

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

<hr/>)
AMERICAN NATIONAL PROPERTY)	
AND CASUALTY COMPANY,)	
)	
<i>Plaintiff, Counterclaim-Defendant,</i>)	CIVIL ACTION
)	
v.)	NO. 3:11-CV-219
)	
CAROL ANN STUTTE; LAURA JEAN)	
STUTTE,)	
)	
<i>Defendants, Counterclaim-Plaintiffs,</i>)	ANSWER AND AMENDED
)	COUNTERCLAIM
and)	
)	JURY TRIAL DEMANDED
CHASE HOME FINANCE, LLC,)	
)	
<i>Defendant.</i>)	
<hr/>)

Defendants Carol Ann Stutte and Laura Jean Stutte (collectively, the “Stuttes”), by their attorneys, hereby answer the Complaint for Declaratory Judgment of Plaintiff American National Property And Casualty Company (“ANPAC”), and assert a counterclaim against ANPAC.

**THE STUTTES’ ANSWER TO ANPAC’S COMPLAINT FOR
DECLARATORY JUDGMENT**

The Stuttes answer ANPAC’s Complaint for Declaratory Judgment as follows:

1. Admitted.
2. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

3. Admitted.¹

3. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes admit only that ANPAC is a Missouri corporation with its principal place of business in Springfield, Missouri; the Stuttes are residents of Knoxville, Tennessee; and the amount in controversy exceeds \$75,000.00. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

4. The Stuttes deny that the total amount of their insurance claim is \$276,275.46. The Stuttes admit the remaining allegations in this paragraph.

5. The Stuttes admit that their insurance claim was denied by correspondence from ANPAC dated May 12, 2011. The remaining allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the remaining allegations in this paragraph.

6. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the allegations in this paragraph.

7. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

8. The Stuttes lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

¹ Because the Complaint inadvertently contains two paragraphs numbered “3,” this Answer also contains two paragraphs numbered “3.”

9. The allegations contained in this paragraph constitute conclusions of law to which no response is required. To the extent a response is required, the Stuttes deny the allegations in this paragraph.

10. This paragraph contains no allegations to which a response is required. To the extent a response is required, the Stuttes deny that ANPAC is entitled to any of the relief that it seeks.

The remainder of the Complaint consists of ANPAC's request for relief, to which no response is required. To the extent a response is required, the Stuttes deny that ANPAC is entitled to any of the relief that it seeks.

Each and every allegation of the Complaint not heretofore expressly admitted or denied is hereby denied.

THE STUTTES' AFFIRMATIVE DEFENSES

The Stuttes assert the following affirmative defenses pursuant to Fed. R. Civ. P. 8(c):

First Affirmative Defense

ANPAC's Complaint fails to state a claim upon which relief can be granted.

Second Affirmative Defense

ANPAC cannot assert claims against the Stuttes based on the terms, conditions, and other provisions of the policy at issue because ANPAC has breached its obligations under that policy.

Third Affirmative Defense

ANPAC's Complaint is barred under the doctrine of unclean hands.

Fourth Affirmative Defense

ANPAC's Complaint is barred under the doctrine of laches.

Fifth Affirmative Defense

ANPAC's Complaint is barred under the doctrines of waiver and estoppel.

Sixth Affirmative Defense

To the extent that ANPAC relies on ambiguous contractual provisions, those provisions must be construed against ANPAC, thus requiring denial of ANPAC's Complaint.

Seventh Affirmative Defense

ANPAC's Complaint may be barred or limited by the terms and conditions of the policy at issue, or by ANPAC's conduct.

Eighth Affirmative Defense

To the extent that ANPAC relies on vague, unidentified, or undefined policy terms, conditions, or exclusions, the Stuttes reserve the right to supplement their affirmative defenses and to raise additional defenses.

Prayer for Relief from ANPAC's Complaint

WHEREFORE, the Stuttes respectfully request that the Court enter judgment:

- (a) Denying ANPAC's requested relief against the Stuttes, and entering judgment in favor of the Stuttes and against ANPAC;
- (b) Dismissing ANPAC's Complaint with prejudice; and
- (c) Granting the Stuttes such other and further relief as the Court may deem just and proper, including costs and fees incurred in defense of ANPAC's Complaint.

THE STUTES' AMENDED COUNTERCLAIM AGAINST ANPAC

The Stutes bring this amended counterclaim against ANPAC pursuant to Fed. R. Civ. P. 13(a) and 13(e), and in support thereof, state as follows:

Nature of Action

1. This is a civil action for damages and declaratory relief arising from ANPAC's refusal to pay the Stutes' claim under a homeowners insurance policy for losses and additional living expenses resulting from the destruction of the Stutes' home and its contents by fire at approximately 8:00 p.m. on September 4, 2010.

The ANPAC Homeowners Policy

2. The Stutes purchased Tennessee Special Homeowners Policy No. 41-H-V66-965-7 (the "Policy") from ANPAC. The Policy is attached hereto as Exhibit A.

3. The Policy insures, among other things, the Stutes' home, other structures, and personal property located at 2715 Highway 360, Vonore, Monroe County, Tennessee ("home" or "home and contents") for the period from June 10, 2010 to June 10, 2011.

4. Under the terms of the Policy, ANPAC is obligated to pay for "accidental direct physical loss" – including loss caused by fire – to the Stutes' home and contents, subject to the applicable coverage limits set forth in the Policy.

5. Under the terms of the Policy, ANPAC is also obligated to reimburse the Stutes' "additional living expenses" for a period of up to 36 months if a covered loss renders their home uninhabitable, subject to the applicable coverage limits set forth in the Policy.

The Fire and the Stutes' Claim

6. At approximately 3:00 p.m. on September 4, 2010, the Stutes, their daughter, and a family friend departed the Stutes' home for a planned vacation to Nashville, Tennessee.

7. Upon arriving in Nashville that same day, the Stuttes and their travel companions checked into the Holiday Inn Express Hotel and Suites at 714 Spence Lane in the southeast part of town.

8. That same evening, the Stuttes and their travel companions drove into downtown Nashville, parked their car at the NCB Garage, and went to dinner at the Wildhorse Saloon.

9. At approximately 8:00 p.m., while at the restaurant, the Stuttes were informed by telephone that their home was on fire. Carol Ann Stutte then spoke by telephone with a member of the Monroe County Sheriff's Office, who confirmed that the Stuttes' home was fully engulfed in flames.

10. The fire completely destroyed the Stuttes' home and contents and rendered their home uninhabitable.

11. The Stuttes timely noticed an insurance claim under the Policy for approximately \$300,000.

12. The Stuttes provided ANPAC with documentary and testimonial evidence from multiple sources and witnesses, all of which confirmed that the Stuttes and all other members of their household were physically present in Nashville, Tennessee, approximately 200 miles away from their home, at the time of the fire. The evidence provided to ANPAC included a parking receipt from NCB Garage dated "SEP 4" and time-stamped "19:30" (7:30 p.m.), receipts for admission to the Wildhorse Saloon dated "9/4/2010" and time-stamped "19:48" (7:48 p.m.) and "19:49" (7:49 p.m.), and a dinner receipt from the Wildhorse Saloon dated "9/4/2010" and time-stamped "20:25" (8:25 p.m.).

13. The Stuttes also provided ANPAC with a copy of an Incident Report from the Monroe County Sherriff's Office dated August 9, 2010. The report describes an incident that

occurred on August 6, 2010 – approximately one month before the fire – in which the Stuttes’ neighbor, Janice Millsaps, threatened, among other things, to burn down the Stuttes’ home. The Stuttes have filed a civil lawsuit against Ms. Millsaps in the Chancery Court for Monroe County, Tennessee, a copy of which is attached hereto as Exhibit B.

14. The Stuttes also provided ANPAC with documentary evidence showing that, at the time of the fire, the Stuttes had good credit, they were not suffering any financial distress, and that they had no motive – financial or otherwise – to cause the destruction of their home and contents.

15. Since the fire rendered their home uninhabitable, the Stuttes have incurred, and continue to incur, additional living expenses as defined by the Policy. The Stuttes have timely provided, and continue to provide, ANPAC with documentation of these expenses. As of June 1, 2011, the Stuttes’ unreimbursed additional living expenses totaled approximately \$5,000.

16. At ANPAC’s request, the Stuttes have paid, and continue to pay, for electricity and security lights at the site where their home used to stand.

17. The Stuttes have timely paid, and continue to pay, all mortgage payments due on their home to Defendant Chase Home Finance, LLC, and all insurance payments due on their home and contents to ANPAC.

The Coverage Dispute

18. ANPAC denied the Stuttes’ insurance claim by letter dated May 12, 2011. That same day, ANPAC filed its Complaint for Declaratory Judgment in this Court.

19. ANPAC’s denial letter and Complaint falsely accused the Stuttes of intentionally causing the fire that destroyed their home and contents, and of committing concealment or fraud

relating to their insurance claim. ANPAC did not cite any other basis for refusing to honor its obligations under the Policy.

20. ANPAC did not cite or plead any specific facts in support of its coverage denial. The denial letter and Complaint stated only that “[i]t was determined through investigation that the preponderance of the evidence” supported ANPAC’s allegations. ANPAC therefore failed to explain how and why it determined that the Stuttes intentionally caused the fire, despite the fact that ANPAC had evidence in its possession proving that the Stuttes were about 200 miles away from their home when it burned down, and identifying a suspect who had harassed the Stuttes and specifically threatened to burn down their home in the months leading up to the fire.

21. By letter dated May 19, 2011, the Stuttes requested copies of the information on which ANPAC based its denial of their insurance claim. ANPAC did not respond to the Stuttes’ request.

22. Instead, on May 20, 2011, the Stuttes received a two-sentence letter from ANPAC stating that the Policy had been cancelled, effective on September 4, 2010 at 12:01 a.m., which is approximately 20 hours before the Stuttes’ home and contents were destroyed by fire.

23. Two weeks earlier, on May 6, 2011, ANPAC had sent the Stuttes a “Notice of Premium Due” on their destroyed home and contents for the period from June 10, 2011 to June 10, 2012. By this notice, ANPAC had attempted to renew the Policy and increase the Stuttes’ premium by nearly 30 percent due to a recent negative entry on their credit report, which was a direct result of the financial strain on the Stuttes caused by ANPAC’s failure to pay their claim.

24. The Stuttes dispute ANPAC’s denial of coverage and cancellation of the Policy.

25. The Stuttes have timely paid all premiums due and have complied or substantially complied with all other pertinent terms and conditions of the Policy.

COUNT ONE
(Breach of Contract)

26. The Stuttes hereby incorporate paragraphs 1 through 25 of this counterclaim, as if fully set forth herein.

27. ANPAC has breached its contractual duties under the Policy to pay for the loss to the Stuttes' home and contents, and for the unreimbursed additional living expenses already incurred by the Stuttes.

28. As a direct result of this breach of contract, the Stuttes have been and will be deprived of the benefits of the insurance coverage for which the Stuttes paid premiums.

29. As a further direct result of this breach of contract, the Stuttes have been forced to incur and will continue to incur additional consequential damages, including, without limitation, attorneys' fees and other expenses in defending this litigation and attempting to obtain coverage under the Policy, lost earnings on amounts wrongfully withheld by ANPAC, and damage to their credit due to the financial strain caused by ANPAC's breach, which damages are not subject to the Policy's limits of liability.

COUNT TWO
(Declaratory Judgment)

30. The Stuttes hereby incorporate paragraphs 1 through 29 of this counterclaim, as if fully set forth herein.

31. ANPAC has denied the Stuttes' insurance claim and cancelled the Policy, thereby disclaiming ANPAC's ongoing obligation to reimburse the Stuttes' additional living expenses as they accrue for up to 36 months after the date of the loss.

32. The Stuttes will continue to incur additional living expenses as defined by the Policy.

33. An actual controversy of a justiciable nature presently exists between the Stuttes and ANPAC concerning the existence of the Policy and the ongoing rights and obligations of the parties with respect to coverage for additional living expenses. Accordingly, the Stuttes request a declaratory judgment pursuant to 28 U.S.C. § 2201 *et seq.* and Rule 57 of the Federal Rules of Civil Procedure, declaring such rights and obligations. The issuance of declaratory relief by this Court will terminate some or all of the existing controversy among the parties.

COUNT THREE

(Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-101 *et seq.*)

34. The Stuttes hereby incorporate paragraphs 1 through 33 of this counterclaim, as if fully set forth herein.

35. ANPAC has engaged in unfair or deceptive acts or practices by denying coverage for the Stuttes' claim, cancelling the Policy, and filing this coverage action based on allegations ANPAC knows, or should know, to be false, in an effort to avoid its obligations under the Policy.

36. Specifically, ANPAC accused the Stuttes of destroying their home and contents, and of committing concealment or fraud relating to their claim, even though ANPAC knew, or should have known, that these allegations were false based on evidence in its possession concerning the Stuttes whereabouts at the time of the fire.

37. As a direct result of these unfair or deceptive acts or practices, the Stuttes have suffered and continue to suffer the ascertainable loss of money, property, and/or other things of value, including, without limitation, insurance proceeds for the loss to their home and contents and additional living expenses, attorneys' fees and other expenses in defending this litigation and attempting to obtain coverage under the Policy, lost earnings on the amounts wrongfully withheld by ANPAC, and damage to their credit. In addition, the Stuttes are entitled to recover

treble damages, up to three times the actual damages they have sustained, pursuant to Tenn. Code Ann. § 47-18-109(a)(3).

COUNT FOUR
(Bad Faith Refusal to Pay, Tenn. Code Ann. § 56-7-105)

38. The Stuttes hereby incorporate paragraphs 1 through 37 of this Counterclaim, as if fully set forth herein.

39. After a fire completely destroyed their home and contents on September 4, 2010, the Stuttes timely noticed an insurance claim for the loss under ANPAC Special Homeowners Policy No. 41-H-V66-965-7, at which point the Policy, by its terms, became due and payable.

40. By letter to ANPAC dated May 19, 2011, the Stuttes made a formal demand for payment under the Policy and provided notice that, if ANPAC did not pay the Stuttes' claim for the loss and their additional living expenses within sixty (60) days, the Stuttes would pursue a bad faith penalty claim under Tennessee Code Annotated § 56-7-105. This formal demand letter is attached hereto as Exhibit C.

41. The Stuttes waited more than sixty (60) days before filing this counterclaim for bad faith, during which time ANPAC did not respond to the Stuttes' formal demand or pay the Stuttes' claim.

42. ANPAC's refusal to pay the Stuttes' insurance claim was not in good faith. The only bases for ANPAC's refusal were its allegations that the Stuttes intentionally caused the fire and committed concealment or fraud relating to their claim. Upon information and belief, ANPAC's investigation and claims handling did not yield sufficient legitimate grounds to support its conclusory allegations. To the contrary, ANPAC discovered documentary and testimonial evidence from multiple sources confirming that the Stuttes were approximately 200 miles away from their home at the time of the fire and, therefore, they could not have set the fire.

The Stuttes also provided ANPAC with documentary evidence showing that, at the time of the fire, the Stuttes had good credit, they were not suffering any financial distress, and they had no motive – financial or otherwise – to cause the destruction of their home and contents.

43. ANPAC acted in bad faith by, *inter alia*, delaying for months after discovering evidence that exonerated the Stuttes, failing to reimburse the Stuttes’ in full for their additional living expenses, denying the Stuttes’ claim and cancelling the Policy, and by filing the present litigation—all without sufficient legitimate grounds, and without providing any specific factual support for these actions. Because ANPAC has failed to provide any specific factual support for its refusal to pay, the Stuttes reserve their right, based on facts discovered during the course of this litigation, to assert that additional actions taken by ANPAC constitute bad faith under Tenn. Code Ann. § 56-5-107.

44. As a direct result of ANPAC’s bad faith refusal to pay, the Stuttes have suffered additional expenses, losses, and injuries, including, without limitation, attorneys’ fees and other expenses in attempting to obtain coverage under the Policy and in defending this litigation, lost earnings on the amounts wrongfully withheld by ANPAC, damage to their credit, and emotional distress.

Prayer for Relief

WHEREFORE, the Stuttes respectfully request that the Court enter judgment:

- (a) Awarding the Stuttes actual compensatory and consequential damages sustained as a result of ANPAC’s breach of contract and ANPAC’s unfair or deceptive acts or practices;
- (b) Declaring that ANPAC has a continuing obligation under the Policy to provide coverage for the Stuttes’ additional living expenses as they accrue;
- (c) Awarding the Stuttes treble damages equal to three times the amount of the actual compensatory and consequential damages suffered as a result of ANPAC’s unfair or deceptive acts or practices;

- (d) Awarding the Stuttes a sum not to exceed twenty-five percent (25%) of the liability for the loss, in accordance with Tenn. Code Ann. § 56-7-105;
- (e) Awarding reasonable attorneys' fees and other expenses and costs incurred by the Stuttes in defending and prosecuting this litigation; and
- (f) Such other and further relief as the Court deems just and proper.²

JURY TRIAL DEMANDED

The Stuttes request a trial by jury on all issues so triable.

Dated: July 20, 2011

Respectfully submitted,

/s/ Peter J. Alliman
Peter J. Alliman (BPR No. 5984)
WHITE, CARSON & ALLIMAN, P.C.
135 College Street
Madisonville, TN 37354
Tel: (423) 442-9000
Fax: (423) 442-3949
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Seth A. Tucker (*pro hac vice*)
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COVINGTON & BURLING LLP
1201 Pennsylvania Avenue NW
Washington, DC 20004-2401
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Fax: (202) 662-6291

² The Stuttes also reserve their right to bring additional claims, including, without limitation, for defamation, fraud, and intentional infliction of emotional distress, against ANPAC based on facts discovered in the course of this litigation.

Email: stucker@cov.com
slevitt@cov.com
jhardin@cov.com

*Of Counsel for Defendants Carol Ann Stutte
and Laura Jean Stutte*

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2011, a copy of the foregoing **ANSWER AND AMENDED COUNTERCLAIM** was filed electronically using the Court's Electronic Filing System. Notice of this filing will be served through the Electronic Filing System to parties and counsel who are Filing Users, and by first-class mail to any party or counsel who is not served through the Electronic Filing System.

/s/ Peter J. Alliman

Peter J. Alliman (BPR No. 5984)
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*Attorney for Defendants Carol Ann Stutte
and Laura Jean Stutte*

Exhibit A

AMERICAN NATIONAL PROPERTY AND CASUALTY CO

POLICY NUMBER
 41-H-V66-965-7
 POLICY TERM
 06-10-2010 TO 06-10-2011

THIS AMENDED DECLARATION
 REPLACES ALL PRIOR DECLARATIONS, IF ANY, AND WITH POLICY PROVISIONS
 AND ANY ENDORSEMENTS ISSUED TO FORM A PART THEREOF COMPLETES THIS
 HOMEOWNERS POLICY

1949 E. SUNSHINE
 SPRINGFIELD, MISSOURI 65899-0001
 (417) 887-0220

AND SUBSEQUENT RENEWALS
 AT 12:01 A.M. (STD)

CHANGE EFFECTIVE 08-16-2010 REQUESTOR: AGENT
 CHANGE TYPE: COV

NAMED INSURED AND P.O. ADDRESS
 STUTTE, CAROL & LAURA J
 2715 HIGHWAY 360
 VONORE TN 37885-2918

LIENHOLDER/MORTGAGEE
 CHASE HOME FINANCE, LLC
 PO BOX 47020
 ATLANTA GA 30362-0020

PREMIUM TO BE PAID BY
 MORTGAGEE

AGENT
 FOR CUSTOMER SERVICE, CALL PH #865-977-8370
 ERIC KURTZ A0298-P 1-067

2715 HIGHWAY 360 VONORE TN 378852918

SECTION I	\$1,000 ALL PERIL DEDUCTIBLE	LIMITS
	COVERAGE A - DWELLING	\$206,000
	COVERAGE B - OTHER STRUCTURES	\$20,600
	COVERAGE C - PERSONAL PROPERTY	\$154,500
	COVERAGE D - LOSS OF USE	\$51,500
	SUBJECT TO MONTHLY MAXIMUM OF \$4,120	
SECTION II		
	COVERAGE E - PERSONAL LIABILITY (EACH OCCURRENCE)	\$300,000
	COVERAGE F - MEDICAL PAYMENTS TO OTHERS (EACH PERSON)	\$5,000

----- RATING INFORMATION -----

CONSTRUCTION: FRAME PROTECTION: 10 ZONE: 55
 1 FAMILY DWELLING, BUILT IN 1970. FIRE DIST: VONORE FD
 DISCOUNTS: 'CLAIM FREE +' - 54%, HOME ADVAN - 10%, UTILITY SYSTEM/ROOF CREDIT - 64%,
 PROTECTIVE DEVICE - 5%

LIENHOLDER(S)/MORTGAGEE(S)

1ST CHASE HOME FINANCE, LLC
 ITS SUCCESSORS AND/OR ASSIGNS
 PO BOX 47020
 ATLANTA GA 30362-0020
 LOAN NUMBER - 1992481846

SUBJECT TO THE FOLLOWING TERMS AND ENDORSEMENTS

SH3.41 06-06	SH31410 10-09	\$10.00	SH91109 01-10
SH91412 04-06 01 \$88.00	SH91909 05-06	\$30.00	SH9291 10-09 \$133.00

\$975.00 \$261.00 \$1236.00

DATE 08-26-2010
 PRINTED

AX3-26-21

AUTHORIZED REPRESENTATIVE

SEE REVERSE SIDE FOR IMPORTANT INFORMATION

MORTGAGEE

ENDORSEMENT DESCRIPTIONS

SH3.41	0606	TN HOMEOWNERS SPECIAL FORM
SH31410	1009	SPECIAL PROTECTION PACKAGE
SH91109	0110	TN HOMEOWNERS AMENDATORY
SH91412	0406	ORDINANCE OR LAW COVERAGE
SH91909	0506	EQUIPMENT BREAKDOWN COVG
SH9291	1009	CONTENTS REPLACEMENT COST

Special Notice to Lienholders and Mortgagees:

This is a continuous form policy. Coverage for the lienholder and/or mortgagee will continue in force until cancelled by written notice.

The company reserves the right to cancel this policy giving the lienholder and/or mortgagee a ten day notice of cancellation.

IMPORTANT INFORMATION ON HOW TO REPORT A CLAIM

Should you need to report a claim under this policy, please call (Toll-Free) 1-800-333-2860.

Please be prepared to furnish the following information:

- 1) Date and Time of Loss
- 2) Facts of Occurrence
- 3) Location of Loss if other than the residence premises
- 4) Name, Address, and Phone Number of any injured parties
- 5) If applicable, name of law enforcement agency or fire department and the incident number

As a Policyholder, you are required to protect your property from further damage, make reasonable and necessary temporary repairs, and keep an accurate record of repair expenditures.

IMPORTANT INFORMATION REGARDING YOUR POLICY

Should any question or dispute arise about your policy, first contact the agent who issued this policy or you may contact the company at the address shown below:

American National Property And Casualty
1949 East Sunshine
Springfield, Missouri 65899-0001
Telephone #417-887-0220

Authorized Representative

TENNESSEE

SPECIAL

HOMEOWNERS

POLICY



AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY

American National Corporate Centre 1949 E. Sunshine

Springfield, MO 65899-0001

417-887-0220

**SPECIAL HOMEOWNERS POLICY FORM SH-3
QUICK REFERENCE**

DECLARATION PAGE

Your Name
Location of Your Residence
Policy Inception and Expiration Date of Coverage
Policy Coverages and Limits of Liability
Policy Coverage Deductible Amounts

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HOMEOWNERS POLICY FORM 3

AGREEMENT

We will provide the insurance described in this policy in return for the premium and compliance with all applicable provisions of this policy. The policy deductible applies to each Section I occurrence unless specifically excepted. The deductible does not apply to Section II losses.

Common Cause of Loss Deductible

If you incur loss to your property covered under this policy and any other covered property owned by you, from a common cause of loss, we will apply only the highest applicable deductible to the aggregate amount of property damages. If the other covered property owned by you is a motor vehicle, the loss must be covered under the motor vehicle's Coverage D – Comprehensive Coverage. Common cause of loss is one occurrence which results in loss to more than one item of covered property owned by you. The properties incurring loss by a common cause of loss must be covered by this policy and another policy that includes a Common Cause of Loss Deductible provision which is issued by American National Property And Casualty Company or American National General Insurance Company.

This provision does not apply if the common cause of loss results from the peril of earthquake.

DEFINITIONS

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

1. **"Actual cash value"** means the amount it would currently cost to repair or replace the covered property with new material of like kind and quality, less allowance for physical deterioration and depreciation, including obsolescence.
2. **"Bodily injury"** means bodily harm, sickness, or disease, including required care, loss of services, and death resulting therefrom.
3. **"Business" or "business pursuits"** includes:
 - a. trade, profession, or occupation (which includes farming); and
 - b. home day-care services (which includes one or more persons in your care at any one time, for which you receive any compensation). The following are not considered **business pursuits**:
 - (1) mutual exchange of home day-care services for which you receive no compensation; or
 - (2) providing home day-care services for a relative.
4. **"Declarations"** means the policy **Declarations**, any amended **Declarations**, the most recent renewal certificate, or any endorsement changing any of these.
5. **"Fungus"** means any type or form of **fungus**, including mold, mildew, mycotoxins, spores, scents or byproducts or released by fungi.
6. **"Insured"** means you and the following residents of your household:
 - a. your relatives;
 - b. any other person under the age of 21 who is in the care of any person named above.

Under Section II, **"insured"** also means:

 - c. with respect to animals or watercraft to which this policy applies, any person or organization legally responsible for these animals or watercraft which are owned by you or any person included in 6a or 6b. A person or organization using or having custody of these animals or watercraft in the course of any **business**, or without permission of the owner is not an **insured**; and
 - d. with respect to any vehicle to which this policy applies, any person while engaged in your employment or the employment of any person included in 6a or 6b.
7. **"Insured location"** means:
 - a. the **residence premises**;
 - b. the part of any other premises, other structures, and grounds, used by you as a residence and which is shown in the **Declarations**, or which is acquired by you during the policy period for your use as a residence;
 - c. any premises used by you in connection with the premises included in 7a or 7b;

- d. any part of a premises not owned by any **insured** but where any **insured** is temporarily residing;
 - e. vacant land owned by or rented to any **insured** other than farmland;
 - f. land owned by or rented to any **insured** on which a one- or two-family dwelling is being constructed as a residence for any **insured**;
 - g. individual or family cemetery plots or burial vaults of any **insured**; and
 - h. any part of a premises occasionally rented to any **insured** for other than **business** purposes.
8. "**Limit of liability**" means the maximum amount we will pay for losses as a result of any one occurrence.
9. This definition applies to Section II only:
- "**motor vehicle**" means:
- a. a motorized land vehicle designed for travel on public roads or subject to **motor vehicle** registration. A motorized land vehicle in dead storage on an **insured location** is not a **motor vehicle**;
 - b. a trailer or semitrailer designed for travel on public roads and subject to **motor vehicle** registration. A boat, camp, home, or utility trailer not being towed by or carried on a vehicle included in 9a is not a **motor vehicle**;
 - c. a motorized golf cart, snowmobile, or other motorized land vehicle owned by any **insured** and designed for recreational use off public roads, while off an **insured location**. A motorized golf cart while used for golfing purposes is not a **motor vehicle**; and
 - d. any vehicle while being towed by or carried on a vehicle included in 9a, 9b, or 9c.
10. This definition applies to Section II only: "**occurrence**" when used in Section II of this policy, means an accident, including exposure to conditions, which results in:
- a. **bodily injury**; or
 - b. **property damage**
- during the policy period. Repeated or continuous exposure to substantially the same general conditions is considered to be one **occurrence**.
11. "**Pollutants**" means any solid, liquid, gaseous, or thermal irritant or contaminant, including but not limited to smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, and waste. Waste includes materials to be recycled, reconditioned, or reclaimed.

12. "**Property damage**" means physical injury to or destruction of tangible property, including loss of use of this property.
13. "**Punitive or exemplary damages**" are damages which may be imposed to punish a wrongdoer and to deter others from similar conduct.
14. "**Residence employee**" means an employee of any **insured** who performs duties in connection with the maintenance or use of the **residence premises**, including household or domestic services, or who performs duties elsewhere of a similar nature not in connection with the **business** of any **insured**.
15. "**Residence premises**" means the one- or two-family dwelling, other structures, and grounds or that part of any other building where you reside and which is shown as the insured property in the **Declarations**.

SECTION I – COVERAGES

COVERAGE A – DWELLING

We cover:

- a. the dwelling on the **residence premises** shown in the **Declarations** used principally as a private residence, including structures attached to the dwelling;
- b. materials and supplies located on or adjacent to the **residence premises** for use in the construction, alteration, or repair of the dwelling or other structures on the **residence premises**; and
- c. wall-to-wall carpeting attached to the dwelling on the **residence premises**.

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

COVERAGE B – OTHER STRUCTURES

We cover other structures on the **residence premises**, separated from the dwelling by clear space. Structures connected to the dwelling by only a fence, utility line, or similar connection are considered to be other structures.

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

We do not cover other structures:

- a. used in whole or in part for **business** purposes;

- b. rented or held for rental to any person not a tenant of the dwelling, other than a **residence employee**, unless used solely as a private garage; or
- c. located away from the **residence premises**.

COVERAGE C – PERSONAL PROPERTY

We cover personal property owned or used by any **insured** while it is anywhere in the world. At your request, we will cover personal property owned by others while the property is on the part of the **residence premises** occupied by any **insured**. Also, we will cover, at your request, personal property owned by a guest or a **residence employee**, while the property is in any residence occupied by any **insured**.

Our **limit of liability** for personal property usually situated at any **insured's** residence, other than the **residence premises**, is 10% of the **limit of liability** for Coverage C. Personal property in a newly acquired principal residence is not subject to this limitation for the 30 days immediately after you begin to move the property there.

Special Limits of Liability. These limits do not increase the Coverage C **limit of liability** as shown on the Declarations page. The special limit for each following numbered category is the total limit for each occurrence for all property in that numbered category.

1. The greater of \$300 or 1/10 of 1% of Coverage A on money, bank notes, bullion, gold other than goldware, silver other than silverware, platinum, coins, and medals.
2. The greater of \$1,500 or ½ of 1% of Coverage A on securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets, and stamps. This dollar limit applies to these categories regardless of the medium (such as paper or computer software) on which the material exists. This limit includes the cost to research, replace, or restore the information from the lost or damaged material.
3. \$2,000 on watercraft, including their trailers, furnishings, equipment, and outboard motors.
4. \$1,500 on trailers not used with watercraft.
5. \$5,000 on grave markers.
6. \$1,000 per article to a total limit for all articles being the greater of \$2,500 or ½ of 1% of Coverage A for loss by theft of jewelry, watches, furs, and precious and semiprecious stones.
7. The greater of \$2,500 or 1% of Coverage A for loss by theft of silverware, silverplated ware, goldware, goldplated ware, pewter ware, plated ware, flatware, hollowware, tea sets and trays.

8. The greater of \$3,000 or 1% of Coverage A for loss by theft of guns and related equipment.
9. The greater of \$2,500 or ½ of 1% of Coverage A on property, on the **residence premises**, used at anytime or in any manner for any **business** purpose whether or not the **business** is operational at the time of loss. Property used or intended for use in any **business**, while away from the **residence premises**, is limited to \$1,000. **Business** property on or away from the **residence premises** does not include Electronic Data Processing equipment, the recording or storage media used with the equipment, or **business** merchandise.
10. The greater of \$10,000 or 1% of Coverage A for loss by theft of Oriental rugs, tapestries, wall hangings, or similar articles. Oriental rugs include, but are not limited to, Persian (Iranian), Turkish, Chinese, and Indian rugs.
11. The greater of \$5,000 or 1% of Coverage A for computer hardware and software, whether used for personal or **business** reasons, except as limited under Property Not Covered, item 10.
12. \$250 per article for loss by theft for comic books, including those that are part of a collection, and collectable cards, including but not limited to sports cards, fictional character cards and other similar cards. The total **limit of liability** is \$2,500.

Property Not Covered. We do not cover:

1. articles separately described and specifically insured in this or any other insurance contract;
2. animals, birds, or fish unless described and specifically insured in this policy;
3. any motorized land vehicles except:
 - a. those used solely to service an **insured's** residence and not licensed for road use; or
 - b. those designed for assisting the handicapped;
4. any device or system, used for the transmitting, receiving, recording, or reproduction of sound or pictures, which may be operated from the electrical system of any motor vehicle, motorized land conveyance, aircraft, or watercraft. Such devices include:
 - a. citizen band radios, radio transmitters, or receivers;
 - b. radio telephones;
 - c. radar detectors;
 - d. televisions; or
 - e. accessories, antennas, tapes, and wires used with such systems or devices.

This exclusion applies only for such devices or media while in or upon a motor vehicle, motorized land vehicle, or watercraft, whether or not attached;

5. aircraft and parts;
6. property of roomers, boarders, and other tenants, except property of roomers and boarders who are **residence employees** of the **insured** or related to an **insured**;
7. property contained in an apartment regularly rented or held for rental to others by any **insured**;
8. property rented or held for rental to others away from the **residence premises**;
9. **business** merchandise. **Business** merchandise means merchandise in storage, held as samples, for sale, or for delivery after sale;
10. film, discs, tapes, or media, including all types of software, used for the recording or storage of magnetic impulses, in excess of the cost of replacing such media in blank or unexposed form. However, we do cover the cost to replace such media which may be replaced with other of like kind and quality on the open retail market. No coverage is provided for **business** media away from the **residence premises**; or
11. books of account, filing systems, transcriptions, or any other records in excess of the cost of replacing such records in blank or unexposed form.

COVERAGE D – LOSS OF USE

Subject to a monthly maximum of 2% of the Coverage A **limit of liability**, the limit of liability shown in the **Declarations** for Coverage D is the total limit for all the following coverages:

1. **Additional Living Expense.** If a loss covered under this Section makes the **residence premises** uninhabitable, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living for up to 24 months. Payment shall be for the shortest time required to repair or replace the premises; or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy.
2. **Fair Rental Value.** If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by you uninhabitable, we cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 24 months. This period of time is not limited by expiration of this policy. Fair rental

value shall not include any expense that does not continue while that part of the **residence premises** rented or held for rental is uninhabitable.

3. **Prohibited Use.** If a civil authority prohibits you from use of the **residence premises** as a result of direct damage to neighboring premises by a Peril Insured Against in this policy, we cover any resulting Additional Living Expense and Fair Rental Value loss for a period not exceeding two weeks during which use is prohibited.

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

ADDITIONAL COVERAGES

1. **Debris Removal.** We will pay the reasonable expense incurred by you in the removal of debris of covered property provided coverage is afforded for the peril causing the loss. Debris removal expense is included in the **limit of liability** applying to the damaged property. We will also pay up to \$500 in the aggregate for any one loss for reasonable expenses incurred by you in removing any fallen trees from the **residence premises** if:
 - a. the tree damages covered property;
 - b. the falling of the tree is caused by a Peril Insured Against under Coverage C; and
 - c. this coverage is not provided elsewhere in this policy.

Debris Removal does not apply to costs to:

- a. extract **pollutants** from land, air, or water; or
- b. remove, restore, or replace land, air, or water which contains **pollutants**.
2. **Reasonable Repairs.** We will pay the reasonable cost incurred by you for necessary repairs made solely to protect covered property from further damage if a Peril Insured Against causes the loss. This coverage does not increase the **limit of liability** applying to the property being repaired.
3. **Trees, Shrubs, and Other Plants.** We cover trees, shrubs, plants, or lawns on the **residence premises**, for loss caused by the following Perils: Fire or lightning, Explosion, Riot or civil commotion, Aircraft, Vehicles not owned or operated by a resident of the **residence premises**, Vandalism or malicious mischief, or Theft. The total **limit of liability** for this coverage shall not exceed 5% of the Coverage A policy limit for all trees, shrubs, plants, and lawns nor more than \$500 for any one tree, shrub, or plant including removal expense. In no event do we cover property grown for **business** purposes.

4. **Fire Department Service Charge.** We will pay up to \$500 for your liability assumed by contract or agreement for fire department charges incurred when the fire department is called to save or protect covered property from a Peril Insured Against. No deductible applies to this coverage.
5. **Property Removed.** Covered property while being removed from a premises endangered by a Peril Insured Against and for not more than 30 days while removed is covered for direct loss from any cause. This coverage does not change the **limit of liability** applying to the property being removed.
6. **Credit Card, Fund Transfer Card, Forgery, and Counterfeit Money.** We will pay up to \$1,000 for:
 - a. the legal obligation of any **insured** to pay because of the theft or unauthorized use of credit cards or fund transfer cards issued to or registered in any **insured's** name. We do not cover use by a resident of your household, a person who has been entrusted with the credit card or fund transfer card, or any person if any **insured** has not complied with all terms and conditions under which the credit card or fund transfer card is issued;
 - b. loss to any **insured** caused by forgery or alteration of any check or negotiable instrument; and
 - c. loss to any **insured** through acceptance in good faith of counterfeit United States or Canadian paper currency.

We do not cover loss arising out of **business pursuits** or dishonesty of any **insured**. No deductible applies to this coverage.

Defense:

- a. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for the loss equals our **limit of liability**.
 - b. If a claim is made or a suit is brought against any **insured** for liability under the Credit Card coverage, we will provide a defense at our expense by counsel of our choice.
 - c. We have the option to defend at our expense any **insured** or any **insured's** bank against any suit for the enforcement of payment under the Forgery coverage.
7. **Collapse.** We insure for risk of direct physical loss to covered property involving collapse of a building or any part of a building caused only by one or more of the following:

- a. Perils Insured Against in Coverage C – Personal Property. These perils apply to covered building and personal property for loss insured by this additional coverage;
- b. decay within the building or structure that is hidden from view, unless the presence of such decay is known to an **insured** prior to collapse. This additional coverage does not include any coverage for the sinking, shifting, or compaction of soil, fill material, or organic matter;
- c. insect or vermin damage within the building or structure that is hidden from view, unless the presence of such damage is known to an **insured** prior to collapse. This additional coverage does not include any coverage for sinking, shifting, or compaction of soil, fill material, or organic matter;
- d. weight of contents, equipment, animals, or people;
- e. weight of rain, ice, or snow, which collects on a roof; or
- f. use of defective material or methods in construction, remodeling, or renovation if the collapse occurs during the course of the construction, remodeling, or renovation.

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

Collapse is defined as an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

Collapse does not include settling, cracking, shrinking, bulging, expansion, earth sinking, or compaction of soil, fill material, or organic matter.

Collapse does not include any building or any part of a building that remains standing, even if it is in danger of falling down or caving in, or even if it has separated from another building. A building or any part of a building that is standing is not considered to be in a state of collapse even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

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

8. **Loss Assessment.** We will pay up to \$1,000 for your share of any loss assessment charged during the policy period against you by a corporation or association of property owners.

This coverage applies only when the assessment is made as a result of a direct loss to the property, owned by all members collectively, caused by a Peril Insured Against under Coverage A - Dwelling. This coverage applies only to loss assessments charged against you as owner or tenant of the **residence premises**. This coverage does not apply if:

- a. the direct loss is due to an earthquake, land shock waves, or tremors before, during, or after a volcanic eruption; or
- b. the loss assessment is charged against you, a corporation, or association of property owners by any governmental body.

The limit of \$1,000 is the most we will pay with respect to any one loss, regardless of the number of assessments.

9. **Volcanic Eruption.** We cover direct loss to a building or property contained in a building resulting from the eruption of a volcano when the direct loss is caused by:

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

We will pay for the removal of only the ash, dust, or particulate matter which has caused direct loss to a building or property contained in a building. One or more volcanic eruptions that occur within a 72-hour period shall be considered one volcanic eruption.

10. **Inflation Guard Coverage.** Each year on the anniversary of this policy, the Coverage A – Dwelling amount may be increased depending on a residential building cost index for your area. The **limits of liability** for Coverage B – Other Structures, Coverage C – Personal Property, and Coverage D – Loss of Use are increased at the same percentage as Coverage A.

SECTION I – PERILS INSURED AGAINST

COVERAGE A – DWELLING AND COVERAGE B – OTHER STRUCTURES

We insure for risks of accidental direct physical loss to the property described in Coverages A and B except:

1. collapse other than as provided in Additional Coverages, item 7. Collapse;
2. freezing of a plumbing, heating, air conditioning or automatic fire protective sprinkler system or of a household appliance, or by discharge, leakage, or overflow from within the system or appliance, caused by freezing. This exclusion applies only while the dwelling is vacant, unoccupied, or being constructed unless you have used reasonable care to:
 - a. maintain heat in the building; or
 - b. shut off the water supply and drain the system and appliances of water;
3. freezing, thawing, pressure, or weight of water or ice, whether driven by wind or not, to a fence, pavement, patio, swimming pool, foundation, retaining wall, bulkhead, pier, wharf, or dock;
4. theft in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is completed and occupied;
5. vandalism and malicious mischief or breakage of glass and safety glazing materials if the dwelling has been vacant for more than 30 consecutive days immediately before the loss. Vacant means empty or without contents pertaining to the usual activities customary to the occupancy of the dwelling. A dwelling being constructed is not considered vacant;
6. continuous or repeated seepage or leakage of water or steam, unless sudden and accidental, from within a plumbing, heating, air conditioning, or automatic fire protective sprinkler system, water bed, or from within a household appliance;
7.
 - a. wear and tear, marring, deterioration;
 - b. inherent vice, latent defect, mechanical breakdown;
 - c. smog, rust, mold, or wet or dry rot;
 - d. smoke from agricultural smudging or industrial operations;
 - e. pollution or contamination;
 - f. settling, cracking, shrinking, bulging, or expansion of pavements, patios, foundations, walls, floors, roofs, or ceilings; or
 - g. birds, vermin, rodents, insects, or domestic animals.

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

8. **cosmetic loss or damage to metal roof coverings caused by the peril of hail.**

Cosmetic loss or damage means only that damage that alters the physical appearance of the roof covering, but does not result in failure of the roof covering to perform its intended function or damage that allows the penetration of water through the roof covering.

We do cover hail damage to the roof coverings that results in damage that will allow the penetration of water through the roof covering or that results in the failure of the roof covering to perform its intended function.

Roof covering means the roofing material exposed to the weather, the underlayments applied for moisture protection and all flashings, vents and roof accessories required in the replacement of a roof covering, with the purpose of keeping out elements over an extended period of time; and

9. losses excluded under Section I - Exclusions.

COVERAGE C – PERSONAL PROPERTY

We insure for accidental, direct, physical loss to property described in Coverage C caused by:

1. **Fire or lightning.**
2. **Windstorm or hail.** This peril does not include loss to the property contained in a building caused by rain, snow, sleet, sand, or dust, unless the direct force of wind or hail damages the building causing an opening in a roof or wall and the rain, snow, sleet, sand, or dust enters through this opening. This peril includes loss to watercraft and their trailers, furnishings, equipment, and outboard motors, only while inside a fully enclosed building.
3. **Explosion.**
4. **Riot or civil commotion.**
5. **Aircraft,** including self-propelled missiles and spacecraft.
6. **Vehicles.** This peril does not include watercraft.

7. **Smoke,** meaning sudden and accidental damage from smoke.

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

8. **Vandalism or malicious mischief.**

9. **Theft,** including attempted theft and loss of property from a known location when it is likely that the property has been stolen. Theft does not include:

- a. loss of a precious or semiprecious stone from its setting; or
- b. loss sustained by any **insured** due to an insufficient funds or otherwise nonredeemable check, draft, or medium of exchange.

This peril does not include loss caused by theft:

- a. committed by an **insured**, or any person regularly residing on the **residence premises**;
- b. in or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is completed and occupied; or
- c. from any part of a **residence premises** rented by an **insured** to other than an **insured**.

This peril does not include loss caused by theft that occurs away from the **residence premises** of:

- a. property while at any other residence owned, rented to, or occupied by any **insured**, except while any **insured** is temporarily residing there. Property of a student who is an **insured** is covered while at a residence away from home if the student has been there at any time during the 45 days immediately before the loss;
- b. watercraft including its furnishings, equipment, and outboard motors; or
- c. trailers and campers.

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

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

12. **Sudden and accidental discharge or overflow of water or steam** from within a plumbing, heating, or air conditioning system or from within a household appliance, waterbed, or automatic fire protective sprinkler system. This peril does not include loss:
 - a. to the appliance from which the water or steam escaped;
 - b. caused by or resulting from freezing; or
 - c. to the waterbed from which water escaped unless loss was from an insured peril.

13. **Sudden and accidental tearing asunder, cracking, burning, or bulging** of a steam or hot water heating system, an air conditioning, or automatic fire protective sprinkler system, or an appliance for heating water. We do not cover loss caused by or resulting from freezing under this peril.

14. **Freezing** of a plumbing, heating, air conditioning, or automatic fire protective sprinkler system or of a household appliance. This peril does not include loss on the residence premises while the dwelling is unoccupied, unless you have used reasonable care to:
 - a. maintain heat in the building; or
 - b. shut off the water supply and drain the system and appliances of water.

15. **Sudden and accidental damage to electrical appliances, devices, fixtures, and wiring** from an increase or decrease of electrical currents artificially generated. There is no coverage for loss to a tube, transistor, wafer, card, chip, integrated circuit, or similar electronic circuitry and components.

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

SECTION I – EXCLUSIONS

1. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.
 - a. **Ordinance or Law**, meaning enforcement of any ordinance or law regulating the construction, repair, or demolition of a building or other structure, unless specifically provided under this policy.

- b. **Earth Movement**, meaning any loss caused by, resulting from, contributed to, or aggravated by:
 - (1) earthquake, including land shock waves or tremors, before, during, or after volcanic eruption;
 - (2) landslide or mudflow;
 - (3) earth sinking, rising, or shifting; or
 - (4) settlement or subsidence due to the sinking, shifting or compaction of soil, fill material, or organic matter.

Earth movement also means volcanic eruption, explosion, or effusion, except as provided in Additional Coverages for Volcanic Eruption.

We do cover direct loss caused by earth movement for:

- (1) fire;
- (2) explosion other than the explosion of a volcano;
- (3) breakage of glass or safety glazing material which is part of a building, storm door, or storm window; or
- (4) theft.

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

- (1) flood, surface water, waves, tidal water, overflow of a body of water, or spray from any of these, whether or not driven by wind;
- (2) water which backs up through sewers, drains, sump pumps, sump pump wells, or similar systems;
- (3) water below the surface of the ground, including water which exerts pressure on, or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool, or other structure.

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

- d. **Power interruption**, meaning the interruption of power or other utility service if the interruption takes place away from the **residence premises**. If a Peril Insured Against ensues on the **residence premises**, we will pay only for loss caused by the ensuing peril.
- e. **Neglect**, meaning neglect of the **insured** to use all reasonable means to save and preserve property at and after the time of a loss, or when property is endangered by a Peril Insured Against.

- f. **War**, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental.
 - g. **Nuclear Hazard**, to the extent set forth in the Nuclear Hazard Clause of Section I - Conditions.
 - h. **Intentional Loss**. We do not provide coverage for a person who is insured under this policy if that person commits or directs an act with the intent to cause a loss.
 - i. **Transit of Structures**, meaning preparation for transit or transit of the dwelling, any other structures, or any part of any other building under Coverage A and Coverage B while on or away from the grounds which are part of the **residence premises** shown in the **Declarations**.
2. We do not insure for loss to property described in Coverages A and B caused by any of the following. However, any ensuing loss to property described in Coverages A and B not excluded or excepted in this policy is covered.
- a. **Weather conditions**. This exclusion only applies if weather conditions contribute in any way with a cause or event excluded in paragraph 1. above to produce the loss;
 - b. **Acts or Decisions**, including the failure to act or decide, of any person, group, organization, or governmental body;
 - c. **Planning, Standards, Design, Construction, or Maintenance**. This means any acts, errors, or omissions (whether by the **insured** or others) in:
 - (1) planning, zoning, development surveying, or siting;
 - (2) establishing or enforcing building codes or standards for construction of materials;
 - (3) the design, specifications, or construction of the following property or facilities:
 - (a) buildings or structures;
 - (b) improvements or changes in or additions to land or other property; or
 - (c) roads, water mains, sewers, drainage systems, levees, dams, or other facilities;
- (4) the furnishing of work, materials, parts, or equipment in connection with any of such property or facilities; or
 - (5) the maintenance of any of such property or facilities.
- All whether on or away from the insured premises or property insured or covered by this policy.
3. We do not insure for loss or the remediation of loss to property described in Section I - Perils Insured Against, Coverage A - Dwelling, Coverage B - Other Structures, or Coverage C - Personal Property arising out of, caused by, contributed to, aggravated by or resulting from (whether directly or indirectly):
- a. **fungus**;
 - b. rust, corrosion, wear and tear, deterioration or other characteristic or quality in the property that causes it to degenerate, damage, destroy or consume itself;
 - c. condensation, dampness of atmosphere, extremes of temperature;
 - d. pollution or contamination;
 - e. smog, smoke from agricultural smudging or industrial operations;
 - f. rats, mice, rodents, vermin;
 - g. termites, moths or other insects; or
 - h. birds or domestic animals.
- This exclusion applies regardless of whether the causes or conditions listed in a. through h. ensue from, arise out of or are a result of any other cause of loss.
- Remediation, as used in this exclusion, means the cost to test for, measure, detect or evaluate any of the causes or conditions listed in a. through h., as well as the cost to treat, contain, remove or dispose of any of the same, beyond or in addition to that which is required to physically repair or replace otherwise covered property.
- This exclusion also applies to any claim for loss of use or fair rental value of the described property under Section I - Coverages, Coverage D - Loss of Use.

SECTION I – CONDITIONS

1. **Insurable Interest and Limit of Liability**. Even if more than one person has an insurable interest in the property covered, we shall not be liable:
- a. to the **insured** for an amount greater than the **insured's** interest at the time of loss; nor
 - b. for more than the applicable **limit of liability**.

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

- a. give immediate notice to us or our agent, and in case of theft also to the police. In case of loss under the Credit Card or Fund Transfer Card coverage also notify the credit card or fund transfer card company;
- b. protect the property from further damage, make reasonable and necessary repairs required to protect the property, and keep an accurate record of repair costs;
- c. prepare an inventory of damaged personal property showing in detail, the quantity, description, **actual cash value**, and amount of loss. Attach to the inventory all bills, receipts, and related documents that substantiate the figures in the inventory;
- d. as often as we reasonably require:
 - (1) exhibit the damaged property;
 - (2) provide us with records and documents we request and permit us to make copies;
 - (3) let us record your statements and submit to examinations under oath by any person named by us and sign the transcript of the examination; and
 - (4) produce employees, members of the **insured's** household, or others for examination under oath to the extent it is within the **insured's** power to do so; and
- e. submit to us, within 60 days after we request, your signed, sworn proof of loss which sets forth, to the best of your knowledge and belief;
 - (1) the time and cause of loss;
 - (2) interest of the **insured** and all others in the property involved and all encumbrances on the property;
 - (3) other insurance which may cover the loss;
 - (4) changes in title or occupancy of the property during the term of the policy;
 - (5) specifications of any damaged building and detailed estimates for repair of the damage;
 - (6) an inventory of damaged personal property described in 2c;
 - (7) receipts for additional living expenses incurred and records supporting the fair rental value loss; and
 - (8) evidence or affidavit supporting a claim under the Credit Card, Fund Transfer Card, Forgery, and Counterfeit Money coverage, stating the amount and cause of loss.

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

- a. Losses to the following types of property will be settled at the **actual cash value** of the damaged property at the time of the loss:
 - (1) personal property;
 - (2) structures that are not buildings; and
 - (3) all antennas, carpeting, awnings, domestic appliances, and outdoor equipment, whether or not attached to buildings.

Our **limit of liability** and payment for covered losses will not exceed the smallest of the following:

- (1) the **actual cash value** at the time of the loss determined with proper deduction for depreciation;
 - (2) the cost to repair or replace the damaged property with material of like kind and quality, with proper deduction for depreciation; or
 - (3) the applicable **limit of liability** of the policy.
- b. Buildings under Coverage A or B will be settled at replacement cost without deduction for depreciation, subject to the following:
 - (1) We will pay the cost of repair or replacement without deduction for depreciation, but not exceeding the smaller of the following amounts:
 - (a) the **limit of liability** under this policy applying to the building;
 - (b) the replacement cost of that part of the building damaged for equivalent construction and use on the same premises;
 - (c) the amount actually and necessarily spent to repair or replace the damaged building; or
 - (d) the replacement cost of your home or any part as described in Declarations - Page 2, Description of Your House.
 - (2) We will pay the **actual cash value** of the damage, not to exceed the applicable **limit of liability**, until actual repair or replacement is completed.

- (3) You may disregard the replacement cost loss settlement provisions and make claim under the policy for loss or damage to buildings on an **actual cash value** basis and then make claim within 180 days after loss for any additional liability on a replacement cost basis.
- c. When Declarations - Page 2, Description of Your House is part of your policy, our payment for loss is limited to the replacement cost of your house as described on Declarations - Page 2.
- If the description, provided by you, of your house is incomplete or inaccurate, any difference between the description provided and the actual home will not be covered.
4. **Loss to a Pair or Set.** In case of loss to a pair or set we may elect to:
- repair or replace any part to restore the pair or set to its value before the loss; or
 - pay the difference between **actual cash value** of the property before and after the loss.
5. **Glass Replacement.** Loss for damage to glass caused by a Peril Insured Against shall be settled on the basis of replacement with safety glazing materials when required by ordinance or law.
6. **Appraisal.** If you and we fail to agree on the amount of loss, either one can demand that the amount of the loss be set by appraisal. If either makes a written demand for appraisal, each shall select a competent independent appraiser, and notify the other of the appraiser's identity within 20 days of receipt of the written demand. The two appraisers shall then select a competent impartial umpire. If the two appraisers are unable to agree upon an umpire within 15 days, you or we can ask a judge of a court of record in the state where the **residence premises** is located to select an umpire. The appraisers shall then set the amount of the loss. If the appraisers submit a written report of an agreement to us, the amount agreed upon shall be the amount of the loss. If the appraisers fail to agree within a reasonable time, they shall submit their differences to the umpire. Written agreement signed by any two of these three shall set the amount of the loss. Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and the compensation of the umpire shall be paid equally by you and us.
7. **Other Insurance.** If a loss covered by this policy is also covered by other insurance, we will pay only the proportion of the loss that the **limit of liability** that applies under this policy bears to the total amount of insurance covering the loss.
8. **Suit Against Us.** No action shall be brought unless there has been compliance with the policy provisions and the action is started within one year after the occurrence causing loss or damage.
9. **Our Option.** We may make a cash settlement and take all or part of the damaged property at its appraised or agreed upon value, or repair or replace the damaged property with property of like kind and quality.
10. **Loss Payment.** We will adjust all losses with you and pay you unless some other person is named in the policy or is legally entitled to receive payment. We will pay within 60 days after we receive your proof of loss and the amount of loss is finally determined by:
- agreement between you and us;
 - a court judgment; or
 - an appraisal award.
11. **Abandonment of Property.** We need not accept any property abandoned by any **insured**.
12. **Recovered Property.** If property for which we have made payment is recovered by you or us, you or we will notify the other of the recovery. You will have the option of keeping the property or having it become our property. If you keep the property, you will repay the amount you received for that property.
13. **Mortgage Clause.** The word "mortgagee" includes trustee. If a mortgagee is named in this policy, any loss payable under Coverages A or B shall be paid to the mortgagee and you, as interests appear. If more than one mortgagee is named, the order of payment shall be the same as the order or precedence of the mortgages. If we deny your claim, that denial shall not apply to a valid claim of the mortgagee, if the mortgagee:
- notifies us of any change in ownership or occupancy, or substantial change in risk of which the mortgagee is aware;
 - pays any premium due under this policy on demand if you have neglected to pay the premium; and

- c. submits a signed, sworn statement of loss within 60 days after receiving notice from us of your failure to do so. Policy conditions relating to Appraisal, Suit Against Us, and Loss Payment apply to the mortgagee.

If the policy is cancelled by us, the mortgagee shall be notified at least ten days before the date cancellation takes effect.

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

- a. we are subrogated to all the rights of the mortgagee granted under the mortgage on the property; or
- b. at our option, we may pay to the mortgagee the whole principal on the mortgage plus any accrued interest. In this event, we shall receive a full assignment and transfer of the mortgage and all securities held as collateral to the mortgage debt. Subrogation shall not impair the right of the mortgagee to recover the full amount of the mortgagee's claim.

14. **No Benefit to Bailee.** We will not recognize any assignment or grant any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this policy.

15. **Nuclear Hazard Clause.**

- a. "Nuclear Hazard" means any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these.
- b. Loss caused by the nuclear hazard shall not be considered loss caused by fire, explosion, or smoke, whether these perils are specifically named in or otherwise included within the Perils Insured Against in Section I.
- c. This policy does not apply under Section I to loss caused directly or indirectly by nuclear hazard, except that direct loss by fire resulting from the nuclear hazard is covered.

SECTION II – LIABILITY COVERAGES

COVERAGE E – PERSONAL LIABILITY

If a claim is made or a suit is brought against any **insured** for damages because of **bodily injury** or

property damage to which this coverage applies, we will:

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

COVERAGE F – MEDICAL PAYMENTS TO OTHERS

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

This coverage does not apply to you or regular residents of your household other than **residence employees**. As to others, this coverage applies only:

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

SECTION II – EXCLUSIONS

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

- a. which is expected or intended by any **insured** even if the actual injury or damage is different than expected or intended;
- b. arising out of **business pursuits** of any **insured** or the rental or holding for rental of any part of any premises by an **insured**.

This exclusion does not apply to:

- (1) activities which are ordinarily incident to **non-business pursuits**;
 - (2) the rental or holding for rental of a residence of yours:
 - (a) on an occasional basis for the exclusive use as a residence;
 - (b) in part, unless intended for use as a residence by more than two roomers or boarders; or
 - (c) in part, as an office, school, studio, or private garage; or
 - (3) Coverage E to the occasional part-time **business pursuits** of an **insured** who is 19 years of age or younger;
- c. arising out of the transmission of a communicable disease by any **insured**;
- d. which results from sexual misconduct, whether any **insured** participated in committing any sexual misconduct or remained passive after having knowledge of any sexual misconduct. Sexual misconduct means physical or mental harassment or assault of a sexual nature against any person;
- e. arising out of any act or omission of any **insured** as an officer or member of the board of directors of any corporation or other organization, except the acts of an unpaid volunteer, director, officer, or trustee of a religious, charitable, or nonprofit organization;
- f. arising out of the rendering or failing to render professional services;
- g. arising out of any premises owned by or rented to any **insured** which is not an **insured location**;
- h. arising out of the ownership, maintenance, use, loading, or unloading of **motor vehicles** or all other motorized land conveyances, including any attached trailers, owned or operated by or rented or loaned to any **insured**.

This exclusion does not apply to a motorized land conveyance designed for assisting the handicapped or for the maintenance of an **insured location**, or a motorized golf cart while used for golfing purposes, including travel to and from a golf course which is:

- (1) not designed for travel on public roads; and
- (2) not subject to **motor vehicle** registration;

- i. arising out of the ownership, maintenance, use, loading, or unloading of a watercraft:
 - (1) owned by or rented to any **insured** if the watercraft has inboard or inboard-outboard motor power of more than 50 horsepower or is a sailing vessel, with or without auxiliary power, 26 feet or more in overall length;
 - (2) powered by one or more outboard motors with more than 25 total horsepower, owned by any **insured**; or
 - (3) designated as an airboat, air cushion, jet ski, or similar type of craft.

This exclusion does not apply while the watercraft is stored;

- j. arising out of the ownership, maintenance, use, loading, or unloading of an aircraft, meaning any contrivance used or designed for navigation of or flight in the air, except model aircraft of the hobby variety not used or designated for the transportation of people or cargo;
- k. arising out of the entrustment by any **insured** to any person any of the following:
 - (1) an aircraft;
 - (2) a watercraft; or
 - (3) a **motor vehicle** or any other motorized land conveyance;
- l. arising out of statutorily imposed vicarious parental liability for the actions of a child or minor using:
 - (1) an aircraft;
 - (2) a watercraft; or
 - (3) a **motor vehicle** or any other motorized land conveyance;
- m. caused directly or indirectly by war, including undeclared war, civil war, insurrection, rebellion, revolution, warlike act by a military force or military personnel, destruction or seizure or use for a military purpose, and including any consequence of any of these. Discharge of a nuclear weapon shall be deemed a warlike act even if accidental;
- n. arising out of the actual, alleged, or threatened discharge, dispersal, seepage, migration, release, or escape of **pollutants**.

This exclusion includes any liability imposed by law;

o. caused by poisoning which includes but is not limited to:

- (1) the eating of paint that has lead or lead compounds in it;
- (2) the inhalation of paint that has lead or lead compounds in it; or
- (3) effects of radon or any other substance that emits radiation.

This exclusion includes any liability imposed by law;

p. arising out of any criminal act committed by or at the direction of any **insured**; or

q. arising out of, caused by, contributed to, aggravated by or resulting from (whether directly or indirectly):

- (1) **fungus**;
- (2) rust, corrosion, wear and tear, deterioration or other characteristic or quality in the property that causes it to degenerate, damage, destroy or consume itself;
- (3) condensation, dampness of atmosphere, extremes of temperature; or
- (4) pollution or contamination.

This exclusion includes:

- i. the cost of testing, monitoring, abating, mitigating, removing, remediating or disposing of any of the causes or conditions listed in items (1) through (4) above;
- ii. any supervision, instruction, disclosures, or failure to disclose, recommendations, warnings, or advice given, or which allegedly should have been given, in connection with **bodily injury** or **property damage** arising out of, resulting from, caused by, contributed to, or aggravated by, whether directly or indirectly, any of the causes or conditions listed in items (1) through (4) above; and
- iii. any obligation to share liability with or repay damages to another who must pay damages because of **bodily injury** or **property damage** of the type described in this exclusion.

This exclusion applies regardless of any other cause that contributed directly or indirectly, concurrently or in any sequence to the **bodily injury** or **property damage**.

Exclusions g., h., i., j., and k. do not apply to **bodily injury** to any **residence employee** arising out of and in the course of the **residence employee's** employment by an **insured**.

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

a. liability:

- (1) for your share of any loss assessment charged against all members of an association of property owners; or
- (2) under any other contract or agreement except those written contracts directly relating to the maintenance of the **insured location** not excluded in (1) above or elsewhere in this policy;

b. **property damage** to property owned by the **insured**;

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

d. **bodily injury** to any person eligible to receive any benefits:

- (1) required to be provided; or
- (2) voluntarily provided by the **insured** under any:

- (a) workers' or workmen's compensation law;
- (b) nonoccupational disability law; or
- (c) occupational disease law;

e. **bodily injury** or **property damage** for which any **insured** under this policy is also an **insured** under a nuclear energy liability policy or would be an **insured** but for its termination upon exhaustion of its **limit of liability**.

A nuclear energy liability policy is a policy issued by:

- (1) American Nuclear Insurers;
- (2) Mutual Atomic Energy Liability Underwriters;
- (3) Nuclear Insurance Association of Canada; or
- (4) any of their successors; or

f. **bodily injury** to you and any **insured** within the meaning of part a. or b. of Definition 6. "**insured**";

g. **punitive or exemplary damages**;

h. liability imposed upon any **insured** by any governmental authority resulting from, consisting of, arising out of or in any way caused by:

- (1) **fungus**;

- (2) rust, corrosion, wear and tear, deterioration or other characteristic or quality in the property that causes it to degenerate, damage, destroy or consume itself;
 - (3) condensation, dampness of atmosphere, extremes of temperature; or
 - (4) pollution or contamination; or
- i. liability arising out of the sale or transfer of real or personal property, including but not limited to the following:
 - (1) known or unknown property or structural defects;
 - (2) known or unknown defects in plumbing, heating, air conditioning or electrical systems;
 - (3) known or unknown soil conditions or drainage problems; or
 - (4) concealment or misrepresentation of any known defects.
3. **Coverage F – Medical Payments to Others**, does not apply to **bodily injury**:
- a. to a **residence employee** if it occurs off the **insured location** and does not arise out of or in the course of the **residence employee's** employment by any **insured**;
 - b. to any person, eligible to receive any benefits required to be provided or voluntarily provided under any workers' or workmen's compensation, nonoccupational disability, or occupational disease law;
 - c. from any nuclear reaction, radiation, or radioactive contamination, all whether controlled or uncontrolled or however caused, or any consequence of any of these; or
 - d. to a person other than a **residence employee** of an **insured**, regularly residing on any part of the **insured location**.
- b. to the extent herein provided, premiums on appeal and attachment bonds required in a suit we defend. We will not pay the premium for an attachment bond that is more than our limit of liability. On appeal bonds, we will pay that part of the premium that our Coverage E limit of liability bears to the amount of the bond. For example, if our applicable limit of liability is \$100,000 and the amount of the bond is \$1,000,000 we will pay 1/10th of the premium. We have no duty to apply for or furnish bonds;
 - c. reasonable expenses incurred by any **insured** at our request, including actual loss of earnings (but not loss of other income) up to \$200 per day for assisting us in the investigation or defense of any claim or suit; and
 - d. interest on the entire judgment which accrues after entry of the judgment and before we pay or tender, or deposit in court that part of the judgment which does not exceed the **limit of liability** that applies.
2. **First Aid Expenses.** We will pay expenses for first aid to others incurred by any **insured** for **bodily injury** covered under this policy. We will not pay for first aid to you or any other **insured**.
3. **Damage to Property of Others.**
- a. We will pay for **property damage** to property of others caused by any **insured**.
 - b. We will pay the lesser of:
 - (1) replacement cost at the time of loss;
 - (2) full cost of repair; or
 - (3) \$500 in any one **occurrence**.
 - c. We will not pay for **property damage**:
 - (1) to property covered under Section I of this policy;
 - (2) caused intentionally by any **insured** who is 13 years of age or older;
 - (3) to property owned by or rented to any **insured**, a tenant of any **insured**, or a resident in your household; or
 - (4) arising out of:
 - (a) **business pursuits**;
 - (b) any act or omission in connection with a premises owned, rented, or controlled by any **insured**, other than the **insured location**; or
 - (c) the ownership, maintenance, or use of a **motor vehicle**, aircraft, or watercraft.

SECTION II – ADDITIONAL COVERAGES

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

1. **Claim Expenses.** We pay:
- a. expenses incurred by us and costs taxed against any **insured** in any suit we defend;

SECTION II – CONDITIONS

1. **Limit of Liability.** Regardless of the number of **insureds**, claims made, or persons injured, our total liability under Coverage E for all damages resulting from any one **occurrence** shall not exceed the **limit of liability** for Coverage E stated in the **Declarations**. All **bodily injury** and **property damage** resulting from any one accident or from continuous or repeated exposure to substantially the same general conditions shall be considered to be the result of one **occurrence**. Our total liability under Coverage F for all medical expense payable for **bodily injury** to one person as the result of one accident shall not exceed the **limit of liability** for Coverage F stated in the **Declarations**.
 2. **Severability of Insurance.** This insurance applies separately to each **insured**. This condition shall not increase our **limit of liability** for any one **occurrence**.
 3. **Duties After Loss.** In case of an accident or **occurrence**, the **insured** shall perform the following duties that apply. You shall cooperate with us in seeing that these duties are performed:
 - a. give written notice to us or our agent as soon as practicable, which sets forth:
 - (1) the identity of the policy and **insured**;
 - (2) reasonably available information on the time, place, and circumstances of the accident or **occurrence**; and
 - (3) names and addresses of any claimants and available witnesses;
 - b. forward to us every notice, demand, summons, or other process relating to the accident or **occurrence**;
 - c. at our request, assist in:
 - (1) making settlement;
 - (2) the enforcement of any right of contribution or indemnity against any person or organization who may be liable to any **insured**;
 - (3) the conduct of suits and attend hearings and trials; and
 - (4) *securing and giving evidence and obtaining the attendance of witnesses*;
 - d. under the coverage - Damage to Property of Others - submit to us within 60 days after the loss, a sworn statement of loss and exhibit the damaged property, if within the **insured's** control;
 - e. the **insured** shall not, except at the **insured's** own cost, voluntarily make any payment, assume any obligation, or incur any expense other than for first aid to others at the time of the **bodily injury**; and
 - f. let us record your statements and submit to examinations under oath by any person named by us and sign the transcript of the examination.
4. **Duties of an Injured Person – Coverage F – Medical Payments to Others.** The injured person or someone acting on behalf of the injured person shall:
 - a. give us written proof of claim, under oath if required, as soon as practicable;
 - b. execute authorization to allow us to obtain copies of medical reports and records; and
 - c. the injured person shall submit to physical examination by a physician selected by us when and as often as we reasonably require.
 5. **Payment of Claim - Coverage F – Medical Payments to Others.** Payment under this coverage is not an admission of liability by any **insured** or us.
 6. **Suit Against Us.** No action shall be brought against us unless there has been compliance with the policy provisions.

No one shall have any right to join us as a party to any action against any **insured**. Further, no action with respect to Coverage E shall be brought against us until the obligation of the **insured** has been determined by final judgment or agreement signed by us.
 7. **Bankruptcy of any Insured.** Bankruptcy or insolvency of any **insured** shall not relieve us of any of our obligations under this policy.
 8. **Other Insurance – Coverage E – Personal Liability.** This insurance is excess over any other collectible insurance. However, if the other insurance is specifically written as excess insurance over this policy, the limits of this policy apply first.

SECTION I AND SECTION II – CONDITIONS

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

2. **Concealment or Fraud.** This entire policy shall be void if, whether before or after a loss, any **insured** has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of any **insured** therein, or in case of any fraud or false swearing by any **insured** relating thereto.
3. **Liberalization Clause.** If we adopt any revision which would broaden the coverage under this policy without additional premium within 60 days prior to or during the policy period, the broadened coverage will immediately apply to this policy.
4. **Waiver or Change of Policy Provisions.** A waiver or change of any provision of this policy must be in writing by us to be valid. Our request for an appraisal or examination shall not waive any of our rights.
5. **Cancellation.**
 - a. You may cancel this policy at any time by returning it to us or by notifying us in writing of the date cancellation is to take effect.
 - b. We may cancel this policy only for the reasons stated in this condition by notifying you in writing of the date cancellation takes effect.

This cancellation notice may be delivered to you or mailed to you at your mailing address shown in the **Declarations**. Proof of mailing shall be sufficient proof of notice:

 - (1) When you have not paid the premium, whether payable to us or to our agent or under any finance or credit plan, we may cancel at any time by notifying you at least ten days before the date cancellation takes effect.
 - (2) When this policy has been in effect for less than 60 days and is not a renewal with us, we may cancel for any reason by notifying you at least ten days before the date cancellation takes effect.
 - (3) When this policy has been in effect for 60 days or more, or at any time if it is a renewal with us, we may cancel if there has been a material misrepresentation of fact which if known to us would have caused us not to issue the policy or if the risk has changed substantially since the policy was issued. This can be done by notifying you at least 30 days before the date cancellation takes effect.
6. **Nonrenewal.** We may elect not to renew this policy. We may do so by delivery to you, or mailing to you at your mailing address shown in the **Declarations**, written notice at least 30 days before the expiration date of this policy. Proof of mailing shall be sufficient proof of notice.
7. **Assignment.** Assignment of this policy shall not be valid unless we give our written consent.
8. **Subrogation.** Any **insured** may waive in writing before a loss all rights of recovery against any person. If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

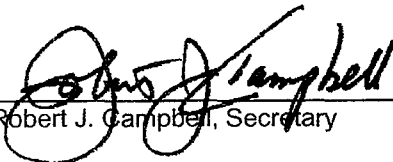
If an assignment is sought, any **insured** shall sign and deliver all related papers and cooperate with us in any reasonable manner.

Subrogation does not apply under Section II to Medical Payments to Others or Damage to Property of Others.
9. **Death.** If any person named in the **Declarations** or the spouse, if a resident of the same household, dies:
 - a. we insure the legal representative of the deceased but only with respect to the premises and property of the deceased covered under the policy at the time of death;
 - b. **insured** includes:
 - (1) any member of your household who is an **insured** at the time of your death, but only while a resident of the **residence premises**; and
 - (2) with respect to your property, the person having proper temporary custody of the property until appointment and qualification of a legal representative.
- c. When this policy is cancelled, the premium for the period from the date of cancellation to the expiration date will be refunded on a pro rata basis.
- d. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will refund it within a reasonable time after the date cancellation takes effect.

10. **Continuous Renewal.**

- a. "Policy Term" in the **Declarations** is amended to include the effective time of this policy to be 12:01 a.m. Standard Time at the **residence premises** on the dates shown.
- b. To the extent that coverage in this policy replaces coverage in other policies terminating noon Standard Time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.
- c. If we elect to continue this insurance, we will renew this policy if you pay the required renewal premium for each successive policy period, subject to our premiums, rules, and forms then in effect. You must pay us prior to the end of the current policy period or else this policy will expire.
- d. If a mortgagee is named in this policy, we will continue this insurance for the mortgagee's interest only for ten days after written notice of termination to the mortgagee and then this policy will terminate.

IN WITNESS WHEREOF, this Company caused this policy to be signed by its President and Secretary, but if required by state law, the policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Robert J. Campbell, Secretary



Gregory V. Ostergren, President

Authorized Representative

**AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY**

**SPECIAL PROTECTION PACKAGE
Silver Series**

For an additional premium, we agree to amend your policy as follows:

I. In **SECTION I – COVERAGES, COVERAGE D – LOSS OF USE**, item 1 and 2 are deleted and replaced with the following:

1. **Additional Living Expense.** If a loss covered under this Section makes the **residence premises** uninhabitable, we cover any necessary increase in living expenses incurred by you so that your household can maintain its normal standard of living for up to 36 months. Payment shall be for the shortest time required to repair or replace the premises; or, if you permanently relocate, the shortest time required for your household to settle elsewhere. This period of time is not limited by expiration of this policy.
2. **Fair Rental Value.** If a loss covered under this Section makes that part of the **residence premises** rented to others or held for rental by you uninhabitable, we cover its fair rental value. Payment shall be for the shortest time required to repair or replace the part of the premises rented or held for rental, but not to exceed 36 months. This period of time is not limited by expiration of this policy. Fair rental value shall not include any expense that does not continue while that part of the **residence premises** rented or held for rental is uninhabitable.

II. **SECTION I – CONDITIONS**

A. Under item 3. **Loss Settlement**, paragraph b. is deleted and replaced with the following:

- b. Buildings under Coverage A will be settled at replacement cost without deduction for depreciation, subject to the following:
 - (1) We will pay the cost of repair or replacement without deduction for depreciation, but not exceeding the smallest of the following amounts:
 - (a) 125% of the **limit of liability** shown in the **Declarations** for Coverage A.
 - (b) the replacement cost of that part of the damage for equivalent construction and use on the same premises;
 - (c) the amount actually and necessarily spent to repair or replace the damage; or
 - (d) the replacement cost of your home or any part as described in **Declarations** – Page 2, Description of Your House.

The extension provided in (a), above, does not apply unless and until replacement takes place on the same premises with a structure designed for the same use and occupancy. Compliance with any applicable Valued Policy Statute will be limited to the **limit of liability** shown in the **Declarations**.

- (2) We will pay the **actual cash value** of the damage not to exceed the applicable **limit of liability**, until actual repair or replacement is completed.
- (3) For replacement cost loss settlement provisions to apply, you must first make claim under the policy for loss or damage on an **actual cash value** basis and then you must:
 - (a) complete repair or replacement of the damaged property; and
 - (b) make claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability on a replacement cost basis.

You agree to notify us within 90 days of the start of any new building or any additions or remodeling of the dwelling which will increase the value of your dwelling by \$5,000 or more, and pay any resulting additional premium. If you fail to notify us within 90 days, our loss payment shall not exceed the **limit of liability** applying to the dwelling.

B. Under item 3. **Loss Settlement**, paragraph d. is added as follows:

d. Structures under Coverage B will be settled at replacement cost without deduction for depreciation, subject to the following:

(1) We will pay the cost of repair or replacement without deduction for depreciation, but not exceeding the smallest of the following amounts:

- (a) the **limit of liability** shown in the **Declarations** for Coverage B;
- (b) the replacement cost of that part of the damage for equivalent construction and use on the same premises; or
- (c) the amount actually and necessarily spent to repair or replace the damage.

(2) We will pay the **actual cash value** of the damage not to exceed the applicable **limit of liability**, until actual repair or replacement is completed.

(3) For replacement cost loss settlement provisions to apply, you must first make claim under the policy for loss or damage on an **actual cash value** basis and then you must:

- (a) complete repair or replacement of the damaged property; and
- (b) make claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability on a replacement cost basis.

III. Under Section I, the following limits of liability apply:

A. Coverage C – Personal Property limit is at least 75% of Coverage A, but no more than the amount shown on the **Declarations** for Coverage C.

B. Coverage D – Loss of Use limit is at least 25% of Coverage A, but no more than the amount shown on the **Declarations** for Coverage D.

IV. Special Protection Package and Ordinance or Law Coverage shall not increase the total amount we will pay under Coverage A – Dwelling, for the cost of repair or replacement, beyond 125% of the Coverage A – Dwelling **limit of liability** shown on the **Declarations**.

All other provisions of the policy apply.

AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY

TENNESSEE HOMEOWNERS AMENDATORY ENDORSEMENT

THIS ENDORSEMENT CHANGES YOUR POLICY. PLEASE READ IT CAREFULLY.

- I. As applies to all policy forms, the Common Cause of Loss Deductible provision under **AGREEMENT** is deleted and replaced with the following:

Common Cause of Loss Deductible

If you incur loss to your property covered under this policy and any other covered property owned by you, from a common cause of loss, we will apply only the highest applicable deductible to the aggregate amount of property damages. If the covered property owned by you is a motor vehicle, the loss must be covered under the motor vehicle's Coverage D – Comprehensive Coverage. Common cause of loss is one occurrence which results in loss to more than one item of covered property owned by you. The properties incurring loss by a common cause of loss must be covered by this policy and another policy that includes a Common Cause of Loss Deductible provision which is issued by American National Property And Casualty Company.

This provision does not apply if the common cause of loss results from the peril of earthquake.

- II. As applies to policy form SH-7.41, in **SECTION I – COVERAGES**, under **PERSONAL PROPERTY REPLACEMENT COST COVERAGE**, item 2. is deleted and replaced with the following:

2. Our **limit of liability** is the **actual cash value** of the item or items unless and until actual repair or replacement is completed. You may elect to disregard this condition in making claim. Such election shall not prejudice your right to make further claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability brought about by this policy condition.

- III. As applies to policy form SH-3.41, in **SECTION I – CONDITIONS**, under item 3. **Loss Settlement**, item b.(3) is deleted and replaced with the following:

- b.(3) For replacement cost loss settlement provisions to apply, you must first make claim under the policy for loss or damage on an **actual cash value** basis and then you must:

- (a) complete repair or replacement of the damaged property; and
(b) make claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability on a replacement cost basis.

- IV. As applies to policy form SH-6.41, in **SECTION I – CONDITIONS**, under item 3. **Loss Settlement**, item c. is deleted and replaced with the following:

- (c) For replacement cost loss settlement provisions to apply, you must first make claim under the policy for loss or damage on an **actual cash value** basis and then you must:

- (1) complete repair or replacement of the damaged property; and
(2) make claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability on a replacement cost basis.

- V. As applies to policy form SH-7.41, in **SECTION I – CONDITIONS**, under item 3. **Loss Settlement**, item a. (3) is deleted and replaced with the following:

- a.(3) For replacement cost loss settlement provisions to apply, you must first make claim under the policy for loss or damage on an **actual cash value** basis and then you must:

- (1) complete repair or replacement of the damaged property; and
(2) make claim within 180 days from the date of payment of the **actual cash value** amount for any additional liability on a replacement cost basis.

EXCEPT AS AMENDED BY THIS ENDORSEMENT, ALL OTHER TERMS AND CONDITIONS OF YOUR POLICY CONTINUE TO APPLY.

**AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY**

ORDINANCE OR LAW COVERAGE

For an additional premium, covered losses under Coverage A – Dwelling will be settled on the basis of any ordinance or law that regulates construction, repair, or demolition at the time of loss settlement. The total **limit of liability** for this coverage shall not exceed 25% of the Coverage A – Dwelling limit as shown on the **Declarations**.

Special Conditions

1. This coverage only applies after the dwelling is damaged by a covered peril as provided in SECTION I of the policy.
2. This coverage applies only to repairs to the portion of the dwelling damaged by a covered peril, when the total damage equals or exceeds 50% of the Coverage A limit. The calculation of total damage will not consider any expenses necessary to comply with any ordinance or law regulating construction, repair, or demolition of the building.
3. Ordinance or Law coverage does not include:
 - a. Any loss in value of property which results from the enforcement of any ordinance or law; or
 - b. any loss, expense or cost which results from the enforcement of any ordinance or law requiring any **insured** or others to test for, monitor, remove, detoxify, clean up, treat, neutralize, or in any way respond to or assess the effects of **pollutants**.
4. As it applies to your Elite Homeowners Policy, this coverage and Dwelling Replacement Cost Extension coverage shall not increase the total amount we will pay under Coverage A – Dwelling for the cost of repair or replacement beyond 125% of the Coverage A – Dwelling **limit of liability** shown on the **Declarations**.
5. As it applies to your Special Homeowners Policy, this coverage and Special Protection Package Endorsement shall not increase the total amount we will pay under Coverage A – Dwelling for the cost of repair or replacement beyond 125% of the Coverage A – Dwelling **limit of liability** shown on the **Declarations**.

**AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY**

EQUIPMENT BREAKDOWN COVERAGE

For an additional premium, we will provide the insurance described in this endorsement in compliance with all applicable provisions of this policy. The most we will pay for loss, damage or expense under this endorsement arising from any **one accident** is \$50,000. Coverage provided under this endorsement does not increase any limit of liability under Section I.

ADDITIONAL DEFINITIONS USED IN THIS ENDORSEMENT ONLY

1. **"Accident"** means sudden and accidental:
 - a. mechanical or electrical breakdown; or
 - b. tearing apart, cracking, burning or bulging of a steam or hot water heating system, or an air conditioning system;

that results in direct physical damage to **covered equipment**.

2. **"Covered equipment"** means property covered under Coverage A – Dwelling or Coverage B – Other Structures, and:
 - a. that generates, transmits or utilizes energy; or
 - b. which, during normal usage, operates under vacuum or pressure, other than the weight of its contents.

Covered equipment, however, does not mean:

- a. structure or foundation;
- b. insulating material;
- c. sewer piping, buried vessels or piping, or piping forming a part of a fire protective sprinkler system;
- d. water piping other than the following: boiler feed water piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
- e. kitchen or laundry appliances, including but not limited to, refrigerator, dishwasher, oven, stove, clothes washer or clothes dryer, unless permanently installed in the dwelling; or
- f. electronic entertainment or computer equipment, including but not limited to, television or stereo equipment, or any electronic component used with such electronic entertainment or computer equipment.

3. **"One accident"** means: If an initial **accident** causes other **accidents**, all will be considered **one accident**. All **accidents** that are the result of the same event will be considered **one accident**.

PROPERTY COVERAGES

1. We will pay for direct physical damage to **covered equipment** that is the result of an **accident**.

2. **Spoilage**

With respect to your refrigerated property, we will pay up to \$500 for:

- a. physical damage due to spoilage that is the result of an **accident**;
- b. any necessary expenses you incur to reduce the amount of loss under this coverage to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.

3. **Loss of Use**

Coverage for Additional Living Expense and Fair Rental Value, as provided under Coverage D – Loss of Use, is extended to the coverage provided by this endorsement. Our limit of liability for Loss of Use as a result of an **accident** covered under this endorsement is \$200 per day for no more than 5 consecutive days, up to a maximum of \$1,000 per **accident**.

EXCLUSIONS

1. We will not pay under this endorsement for loss, damage or expense caused by or resulting from electrical power surge or brown out.
2. We do not cover under this endorsement any property that is not **covered equipment** except for refrigerated property to the extent it is covered under **Spoilage**.

LOSS SETTLEMENT

Our liability for loss to any one item or items covered under this endorsement shall not exceed the smallest of the following:

1. the full cost of repair at the time of the loss;
2. the full cost of replacement at the time of the loss
3. any special limit of liability described in this endorsement; or
4. \$50,000.

However, if you replace with equipment that is better for the environment, safer or more efficient than the equipment being replaced, we will pay your replacement cost not to exceed 125% of the cost to repair or replace with a product of like kind and quality. This condition does not increase any of the applicable limits.

DEDUCTIBLE

A \$500 deductible applies to this endorsement.

All other provisions of this policy apply.

**AMERICAN NATIONAL PROPERTY AND CASUALTY COMPANY
AMERICAN NATIONAL GENERAL INSURANCE COMPANY**

CONTENTS REPLACEMENT COST COVERAGE ENDORSEMENT

In consideration of an additional premium, coverage of this policy is extended to include the full cost of repair or replacement without deduction for depreciation, subject to the conditions of this endorsement and applicable to:

Coverage C - Unscheduled Personal Property including outdoor radio and television antennas, carpeting, awnings, domestic appliances, and outdoor equipment.

Coverage provided by this endorsement is limited to the policy perils insured against.

Our liability for loss on any one item or items covered hereunder shall not exceed the smallest of the following amounts:

1. replacement cost at the time of loss;
2. the full cost of repair;
3. the Coverage C Limit of Liability;
4. any special **limits of liability** described in the policy;
5. the interest of the **insured**; or
6. the amount it would cost us to replace the item with a similar item of like kind and quality, using our replacement facilities, within a reasonable time after the loss.

Our **limit of liability** is the **actual cash value** of the item or items unless and until actual repair or replacement is completed. You may elect to disregard this condition in making claim. Such election shall not prejudice your right to make further claim within 180 days after the date of payment of the **actual cash value** amount for any additional liability brought about by this policy condition.

This endorsement does not apply:

1. to any item or article of rarity or antiquity that cannot be replaced;
2. to any item or article not maintained in reasonable repair or average operating condition; or
3. any item or article that is obsolete or useless to the **insured**.

All other terms and conditions of this policy not in conflict herewith remain unchanged.

Exhibit B

IN THE CHANCERY COURT FOR MONROE COUNTY, TENNESSEE

CAROL ANN and LAURA STUTTE,)
KIMBERLY HOLLOWAY,)
)
Plaintiffs,)
)
vs.)
)
JANICE MILLSAPS.)
)
Defendant.)

FILED
FEB 02 2011
TIME 3:35 PM
ROBERT J. PENNINGTON
CLERK & MASTER MONROE CTY
No. 16967

COMPLAINT

Plaintiffs, Carol Ann and Laura Stutte (hereinafter the “Stuttes”), by and through the undersigned counsel, bring this Complaint against the Defendant, Janice Millsaps (hereinafter “Ms. Millsaps”), for trespass, conversion, malicious harassment in violation of T.C.A. 4-21-701, and intentional infliction of emotional distress, and in support of these claims, state as follows:

1. Parties

1. Plaintiffs, Carol Ann and Laura Stutte, are domestic partners who formerly resided at 2715 Highway 360 in Vonore, Tennessee. The Stuttes now reside in Knox County, Tennessee. Their street address is not herein disclosed due to multiple death threats they have received from the Defendant, but they may be reached through the undersigned counsel.

2. Plaintiff, Kimberly Holloway, is the adult daughter of Carol Ann and Laura Stutte. She resided with the Stuttes during all times material to this Complaint, and lives with them now.

3. Defendant, Janice Millsaps, is a single person residing at 2713 Highway 360, Vonore, TN 37885. She is the former next-door neighbor of the Stuttes, and the subject of multiple police reports due to her harassment of the Stuttes. Ms. Millsaps is the daughter of John

Millsaps, deceased, whose estate conveyed ownership of the home that is the subject of this litigation to the Stuttes. Her double-wide mobile home is located about 20 feet from the gate leading to the Stuttes' property, and approximately 120 feet from the Stuttes' front door.

II. Jurisdiction and Venue

4. Jurisdiction is proper in this Court pursuant to T.C.A. 16-11-101(a), which states that the chancery courts shall have jurisdiction concurrently with the circuit courts of all civil causes of action, and pursuant to T.C.A. 16-11-103, which grants the chancery court exclusive original jurisdiction of all cases of an equitable nature where the demand exceeds fifty dollars (\$50.00).

5. Venue is proper in this Court pursuant to T.C.A. 20-4-101(a) in that the Defendant may be found in Monroe County, Tennessee, and the cause of action arises out of a fire the Defendant set to the Plaintiff's home, which is located in Monroe County, Tennessee.

III. General Allegations

6. On or about June 10, 2005, the Stuttes purchased their home located at 2715 Highway 360, Vonore, Tennessee, 37885, from the executor of the John Millsaps estate, paying the sum of \$149,000.

7. Over the next five (5) years, the Stuttes resided at the home and invested considerable sums of money in its improvement, such that at the time of the fire, the property was insured for \$206,000. The Stuttes also insured their personal property, most of which was located in the home, for \$154,000. The Stuttes intended the home to be where they retired, and sentimentally named the property "The Promised Land."

8. During the time the Stuttes resided at The Promised Land, the Stuttes were

routinely harassed and threatened by their neighbor, Defendant Janice Millsaps. Examples of the harassment include, but are not limited to:

- a. On several occasions, Ms. Millsaps threatened to poison the Stuttes' dogs. She then lured the Stuttes' dogs to her yard with meat scraps. The dogs would subsequently fall ill, and one of the Stuttes' dogs subsequently died, apparently from being poisoned.
 - b. Ms. Millsaps on several occasions came onto the Stuttes' property without permission, entering their home when they weren't home, and peering in their windows as the Stuttes watched TV at night. Ms. Millsaps would routinely comment that the Stuttes "couldn't fool" her by leaving their lights and television on when they left; that she always knew when they were home and when they were gone, and when they were sleeping and when they were awake.
 - c. Ms. Millsaps routinely approached the Stuttes in a surreptitious manner while they were gardening or fishing from their dock. When she was close, she would remark that she could have killed them "right then," and the Stuttes would not have had a chance to defend themselves.
9. Ms. Millsaps has repeatedly threatened the lives of the Stuttes, making statements such as, "there's bodies in these hills that no one will ever find." She routinely referred to "friends" that she allegedly has on the police force who would ensure that she was never caught if she killed the Stuttes, saying that the community "takes care of things the old fashioned way, the Millsaps way."
10. Ms. Millsaps specifically and repeatedly threatened to burn the Stuttes' house.

11. The Stuttes first attempted to ignore or simply to make light of her comments, not wanting to encourage her by responding with fear or anger. When the threats continued, the Stuttes made contact with her family and pastor. Ms. Millsaps brother, who had sold them the house, responded, "There's nothing we can do with her." Other members of Ms. Millsaps' family responded similarly. The pastor made light of the situation, saying, "Oh, that's just Janice."

12. On or about June 21, 2010, Ms. Millsaps accepted a UPS delivery to the Stuttes' daughter. The package contained the daughter's insulin pump that cost \$6,803.00. The pump is used to treat their daughter's diabetes.

13. Ms. Millsaps admitted to the Stuttes and to UPS representatives that she had received the pump, but stated, "you'll never get it back" and refused to return it. On June 22, 2010, at UPS's request, the Stuttes filed a police report, but Ms. Millsaps has still refused to return the pump.

14. Ms. Holloway now suffers severe dips in her blood sugar levels, because she cannot access the insulin pump. Ms. Holloway's insurance will not replace the pump, and neither Ms. Holloway nor the Stuttes have sufficient funds to pay for a new pump out-of-pocket. The Stuttes and Ms. Holloway fear that Ms. Holloway will go into an insulin-induced coma if this situation is not rectified soon.

15. On August 4, 2010, one month before the fire, Ms. Millsaps approached the Stuttes as they stopped to close their front gate, located a few steps from Ms. Millsaps' front porch. Ms. Millsaps poked at the Stuttes and asked them, "Do you know what is better than one dead queer? Two dead queers." She specifically threatened to burn their house down, before

laughing and returning to her house. The Stuttes departed immediately.

16. During that week, because they were tired of Ms. Millsaps' repeated harassment, upset by her theft of the insulin pump and the killing of their dogs, and fearful for their own safety, the Stuttes decided to sell their home.

17. The Stuttes listed their home with ERA Norman Lee Real Estate for the sale price of \$274,900. The house was shown, with favorable reviews, during the next two weeks to four potential buyers.

18. On September 4, 2010, at approximately 3:00 o'clock in the afternoon, the Stuttes, Ms. Holloway, and their neighbor, left on a long-scheduled vacation to celebrate the Labor Day weekend in Nashville, Tennessee.

19. At approximately 8:00 that night, the Stuttes received a call from the Monroe County Sheriff's Department, wherein they were informed that their house was on fire and was a total loss.

20. Carol Ann Stutte drove home from Nashville to see if the dogs had been killed, and witnessed the last wall of her home fall into the remaining embers of the fire. The dogs were unharmed.

21. The next morning, Carol Ann Stutte saw the word "Queers" painted in black spray paint on the side of their detached garage.

22. On September 7, 2010, the Stuttes discovered that the lug nuts on the trailer to their boat had been loosened and the trailer vandalized.

23. During this same time frame, the Stuttes discovered nails in front of their gate and around their vehicles. They duly filed a police report.

24. A few days after the fire, Ms. Millsaps taunted the Stuttes as they visited the site of their home, pointing at the Stuttes and at the remains of their home, and laughing. Her intent and demeanor appeared malicious.

25. These incidents have caused the Stuttes tremendous emotional distress. Their privacy is gone. Their home is gone. They suffer from periods of nausea, insomnia, nightmares and depression. Carol Ann in particular, is prone to periods of crying for no immediate reason. They live in fear of the memory of Ms. Millsaps' threats to kill them, made more believable since she had threatened to burn their house down less than a month before it burned to the ground. The Plaintiffs describe their lives as feeling "like zombies."

Count 1: Trespass and Conversion

26. By her actions as described in Paragraphs 4-25 of this Complaint, Ms. Millsaps is liable to the Stuttes for trespass and conversion, in that Ms. Millsaps intentionally took and refused to return the Plaintiffs' insulin pump, killed their dogs, repeatedly entered Plaintiffs' land without their permission, vandalized their boat and garage, and set fire to their home, causing massive damage to their property and depriving them of the use thereof.

27. As a result of her actions, the Stuttes are entitled to compensatory and punitive damages, attorneys' fees, court and discretionary costs, together with pre- and post-judgment interest, in an amount not less than the loss of value of their property, to wit: \$292,688.82.

Count 2: Intentional Infliction of Emotional Distress

28. By her actions as described in Paragraphs 4-25 of this Complaint, Ms. Millsaps is liable to the Stuttes for intentional infliction of emotional distress. Ms. Millsaps has intentionally and/or maliciously harassed and threatened the Stuttes, entered their home without permission,

stolen Ms. Holloway's insulin pump, killed their dogs, vandalized their property, called them "queers," and burned their house down. Such acts constitute intentional infliction of emotional distress in that they are intentional and/or reckless, so outrageous as to not be tolerated by civilized society, and have resulted in serious mental injury to the plaintiffs.

29. As a result of her actions, the Stuttes are entitled to compensatory and punitive damages, attorneys' fees, court and discretionary costs, together with pre- and post-judgment interest, in an amount not less than the loss of value of their property and an appropriate sum to compensate them for their pain and suffering, in an amount not less than \$880,000.00.

Count 3: Malicious Harassment


30. By her actions as described in Paragraphs 4-25 of this Complaint, Ms. Millsaps is liable to the Stuttes for malicious harassment, in violation of T.C.A. 4-21-701, in that she has, on the basis of the Stuttes familial status as domestic partners, unlawfully deprived the Stuttes of their constitutional right to the use and enjoyment of their real and personal property, by intimidation and/or by damaging, destroying, and defacing their real and personal property, and by depriving them of their right of privacy as protected by the Tennessee Constitution.

31. As a result of her actions, the Stuttes are entitled to compensatory and punitive damages, attorneys' fees, court and discretionary costs, together with pre- and post-judgment interest, in an amount not less than the loss of value of their property and an appropriate sum to compensate them for their pain and suffering, in an amount not less than \$880,000.00.

Request for Relief

32. Wherefore, premises considered, Plaintiffs request the following relief:
- A. For process to issue and for this Complaint to be served upon the Defendant, her answer being required within thirty (30) days as required by the Tennessee Rules of Civil Procedure.
 - B. For a jury to be empaneled to try this action.
 - C. That upon trial, for an award of not less than \$880,000, together with pre- and post-judgment interest, attorney fees, court and discretionary costs.
 - D. **For a temporary and permanent injunction directing Ms. Millsaps to stay away from the Stuttes and from their real and personal property and to not contact or communicate with the Stuttes or their daughter, and to immediately return Ms. Holloway's insulin pump.**
 - E. For such other, further and general relief as this Court deems appropriate.

Respectfully submitted this 20th day of February, 2011.



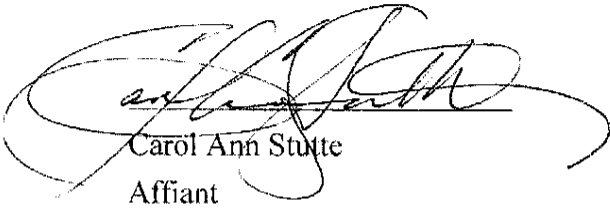
Margaret Beebe Held
Attorney for Plaintiff
BOPR #018033


HELD LAW FIRM
1522 Highland Avenue
Knoxville, TN 37916
(865) 637-6550

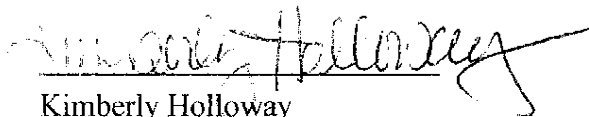
AFFIDAVIT OF CAROL AND LAURA STUTTE AND KIMBERLY HOLLOWAY

We, the undersigned, having been duly sworn according to the law, state that I have read the foregoing COMPLAINT, that the allegations contained therein are true and correct to the best of my knowledge, information and belief, and that this Complaint is brought for no improper purpose, but in truth and sincerity for the purposes described therein.

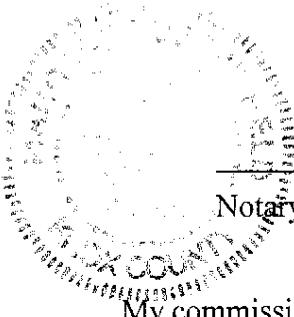
SIGNED this 31st day of January, 2011.



Carol Ann Stutte
Affiant


Laura Stutte
Affiant


Kimberly Holloway
Affiant

Sworn to and subscribed before me this 31st day of January, 2011.

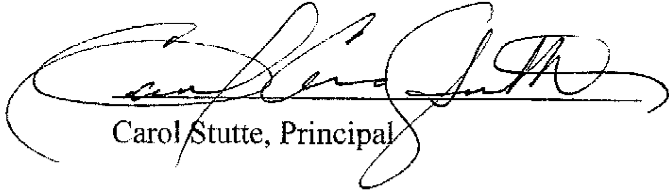




Notary Public

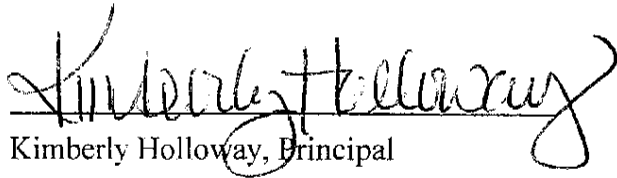
My commission expires: 11-12-2011

COST BOND

I, the undersigned, do hereby agree to be responsible for payment of court costs that may be awarded against me in the case of failure in the prosecution of this action, in accordance with T.C.A. 20-12-120.


Carol Stutte, Principal


Laura Stutte, Principal


Kimberly Holloway, Principal

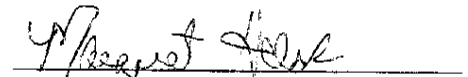

Margaret Held, Surety

Exhibit C

COVINGTON & BURLING LLP

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SLEVITT@COV.COM

May 19, 2011

By E-Mail and FedEx

Ms. Stacey Jennings
Senior SIU Investigator
American National Property & Casualty Company
1949 East Sunshine
Springfield, MO 66898-0001

N. Mark Kinsman, Esq.
Baker, Kinsman, Hollis, Clelland & Winer, P.C.
701 Market Street, Suite 1500
Chattanooga, TN 37402-4825
nmkinsman@bkhcw.com

Re: Insureds: Carol Ann and Laura Stutte
Policy No.: 41-H-V-66965 (06/10/2010 – 06/10/2011)
Your Claim No.: 41-H-25N023-R
Loss Date: 09/04/2010

Dear Ms. Jennings and Mr. Kinsman:

Covington & Burling LLP is coverage counsel for Carol Ann and Laura Stutte. This firm has agreed to represent them *pro bono* due to the compelling nature of their claim. The American National Property and Casualty Company (“ANPAC”) issued the above-referenced homeowners insurance policy (the “Policy”), which insures the Stuttes’ real and personal property located at 2715 Highway 360, Vonore, Monroe County, Tennessee. As you know, the Stuttes’ home and its contents were completely destroyed by fire on September 4, 2010. The Stuttes timely noticed the above-referenced claim under the Policy and submitted a Sworn Statement in Proof of Loss for \$276,275.46.

COVINGTON & BURLING LLP

Ms. Stacey Jennings
N. Mark Kinsman, Esq.
May 19, 2011
Page 2

ANPAC denied the Stuttes' claim by letter dated May 12, 2011. That same day, ANPAC filed a declaratory judgment action in the United States District Court for the Eastern District of Tennessee, which seeks a declaration that ANPAC has no obligation under the Policy to pay the Stuttes' claim. The Stuttes received the denial letter, as well as the summonses and copies of the complaint, on May 16, 2011.

ANPAC's only bases for denying coverage appear to be its conclusory allegations that the Stuttes "intentionally caused" the fire and "have committed concealment or fraud relating to the claim." However, ANPAC does not cite or plead *any* facts in support of these grave accusations. These unsupported and unfounded allegations fall well short of ANPAC's obligations under Tennessee law to "provide a reasonable and accurate explanation of the basis" for its coverage denial. Tenn. Code Ann. § 56-8-105(12). The Stuttes demand that ANPAC disclose a complete copy of its investigation file, as well as copies of any and all other information that ANPAC believes supports or relates in any way to the allegations in its denial letter and complaint.

We await with great interest the information on which ANPAC has based its decision because the facts of which we are aware strongly suggest that the decision is groundless. Both documentary and testimonial evidence confirms that the Stuttes and their daughter – Kimberly Holloway – were in Nashville, Tennessee, approximately 200 miles away from their home, at the time it burned down. ANPAC's allegations therefore appear to be baseless and asserted in bad faith.

COVINGTON & BURLING LLP

Ms. Stacey Jennings
N. Mark Kinsman, Esq.
May 19, 2011
Page 3

The Stuttes demand that ANPAC immediately withdraw its coverage denial and declaratory judgment action, and that ANPAC promptly pay the above-referenced claim in full. If ANPAC does not do so within 60 days, the Stuttes intend to bring a bad faith claim against ANPAC pursuant to Tenn. Code Ann. § 56-7-105.

In addition to issuing an erroneous denial of coverage and improperly refusing to pay for the property loss suffered by its insureds, ANPAC has failed to fully comply with its obligation under Coverage D of the Policy to reimburse the Stuttes for their additional living expenses for up to 24 months. At present, ANPAC owes the Stuttes \$4,078.15 for covered expenses through May 1, 2011. The Stuttes demand that ANPAC pay this amount promptly, and that ANPAC fulfill its policy obligations by continuing to reimburse the Stuttes' additional living expenses within a reasonable time after they accrue.

The Stuttes have fulfilled, and continue to fulfill, all of their obligations under the Policy, including the payment of premiums. If ANPAC persists in its refusal to pay the Stuttes' claim and additional living expenses, we will take all appropriate actions to protect the Stuttes' rights and resolve this matter and to hold ANPAC to account.

We look forward to hearing from you soon.

Sincerely,



Scott J. Levitt

cc: Darien S. Capron, Esq. – Covington & Burling LLP
Jonathan G. Hardin, Esq. – Covington & Burling LLP
Margaret B. Held, Esq.
Carol Ann and Laura Stutte

COVINGTON & BURLING LLP

Ms. Stacey Jennings

N. Mark Kinsman, Esq.

May 19, 2011

Page 4

Seth A. Tucker, Esq. – Covington & Burling LLP

Amy Whelan, Esq. – National Center for Lesbian Rights