222 VA 33

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 791471

GEORGE R. PARKER and RACHEL H. PARKER
Appellants

v.

HARTFORD FIRE INSURANCE COMPANY
Appellee

JOINT APPENDIX

Wm. Rosenberger, Jr.
1904 Central Fidelity Bank Bldg.
P. O. Box 1328
Lynchburg, Virginia 24505
Attorney for Appellants

Richard S. Tilley
Dominion Building
410 Elm Avenue, S.W.
Roanoke, Virginia 24016
Attorney for Appellee

APPELLATE PRINTING SERVICES, INC., HERITAGE BLDG., RICHMOND, VA. (804) 643-7789

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EXHIBITS

CIVIL WARRANT

Virginia: County of Bedford, To-Wit:

To the Sheriff of ~~said County~~ CITY OF RICHMOND:

I hereby command you, in the name of the Commonwealth of Virginia, to summon ..... Hartford Fire Insurance Company ....., if to be found in your district, to appear at ... Bedford ..., Virginia ..... in said County on the 30th day of November ..... 19 78 at 2:00 P.M. before the Judge of the Bedford County General District Court to answer the complaint of .... George R. Parker and Rachel H. Parker .....

upon a claim for money for the sum of Five Thousand and no/100----------, Dollars, ($ 5,000.00) with interest from the 30th day of November ....., 19 78 , till paid, and $..... attorney fee, ...% collection fee due by reason of Damages due under Farm Policy No. 14 FO 101758 issued to George R. Parker and Rachel H. Parker for the period beginning September 1, 1973 and expiring September 1, 1976 .....

....., and then and there make return of this warrant.

Homestead exemption waived? .....

Given under my hand this 8th day of November, 19 78 .

Leona L. Harrison
Deputy Clerk Bedford County General District Court

George R. Parker & Rachel H. Parker
vs.
Hartford Fire Insurance Company

In debt.

day of , 19 ....

Judgment, that the plaintiff recover of the defendant .....
..... Dollars with interest from the ... day of ....., 19 , till paid, and $ ..... attorney fee, % collection fee, $ ..... for his costs.

As to this judgment the homestead exemption is/is not waived.

Judge

APPLICATION FOR REMOVAL FILED 12/21/78 (R. 2)

Comes now the defendant, by counsel, and files his Application for Removal of the above styled matter to the Circuit Court for the County of Bedford, Virginia, and in support thereof says as follows:

1. That the amount in controversy exceeds One Thousand and no/100 Dollars ($1,000.00), exclusive of interest, attorney's fees and costs.

2. That the defendant does file herewith an Affidavit of Substantial Defense setting forth its grounds of defense.

3. That the defendant hereby tenders to be paid to the Clerk of the Circuit Court for the County of Bedford, Virginia, the writ tax and costs of the Circuit Court for the County of Bedford, Virginia, in the amount of $20.00.

4. That the defendant hereby tenders to be paid to the plaintiff the sum of $5.00 for his accrued Court costs herein.

WHEREFORE, your defendant requests the above styled matter be removed to the Circuit Court for the County of Bedford, Virginia in accordance with Section 16.1-92 of the 1950 Code of Virginia, as amended.

AFFIDAVIT OF SUBSTANTIAL DEFENSE FILED 12/21/78 (R. 4)

This day personally appeared before me, Margaret H. Ward, a Notary Public in and for the State and County, Carl R. Croy, who gave oath before me in due form of law,

a. that he is the agent and employee of the defendant in the above styled matter;

b. that the amount in controversy exceeds One Thousand Dollars ($1,000.00);

c. that said defendant has a substantial defense to the plaintiff's claim;

d. that defendant did not insure the plaintiffs for the loss complained of.

OPINION DATED JULY 6, 1979 (R. 42)

The sole issue is whether Hartford owed a policy defense to its insureds, the Parkers, under a comprehensive farmowner's policy. The Company refused to defend a suit filed by Loyd Turpin against the Parkers. In this action, the Parkers seek reimbursement for attorney fees incurred in the defense of the case. There is no dispute as to the amount. Argument was heard on May 23, 1979, and certain material facts were stipulated.

Procedurally, Loyd Turpin filed a motion for judgment against the Parkers and Virginia Harvestore Inc. seeking compensatory and punitive damages for alleged desecration of a reserved burial lot on the Parker farm. (Exhibit #1) Demurrers were sustained as to all defendants and a Bill of Complaint was later filed against the Parkers only and heard on the Chancery side of this Court. (Exhibit #2) After numerous hearings and views, a decree was entered on March 29, 1977 (Exhibit #3)

The Bill alleged a recorded reservation in a burial lot on land owned by the Parkers. The reservation appeared in the chain of title but not in the 1970 deed to the Parkers. Hartford claims that the suit was outside the coverage of its policy and excluded under the exclusion clause. The Parkers claim that the bill filed by Turpin against the Parkers was ambiguous but did allege, inter alia, unintentional trespass. They say that Hartford had a duty to defend an unintentional

trespass claim. Because of the positions taken by counsel, it is necessary to fully set out the allegations of the Bill of Complaint (Exhibit #2)

> "12. That the defendant, George R. Parker, knew or should have known of the existence of the burial lot at the time of the 1968 deed due to the maintained condition of the burial lot and the fence enclosing same; and, in fact, was given actual knowledge of the existence of the burial lot subsequent to said conveyance and prior to the occurrence of the acts referred to in paragraph 14 when he became in arrears on a required payment of a purchase money note due to the plaintiff which was given as part of the consideration for the 1968 deed, and received forgiveness of such arrearage on his oral promise to the plaintiff that he, the defendant, George R. Parker, would repair and replace the fence enclosing the burial lot and would clear the burial lot of trash and debris that had accumulated thereon.
>
> 13. That because the burial lot was excepted out of the 1921 deed, because the burial lot has been used as a place of burial for members of the plaintiff's family, because the burial lot has been maintained as a burial lot up to the time of the 1968 deed and, finally, because the defendant, George R. Parker, had actual knowledge of the existence of the burial lot, the defendants, George R. Parker and his wife, Rachel Hoback Reynolds Parker, had the lawful duty to refrain from trespassing upon the burial lot, to refrain from doing any act that would interfere with the continued use of the burial lot as a place of burial for members of the plaintiff's family, including the plaintiff, to refrain from doing any act that would interfere with the right of members of plaintiff's family, including the plaintiff, to visit the burial lot and the graves of their decedents buried thereon, and to refrain from doing any act that would disturb or interfere with or desecrate any of the graves within the burial lot.
>
> 14. That notwithstanding the defendants lawful duty as set forth in paragraph 11, the defendants tore down the fence enclosing the burial lot, have refused to allow plaintiff to visit the burial lot and, furthermore, contracted with Virginia Harvestore, Inc. for the construction of a storage and feeding system on the tract of land where the burial lot is situated, and the defendants, by the acts of their agent, Virginia Harvestore, Inc., in constructing said storage and feeding system, unlawfully entered upon the burial lot, and willfully, wantonly and recklessly, without regard to the rights of the plaintiff or members of his family, erected a silo and/or feed bin in such a

manner and in such a place that the burial lot has ceased to exist, is desecrated and is now used in the operation of a farm, thereby causing irreparable damage to the graves of the plaintiff's decedents, depriving plaintiff and the members of his family of a place in which to be buried and eliminating a place where the plaintiff and the members of his family can come to pay respect to their deceased family members.

15. That the defendants have refused to cease their unlawful trespass upon the burial ground and to restore same to its prior condition.

16. That unless the defendants are restrained and prevented from continuing the unlawful trespass upon the burial lot and be required to restore it to its former condition, its use as a place of burial for members of plaintiff's family, including those family members previously buried in the burial lot, the family members now living and future family members, will cease.

17. That the plaintiff has no adequate remedy at law."
(Exhibit #2, pp. 4, 5, 6)

The Bill concluded with a prayer for a permanent injunction and ".....sufficient damages.....to defray the cost of restoring the burial lot to its former condition and to reimburse him for his costs and attorneys fees."

Counsel for the Parkers argues in his brief that a decision should not be based on a "partial reading" of the allegations, (June 22, 1979, letter). I agree. The allegations should be read as a whole. <u>But, when read as a whole the pivotal question becomes - Does the bill allege unintentional trespass or does it allege intentional acts? The inescapable conclusion is that it alleges intentional acts.</u>

The liability of the company to defend actions against its insured is set forth in coverage G of the policy as follows:

"(a) Liability: To pay on behalf of the Insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury or property damage and the Company shall defend any suit against the

> Insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent."

The exclusion clause of the policy, Section 2(c), provides that no coverage is afforded ".....to bodily injury or property damage caused intentionally by or at the direction of the insured....."

The general rule is that the duty to defend an action is to be determined by the allegations of the suit.

> "Generally, the obligation of a liability insurer to defend an action brought against the insured by a third party is determined by the allegations of the complaint in such action." 2 ALR 3d 1249; see also, 44 Am.Jur. 2d, "Insurance" §1539.

As counsel for the Parkers correctly states, if the allegations are ambiguous and leave it in doubt whether the case alleged is covered by the policy, the refusal of the Company to defend is at its own risk. London Guar. Co. v. White & Bros., 188 Va. 195, 199-200, 49 S.E.2d 254, 256 (1948). The obligation of the Company in this case was to pay damages assessed against the insured because of bodily injury or property damage. It had to defend claims covered by the policy even if such claims were groundless, false, or fraudulent. Moreover, in a recent case, the Virginia Supreme Court has held that a blanket liability insurer must defend a claim for punitive damages when such claim was ancillary to the claim for compensatory damages since the duty to defend extended to the occurrence out of which both claims arose. Lerner v. Safeco, 219 Va. 101, 245 S.E.2d 245 (1978). However, it should be noted that in this case and several others cited by counsel for the Parkers, the language of the insuring arguments was not the same. In Safeco, the Company obligated itself to pay damages for

bodily injury or property damage to which the insurance applied caused by an occurrence. The underlined language does not appear in the policy in question. The Safeco opinion noted that a company is under no duty to defend an action against its insured ".....when, under the allegations of the complaint, it would not be liable under its contract for any recovery therein had....." Travelers Indem. Co. v. Obenshain, Committee, 219 Va. 44, 245 S.E.2d 247 (1978); Accident Corp. v. Washington Co., 148 Va. 829, 843-44, 139 S.E. 513, 517 (Spec. Ct. App. 1927).

In determining coverage questions based on pleadings, the Court should consider the pleading as a whole rather than extract words or phrases favorable to one side. Considered as a whole, it is clear that the Turpin complaint alleged willful desecration of a known, partially fenced, burial lot on the Parker farm. This encumbrance on the Parker farm appeared of record in their chain of title. It is alleged that they knew its location because of fencing and maintenance (Par. 12).

The argument of the Parkers that the allegations amount to nothing more than a negligent trespass ignores reality. The pleadings speak for themself. The Company was not required to defend for two reasons. First, under the strict coverage of this policy (as destinguished from broader language in other cases cited) the incident giving rise to the complaint was outside the scope of coverage. Certainly no coverage was intended for injunctions on the equity side of court. Second, even if covered, the Parkers' claim for attorneys fees must fail under the "willful act" exclusion of the policy.

Counsel for the Company cites numerous authorities in Virginia and elsewhere for the proposition that an insurance company is not bound to defend claims not within its insurance contract. Its duty to defend groundless, false or fraudulent action extends only to those actions to which the policy applies and not to actions outside the policy. See Ocean Accident v. Washington Brick, 148 Va. 829, 139 S.E. 513 (1927); London Guar. Co. v. White Bros., 188 Va. 195, 198, 199-200, 49 S.E.2d 254, 255-56 (1948); Fessenden School v. American Mutual Liability Insurance Co., 289 Mass. 124, 193 N.E. 558.

Cases relied upon by the Parkers are distinguishable. In Norman v. Insurance Company of North America, 218 Va. 718, 239 S.E.2d 902 (1978), the Court simply recognized that if the allegations in the pleading leave it in doubt as to whether the case alleged is covered by the policy, the refusal of the insurance company to defend is at its own risk. York Industrial Center v. Michigan Mutual Company, 271 N.C. 158, 155 S.E.2d 501 (1967) held that the insurance policy covered a trespass on lands of another caused by a surveyor's error in locating boundary lines. The language in that policy, however, was not similar to that in the case at bar. As a matter of fact, the opinion states on page 506 ".....the policy issued by the defendant in this case, as amended, was designed to provide coverage substantially more extensive than that limited to liability for damages 'caused by accident'....." The Restatement rule is inapposite because it concerns intrusions under mistake. We are not dealing with trespass based on mistaken belief or a surveyor's error.

The claim of Turpin against the Parkers was for desecration and willful interference with a reserved burial lot on the Parker farm.

An insurance policy is nothing more than a contract. The obligations of the parties should be determined from the language of the contract. Unless the language is ambiguous, no rules of construction are necessary. For reasons stated, final judgment will be entered for Hartford Fire Insurance Company. Counsel for the Company will prepare and submit an order.

FINAL ORDER ENTERED AUGUST 2, 1979

This day came the parties, by counsel, and neither party demanding a jury and both parties having waived a jury, all matters of law and fact were submitted to the Court without a jury, and counsel for both parties having heretofore filed briefs in this matter, and the Court having considered the same, and now being of opinion that it is proper in all respects so to do, for the reasons stated in the Opinion of this Court, dated July 6, 1979, which is attached hereto and made a part hereof, it is Considered that the plaintiffs take nothing by their warrant for money against the defendant, but for their false clamor be in mercy, etc., and that the defendant go thereof without day and recover against the plaintiffs its cost by it about its defense in this behalf expended, to which action of the Court, the plaintiffs, by counsel, duly object and except on the ground that the motion for judgment and the bill of complaint filed against the plaintiffs allege facts and circumstances, some of which, if proved, fall within the risk covered by the liability insurance policy under which the plaintiffs were entitled to a defense by the defendant. Lerner v. Safeco, 219 Va. 101, 245 S.E. 2d 249 (1978).

ASSIGNMENT OF ERROR

The insurer owed the duty to defend.

EXHIBIT NO. 1 (R. 51)

MOTION FOR JUDGMENT

* * * * * *

8. That the defendants, George R. Parker and Rachel Hoback Reynolds Parker contracted with the defendant, Virginia Harvestore, Inc., for the construction of a storage and feeding system on the tract of land referred to in paragraph 7 above, and in the process of said construction illegally and without permission proceeded to destroy, obliterate and desecrate the graves of Richard Turpin and Jack Turpin by erecting a silo and/or a feed bin thereon and thereover, knowing at the time thereof the existence of the aforesaid burial lot.

9. That as a result of the acts of the defendant, Virginia Harvestore, Inc., in erecting the aforesaid silo and/or feed bin for the defendants, George R. Parker and Rachel Hoback Reynolds Parker, the graves of Richard Turpin and Jack Turpin have ceased to exist and are now being used in the operation of a farm.

10. That the defendants, George R. Parker and Rachel Hoback Reynolds Parker, have refused to restore the graves of Richard Turpin and Jack Turpin.

11. That because of the intentional unauthorized, and wantonly inhumane and wrongful actions of the defendants, George R. Parker, Rachel Hoback Reynolds Parker and Virginia Harvestore, Inc., in destroying and obliterating the graves of Richard Turpin and Jack Turpin,

plaintiff has suffered severe and permanent mental anguish and pain and suffering, as well as a high degree of emotional worry and strain.

12. That furthermore, as a direct result of all of the aforesaid actions of the defendants, the plaintiff has been wrongfully deprived of a place in which to be buried next to his beloved family members and, as a result, will suffer future anguish and grief, and in addition, will be forced to purchase additional burial lots.

13. That furthermore, plaintiff has been forced to incur substantial legal fees in his efforts to combat and rectify the intentional, illegal and wanton acts of the defendants.

WHEREFORE, the plaintiff, by counsel, moves the Circuit Court of Bedford County for a judgment against the defendants, jointly and severally, for the sum of One Hundred Thousand Dollars ($100,000.00) in compensatory damages stemming from the desecration and destruction of the graves of Richard Turpin and Jack Turpin, as well as the continuing trespass and desecration being committed upon the said graves each and every day by George R. Parker and Rachel Hoback Reynolds Parker, and One Hundred Thousand Dollars ($100,000.00) punitive damages stemming from all of the aforesaid acts.

EXHIBIT NO. 2 (R. 57)

BILL OF COMPLAINT

* * * * * *

12. That the defendant, George R. Parker, knew or should have known of the existence of the burial lot at the time of the 1968 deed due to the maintained condition of the burial lot and the fence enclosing same; and, in fact, was given actual knowledge of the existence

of the burial lot subsequent to said conveyance and prior to the occurrence of the acts referred to in paragraph 14 when he became in arrears on a required payment of a purchase money note due to the plaintiff which was given as part of the consideration for the 1968 deed, and received forgiveness of such arrearage on his oral promise to the plaintiff that he, the defendant, George R. Parker, would repair and replace the fence enclosing the burial lot and would clear the burial lot of trash and debris that had accumulated thereon.

13. That because the burial lot was excepted out of the 1921 deed, because the burial lot has been used as a place of burial for members of the plaintiff's family, because the burial lot has been maintained as a burial lot up to the time of the 1968 deed and, finally, because the defendant, George R. Parker, had actual knowledge of the existence of the burial lot, the defendants, George R. Parker and his wife, Rachel Hoback Reynolds Parker, had the lawful duty to refrain from trespassing upon the burial lot, to refrain from doing any act that would interfere with the continued use of the burial lot as a place of burial for members of the plaintiff's family, including the plaintiff, to refrain from doing any act that would interfere with the right of members of plaintiff's family, including the plaintiff, to visit the burial lot and the graves of their decedents buried thereon, and to refrain from doing any act that would disturb or interfere with or desecrate any of the graves within the burial lot.

14. That notwithstanding the defendants lawful duty as set forth in paragraph 11, the defendants tore down the fence enclosing the burial lot, have refused to allow plaintiff to visit the burial lot and, furthermore, contracted with Virginia Harvestore, Inc. for the

construction of a storage and feeding system on the tract of land where the burial lot is situated, and the defendants, by the acts of their agent, Virginia Harvestore, Inc., in constructing said storage and feeding system, unlawfully entered upon the burial lot, and willfully, wantonly and recklessly, without regard to the rights of the plaintiff or the members of his family, erected a silo and/or feed bin in such a manner and in such a place that the burial lot has ceased to exist, is desecrated and is now being used in the operation of a farm, thereby causing irreparable damage to the graves of the plaintiff's decedents, depriving plaintiff and the members of his family of a place in which to be buried and eliminating a place where the plaintiff and the members of his family can come to pay respect to their deceased family members.

15. That the defendants have refused to cease their unlawful trespass upon the burial ground and to restore same to its prior condition.

16. That unless the defendants are restrained and prevented from continuing the unlawful trespass upon the burial lot and be required to restore it to its former condition, its use as a place of burial for members of plaintiff's family, including those family members previously buried in the burial lot, the family members now living and future family members, will cease.

17. That the plaintiff has no adequate remedy at law.

WHEREFORE, the plaintiff prays that a permanent injunction be granted restraining and enjoining the defendants from continuing the trespass upon the burial lot; and, further, the plaintiff prays that sufficient damages be awarded him to defray the cost of restoring the

burial lot to its former condition and to reimburse him for his costs in this behalf expended, including attorney's fees, and for such other further and general relief as the nature of this cause may require.

EXHIBIT NO. 3 (R. 63)

DECREE ENTERED MARCH 29, 1977

* * * * * *

2. That the burial lot so reserved by the 1921 deed and situated on the 150.60 acre tract of land acquired by the defendant, Rachel Hoback Reynolds Parker, by deed dated August 27, 1970, and recorded in Deed Book 363 at page 578, is 25 feet by 25 feet in size and is located adjacent to and on the easterly side of the milk parlor presently situated on said tract, in the area of the large silo and feeder.

* * * * * *

5. That the defendants and their successors in title are perpetually restrained and enjoined from digging, excavating or littering upon the said burial lot.

* * * * * *

9. That the defendants shall pay all court costs incurred in this matter, which shall not include attorney's fees, which amounts shall be paid within thirty (30) days after entry hereof; but the claim of the complainant to any other damages is denied.

* * * * * *

EXHIBIT NO. 4 (R. 66)

BILL OF HUNTER, FOX AND TRABUE

LAW OFFICES

HUNTER, FOX & TRABUE

A PROFESSIONAL CORPORATION

SEVEN-O-SEVEN BUILDING

ROANOKE, VIRGINIA

24011

May 31, 1973

CHARLES EVANS HUNTER (1887-1968)
CHARLES O. FOX, JR.
CHARLES O. FOX, III
KENNETH E. TRABUE
GEORGE W. WOOTEN
CHARLES H. OSTERHOUDT
JOHN J. BEALL, JR.
C. THOMAS BURTON, JR.

P. O. BOX 534
AREA CODE 703
TELEPHONE 343-2451

HUGH D. GLISSON-COUNSEL

Mr. and Mrs. George Parker
Route 1
Goode, Virginia

Invoice # 01384-1
Billed Through May 31, 1973

FOR PROFESSIONAL SERVICES RENDERED

To: HUNTER, FOX & TRABUE

Fee: For Professional Services Rendered		
16.70 hours at $35.00 an hour-George W. Wooten		$ 584.00
1.80 hours at $30.00 an hour-John J. Beall, Jr.		54.00
6.30 hours at $25.00 an hour-C. Thomas Burton, Jr.		157.00
Total Fee		$ 796.00
Costs: Mileage Reimbursement - Trip to Bedford	$ 9.00	
Long Distance Phone Calls	14.90	
Total Costs		$ 23.90
TOTAL		$ 819.90

paid 800.00 - July 9, 1973
776. fee
23.90 costs

Exhibits No 4
WHS

EXHIBIT NO. 5 (R. 67)

BILL OF HUNTER, FOX AND WOOTEN

LAW OFFICES
HUNTER, FOX & WOOTEN
A PROFESSIONAL CORPORATION
SEVEN-O-SEVEN BUILDING
ROANOKE, VIRGINIA
24024

CHARLES D. FOX, III
GEORGE W. WOOTEN
C. THOMAS BURTON, JR.
GARY E. TEGENKAMP
CHARLES E. MILLS, III
LINDA F. STEELE
JOHN G. JACKSON
CHARLES E. KLUTTZ
WILLIAM E. VALENTINE

CHARLES EVANT HUNTER (1887-1968)
CHARLES D. FOX, JR. (1895-1976)
P. O. BOX 12247
AREA CODE 703
TELEPHONE 343-2451
CABLE ADDRESS
"FOXHUNT"

August 22, 1977

Mr. and Mrs. George Parker
Route 1, Box 230
Crew, Virginia 23930

Invoice #01384-2
Billed Through: August 22, 1977

FOR PROFESSIONAL SERVICES RENDERED

TO: HUNTER, FOX & WOOTEN

FEE:	3.7 hours - $25.00/hour -	C. Thomas Burton, Jr.		$ 92.5
	.6 hour - $25.00/hour -	Gary E. Tegenkamp		15.0
	19.7 hours - $35.00/hour -	George W. Wooten	$ 689.50	
	59.7 hours - $40.00/hour -	George W. Wooten	2,388.00	
	9.0 hours - $45.00/hour -	George W. Wooten	405.00	
	Total	George W. Wooten		3,482.5
		Total Fee		$3,590.0
Costs Advanced:	Phone Calls		$ 11.84	
	Mileage		45.90	
	Other		63.32	
	Total Costs			$ 121.0
		TOTAL		$3,711.0

Exhibit No 5

EXHIBIT NO. 6

FARMERS COMPREHENSIVE PERSONAL LIABILITY FORM
PROVISIONS APPLICABLE TO SECTION II

FO-9
FO-Section II
(Ed. 4-63)

THIS COMPANY AGREES WITH THE NAMED INSURED:

INSURING AGREEMENTS

1. COVERAGE G — FARMERS COMPREHENSIVE PERSONAL LIABILITY:

(a) **Liability:** To pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as damages because of bodily injury or property damage and the Company shall defend any suit against the Insured alleging such bodily injury or property damage and seeking damages which are payable under the terms of this policy, even if any of the allegations of the suit are groundless, false or fraudulent; but the Company may make such investigation and settlement of any claim or suit as it deems expedient.

(b) **Fire legal liability:** Coverage G also applies with respect to all sums which the Insured shall become legally obligated to pay as damages because of property damage to the premises or house furnishings therein if such property damage arises out of (1) fire, (2) explosion, or (3) smoke or smudge caused by sudden, unusual and faulty operation of any heating or cooking unit.

2. COVERAGE H — PERSONAL MEDICAL PAYMENTS: To pay all reasonable expenses incurred within one year from the date of accident for necessary medical, surgical, X-ray and dental services, including prosthetic devices, and necessary ambulance, hospital, professional nursing and funeral services, to or for each person who sustains bodily injury caused by accident,

(a) while on the premises with the permission of an Insured, or

(b) while elsewhere if such bodily injury, (1) arises out of the premises or a condition in the ways immediately adjoining, (2) is caused by the activities of an Insured or of any farm or residence employee in the course of his employment by an Insured, (3) is sustained by an insured farm employee or by a residence employee and arises out of and in the course of his employment by an Insured, or (4) is caused by an animal owned by or in the care of an Insured.

3. COVERAGE I — PHYSICAL DAMAGE TO PROPERTY OF OTHERS: To pay for loss of property of others caused by an Insured. "Loss" means damage or destruction but does not include disappearance, abstraction or loss of use. This coverage shall not apply if insurance is otherwise provided in Section I of this policy.

4. SUPPLEMENTARY PAYMENTS: With respect to such insurance as is afforded by this policy, for Coverage G, this Company shall pay, in addition to the applicable limits of liability:

(a) all expenses incurred by this Company, all costs taxed against the Insured in any defended suit and all interest on the entire amount of any judgment therein which accrues after entry of the judgment and before this Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of this Company's liability thereon;

(b) premiums on appeal bonds required in any such suit, premiums on bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy, but without any obligation to apply for or furnish any such bonds;

(c) expenses incurred by the Insured for such immediate medical and surgical relief to others, except a farm employee, as shall be imperative at the time of the accident;

(d) all reasonable expenses, other than loss of earnings, incurred by the Insured at this Company's request.

5. SUPPLEMENTARY DEFINITIONS:

(a) **"bodily injury"** means bodily injury, sickness or disease, including death resulting therefrom, sustained by any person;

(b) **"property damage"** means injury to or destruction of property, including loss of use thereof;

(c) **"premises"** for purposes of Section II, the definition of "premises" appearing in the Basic Policy shall include: (1) all premises which the Named Insured or his spouse owns, rents or operates as a farm or maintains as a residence and includes private approaches thereto and other premises and private approaches thereto for use in connection with said farm or residence, except business property, (2) individual or family cemetery plots or burial vaults, (3) premises in which an Insured is temporarily residing, if not owned by an Insured, and (4) vacant land owned by or rented to an Insured. Land shall not be deemed vacant following the commencement of any construction operations thereon unless such operations are being performed solely by independent contractors in connection with the construction of a one or two family dwelling or farm structure for the Insured;

(d) **"farm"** includes all farm structures and residences thereon;

(e) **"business property"** includes (1) property on which a business is conducted, and (2) property, other than a farm, rented in whole or in part to others, or held for such rental, by the Insured. The Insured's property shall not constitute "business property" because of (a) occasional rental of the Insured's residence, (b) rental in whole or in part to others of a one or two family dwelling usually occupied in part by the Insured as a residence, unless such rental is for the accommodation of more than two roomers or boarders, (c) rental of space in the Insured's residence for office, school or studio occupancy, or (d) rental or holding for rental of not more than three car spaces or stalls in garages or stables;

(f) **"automobile"** means a land motor vehicle, trailer or semi-trailer; but the term "automobile" does not include, except while being towed by or carried on an automobile, any of the following: any crawler or farm-type tractor, farm implement or, if not subject to motor vehicle registration, any equipment which is designed for use principally off public roads;

(g) **"midget automobile"** means a land motor vehicle of the type commonly referred to as a "midget automobile", "kart", "go-kart", "speedmobile" or by a comparable name, whether commercially built or otherwise;

(h) **"undeclared outboard motor"** means

(1) an outboard motor of more than twenty-four horsepower, or

(2) a combination of outboard motors of more than twenty-four horsepower in the aggregate and used with a single watercraft,

if not declared and a premium charged therefor;

(OVER)

(i) Definition 2(d), Residence Employee, in the General Conditions in this policy is deleted and the following substituted therefor:
"(d) **"residence employee"** means an employee of an Insured, other than a farm employee, who is exclusively engaged in the performance of household, domestic, or other services, including the maintenance or use of automobiles or teams, in connection with the ownership, maintenance or use of the farm premises as a residence, or of non-farm premises, or who performs elsewhere duties of a similar nature not in connection with an Insured's business.";

(j) **"insured farm employee"** means any farm employee if specifically covered by endorsement attached hereto for which a premium charge is made.

6. INSURANCE FOR NEWLY ACQUIRED OUTBOARD MOTORS:

Part (3) of Special Exclusion (b) does not apply to a watercraft powered by an undeclared outboard motor, ownership of which is acquired during the policy term by an Insured included within parts (1) or (2) of the definition of "Insured".

SPECIAL EXCLUSIONS

SECTION II OF THIS POLICY DOES NOT APPLY:

(a) (1) to any business pursuits of an Insured, except under Coverages G and H, activities therein which are ordinarily incident to non-business pursuits, (2) to the rendering of any professional service or the omission thereof, or (3) to any act or omission in connection with premises, other than as defined, which are owned, rented or controlled by an Insured; but this subdivision (3) does not apply with respect to bodily injury to a residence employee or an insured farm employee if such bodily injury arises out of and in the course of employment by the Insured of such residence employee or insured farm employee;

(b) under Coverages G and H, to the ownership, maintenance, operation, use, loading or unloading of (1) automobiles or midget automobiles while away from the premises or the ways immediately adjoining, except under Coverage G with respect to operations by independent contractors for non-farming or non-business purposes of an Insured not involving automobiles owned or hired by the Insured, (2) watercraft owned by or rented to an Insured, while away from the premises, if with inboard motor power exceeding fifty horsepower, or if a sailing vessel with or without auxiliary power and twenty-six feet or more in overall length, (3) watercraft, other than a sailing vessel, while away from the premises and powered in whole or in part by an undeclared outboard motor owned by an Insured, or (4) aircraft; but, with respect to bodily injury to a residence employee or an insured farm employee, arising out of and in the course of employment by the Insured of such residence employee or insured farm employee, parts (1), (2), and (3) of this exclusion do not apply, and part (4) applies only while such employee is engaged in the operation or maintenance of aircraft;

(c) under Coverages G and H, to bodily injury or property damage caused intentionally by or at the direction of the Insured;

(d) under Coverage G, to bodily injury to any farm employee, arising out of and in the course of his employment by the Insured, and under Coverages G and H, to any person, including any residence employee or insured farm employee, (1) if the Insured has in effect on the date of the occurrence a policy providing workmen's compensation or occupational disease benefits therefor, or (2) if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation or occupational disease law; but this subdivision (2) does not apply with respect to Coverage G unless such benefits are payable or required to be provided by the Insured;

(e) under Coverage G, to liability assumed by the Insured under any contract or agreement; but this exclusion as respects Insuring Agreement I(a) does not apply to (1) any indemnity obligation assumed by the Insured under a written contract directly relating to the ownership, maintenance or use of the premises, (2) liability of others assumed by the Insured under any other written contract, or (3) a warranty of goods or products;

(f) under Insuring Agreement I(a) of Coverage G, to property damage to (1) property used by, rented to or in the care, custody or control of the Insured or property as to which the Insured for any purpose is exercising physical control, (2) goods, products or containers thereof, manufactured, sold, handled or distributed by an Insured, or work completed by or for an Insured, out of which the occurrence arises, or (3) property arising out of any substance released or discharged from any aircraft;

(g) under Coverage G, to sickness or disease of any residence employee or insured farm employee unless prior to 36 months after the end of the policy period written claim is made or suit is brought against the Insured for damages because of such sickness or disease or death resulting therefrom;

(h) under Coverage H, to bodily injury to (1) any Insured included within parts (1) and (2) of the definition of "Insured", or (2) any person, other than a residence employee or an insured farm employee, if such person is regularly residing on the premises including any part rented to such person or to others, or is on the premises because of a business conducted thereon, or is injured by an accident arising out of such business, or is engaged in work incidental to the maintenance or use of the farm premises; but this exclusion does not apply to a person while on the premises in the performance of a reciprocal exchange of assistance in which the Named Insured participates and for which the Insured is not obligated to pay any monetary consideration;

(i) under Coverage I, to loss (1) arising out of the ownership, maintenance, operation, use, loading or unloading of any land motor vehicle, trailer or semitrailer, farm machinery or equipment, aircraft or watercraft, (2) of property owned by or rented to any Insured, any resident of the Named Insured's household or any tenant of the Insured, or (3) caused intentionally by an Insured over the age of 12 years.

Section II is otherwise subject to the provisions set forth in the policy to which this form is attached.