP 1178.

insured its underwriting file). Coffee obtained the files of both coverage attorneys, the insurance agent, and the independent adjuster. CP 1046. Coffee deposed CBIC's adjuster, its vice president of claims, its general counsel, the independent adjuster and both outside coverage counsel. *Id.* Coffee's counsel noted (but then struck) the deposition of the agent. Coffee had full access to any information in Clark/Campbell's control by the terms of Coffee's settlement agreement with them. Despite the well-developed record, Coffee demonstrated no violations by CBIC of Insurance Commissioner claims handling regulations. CP 938.

Timeliness is not an issue in this case. The declaratory complaint itself alleges that CBIC promptly addressed the tenders. CP 5-6.

Coffee criticizes Barbara Cochrane's email assignment of the case to the independent adjuster. Br. of Appellant at 6-9. However, Coffee mischaracterizes Colvard's efforts. Colvard understood his task to be to gather information "regarding the circumstances of the accident." CP 1078. Colvard's assessment of Brian Campbell's work for Clark, in fact, confirmed that he was working for Clark, information that was favorable to coverage. CP 1064, 1066-67. CBIC professionals took their responsibility to be to find coverage for the insured. Barbara Cochrane so testified in her deposition. CP 158 ("My job is to investigate and to find coverage, if possible."), 159. In any event, the scope of the investigation

beyond the terms of the complaint is irrelevant because CBIC could not, and did not, look to information outside the complaint to deny a *defense*. Defense, not indemnity, is the linchpin of Coffee's claim.

Coffee characterizes comments attributing comparative fault to Gavin Coffee (for talking on his cell phone while driving) as "disrespect for Washington law," and impliedly as bad faith by CBIC. Br. of Appellant at 41 n.19. To the contrary, Gavin Coffee's comparative fault would *reduce the liability exposure of CBIC's insureds Campbell/Clark*, to whom CBIC owed its duties, and in whose shoes Coffee now stands. CP 1034.³⁵ USAA, Coffee's UIM insurer, also considered Coffee's cell phone usage as a factor indicating potential comparative fault. CP 1048, 1050.

Coffee criticizes CBIC's choice of coverage counsel as self-serving. Br. of Appellant at 42 ("hand-picked a lawyer who would rubber-stamp its analysis"). That criticism is baseless and insulting. Dinning specifically testified that he did not address coverage matters with a preconceived outcome in mind. CP 1095. Moreover, a Westlaw search

³⁵ Use of handheld cell phones while driving is now prohibited, due to the safety concerns inherent in such conduct. RCW 46.61.667. *See* Laws 2007, chap. 417 § 1 ("While wireless communications devices have assisted with quick reporting of road emergencies, their use has also contributed to accidents and other mishaps on Washington state roadways. When motorists hold a wireless communications device in one hand and drive with the other, their chances of becoming involved in a traffic mishap increase.") This law was under consideration by the Legislature when this claim was reported to CBIC. SB 5037 (first reading Jan. 8, 2007).

for Ronald Dinning as counsel in Washington state court appellate cases produces no less than twenty-six cases, with at least twenty of them involving coverage issues, and at least two of those cases directly considering whether injury “arose out of” the “use” of motorized vehicles. One of those cases, *McCauley, supra*, is a virtual primer on Washington caselaw on “arising out of” and vehicle “use.” Dinning’s testimony that he was highly familiar with controlling caselaw is well borne out by objective evidence. CP 1328-37.

Coffee also questions Dinning’s integrity and competence for not billing more time on application of the auto exclusion to “lost load” accidents, br. of appellant at 7, when Dinning had already thoroughly briefed the same issue in a recent case. CP 1331-32. The fact that Dinning was able to give his client prompt, correct, unequivocal legal advice on a legal issue on which he was already an expert is a measure of Dinning’s expertise, not a sign of bad faith.

Coffee fails to raise a genuine issue of material fact regarding CBIC’s conduct, particularly when the only investigation germane to this inquiry is the evaluation of the “four corners” of the complaint. CBIC’s reliance on Dinning’s and Rogers’ unequivocal advice on the defense of the underlying case was appropriate.

Coffee criticizes Dinning's May 31, 2007 denial letter to Allstate and Safeco. Br. of Appellant at 44-47. Coffee's criticism is baseless. She ignores CBIC's earlier March 12, 2007 letter to Clark regarding coverage. CP 1230-33. Moreover, Dinning's May 31 letter was thorough in its articulation of the reasons for its denial of coverage. CP 919-20. It properly stated that based on the facts articulated in Coffee's complaint, exclusion g. plainly applied. CP 917, 919-20. Under Washington law, an insurer's denial letter must place the insured on notice regarding the insurer's rationale for the rejection of the claim, but it need not be exhaustive as to every possible reason for denying coverage. *Hayden v. Mutual of Enumclaw Ins. Co.*, 141 Wn.2d 55, 62-63, 1 P.3d 1167 (2000) (insurer not estopped on summary judgment to raise grounds for denial of coverage not stated in denial letter to insured). In fact, where an insurer indicates that it is receptive to further information from the insured on coverage (as was true here – CP 904, 920), bad faith is not present. *Holly Mountain Resources*, 130 Wn. App. at 651-52.

Finally, Coffee is unable to meet the burden of proving actual harm to Clark/Campbell from any alleged bad faith conduct. Here, as in the recently-published case of *Ledcor Indus. (USA), Inc. v. Mut. of Enumclaw Ins. Co.*, ___ Wn. App. ___, 206 P.3d 1255 (2009), the required element of "actual damage" to the insureds is glaringly absent. Clark/Campbell were

defended by competent counsel at the expense of their primary auto insurer, Allstate. CP 424, 451, 1245, 1265. Allstate is not seeking reimbursement from CBIC.³⁶ Whereas in *Ledcor* the insured contributed personal funds toward settlement, here the insureds were fully released without any personal contribution whatsoever. CP 938. Coffee cannot meet the burden of proving causation that *Onvia* requires.

The trial court's summary judgment dismissal of Coffee's bad faith claims should be affirmed.

(6) Coffee Is Not Entitled to Attorney Fees on Appeal

Coffee is not entitled to an award of attorney fees. Attorney fees are only available where the insurer compels the insured to assume the burden of a legal action to obtain the full benefit of his or her insurance contract. *Olympic S.S. Co., Inc. v. Centennial Ins. Co.*, 117 Wn.2d 37, 53, 811 P.2d 673 (1991).

Here, no coverage exists. CBIC properly denied Clark/Campbell's request for defense and indemnity. Thus, Clark and his business has obtained the full benefit of its insurance contract, and Coffee cannot recover attorney fees as the assignee of Clark/Campbell.

³⁶ Safeco expressly disclaimed either standing or interest in challenging CBIC's denial. Upon reading CBIC's letter of June 26, 2007, Safeco wrote to CBIC: "Safeco has no standing or desire to challenge your coverage position." CP 693. Allstate has never sought defense participation from CBIC and is not a party to this action.

F. CROSS-APPEAL

(1) Assignment of Error

(a) Assignment of Error on Cross-Review

The trial court erred in denying CBIC's motion for summary judgment on its other insurance provision.

(b) Issue Pertaining to Assignment of Error on Cross-Review

Does a liability insurance carrier have a duty to defend its insureds where an "other insurance" clause in its policy disavows the duty to defend under certain circumstances and makes its policy, if applicable at all, excess over the primary coverage and defense provided by other insurers?

(2) CBIC Owed No Duty to Defend Clark/Campbell Because Other Insurance Coverages Were Primary and Provided Them a Defense³⁷

The CBIC policy contained endorsement CBGL 00 06 04 05, "Amendment of Other Insurance Condition." In addition to providing that CBIC's coverage did not apply to any loss covered by insurance issued by other insurers covering such a loss, and CBIC would only pay after exhaustion of all other valid and collectible insurance coverage, that

³⁷ The trial court declined to reach the other insurance issue because it was not a matter that could be resolved within the four corners of the complaint. CP 635-37. The trial court was mistaken. An "other insurance" clause necessarily requires consideration of the other insurance that is applicable to the loss referenced in the complaint.

endorsement also specifically provided that CBIC *had no duty to defend* an insured “if any other insurer has a duty to defend, and is defending, the insured against that ‘suit’”:

This insurance does not apply to “bodily injury,” . . . which is covered by any other valid and collectable [sic] insurance issued by any other insurer

Prior to the exhaustion of all other applicable insurance, we will have no duty under COVERAGE A. – BODILY INJURY AND PROPERTY DAMAGE LIABILITY . . . to defend the insured against any “suit” if any other insurer has a duty to defend, and is defending, the insured against that “suit.”

CP 807. All of the conditions of this endorsement were met prior to any tender of the defense to CBIC where Safeco and Allstate both acknowledged their duties to defend, Allstate actually defended Clark/Campbell, and that defense continued until the wrongful death action was settled.

Such other insurance clauses are common in Washington liability insurance policies. As noted in *New Hampshire Indem. Co. v. Budget Rent-A-Car Systems, Inc.*, 148 Wn.2d 929, 933 n.2, 64 P.3d 1239 (2003), such excess clauses “are another type of other insurance clause which provide that an insurer will pay [or defend] a loss only after other available primary insurance is exhausted.” Our Supreme Court stated without hesitation that other insurance clauses are enforceable even to the

extent of enforcing a so-called “super escape clause,” which provides that the policy in question will not apply to any liability for a loss covered by any other primary or excess policies. The Court held that such other insurance clauses do not violate public policy. *Id.* at 936. The Court also held that under the coverages applicable in the case, the rental car company, which had the other insurance clause, was not primarily responsible for the insured’s defense.

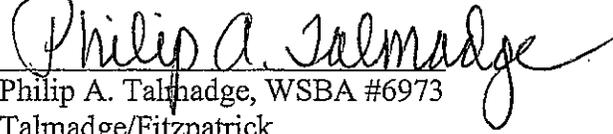
CBIC’s policy imposed *no duty* to defend Clark/Campbell here because its “other insurance” clause made clear that Safeco and Allstate had the primary duty to defend Clark/Campbell, and did so. Because CBIC had no duty to defend Clark/Campbell, Coffee, as the assignee of Clark/Campbell, cannot establish bad faith against CBIC based on an alleged breach of the duty to defend.

G. CONCLUSION

The trial court was correct in dismissing Coffee’s complaint against CBIC. This Court should affirm the trial court’s dismissal of the complaint. Costs on appeal should be awarded to CBIC.

DATED this ~~9th~~ day of June, 2009.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973

Talmadge/Fitzpatrick

18010 Southcenter Parkway

Tukwila, WA 98188

(206) 574-6661

Karen Southworth Weaver

Soha & Lang, P.S.

701 5th Avenue, Suite 2400

Seattle, WA 98104

(206) 624-1800

Attorneys for Respondent/Cross-Appellant
Contractors Bonding & Insurance Company

APPENDIX

Honorable Catherine Shaffer
Hearing Date: August 8, 2008; 9:00 a.m.
With Oral Argument

FILED
KING COUNTY, WASHINGTON

AUG 08 2008

SUPERIOR COURT CLERK
EILEEN L. MCLEOD
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HEIDI R. COFFEE, as assignee to claims and)
rights held by William E. Clark (d/b/a William)
Clark General Contractor) and Brian W.)
Campbell,)

Plaintiff,)

vs.)

CONTRACTORS BONDING &)
INSURANCE COMPANY, a Washington)
corporation,)

Defendant)

Case No.: 07-2-38769-2 SEA

~~PROPOSED-AMENDED~~

**ORDER DISMISSING CLAIMS OF
DUTY TO DEFEND**

On August 8, 2008 the following motions and request for summary judgment came on for hearing before the court:

Defendant CBIC's Motion for Partial Summary Judgment Re Other Insurance Clause;

Plaintiff's Cross-Motion for Summary Judgment On Breach of Duty to Defend;

Defendant CBIC's request (in response to plaintiff's cross-motion for summary judgment

on breach of duty to defend) for entry of summary judgment in favor of CBIC on

breach of duty to defend.

ORIGINAL

ORDER DISMISSING CLAIMS
OF DUTY TO DEFEND - 1

SOHA & LANG, P.S.
ATTORNEYS AT LAW
701 FIFTH AVENUE, STE 2400
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

1 All parties were represented by counsel. The Court considered the record herein and
2 specifically the documents listed on Exhibit A to this Order, and heard argument of counsel.

3 Considering itself fully advised in the premises, the Court does hereby FIND: *as described in its oral ruling*

4 1. That there is no genuine issue as to any material fact with regard to breach of duty
5 to defend; and

6 2. As a matter of law, defendant CBIC had no duty to defend any insured in *Coffee*
7 *v. Clark, et al.*, King County Superior Court No. 07-2-12638-4 SEA. *KSW*

8 The Court therefore does hereby ORDER:

9 1. Defendant CBIC's Motion for Partial Summary Judgment Re Other Insurance
10 Clause is ~~GRANTED~~; *DENIED. AKS KSW*

11 2. Plaintiff's Motion for Summary Judgment on Breach of Duty to Defend is
12 DENIED;

13 3. Defendant CBIC's request for entry of judgment in its favor on the issue of duty
14 to defend is GRANTED; and

15 4. All claims in this action based on an alleged breach of duty to defend are hereby
16 DISMISSED, WITH PREJUDICE.

17
18 SIGNED IN OPEN COURT this 8th day of August, 2008.

19
20 
21 Hon. Catherine Shaffer
Judge of King County Superior Court

22 Presented by:
23 SOHA & LANG, P.S.

24 By: *Karen Southworth Weaver*
25 Karen Southworth Weaver, WSBA 11979
Attorney for Defendant CBIC

Copy received:
PETERSON YOUNG PUTRA

By: *Michael S. Wampold*
Michael S. Wampold, WSBA 26053
Anthony Dodaro, WSBA 30391
Attorneys for Plaintiff Heidi R. Coffee

ORDER DISMISSING CLAIMS
OF DUTY TO DEFEND - 2

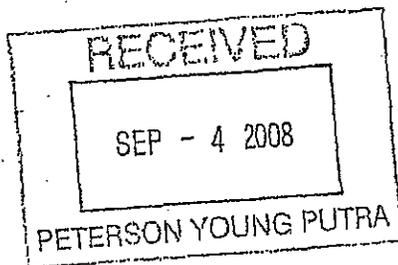
SOHA & LANG, P.S.
ATTORNEYS AT LAW
701 FIFTH AVENUE, STE 2400
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

Exhibit A
(consisting of one page)

Documents considered by the Court:

1. *Defendant CBIC's Motion for Partial Summary Judgment Re Other Insurance Clause;*
2. *Declaration of Karen Weaver in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause, with exhibits 1-27;*
3. *Plaintiff's Opposition to CBIC's Motion for Partial Summary Judgment Re Other Insurance Clause;*
4. *Declaration of Anthony Todaro in Support of Plaintiff's Opposition to CBIC's Motion, with exhibits A - F-2;*
5. *CBIC's Reply in Support of Motion for Partial Summary Judgment Re Other Insurance Clause;*
6. *Second Supplemental Declaration of Karen Weaver in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause, with exhibits 30-35;*
7. *Declaration of Dale Gilbertson;*
8. *Declaration of Allstate Employee Re Defense for William Clark and Brian Campbell in Coffee v. Clark, et al. (with GR 17 affidavit of counsel);*
9. *Plaintiff's Cross-Motion for Summary Judgment on Breach of the Duty to Defend;*
10. *Declaration of Anthony Todaro (dated July 11, 2008), with exhibits;*
11. *CBIC's Opposition to Plaintiff's Cross-Motion for Summary Judgment on Breach of Duty to Defend;*
12. *Supplemental Declaration of Karen Weaver in Opposition to Plaintiff's Cross-Motion for Summary Judgment on Breach of Duty to Defend and in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause, with exhibits 28-29;*
13. *Plaintiff's Reply on Cross-Motion for Partial Summary Judgment on Breach of the Duty to Defend;*
14. *Declaration of John D. Hollinrake Jr.;*
15. _____

Honorable Catherine Shaffer
Hearing Date: August 29, 2008
(Per briefing schedule set by court)
Without Oral Argument



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HEIDI R. COFFEE, as assignee to claims and)
rights held by William E. Clark (d/b/a William)
Clark General Contractor) and Brian W.)
Campbell,)

Case No.: 07-2-38769-2 SEA

Plaintiff,)

~~PROPOSED~~ ORDER DENYING
PLAINTIFF'S MOTION FOR
RECONSIDERATION

vs.)

CONTRACTORS BONDING &)
INSURANCE COMPANY, a Washington)
corporation,)

Defendant)

Plaintiff's Motion for Reconsideration came on for hearing before the undersigned judge of the King County Superior Court, without oral argument. The court considered the following materials:

1. Plaintiff's Motion for Reconsideration;
2. Declaration of Michael A. Goldfarb;
3. CBIC's Opposition to Plaintiff's Motion for Reconsideration;
4. CBIC's Third Supplemental Statement of Authorities;
5. Supplemental Declaration of Karen Southworth Weaver

[PROPOSED] ORDER DENYING PLAINTIFF'S
MOTION FOR RECONSIDERATION - 1

G:\CBIC-1211\Clark-0001\Pleadings\Motion Reconsideration\Proposed Order.doc\1211.00001

SOHA & LANG, P.S.
ATTORNEYS AT LAW
701 FIFTH AVENUE, STE 2400
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

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6. Plaintiff's reply memorandum in support of motion for reconsideration; and

7. ~~The parties' specific agreement at no summary judgment hearing (as noted repeatedly in the Court's oral decision) that the Court could assess the applicability of~~
Considering itself fully advised in the premises, the court hereby ORDERS: the

Plaintiff's Motion for Reconsideration is DENIED.

Dated this 2 day of September 2008.

Hon. Catherine Shaffer
Judge of King County Superior Court

Presented by:

SOHA & LANG, P.S.

By: Karen Southworth Weaver
Karen Southworth Weaver, WSBA 11979
Attorney for Defendant CBIC

Copy received; notice of presentation waived:

PETERSON YOUNG PUTRA

By: _____
Michael S. Wampold, WSBA 26053
Anthony Todaro, WSBA 30391

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summary judgment
hearing.

The Honorable Catherine Shaffer
Noted for Hearing: October 17, 2008 9:00 a.m.
With Oral Argument

FILED
KING COUNTY, WASHINGTON

OCT 17 2008

SUPERIOR COURT CLERK
EILEEN L. MCLEOD
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HEIDI R. COFFEE, as assignee to claims and
rights held by William E. Clark (d/b/a
William Clark General Contractor) and Brian
W. Campbell,

Plaintiff,

vs.

CONTRACTORS BONDING &
INSURANCE COMPANY, a Washington
corporation,

Defendant.

No. 07-2-38769-2 SEA

~~PROPOSED~~

ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT TO DISMISS ALL
REMAINING CLAIMS

Defendant's Motion for Summary Judgment to Dismiss All Remaining Claims came on
for hearing before the undersigned judge of the King County Superior Court on October 17,
2008 with all parties represented by counsel. The Court heard argument of counsel and
considered the record and file herein, and, in particular the documents listed on Exhibit A to
this Order.

The Court, being fully advised in the premises, hereby:

FINDS that there are no disputed questions of material fact and that defendant CBIC is
entitled to summary judgment as a matter of law; and therefore

~~PROPOSED~~
ORDER GRANTING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT TO DISMISS ALL
REMAINING CLAIMS - 1
King County Cause No. 07-2-38769-2 SEA

SOHA & LANG, P.S.
ATTORNEYS AT LAW
701 FIFTH AVENUE, STE 2400
SEATTLE, WASHINGTON 98104
(206) 624-1800/FAX (206) 624-3585

for the reasons set forth
in the Court's oral decision

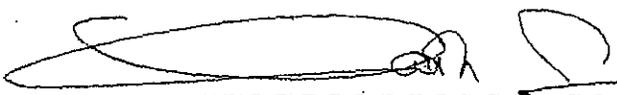
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ORDERS that Defendant's Motion for Summary Judgment to Dismiss All Remaining
Claims shall be and hereby is GRANTED and plaintiff's complaint is DISMISSED WITH
PREJUDICE, and further

ORDERS that Defendant is awarded statutory costs and attorney fees in an amount to
be determined upon submission of a cost bill by Defendant

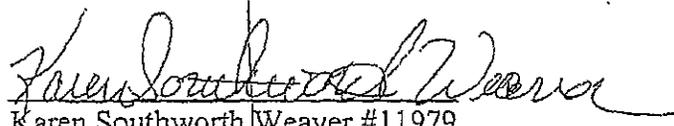
DATED this 17 day of October, 2008.



Honorable Catherine Shaffer
Judge of King County Superior Court

Presented by:

SOHA & LANG, P.S.

By 
Karen Southworth Weaver #11979
Attorneys for Defendant

Approved as to form;
Notice of presentation waived.

PETERSON YOUNG PUTRA, P.S.

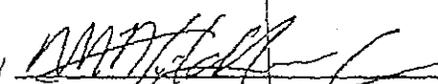
By 
Michael Goldfarb, WSBA # 13492
Michael S. Wappold, WSBA #26053
Anthony Todaro, WSBA # 30391
Attorneys for Plaintiff

Exhibit A
(consisting of two pages)

Documents considered by the Court:

1. *Declaration of Karen Weaver in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause*, with exhibits 1-27;
2. *Supplemental Declaration of Karen Weaver in Opposition to Plaintiff's Cross-Motion for Summary Judgment on Breach of Duty to Defend and in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause*, with exhibits 28-29;
3. *Second Supplemental Declaration of Karen Weaver in Support of CBIC's Motion for Partial Summary Judgment Re "Other Insurance" Clause*, with exhibits 30-35;
4. *Supplemental Declaration of Karen Weaver in Opposition to Plaintiff's Motion for Reconsideration*, with exhibit 36;
5. *Declaration of Karen Weaver in Support of Defendant's Motion for Summary Judgment to Dismiss All Remaining Claims*, with exhibits 37-47;
6. *Declaration of Dale Gilbertson*;
7. *Declaration of Allstate Employee Re Defense for William Clark and Brian Campbell in Coffee v. Clark et al.* (with GR 17 affidavit of counsel);
8. *Defendant CBIC's Motion for Partial Summary Judgment Re Other Insurance Clause*;
9. *CBIC's Reply in Support of Motion for Partial Summary Judgment Re Other Insurance Clause*;
10. *CBIC's Opposition to Plaintiff's Cross-Motion for Summary Judgment on Breach of Duty to Defend*;
11. *CBIC's Opposition to Plaintiff's Motion for Reconsideration*;
12. *Defendant's Motion for Summary Judgment to Dismiss All Remaining Claims*;
13. *Plaintiff's Opposition to Defendant's Motion for Summary Judgment to Dismiss All Remaining Claims*;
14. *Declaration of Michael Goldfarb*, with exhibits;
15. *Declaration of John T. Petrie*;

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16. *CBIC's Reply in Support of Motion for Summary Judgment to Dismiss All Remaining Claims;*

17. *Fourth Supplemental Declaration of Karen Weaver, with exhibits 48-52;*

18. _____
_____;

19. _____
_____.

CBIC

**CONTRACTORS BONDING
AND INSURANCE
COMPANY**

COMMERCIAL LINES POLICY

**COMMON POLICY
DECLARATIONS**

Home Office:
1213 Valley Street
P.O. Box 9271
Seattle, WA 98109-0271
(206) 622-7053
(800) 765-CBIC National
(206) 382-9623 FAX

Renewal DECLARATION EFFECTIVE 03/18/2006

Policy Number: INSSE3223

Agent # 1156

Named Insured and Mailing Address
WILLIAM CLARK GENERAL CONTRACTOR
WILLIAM E CLARK DBA:
18609 41ST PL NE
LAKE FOREST PARK, WA 98155

ROSE HILL INSURANCE SERVICES
733 SEVENTH AVE, STE 112
KIRKLAND, WA, 98033-5657

Policy Period: From: 03/18/2006 To: 03/18/2007 at 12:01 A.M., Standard Time at your mailing address shown above.

Business Description: REMODELING CONTRACTOR

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

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

	PREMIUM	
Commercial Property Coverage Part	\$	
Commercial General Liability Coverage Part	\$	754
Crime and Fidelity Coverages	\$	
Commercial Inland Marine Coverage Part	\$	
Commercial Auto Coverage Part	\$	
Garage Coverage Part	\$	
Businessowners	\$	
Miscellaneous	\$	
Coverage under Federal Terrorism Risk Insurance Act of 2002	\$	No Charge
ANNUAL PREMIUM	\$	754

FORMS(S) AND ENDORSEMENT(S) MADE A PART OF THIS POLICY AT THE TIME OF ISSUE:*

Refer To Forms Schedule

*Omits applicable Forms and Endorsements if shown in specific Coverage Part/Coverage Form Declarations.

02/14/2006
Countersignature Date

ROSE HILL INSURANCE SERVIC
Authorized Representative

CBIL 10 01 08 03

Contractors Bonding & Insurance Company

LOCATION SCHEDULE

POLICY NUMBER: INSSE3223

AGENT #: 1156

WILLIAM CLARK GENERAL CONTRACTOR
WILLIAM E CLARK DBA:
18609 41ST PL NE
LAKE FOREST PARK, WA 98155

ROSE HILL INSURANCE SERVICES
733 SEVENTH AVE, STE 112
KIRKLAND, WA, 98033-5657

Prem. No.	Bldg. No.	Address
--------------	--------------	---------

001	001	18609 41ST PL NE LAKE FOREST PARK, WA 98155
-----	-----	--

FORM SCHEDULE

POLICY NUMBER: INSSE3223

Forms and Endorsements applying to this Coverage Part and made a part of this policy at time of issue:

Form	Edition	Description
IL0003	0702	Calculation of Premium
IL0146	0903	Washington Common Policy Conditions
IL0198	0702	Nuclear Energy Liab Exclusion End (Broad Form)
CBIL0033	0603	Exclusion - Asbestos, Lead, Arsenic

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CALCULATION OF PREMIUM

This endorsement modifies insurance provided under the following:

- BOILER AND MACHINERY COVERAGE PART
- CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
- COMMERCIAL AUTOMOBILE COVERAGE PART
- COMMERCIAL GENERAL LIABILITY COVERAGE PART
- COMMERCIAL INLAND MARINE COVERAGE PART
- COMMERCIAL PROPERTY COVERAGE PART
- CRIME AND FIDELITY COVERAGE PART
- EMPLOYMENT-RELATED PRACTICES 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

The following is added:

The premium shown in the Declarations was computed based on rates in effect at the time the policy was issued. On each renewal, continuation, or anniversary of the effective date of this policy, we will compute the premium in accordance with our rates and rules then in effect.

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 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 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 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.
- 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
COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
FARM COVERAGE PART
FARM UMBRELLA LIABILITY POLICY
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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

EXCLUSION - ASBESTOS, LEAD, ARSENIC

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
COMMERCIAL GENERAL LIABILITY COVERAGE FORM

This insurance does not apply to:

1. "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of contact with asbestos, lead, or arsenic, in any form;
2. "Bodily injury," "property damage," "advertising injury," "personal injury" or medical payments arising out of the handling, processing, manufacturing, installing, removing, disposal, sale, distribution, or presence of asbestos, lead, or arsenic, or any product or material containing any of these substances;
3. Any loss, cost or expense arising out of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing asbestos, lead, or arsenic, or any product containing asbestos, lead, or arsenic, whether done pursuant to government directive or request, or for any other reason.

COMMERCIAL GENERAL
 LIABILITY COVERAGE PART
 DECLARATIONS

Policy Number: INSSE3223

Agent # 1156

See Supplemental Schedule

LIMITS OF INSURANCE

\$ 1,000,000	General Aggregate Limit (Other Than Products - Completed Operations)
\$ 1,000,000	Products/Completed Operations Aggregate Limit
\$ 1,000,000	Personal and Advertising Injury Limit
\$ 1,000,000	Each Occurrence Limit
\$ 300,000	Fire Damage Legal Liability (Any One Fire)
\$ 5,000	Medical Expense Limit (Any One Person)

FORM OF BUSINESS:

Individual Partnership Corporation Other _____
 Business Description: REMODELING CONTRACTOR

Location of All Premises You Own, Rent or Occupy: SEE SCHEDULE ATTACHED

AUDIT PERIOD, ANNUAL, UNLESS OTHERWISE STATED:

Classifications	Code No.	Premium Basis	Rates		Advance Premiums	
			Prem./ Ops.	Prod./ Comp. Ops.	Prem./ Ops.	Prod./ Comp. Ops.
SEE SCHEDULE ATTACHED						

TOTAL PREMIUM FOR THIS COVERAGE PART:

\$ 454 \$ 300

FORM(S) AND ENDORSEMENT(S) APPLICABLE TO THIS COVERAGE PART:
 Refer To Forms Schedule.

02/14/2006
 Countersignature Date

ROSE HILL INSURANCE SERVICES
 Authorized Representative
 PG

COMMERCIAL GENERAL
 LIABILITY COVERAGE PART
 SUPPLEMENTAL SCHEDULE

Policy Number: INSSE3223

Agent # 1156

Classifications	Code No.	Premium Basis	Rates		Advance Premiums	
			Prem./ Ops.	Prod./ Comp. Ops.	Prem./ Ops.	Prod./ Comp. Ops.
PREM NO. 001 CARPENTRY/REMODELING	91340	17,800 PAYROLL	21.934	16.842	390	300
PREM NO. 001 BLANKET ADDITIONAL INSURED	49950	40,000 GROSS RECEIPTS	.0016		64	

FORM SCHEDULE

POLICY NUMBER: INSSE3223

Forms and Endorsements applying to this Coverage Part and made a part of this policy at time of issue:

Form	Edition	Description
CG0001	0196	Commercial General Liability Cov Form
CG0062	1202	War Liability Exclusion
CG0181	0798	Washington Changes
CG0197	0798	WA Chgs-Employment-Related Practices Excl
CG0300	0196	Deductible Liability Insurance
CG2134	0187	Exclusion - Designated Work
CG2149	0196	Total Pollution Exclusion Endorsement
CG2160	0998	Excl-Year 2000 Computer-Related and Other Elect Prob
CG2169	0102	War or Terrorism Exclusion
CG2234	0196	Exclusion-Construction Management Errors and Omissions
CG2243	0196	Exclusion-Engineers, Architects, or Surveyors Prof Lia
CG2294	1001	Excl-Dam to Work Performed by Subcontr on Your Behalf
CG3220	0604	Washington Conditional Exclusion of Terrorism
CBGL0005	1096	Amendment Manifestation - Damage to Claimant
CBGL0006	0405	Amendment of Other Insurance Condition
CBGL0007	0404	Washington Exclusion - Earth Movement
CBGL0008	1096	Limitation of Coverage to Designated Work
CBGL0009	0197	Exclusion - Synthetic Stucco (EIFS)
CBGL0021	0501	Limited Exclusion - Personal Injury Coverage
CBGL0022	0500	Exclusion Multi-Unit Residential Structures
CBGL0025	0301	Amend Limits-Option to Pay Sublimit to Insured
CBGL0026	0501	Organic Pathogen Excl - Bodily Injury/Prop Dam Liab
CBGL0027	0301	Limited Excl-Bodily Injury/Prop Damage Liab
CBGL0036	0703	Special Condition Endorsement
CBGL0040	0803	Residential Subdivision/Housing Tract Exclusion
CBGL0041	0104	Blanket Additional Insured

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

SECTION I - COVERAGES

COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

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

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- (2) The "bodily injury" or "property damage" occurs during the policy period.

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

2. Exclusions

This insurance does not apply to:

a. Expected or Intended Injury

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

b. Contractual Liability

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

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

- (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

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- (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

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

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

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

d. Workers Compensation and Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

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

This exclusion applies:

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

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

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants:
 - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
 - (i) If the pollutants are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
 - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the fuels, lubricants or other operating fluids are intentionally discharged, dispersed or released, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent to be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraphs (a) and (d)(f) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

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

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

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

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.

g. Aircraft, Auto or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;

(4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment".

h. Mobile Equipment

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

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

i. War

"Bodily injury" or "property damage" 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.

j. Damage to Property

"Property damage" to:

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

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

CBIC 00221

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

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

k. Damage to Your Product

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

l. Damage to Your Work

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

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

m. Damage to Impaired Property or Property Not Physically Injured

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

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

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

n. Recall of Products, Work or Impaired Property

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

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

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

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

COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

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

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

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under SUPPLEMENTARY PAYMENTS - COVERAGES A AND B.

b. This insurance applies to:

- (1) "Personal injury" caused by an offense arising out of your business, excluding advertising, publishing, broadcasting or telecasting done by or for you;
- (2) "Advertising injury" caused by an offense committed in the course of advertising your goods, products or services; but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

- a. "Personal injury" or "advertising injury":
 - (1) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;

- (2) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
 - (3) Arising out of the willful violation of a penal statute or ordinance committed by or with the consent of the insured;
 - (4) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement; or
 - (5) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- b. "Advertising injury" arising out of:
- (1) Breach of contract, other than misappropriation of advertising ideas under an implied contract;
 - (2) The failure of goods, products or services to conform with advertised quality or performance;
 - (3) The wrong description of the price of goods, products or services; or
 - (4) An offense committed by an insured whose business is advertising, broadcasting, publishing or telecasting.
- c. Any loss, cost or expense arising out of any:
- (1) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or
 - (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of pollutants.

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.

COVERAGE C. MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
 - (1) On premises you own or rent;

- (2) On ways next to premises you own or rent; or
 - (3) Because of your operations; provided that:
 - (1) The accident takes place in the "coverage territory" and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
- (1) First aid administered at the time of an accident;
 - (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
 - (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazard".
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

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

These payments will not reduce the limits of insurance.

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

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c) Notify any other insurer whose coverage is available to the indemnitee; and
- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and
- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of paragraph 2.b.(2) of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I – Coverages), such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

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

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:
 - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
 - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
 2. Each of the following is also an insured:
 - a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:
 - (1) "Bodily injury" or "personal injury":
 - (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;
 - (b) To the spouse, child, parent, brother or sister of that co-"employee" as a consequence of paragraph (1)(a) above;
 - (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in paragraphs (1)(a) or (b) above; or
 - (d) Arising out of his or her providing or failing to provide professional health care services.
 - (2) "Property damage" to property:
 - (a) Owned, occupied or used by,
 - (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).
 - b. Any person (other than your "employee"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative, if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. With respect to "mobile equipment" registered in your name under any motor vehicle registration law, any person is an insured while driving such equipment along a public highway with your permission. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:
 - a. "Bodily injury" to a co-"employee" of the person driving the equipment; or
 - b. "Property damage" to property owned by, rented to, in the charge of or occupied by you or the employer of any person who is an insured under this provision.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

- b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage B does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

SECTION III – LIMITS OF INSURANCE

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

6. Subject to 5. above, the Fire Damage Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you or temporarily occupied by you with permission of the owner, arising out of any one fire.
7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

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

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.
2. Duties In The Event Of Occurrence, Offense, Claim Or Suit
 - a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
 - b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

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

4. Other Insurance

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

a. Primary Insurance

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

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

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

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

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

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

c. Method of Sharing

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

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

5. Premium Audit

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

6. Representations

By accepting this policy, you agree:

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

7. Separation Of Insureds

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

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

8. Transfer Of Rights Of Recovery Against Others To Us

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

9. When We Do Not Renew

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

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

SECTION V - DEFINITIONS

1. "Advertising injury" means injury arising out of one or more of the following offenses:
 - a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - b. Oral or written publication of material that violates a person's right of privacy;
 - c. Misappropriation of advertising ideas or style of doing business; or
 - d. Infringement of copyright, title or slogan.
2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment".
3. "Bodily Injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
 - a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
 - c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made or sold by you in the territory described in a. above; or

- (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
- (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - You have failed to fulfill the terms of a contract or agreement;
- If such property can be restored to use by:
- The repair, replacement, adjustment or removal of "your product" or "your work"; or
 - Your fulfilling the terms of the contract or agreement.
8. "Insured contract" means:
- A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
 - A sidetrack agreement;
 - Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 - An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 - An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
- Paragraph f. does not include that part of any contract or agreement:
- That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
 - Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.
9. "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".
10. "Loading or unloading" means the handling of property:
- After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";

b. While it is in or on an aircraft, watercraft or "auto"; or

c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

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

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

a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;

b. Vehicles maintained for use solely on or next to premises you own or rent;

c. Vehicles that travel on crawler treads;

d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:

(1) Power cranes, shovels, loaders, diggers or drills; or

(2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:

(1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or

(2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

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

(1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

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

13. "Personal injury" means injury, other than "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor;

d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or

e. Oral or written publication of material that violates a person's right of privacy.

14. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

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

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

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

15. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

16. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage", "personal injury" or "advertising injury" to which this insurance applies are alleged. "Suit" includes:

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

17. "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.

18. "Your product" means:

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (1) You;
- (2) Others trading under your name; or
- (3) A person or organization whose business or assets you have acquired; and

- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
- b. The providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

19. "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:

- a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- b. The providing of or failure to provide warnings or instructions.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAR LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion i. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:
2. Exclusions
- This insurance does not apply to:
- i. War
- "Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:
- (1) War, including undeclared or civil war; or
 - (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.
- B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:
2. Exclusions
- This insurance does not apply to:
- WAR
- "Personal and advertising injury", however caused, arising, directly or indirectly, out of:
- a. War, including undeclared or civil war; or
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.
- C. Exclusion h. under Paragraph 2., Exclusions of Section I – Coverage C – Medical Payments does not apply. Medical payments due to war are now subject to Exclusion g. of Paragraph 2., Exclusions of Section I – Coverage C – Medical Payments since "bodily injury" arising out of war is now excluded under Coverage A.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WASHINGTON CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Exclusion e. of Coverage A – Bodily Injury And Property Damage Liability (Section I – Coverages) 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, Exclusion e. is replaced with the following:

This insurance does not apply to:

1. "Bodily injury" to 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 liability assumed by the insured under an "insured contract".

- B. Paragraphs 2.a.(1)(a), (b) and (c) of Section II – Who Is An Insured apply only to "employees" of the insured whose employment is not subject to the Industrial Insurance Act of Washington (Washington Revised Code Title 51).

With respect to "employees" of the insured whose employment is subject to the Industrial Insurance Act of Washington, Paragraph 2.a.(1) of Section II – Who Is An Insured is replaced with the following:

2. Each of the following is also an insured:

- a. Your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" is an insured for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), or to a co-"employee" while that co-"employee" is either in the course of his or her employment or performing duties related to the conduct of your business;

- (b) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) above; or

- (c) Arising out of his or her providing or failing to provide professional health care services.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WASHINGTON CHANGES – EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2., Exclusions of Coverage A – Bodily Injury And Property Damage Liability (Section I – Coverages):

This insurance does not apply to:

"Bodily injury" to:

1. A person arising out of any:
 - a. Refusal to employ that person;
 - b. Termination of that person's employment; or
 - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
2. The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) and (c) above is directed.

This exclusion applies:

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

However, Paragraphs (1)(a) and (b) of this exclusion do not apply if such "bodily injury" is sustained by any "employee" of the insured whose employment is subject to the Industrial Insurance Act of Washington (Washington Revised Code Title 51).

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

This insurance does not apply to:

"Personal and advertising injury" to:

1. A person arising out of any:
 - a. Refusal to employ that person;
 - b. Termination of that person's employment; or
 - c. Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination directed at that person; or
2. The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b) and (c) above is directed.

This exclusion applies:

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

However, Paragraphs (1)(a) and (b) of this exclusion do not apply if such "personal and advertising injury" is sustained by any "employee" of the insured whose employment is subject to the Industrial Insurance Act of Washington (Washington Revised Code Title 51).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DEDUCTIBLE LIABILITY INSURANCE

This endorsement modifies insurance provided under the following:

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

Coverage	SCHEDULE	Amount and Basis of Deductible	
		PER CLAIM	or PER OCCURRENCE
Bodily Injury Liability OR		\$	\$
Property Damage Liability OR		\$	\$ 500
Bodily Injury Liability and/or Property Damage Liability Combined		\$	\$

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

APPLICATION OF ENDORSEMENT (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all "bodily injury" and "property damage", however caused):

- A. Our obligation under the Bodily Injury Liability and Property Damage Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
- B. You may select a deductible amount on either a per claim or a per "occurrence" basis. Your selected deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
1. **PER CLAIM BASIS.** If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
 - a. Under Bodily Injury Liability Coverage, to all damages sustained by any one person because of "bodily injury";
 - b. Under Property Damage Liability Coverage, to all damages sustained by any one person because of "property damage"; or
 - c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages sustained by any one person because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence".

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

With respect to "property damage", person includes an organization.

2. PER OCCURRENCE BASIS. If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- a. Under Bodily Injury Liability Coverage, to all damages because of "bodily injury";
- b. Under Property Damage Liability Coverage, to all damages because of "property damage"; or
- c. Under Bodily Injury Liability and/or Property Damage Liability Coverage Combined, to all damages because of:
 - (1) "Bodily injury";
 - (2) "Property damage"; or
 - (3) "Bodily injury" and "property damage" combined

as the result of any one "occurrence", regardless of the number of persons or organizations who sustain damages because of that "occurrence".

C. The terms of this insurance, including those with respect to:

- 1. Our right and duty to defend the insured against any "suits" seeking those damages; and
- 2. Your duties in the event of an "occurrence", claim, or "suit"

apply irrespective of the application of the deductible amount.

D. We may pay any part or all of the deductible amount to effect settlement of any claim or "suit" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - DESIGNATED WORK

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Description of your work:
WORK PERFORMED IN THE STATE OF CALIFORNIA

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

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" shown in the Schedule.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under paragraph 2., Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section 1 – Coverages) is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.
- (2) Any loss, cost or expense arising out of any:
 - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of pollutants; or

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

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – YEAR 2000 COMPUTER-RELATED AND OTHER ELECTRONIC PROBLEMS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" (or "personal and advertising injury" if defined as such in your policy) arising directly or indirectly out of:

a. Any actual or alleged failure, malfunction or inadequacy of:

(1) Any of the following, whether belonging to any insured or to others:

- (a) Computer hardware, including microprocessors;
- (b) Computer application software;
- (c) Computer operating systems and related software;

(d) Computer networks;

(e) Microprocessors (computer chips) not part of any computer system; or

(f) Any other computerized or electronic equipment or components; or

(2) Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph 2.a.(1) of this endorsement

due to the inability to correctly recognize, process, distinguish, interpret or accept the year 2000 and beyond.

b. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph 2.a. of this endorsement.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAR OR TERRORISM EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

2. Exclusions

This insurance does not apply to:

i. War Or Terrorism

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

- (1) War, including undeclared or civil war; or
- (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; or
- (4) "Terrorism", including any action taken in hindering or defending against an actual or expected incident of "terrorism" regardless of any other cause or event that contributes concurrently or in any sequence to the injury or damage.

However, with respect to "terrorism", this exclusion only applies if one or more of the following are attributable to an incident of "terrorism":

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

- (5) Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

Paragraphs (1) and (2), immediately preceding, 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 the Terrorism Exclusion will apply to that incident. When the Terrorism Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Part.

In the event of any incident of "terrorism" that is not subject to the Terrorism Exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

Multiple incidents of "terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

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

2. Exclusions

This insurance does not apply to:

War Or Terrorism

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

- (1) War, including undeclared or civil war; or
- (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; or

- (4) "Terrorism", including any action taken in hindering or defending against an actual or expected incident of "terrorism"

regardless of any other cause or event that contributes concurrently or in any sequence to the injury.

However, with respect to "terrorism", this exclusion only applies if one or more of the following are attributable to an incident of "terrorism":

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

- (5) Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the "terrorism" was to release such materials.

Paragraphs (1) and (2), immediately preceding, 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 the Terrorism Exclusion will apply to that incident. When the Terrorism Exclusion applies to an incident of "terrorism", there is no coverage under this Coverage Part.

In the event of any incident of "terrorism" that is not subject to the Terrorism Exclusion, coverage does not apply to any loss or damage that is otherwise excluded under this Coverage Part.

Multiple incidents of "terrorism" which occur within a seventy-two hour period and appear to be carried out in concert or to have a related purpose or common leadership shall be considered to be one incident.

C. Exclusion **h.** under Paragraph 2., Exclusions of Section 1 – Coverage C – Medical Payments does not apply.

D. The following definition is added to the Definitions Section:

"Terrorism" means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or
 - b. Commission or threat of a dangerous act; or
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. 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
 - b. 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.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" arising out of:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or

2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your "employees" or your subcontractors.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

Professional services include:

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – DAMAGE TO WORK PERFORMED BY
SUBCONTRACTORS ON YOUR BEHALF**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion I. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

2. Exclusions

This insurance does not apply to:

I. Damage To Your Work

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

CBIC 00245

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WASHINGTON CONDITIONAL EXCLUSION OF TERRORISM (RELATING TO DISPOSITION OF FEDERAL TERRORISM RISK INSURANCE ACT OF 2002)

This endorsement modifies insurance provided under the following:

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

A. Applicability Of The Provisions Of This Endorsement

1. The provisions of this endorsement will become applicable commencing on the date when any one or more of the following first occurs:
 - a. The federal Terrorism Risk Insurance Program ("Program"), established by the Terrorism Risk Insurance Act of 2002, has terminated with respect to the type of insurance provided under this Coverage Part or Policy; or
 - b. A renewal, extension or continuation of the Program has become effective without a requirement to make terrorism coverage available to you and with revisions that:
 - (1) Increase our statutory percentage deductible under the Program for terrorism losses. (That deductible determines the amount of all certified terrorism losses we must pay in a calendar year, before the federal government shares in subsequent payment of certified terrorism losses.); or
 - (2) Decrease the federal government's statutory percentage share in potential terrorism losses above such deductible; or
 - (3) Redefine terrorism or make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other types of events or occurrences under this policy.

The Program is scheduled to terminate at the end of December 31, 2005 unless renewed, extended or otherwise continued by the federal government.

2. If the provisions of this endorsement become applicable, such provisions:
 - a. Supersede any terrorism endorsement already endorsed to this policy that addresses "certified acts of terrorism" and/or "other acts of terrorism", but only with respect to an incident(s) of terrorism (however defined) which results in injury or damage that occurs on or after the date when the provisions of this endorsement become applicable (for claims made policies, such an endorsement is superseded only with respect to an incident of terrorism (however defined) that results in a claim for injury or damage first being made on or after the date when the provisions of this endorsement become applicable); and
 - b. Remain applicable unless we notify you of changes in these provisions, in response to federal law.
3. If the provisions of this endorsement do NOT become applicable, any terrorism endorsement already endorsed to this policy, that addresses "certified acts of terrorism" and/or "other acts of terrorism", will continue in effect unless we notify you of changes to that endorsement in response to federal law.

B. The following definitions are added and apply under this endorsement wherever the term terrorism, or the phrase any injury or damage, 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 or damage" means any injury or damage covered under any Coverage Part or Policy to which this endorsement is applicable, and includes but is not limited to "bodily injury", "property damage", "personal and advertising injury", "injury" or "environmental damage" as may be defined in any applicable Coverage Part or Policy.

C. The following exclusion is added:

EXCLUSION OF TERRORISM

We will not pay for "any injury or damage" 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 C.5. or C.6. are exceeded.

With respect to this Exclusion, Paragraphs C.5. and C.6. describe 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 Part or Policy.

In the event of any incident of "terrorism" that is not subject to this Exclusion, coverage does not apply to "any injury or damage" that is otherwise excluded under this Coverage Part or Policy.

CBIC 00247

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AMENDMENT - MANIFESTATION - DAMAGE TO CLAIMANT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Paragraph 1.b. Insuring Agreement of COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I - Coverages) is replaced by the following:

b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The first "manifestation" of "bodily injury" or "property damage" occurs during the policy period; and
- (3) The person making a claim or bringing a "suit" sustains damages during the policy period because of the "bodily injury" or "property damage".

"Manifestation" means the time at which "bodily injury" or "property damage" is apparent to any person, including but not limited to any claimant, health care professional, property owner, property manager, occupant, contractor or maintenance worker, whether or not such person is an insured under this Coverage Form.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT OF OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Paragraph 4. of the Commercial General Liability Conditions (Section IV) is replaced by the following:

4. Other Insurance

This insurance does not apply to "bodily injury," "property damage," "personal injury" or "advertising injury" which is covered by any other valid and collectable insurance issued by any other insurer regardless of:

- a. Whether such other insurance was issued for different or successive policy period(s) rather than concurrent with this insurance, or;
- b. Whether it covers the "bodily injury," "property damage," "personal injury" or "advertising injury" only by operation of law rather than in accordance with its policy terms.

We will pay (subject to the conditions and limitations of the policy) only up to the amount necessary to indemnify the insured for liability remaining after the exhaustion of all other valid and collectable insurance.

Prior to the exhaustion of all other applicable insurance, we will have no duty under COVERAGE A. - BODILY INJURY AND PROPERTY DAMAGE LIABILITY or COVERAGE B. - PERSONAL AND ADVERTISING INJURY LIABILITY to defend the insured against any "suit" if any other insurer has a duty to defend, and is defending, the insured against that "suit".

In the event we provide defense against a "suit" or make payment under this policy for "bodily injury," "property damage," "personal injury" or "advertising injury" covered by any other insurance policy that has not been exhausted by the payment of settlements or judgments, we shall be subrogated to the insured's rights against any such other policy and insurer. The insured agrees to cooperate as reasonably required by us to provide evidence and to execute any documents necessary to allow us to enforce those rights.

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

HEIDI R. COFFEE, in her capacity as Personal Representative of the Estate of Gavin Coffee, deceased, and as surviving spouse,

Plaintiff,

v.

WILLIAM E. CLARK, an individual, d/b/a William Clark General Contractor; BRIAN W. CAMPBELL, an individual,

Defendants.

07-2-12638-4 SEA
NO.
COMPLAINT FOR WRONGFUL DEATH/SURVIVAL ACTION

Plaintiff alleges as follows:

I. Jurisdiction and Parties

- 1.1 Plaintiff Heidi R. Coffee was duly appointed Personal Representative of the Estate of Gavin B. Coffee on November 13, 2006 in King County Superior Court.
- 1.2 Plaintiff Heidi R. Coffee is the surviving spouse of Gavin B. Coffee. Heidi Coffee is the mother of five children fathered by Gavin Coffee, one of whom was born after Mr. Coffee's passing.
- 1.3 At all relevant times, defendant William E. Clark was a resident of Lake Forest Park, a city located in King County, Washington. Mr. Clark is a licensed contractor doing business as William Clark General Contractor.

1 1.4 At all relevant times, defendant Brian W. Campbell was working for William
2 Clark General Contractor and was a resident of Everett, Snohomish County,
3 Washington.

4 1.5 The injury to Gavin Coffee which led to his death occurred in the vicinity of
5 Interstate 5 and NE 175th Street in Shoreline, a city located in King County,
6 Washington.

7 1.6 Jurisdiction and venue are proper in this court.

8 **II. Factual Background**

9 2.1 At approximately 11:15 a.m. on August 18, 2006, the Honda Civic being
10 operated by Gavin Coffee collided with one or more vehicles while traveling
11 northbound on Interstate 5 in the vicinity of NE 175th Street. Mr. Coffee and
12 other motorists had swerved to avoid colliding with a metal shelving unit that
13 had fallen from the Ford F150 pickup truck being operated by defendant Brian
14 Campbell.

15 2.2 As a result of personal injuries sustained from the collision, Mr. Coffee
16 subsequently died at the scene.

17 2.3 At the time of the collision, Brian Campbell was operating the pickup with the
18 permission of its registered owner, Brian Campbell's grandfather, defendant
19 William Clark, who was a passenger in the pickup.

20 2.4 The metal shelving unit which fell from the pickup had been placed into the
21 rear of the vehicle earlier in the day by defendants Clark and Campbell. The
22 unit was not tied down or secured in any way.

23 2.5 Defendant William Clark knew, or in the exercise of reasonable care should
24 have known, that Brian Campbell could not safely operate the pickup on a
25 public freeway without having first secured the metal shelving unit.
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III. Liability

3.1 Defendants Brian Campbell and William Clark were negligent in failing to secure the metal shelving unit before operating the pickup.

3.2 On January 19, 2007, defendant Brian Campbell pled guilty under RCW 46.61.655 for failing to secure a load in the first degree. In his statement on plea of guilty, Mr. Campbell stated as follows:

On August 18, 2006, I loaded and assisted in operating a motor vehicle on a public roadway in King County, WA and my vehicle was carrying a metal shelving unit, that was not properly secured, and as a result, the unit fell from my vehicle, causing substantial bodily injury and death to Gavin Coffee.

3.3 The failure to secure the metal shelving unit contributed to and was the efficient proximate cause of the death of Gavin Coffee.

3.4 Defendant William Clark was further negligent in his supervision of Brian Campbell.

3.4 This lawsuit is brought pursuant to RCW 4.20.010, 4.20.020, 4.20.046, 4.20.060 and other applicable law.

IV. Damages

4.1 As a proximate result of the negligence of defendants, Gavin Coffee's surviving spouse, Heidi Coffee, has suffered and will continue to suffer general and special damages, including but not limited to past and future loss of marital consortium and emotional distress.

4.2 As a proximate result of the negligence of defendants, Gavin Coffee's five children have suffered and will continue to suffer general and special damages, including but not limited to past and future loss of love, care, companionship, and guidance.

4.3 The estate of Gavin Coffee has suffered and will suffer general and special damages including, but not limited to, funeral and related expenses, services

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and accumulations as a proximate result of the negligence of defendants.

4.4 Plaintiff seeks all compensable damages pursuant to applicable law.

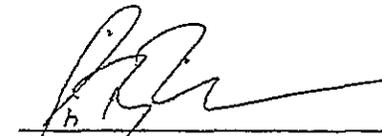
4.5 The amount of the damages will be proven at trial.

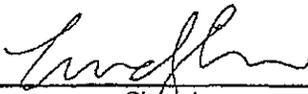
WHEREFORE, the plaintiff prays for the judgment against defendants for:

- A. General and specific damages in amounts to be proven at the time of trial;
- B. For plaintiff's reasonable costs and attorney's fees; and
- C. For such other and further relief as the Court deems just and proper.

DATED this 18 day of April, 2007.

PETERSON YOUNG PUTRA, P.S.


 Anthony Todaro, WSBA No. 30391
 Michael S. Wampold, WSBA No. 26053
 Of Attorneys for Plaintiff

CERTIFICATE OF TRANSMITTAL	
On this day, the undersigned in Seattle, Washington, sent to the Court Clerk the original copy of this document by ABC Messenger Service. I certify under the penalties of perjury under the laws of the State of Washington that the foregoing is true and correct.	
<u>4/18/07</u> Date	 Signed

FILED

08 OCT 13 PM 4:46

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

Honorable Catherine Shaffer
Hearing Date: October 17, 2008; 9:00 a.m.
With Oral Argument

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HEIDI R. COFFEE, as assignee to claims and)
rights held by William E. Clark (d/b/a William)
Clark General Contractor) and Brian W.)
Campbell,)

Plaintiff,)

vs.)

CONTRACTORS BONDING &)
INSURANCE COMPANY, a Washington)
corporation,)

Defendant)

Case No.: 07-2-38769-2 SEA

**DECLARATION OF KAREN WEAVER
- COMPARISON CHART OF
EXHIBITS ON MOTION FOR
SUMMARY JUDGMENT TO DISMISS
ALL REMAINING CLAIMS**

KAREN SOUTHWORTH WEAVER declares as follows:

1. I am an attorney for Defendant Contractor's Bonding & Insurance Company ("CBIC") in this matter, am over the age of eighteen and am competent to be a witness. The matters stated herein are based on my personal knowledge and/or on my review of documents filed with the Court in this action.
2. Exhibits submitted by both parties are duplicative to a substantial degree.

DECL. KAREN WEAVER - COMPARISON
CHART OF EXHIBITS ON MOTION FOR SJ
TO DISMISS ALL REMAINING CLAIMS - 1

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3. The following table compares exhibits 1-32 attached to the Declaration of Michael Goldfarb dated October 6, 2008 and filed with Plaintiff's Opposition to CBIC's Motion for Summary Judgment to Dismiss All Remaining Claims, with exhibits 1-52 attached to multiple declarations of Karen Weaver filed in connection with motions for summary judgment (defense and indemnity/bad faith) and plaintiff's motion for reconsideration in this case. Because the order of exhibits was different for each party, the exhibits are listed roughly in chronological order reflecting dates described in the exhibits, with the insurance policy as exhibit 1 and deposition excerpts at the end. Exhibit numbers for each party are shown in the outer columns.

Goldfarb Ex. No.	Description	Weaver Ex. No.
1 CBIC 00206 - 00249	CBIC policy	1 CBIC 00206 - 00249
	"other ins" clause (excerpt from ex. 1)	2 CBIC 249
2 C 003 - 005	WSP 3-page report	40 (not Bate Stamped)
3	Brian Campbell's typewritten statement to police, with WA OR Claim Service fax header	43
4	Selected portions of WSP extended investigative report, including narrative WSP reports, William Clark written statement, William Clark transcript of call to WSP)	44 (Wm. Clark written statement only)
	William Clay recorded statement to WSP	45
	Excerpts from statement of Kristin Kenney given to WSP	29
	Newspaper articles re accident submitted by plaintiff to court in Wrongful Death Action, in support of motion for reasonableness determination	46

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	August 25, 2006 log note entries from USAA claim file	48
	August 28, 2006 log note entries from USAA claim file	49
	January 31, 2007 letter from Safeco to Allstate	31
6 CBIC 175	Jan. 31, 2007 Safeco email to agent Dale Gilbertson requesting tender to CBIC	3
7 CBIC 169	John McKee Feb. 2 email to Barbara Cochrane and Jeff Thomas enclosing police report	
8 CBIC 174	Feb. 2 2007 emails between John McKee and Jeff Thomas, Barbara Cochrane. Initial research and comments on early publicity.	
9 CBIC 331 - 332	Feb. 2, 2007 emails between John McKee and Jeff Thomas – first notice, comments on local publicity re accident	
10 CBIC 170 - 171	Feb. 2, 2007 emails between John McKee, Jeff Thomas and Barbara Cochrane – first notice, comments on publicity, comments on other insurance, plan to contact Ron Dinning for coverage opinion	
11 CBIC 333	Feb. 2, 2007 emails between John McKee and Barbara Cochrane re scope and speed of investigation, comments on auto exclusion and scope of business	
12 DIN 050 – 051	Feb. 2 and May 14-15, 2007 emails among Jeff Thomas, John McKee, Barbara Cochrane and Ron Dinning re coverage analysis.	
13 CBIC 337	Feb. 2, 2007 emails between John McKee and Jeff Thomas re WSP report and facts of accident, initial coverage issues	
14 CBIC 290	Feb. 6, 2007 Email from Barbara Cochrane to John Colvard requesting detailed statement from the insured.	
15 DIN 100 – 103	Feb. 15, 2007 Washington-Oregon Claim Service John Colvard investigation report to CBIC	4 CBIC 293- 297, w/encs.
16	Feb. 21, 2007 Emails between John McKee and	

DECL. KAREN WEAVER – COMPARISON
CHART OF EXHIBITS ON MOTION FOR SJ
TO DISMISS ALL REMAINING CLAIMS - 3

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1	CBIC 168	Barbara Cochran re investigative report and request for coverage opinion	
2		Feb. 21, 2007 Email McKee to Cochran, discussing coverage issues	5
3			CBIC 339
4	17 DIN 080	Feb. 26, 2007 Emails between Barbara Cochran and Ron Dinning requesting legal opinion, with initial response	6
5			CBIC 275 (does not include initial response)
6			
7			
8	19 CBIC 343-345 (opinion plus comments)	February 28, 2007 Email legal opinion from Ron Dinning with comments by John McKee and Jeff Thomas	7
9			CBIC 272-273 (opinion only)
10			
11			
12		March 2 & 12, 2007 Emails McKee/Dinning and McKee/Cochran re March denial letter	8
13			CBIC 359
14	18 DIN 77	Ron Dinning March, 2007 bill for services rendered	
15			
16	20 CBIC 267 - 270	March 12, 2007 CBIC denial letter to Wm. Clark	9
17			CBIC 267 - 270
18		March 20 and 21, 2007 PYP letter of representation and CBIC response	10
19			CBIC 160 - 161
20		March 22, 2007 CBIC letter to Clark requesting permission to disclose	11
21			CBIC 159
22		April 3 & 4, 2007 CBIC/PYP emails forwarding policy to PYP	12
23			CBIC 152
24		April 3, 2007 Email forwarding March 12 denial letter to PYP	13
25			CBIC 154
	21 (not Bate stamped)	April 18, 2007 Complaint for Wrongful Death/Survival Action	14 (including Safeco)

DECL. KAREN WEAVER - COMPARISON
 CHART OF EXHIBITS ON MOTION FOR SJ
 TO DISMISS ALL REMAINING CLAIMS - 4

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		tender letter) 22 (CBIC 193-196)
	April 27, 2007 Safeco email to PYP, responding to service of wrongful death action	32
	May 3, 2007 Safeco log note that PYP "primarily filing suit to see whether CBIC will accept the tender of defense for Clark's business"	33
	May 3, 2007 Notice of Appearance for defendants in Wrongful Death Action	28
5 CBIC 186 - 187	Doug Lueken's May 10 tender letter to CBIC	14 CBIC 186 - 204 (includes Wrongful Death Complaint)
	May 16/17, 2007 Allstate tender of defense to CBIC	15 CBIC 185
	May 24, 2007 Acknowledgement of Allstate tender	16 CBIC 183
22 CBIC 378	May 14 and May 23, 2007 Emails between John McKee and Barbara Cochrane re Safeco tender of defense and Ron Dinning coverage opinion	
25 DIN 44 - 49	Discussion draft of May 31, 2007 denial letter	17 CBIC 382 - 388 (includes email comments)
23 CBIC 397 - 398	May 31, 2007 Emails between Ron Dinning and Jeff Thomas, John McKee re May 31 denial letter, "arising out of" and "efficient proximate cause"	17 CBIC 382 - 388
	May 31, 2007 Email Dinning to McKee forwarding final denial letter, with comments re efficient proximate cause	18 CBIC 177

DECL. KAREN WEAVER - COMPARISON
CHART OF EXHIBITS ON MOTION FOR SJ
TO DISMISS ALL REMAINING CLAIMS - 5

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24 DIN 33 – 37	May 31, 2007 denial of defense letter.	19 CBIC 178 - 182
26 CBIC 42	June 11, 2007 John McKee request to Michael Rogers for review of denial	
27 DIN 008 – 009	June 26, 2007 letter from CBIC to plaintiff attorneys, defense attorney and Safeco making offer to make limits available subject to declaratory ruling	20 CBIC 142 – 143
	July 16, 2007 Safeco log note that PYP states “they intend to have Clark and Campbell sign a stipulated judgment and order dismissal, agreeing to a high (he said 10-25 million) judgment against CBIC . . . Apparently he has already discussed this with defense attorney, David Weick . . . “	34
	July 30, 2007 PYP rejection of June 26 offer	21 CBIC 141
	August 7, 2007 Safeco letter to CBIC, “Safeco has no standing or desire to challenge your coverage position”	47
28	Settlement Agreement (underlying case)	23
29	Guilty Plea, William Clark	42
30	Guilty Plea, Brian Campbell	41
	Declaratory Complaint	24
	CBIC Answer to Declaratory Complaint & Counterclaim for Declaratory Judgment	25
	Plaintiff’s Answer to Counterclaim for Declaratory Judgment	26
	January 11, 2008 PYP letter to Weaver – plaintiff will not assert IFCA claim at this time	35
31	August 8, 2008 Report of Proceedings	37
	Order Dismissing Claims of Duty to Defend	38
	Order Denying Plaintiff’s Motion for Reconsideration	39
32	Deposition excerpts: Barbara Cochrane; John McKee; John Colvard; Ronald Dinning; case:	

	Churchill v. Factory Mutual, 234 F. Supp.2d 1182	
	Deposition excerpts: Barbara Cochran (claim adjuster)	50
	Deposition excerpts: John Colvard (independent adjuster)	51
	Deposition excerpts: John McKee (VP Claims)	

4. The above chart was created for convenient reference only and is not evidence. Plaintiff's counsel has submitted other declarations in connection with prior motions. Exhibits from those declarations are not included in the above chart.

DATED this 13th day of October, 2008

SOHA & LANG, P.S.

By: Karen Southworth Weaver
 Karen Southworth Weaver, WSBA #11979
 Soha & Lang, P.S.
 701 5th Avenue, Suite 2400
 Seattle, WA 98104
 Telephone: (206) 624-1800
 Facsimile: (206) 624-3585
 Email: weaver@sohalang.com
 Attorneys for Defendant Contractors
 Bonding & Insurance Company

FILED
KING COUNTY, WASHINGTON
OCT 13 2008
SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

HEIDI R. COFFEE, as assignee to claims and)
rights held by William E. Clark (d/b/a William)
Clark General Contractor) and Brian W.)
Campbell,)

Plaintiff,)

vs.)

CONTRACTORS BONDING &)
INSURANCE COMPANY, a Washington)
corporation,)

Defendant)

Case No.: 07-2-38769-2 SEA

**FOURTH SUPPLEMENTAL
DECLARATION OF KAREN WEAVER
IN SUPPORT OF CBIC's MOTION
FOR SUMMARY JUDGMENT TO
DISMISS ALL REMAINING CLAIMS**

KAREN SOUTHWORTH WEAVER declares as follows:

1. I am over the age of eighteen and competent to be a witness. The statements herein are based on my personal knowledge or on my review of business records or pleadings with respect to this matter. I am the attorney for defendant Contractors Bonding & Insurance Company ("CBIC") in this case.

2. The exhibit(s) attached here to are numbered consecutively to the exhibits already attached to declarations I have filed in this case in connection with the cross-motions for

FOURTH SUPPLEMENTAL DECL. KAREN
WEAVER IN SUPPORT OF CBIC'S MOTION FOR
TO DISMISS ALL REMAINING CLAIMS - 1

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1 summary judgment, CBIC's opposition to plaintiff's motion for reconsideration, and in
2 connection with this motion. The next consecutive exhibit number is 48.

3 3. The following exhibits are excerpts from depositions taken in this case or are
4 copies of documents produced by Plaintiff's UIM insurer, USAA, pursuant to subpoena duces
5 tecum issued in this case.

Ex. No.	Document Description
48	p. 14 of USAA claim log notes, produced by USAA pursuant to subpoena duces tecum, reflecting entries from August 25, 2006, stating: "Appears this may be a comp[arative] neg[ligence] case . . . ID [insured driver] on cell ph. Had he not been on cell, would he have been able to avoid? Others involved - following too cl[s]s[e]? . . . Liability must be determined through investigation."
49	p. 21 of USAA claim log notes, produced by USAA pursuant to subpoena duces tecum, reflecting entries from August 28, 2006, stating: "[independent adjuster] adv[ised]d that there was an entire talk show on this case, specifically discussing the fact that Mr. Coffee had been on the phone and could the accident have been avoided if he had not been using the cell ph @ the time"
50	Excerpts from deposition of Barbara Cochrane, taken June 6, 2008: p. 40 p. 80:15 - p. 81:21 p. 85
51	Excerpts from deposition of John Colvard, the independent adjuster retained by CBIC, taken October 3, 2008. p. 9 pp. 29 - 42:8 pp. 44:25 - 46:13 pp. 49:10 - 53:6 pp. 55 - 62
52	Excerpts from deposition of John McKee, CBIC's Vice President of Claims, taken June 20, 2008. pp. 18:22 - 19:12 pp. 24 - 26 pp. 33 - 35 pp. 47:14 - 49

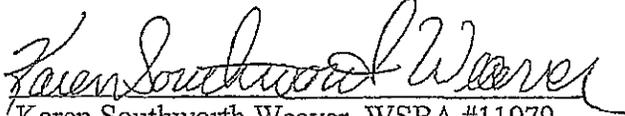
1 4. All discovery requested by plaintiff's counsel in this case has occurred.
2 Plaintiff's counsel has deposed all CBIC personnel involved in handling this claim (Barbara
3 Cochrane, John McKee, Jeff Thomas), as well as the two outside counsel consulted by CBIC
4 regarding coverage (Ronald Dinning, Michael Rogers). Plaintiff deposed independent adjuster
5 John Colvard. Plaintiff's counsel noted, but then struck on his own initiative, the deposition of
6 insurance agent Dale Gilbertson.

7 5. Ronald Dinning, Michael Rogers and John Colvard produced their written files
8 containing materials up to the commencement of this declaratory lawsuit. Agent Dale Gilbertson
9 produced his file.

10 6. CBIC produced its claim file, its underwriting file and timely responded to all
11 interrogatories and requests for production that plaintiff indicated they did want answered. On
12 July 30, 2008, CBIC served objections to requests for production of CBIC's employee
13 compensation plans. In September, 2008, I had two telephone calls with plaintiff's counsel
14 regarding these documents. One of those telephone calls was a KCLR 37 conference. In one
15 phone call, I truthfully informed Mr. Wampold that while CBIC does object to producing its
16 proprietary compensation plans for discovery, those plans are generic bonus plans based on
17 overall company performance and not on the number of claims denied by the claim department.
18 Plaintiff never moved to compel production of the documents to which CBIC objected.

19 I declare under penalty of perjury under the laws of the State of Washington that the
20 foregoing is true to the best of my knowledge.

21 SIGNED this 13th day of October, 2008 at Seattle, Washington.

22 
23 Karen Southworth Weaver, WSBA #11979
24
25

RECEIVED
COURT OF APPEALS
DIVISION ONE

JUN 19 2009

DECLARATION OF SERVICE

On said day below I had delivered by messenger a true and accurate copy of the following documents: Motion for Over-length Brief and Brief of Respondent in Court of Appeals Cause No. 62604-3-I to the following:

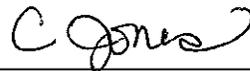
Anthony Todaro
Michael Wampold
Peterson Young Putra
1501 4th Avenue, Suite 2800
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Karen Southworth Weaver
Soha & Lang, P.S.
701 5th Avenue, Suite 2400
Seattle, WA 98104

Originals filed with:
Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 19, 2009, at Tukwila, Washington.



Christine Jones
Talmadge/Fitzpatrick