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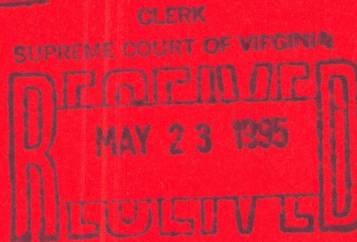
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# Supreme Court of Virginia

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RECORD NO. 950120

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S. F. (JANE DOE), an infant, RICHMOND, VIRGINIA  
By Her Mother and Next Friend,  
K. F. (SARA DOE), et al.,

*Appellants,*

v.

THE WEST AMERICAN  
INSURANCE COMPANY,

*Appellee.*

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## JOINT APPENDIX

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Billie Hobbs, Esquire  
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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

THE WEST AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

S.F. (JANE DOE), an infant, by her  
mother and next friend, K.F. (SARA DOE),

and

SARA DOE, Individually,

and

CENTURY 21 LANDMARK REALTY,

HARBOR VIEW ASSOCIATES,

JAMES E. OWENS,

BILL F. WEEKS,

THOMAS A. CONNOR,

MARGARET CODY,

MICHAEL J. COYLE

DAVID L. HUFFMAN,

JEAN J. FORD,

and

JESSE HAMMOND, an infant,

and

GLENN HAMMOND, an infant,

and

THE PARENTS OR GUARDIANS OF JESSE AND  
GLENN HAMMOND, (to be identified later)

and

JESSIE McBRIDE, an infant,

and

THE PARENTS OR GUARDIANS OF JESSIE

McBRIDE, (to be identified later)

and

FAROD MILLER, an infant,

and

THE PARENTS OR GUARDIANS OF FAROD  
MILLER, (to be identified later)

At Law

No. L91-2481



and	)
CHRISTOPHER DAVID PAIGE, an infant,	)
and	)
THE PARENTS OR GUARDIANS OF CHRISTOPHER	)
DAVID PAIGE, (to be identified later)	)
and	)
MICHAEL SHANE PAIGE, an infant,	)
and	)
THE PARENTS OR GUARDIANS OF MICHAEL	)
SHANE PAIGE, (to be identified later)	)
Defendants.	)

AMENDED MOTION FOR DECLARATORY JUDGMENT

COMES NOW the Plaintiff, The West American Insurance Company ("West American"), by counsel, pursuant to § 8.01-184 of the Code Of Virginia (1950), as amended, and for its Amended Motion For Declaratory Judgment against defendants, states as follows:

The Parties

1. This is an action for declaratory relief under an insurance policy ("the Policy") issued by West American to defendants, James E. Owens, Bill F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford, trading as Harbor View Associates (collectively referred to herein as "Named Insureds").

2. Defendants, S.F. ("Jane Doe"), an infant, and her mother and next friend, K.F. ("Sara Doe"), are plaintiffs in an action

filed in the Circuit Court for the City of Norfolk, with docket number CL90-3278 ("Doe Action"). Therein, Jane Doe and Sara Doe allege that the Named Insureds (and certain other persons) are liable to them for allegedly hiring, selecting, retaining and supervising a known child molester, who allegedly molested Jane Doe sexually.

3. West American has learned that Jeffrey Breit, Esquire, counsel for Jane and Sara Doe in the Doe Action and in this case, also represents six other minor children who allege that they were sexually molested by the same person who allegedly molested Jane Doe. Upon information and belief, these minors (who are defendants herein) are Jesse Hammond, Glen Hammond, Jessie McBride, Farod Miller, Christopher David Paige, Michael Shane Paige (collectively "Other Children"). West American has also named the parents or guardians ("Parents") of the Other Children as defendants since they conceivably may possess derivative claims arising out of their parental or guardian relationships with the minor children. (While West American presently does not know, with certainty, the identity or addresses of the Parents, it will use its best efforts to ascertain those facts).

4. West American seeks an adjudication that: (1) it owes no duty to indemnify the Named Insureds for any claims made by Jane and Sara Doe in the Doe Action and/or alleged by the Other Children which arise out of the intentional acts of the Named Insureds; and (2) that the total insurance coverage available from West American to the Named Insureds under the Policy with



respect to all the claims stated in the Doe Action and, also, for all such claims made by the Other Children and their Parents, does not, in its entirety, exceed the Policy's limit of liability of \$1 million dollars.

Facts Common To All Counts

5. On or about July 5, 1989, West American issued the Policy, number XBW(90) 50 26 05 24, to the Named Insureds. A true copy of the Policy is attached hereto as Exhibit A.

6. The Policy provides that West American shall have the "right and duty" to defend "any claim or suit against the insured seeking damages payable under this policy, even though the allegations of the suit may be groundless."

7. The Policy further provides that West American will pay "all sums which the insured shall become legally obligated to pay as damages because of bodily injury ... or personal injury caused by an occurrence to which this insurance applies."

8. An occurrence is defined by the Policy as an accident, "including continued or repeated exposure" to conditions which result in bodily injury or property damage "neither expected nor intended from the standpoint of the insured" and, with respect to personal injury, the commission of an offense or series of related offenses.

9. Bodily injury is defined by the Policy as injury, sickness or disease sustained by any person which occurs during the policy period.

10. Personal injury is defined by the Policy as injury arising out of false arrest, detention or imprisonment or malicious prosecution, libel, slander, wrongful entry or evictions or other invasion of privacy.

11. On or about September 13, 1990, Jane Doe and Sara Doe, in the Doe Action, filed an Amended Motion for Judgment ("Doe Motion For Judgment"), a copy of which is attached hereto as Exhibit B, against the Named Insureds and against Century 21 Landmark Realty in the Circuit Court for the City of Norfolk.

12. Count I of the Doe Motion For Judgment alleged that the Named Insureds were negligent in hiring, selecting, retaining and supervising a known child molester.

13. Count II of the Doe Motion For Judgment alleged that the Named Insureds "negligently leased" the Apartments by failing to operate, maintain and control the property in a reasonably safe manner.

14. Count III of the Doe Motion For Judgment alleged that the Named Insureds failed to maintain fit premises in accordance with Va. Code § 55-248.13.

15. Count IV of the Doe Motion For Judgment alleged that those acts alleged in Counts I through III "were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages." Count II

16. By Order of this Court entered on December 9, 1991, the Court dismissed Counts II and III of the Doe Motion For Judgment in the Doe Action.

### Count I

17. The allegations of paragraphs 1 through 16 are hereby incorporated by reference as if fully set forth herein.

18. Allegations of intentional conduct by the Named Insureds do not fall within the insuring clauses, provisions or definitions of the Policy.

19. The Named Insureds have requested West American to defend and indemnify them in connection with the Doe Action.

20. West American has agreed to defend the Named Insureds in the Doe Action subject to a reservation of rights position. West American does not have, however, a duty to indemnify the Named Insureds in the Doe Action to the extent that the Named Insureds are found liable in the Doe Action for damages arising out of the Named Insureds' intentional conduct.

WHEREFORE, the West American Insurance Company moves this Court to enter a judgment: (i) declaring that West American has no duty to indemnify the Named Insureds in the Doe Action for any damages or awards which arise out of the Named Insureds' intentional conduct; (ii) awarding West American its costs and attorney's fees incurred herein; and (iii) providing for such other and further relief which this Court may deem appropriate.

### Count II

21. The allegations of paragraphs 1 through 20 are hereby incorporated by reference as if fully set forth herein.



22. The Policy also states that "[t]he total liability of the Company for all damages ... as a result of any one occurrence shall not exceed the limit of liability stated in the Declarations as applicable to each occurrence."

23. The Policy further provides that the foregoing limit of liability "shall apply regardless of the following: [1]. the number of persons or organizations insured under this policy; [2]. the number of persons or organizations who have sustained injury or damage; [3]. the number of claims made or causes of action or suits brought because of injury or damage."

24. The Policy also states that "For the purpose of determining the limit of the Company's liability, all bodily injury . . . arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence."

25. The Declarations section of the Policy provides that the total limit of liability for the business liability coverage of the Policy is \$1,000,000 for each occurrence.

26. The allegations of the Doe Action to the effect that the Named Insureds were negligent in hiring, selecting, retaining and supervising a known child molester, in their entirety, allege and constitute no more than a single occurrence under the terms of the Policy.

27. Therefore, the entire insurance coverage available to the Named Insureds from West American under the Policy with respect to all of the claims of Jane and Sara Doe (and assuming

all other requirements under the Policy for indemnification are also met) does not exceed, in its totality, the Policy's limit of liability of \$1 million.

WHEREFORE, West American Insurance Company moves this Court to enter a judgment: (i) declaring that the allegations set forth in the Doe Action constitute, in their entirety, no more than one occurrence under the Policy; (ii) declaring that the entire amount of insurance coverage available under the Policy to the Named Insureds with respect to the claims of Jane and Sara Doe in the Doe Action does not exceed the Policy's limit of liability of \$1 million; (iii) awarding West American its costs and attorney's fees incurred herein; and (iv) providing for such other and further relief which this Court may deem appropriate.

### Count III

28. The allegations of paragraphs 1 through 27 are hereby incorporated by reference as if fully set forth herein.

29. The Other Children, through counsel, have notified West American that they allegedly possess claims against the Named Insureds arising out of alleged sexual molestation of them by the same person who allegedly molested Jane Doe.

30. Any allegations of intentional conduct by the Named Insureds do not fall within the insuring clauses, provisions or definitions of the Policy.

31. West American does not have a duty to indemnify the Named Insureds to the extent that the Named Insureds are found

liable to the Other Children and/or their Parents for damages arising out of the Named Insureds' intentional conduct.

WHEREFORE, West American Insurance Company moves this Court to enter a judgment: (i) declaring that West American has no duty to indemnify the Named Insureds for any damages or awards made to the Other Children and/or their Parents which arise out of the Named Insureds' intentional conduct; (ii) awarding West American its costs and attorney's fees incurred herein; and (iii) providing for such other and further relief which this Court may deem appropriate.

#### Count IV

32. The allegations of paragraphs 1 through 31 are hereby incorporated by reference as if fully set forth herein.

33. Any and all damages claimed by Jane Doe, Sara Doe, the Other Children or their Parents, which arise out of the alleged negligence of the Named Insureds in hiring, selecting, retaining and supervising a known child molester, constitute, in their entirety, no more than a single occurrence under the terms of the Policy, even though more than one person has allegedly sustained injury or damage and more than one claim or cause of action may be, or has been, brought because of that injury or damage.

34: The entire insurance coverage available to the Named Insureds from West American under the Policy, with respect to all claims of Jane Doe, Sara Doe, the Other Children and/or their Parents (assuming that all other requirements under the Policy



for indemnification are also met) does not exceed, in totality, the Policy's limit of liability of \$1 million.

WHEREFORE, West American Insurance Company moves this Court to enter a judgment: (i) declaring that any and all allegations to the effect that the Named Insureds were negligent in hiring, selecting, retaining and supervising a known child molester constitute, in their entirety, no more than one occurrence under the Policy; (ii) declaring that the total amount of insurance coverage available under the Policy to the Named Insureds from West American with respect to the claims of Jane Doe, Sara Doe, the Other Children and their Parents does not, in its entirety, exceed the Policy's limit of liability of \$1 million; (iii) awarding West American its costs and attorney's fees incurred herein; and (iv) providing for such other and further relief which this Court may deem appropriate.

WEST AMERICAN INSURANCE COMPANY

BY 

Counsel

Barry A. Hackney  
Michael P. Falzone  
David W. Robinson  
HIRSCHLER, FLEISCHER, WEINBERG  
COX & ALLEN  
a Professional Corporation  
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Post Office Box 500  
Richmond, Virginia 23204-0500  
(804) 771-9500  
Counsel for the plaintiff

Dated: November 1, 1993

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document by first-class mail, postage prepaid, on Alan D. Albert, Esquire, Counsel for Jean J. Ford, at MAYS & VALENTINE, 150 Boush Street, 8th Floor, Norfolk, Va. 23510; on Martin W. Boelens, Jr., Esquire, counsel for David L. Huffman, at BOELEN & TOMLIN, 6052 Providence Rd., Suite 102, Virginia Beach, Va. 23464; on G. Michael Price, Esquire, counsel for Harbor View Associates, James E. Owens, Thomas A. Conner, Margaret Cody, and Bill F. Weeks, at CONNER, PENNINGTON & PRICE, 333 West Freemason Street, Suite 102, Norfolk, Va. 23510; and on Jeffrey A. Breit, Esquire, counsel for S.F. (Jane Doe) and K.F. (Sara Doe), at BREIT, DRESCHER & BREIT, 1000 Dominion Tower, 999 Waterside Drive, Norfolk, Va. 23510, on this 1<sup>st</sup> day of November, 1993.

A handwritten signature in dark ink, appearing to read "John R. Boelens", is written over a horizontal line.

P:\...\\WP\049\27\00311\AMEND.082

Jeffrey A. Breit  
Billie Hobbs  
BREIT, DRESCHER & BREIT  
Tazewell Building  
100 Brooke Avenue  
Norfolk, VA 23510  
(804) 622-6000





# **SPECIAL BUSINESS OWNERS POLICY**

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The Definition Section contains the definitions of the words printed in bold face in Section II of the policy. The Definition Section is an integral part of the policy and shall be applied as if the definitions appearing were included each time the words they define are used in the policy.

## SECTION I—PROPERTY COVERAGES

### COVERAGE A BUILDINGS

This policy covers the replacement cost of the building(s) at the premises described in the Declarations for which a limit of liability is shown, including, and while on the premises, the following:

1. all garages, storage buildings and appurtenant structures usual to the occupancy of the insured;
2. fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building;
3. personal property of the insured used for the maintenance and service of the building, including fire extinguishing apparatus, floor coverings, and appliances for refrigerating, ventilating, cooking, dishwashing and laundering;
4. outdoor furniture and yard fixtures;
5. personal property owned by the insured in apartments or rooms furnished by the insured as landlord;
6. trees, shrubs and plants at the described premises for not more than \$250 on any one tree, shrub or plant, including expense incurred for removing all debris thereof, however, the total liability of the Company shall not exceed \$1,000 in the aggregate for any one loss.

**DEBRIS REMOVAL:** This policy covers, as an additional amount of insurance, expenses incurred in the removal of the debris of the property covered occasioned by loss as insured against in this policy.

**AUTOMATIC INCREASE IN INSURANCE:** The limit of liability shown in the Declarations with respect to Coverage A—Buildings shall automatically be increased at the end of each period of three months after inception date of this policy by the percentage shown in the Declarations.

### COVERAGE B BUSINESS PERSONAL PROPERTY

This policy covers replacement cost of the Business Personal Property owned by the insured, usual to the occupancy of the insured, at the premises described in the Declarations for which a limit of liability is shown, including:

1. similar property held by the insured and belonging in whole or in part to others but not exceeding the amount for which the insured is legally liable, including the value of labor, materials, and charges furnished, performed or incurred by the insured; and
2. tenant's improvements and betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the building occupied but not owned by the insured and made or acquired at the expense of the insured, exclusive of rent paid by the insured, but which are not legally subject to removal by the insured;

while (1) in or on the building(s), or (2) in the open (including within vehicles) or within 100 feet of the described premises.

**DEBRIS REMOVAL:** This policy covers, as an additional amount of insurance, expenses incurred in the removal of the debris of the property covered occasioned by loss as insured against in this policy.

**SEASONAL AUTOMATIC INCREASE:** When a limit of liability is shown in the Declarations for Coverage B—Business Personal Property, the limit of liability for Coverage B is automatically increased by 25% to provide for seasonal variation. However, this increase shall not apply unless the limit of liability shown in the Declarations is 100% or more of the insured's average monthly values for the months immediately preceding the date of loss, or in the event the insured has been in business for less than 12 months, such shorter period of time.

**PERSONAL PROPERTY OFF PREMISES:** When a limit of liability is shown in the Declarations for Coverage B—Business Personal Property, this policy also covers the business personal property of the insured (excluding money and securities and similar property held by the insured, and belonging in whole or in part to others for not more than \$1,000 for all losses arising out of any one occurrence while such property is in due course of transit, or otherwise temporarily away from the described premises.



**...NAL PROPERTY AT NEWLY ACQUI... CATIONS:** When a limit of liability is shown in the Declarations for Coverage b—Business Personal Property, this policy also covers the business personal property of the insured for not exceeding \$10,000 while at premises owned, leased or operated by the insured, other than those described in the Declarations, but this coverage shall cease thirty (30) days from the date of acquisition of such premises or on the date values at such locations are reported to the Company or on the expiration date of the policy, whichever occurs first.

**COVERAGE C  
LOSS OF  
INCOME**

This policy covers the actual business loss sustained by the insured and the expenses necessarily incurred to resume normal business operations resulting from the interruption of business or the untenability of the premises when the building or the personal property is damaged as a direct result of an insured peril. The actual business loss sustained by the insured shall not exceed:

1. the reduction in gross earnings, less charges and expenses which do not necessarily continue during the interruption of business; and
2. the reduction in rents, less charges and expenses which do not necessarily continue during the period of untenability.

The actual business loss sustained shall not include charges and expenses which do not necessarily continue during the interruption of business or during the untenability of the premises.

Loss of income shall be payable for only such length of time as would be required to resume normal business operations but not exceeding such length of time as would be required to rebuild, repair or replace such part of the building or personal property as has been damaged or destroyed as a direct result of an insured peril. Such loss shall not exceed twelve consecutive months from the date of loss and shall not be limited by the expiration date of this policy. The insured is required to resume normal business operations as promptly as possible and shall use available means to eliminate any unnecessary delay.

The term "normal business operations" of the insured means the condition that would have existed had no loss occurred.

**RESUMPTION OF OPERATIONS:** It is a condition of this insurance that if the insured could reduce the loss resulting from the interruption of business:

1. by complete or partial resumption of operation of the property herein described, whether damaged or not; or
2. by making use of merchandise or other property at the locations described herein or elsewhere; or
3. by making use of stock at the locations described herein or elsewhere;

such reduction shall be taken into account in arriving at the amount of loss hereunder.

**LIMITATIONS:** The Company shall not be liable for any increase of loss which may be occasioned by:

1. interference at the described premises by strikers or other persons with rebuilding, repairing or replacing the property or with the resumption or continuation of business; or
2. the suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business, and then the Company shall be liable for only such loss as affects the insured's earnings during, and limited to, the period of indemnity covered under this policy.

**COVERAGE D  
MONEY AND  
SECURITIES**

This policy covers money and securities used in the conduct of the insured business for an amount not exceeding the limits of liability shown in the Declarations as follows:

1. On Premises: While in or on the premises described in the Declaration within a bank or savings institution; and
2. Off Premises: While enroute to or from such described premises, bank or savings institution, or within the living quarters of the custodian of such funds.

The insured shall keep records of all the insured property in such manner that the Company can accurately determine therefrom the amount of loss.

The limit of the Company's liability for loss shall not exceed the applicable limit of liability stated in the Declarations, nor

1. what it would cost at the time of loss to replace the property with other of like kind and quality, or
2. the actual cash value thereof at the time of loss.

provided, however, at the option of the insured, payment of the cost of replacing securities may be determined by the market value at the time of such settlement.

**PROPERTY  
NOT  
COVERED**

This policy does not cover:

1. exterior signs unless insured under Optional Coverages;
2. growing crops and lawns;
3. aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration, or watercraft (including motors, equipment and accessories) while afloat.

**PROPERTY  
SUBJECT TO  
LIMITATIONS**

The following property is subject to the limitations described below:

1. valuable papers and records meaning books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) are covered for not exceeding the cost of blank books, cards or other blank material plus the cost of labor incurred by the insured for transcribing or copying such records; and
2. film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing are covered for not exceeding the cost of such media in unexposed or blank form.

Except for loss caused by fire, lightning, windstorm, hail, explosion, smoke, aircraft, vehicles, riot, civil commotion and leakage or accidental discharge from automatic fire protective systems:

1. glass constituting a part of the building is not covered against loss for more than \$50 per plate, pane, multiple plate insulating unit, radiant heating panel, jalousie, louver or shutter, nor for more than \$250 in any one occurrence;
2. glass, glassware, statuary, marbles, bric-a-brac, porcelains and other articles of a fragile or brittle nature are not covered against loss by breakage. This limitation shall not apply to bottles or similar containers of property for sale, or sold but not delivered, nor to lenses of photographic or scientific instruments;
3. fur and fur garments are covered for not exceeding loss in the aggregate of \$1,000 in any one occurrence; and
4. jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals are covered for not exceeding loss in the aggregate of \$1,000 in any one occurrence. This limitation shall not apply to jewelry and watches valued at \$25 or less per item.

## **SECTION I—PERILS AND EXCLUSIONS**

**PERILS  
INSURED**

This policy insures against all risks of direct physical loss, subject to all the provisions contained herein.

**EXCLUSIONS**

The Company shall not be liable for loss:

1. occasioned directly or indirectly by enforcement of any ordinance or law regulating the construction, repair or demolition of buildings or structures
2. caused by or resulting from power, heating or cooling failure or due to change in temperature or humidity unless the change results from physical damage to the building or to equipment contained therein caused by a peril not otherwise excluded; also, the Company shall not be liable for any such loss resulting from riot, riot attending a strike, civil commotion, or vandalism or malicious mischief;



caused by any electrical injury or disturbance of electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated unless fire as insured against ensues and then this Company shall be liable for only loss caused by the ensuing fire:

4. caused by pilferage, appropriation or concealment of any property covered or any fraudulent, dishonest or criminal act done by or at the instigation of any insured, partner or joint venture, including any officer, director, trustee, employee or agent thereof, or any person to whom the property covered may be entrusted;
5. caused by leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the described building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliance had been drained and the water supply shut off during such vacancy or unoccupancy;
6. caused by:
  - (a) wear and tear, marring or scratching;
  - (b) deterioration, inherent vice, latent defect;
  - (c) mechanical breakdown of machines, including rupture or bursting caused by centrifugal force;
  - (d) faulty design, materials or workmanship;
  - (e) rust, mold, wet or dry rot, contamination;
  - (f) dampness or dryness of atmosphere, changes in or extremes of temperature;
  - (g) smog, smoke from agricultural smudging or industrial operations;
  - (h) birds, vermin, rodents, insects or animals;

unless loss by fire, smoke (other than smoke from agricultural smudging or industrial operations), explosion, collapse of a building, glass breakage, water not otherwise excluded ensues, then this policy shall cover only such ensuing loss.

If loss by water not otherwise excluded ensues, this policy shall also cover the cost of tearing out and replacing of any part of the building covered required to effect repairs to the plumbing, heating or air conditioning system or domestic appliance but excluding loss to the system or appliance from which the water escapes:

7. due to any and all settling, shrinking, cracking, bulging or expansion of driveways, sidewalks, swimming pools, pavements, foundations, walls, floors, roofs or ceilings;
8. caused by explosion of steam boilers, steam pipes, steam turbines or steam engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber of a fired vessel or within the flues or passages which conduct the gases of combustion therefrom) if owned by, leased by or operated under the control of the insured, or for any ensuing loss except by fire or explosion not otherwise excluded, and then the Company shall be liable for only such ensuing loss;
9. ~~to steam boilers, steam pipes, steam turbines or steam engines caused by any condition or occurrence within such boilers, pipes, turbines or engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom);~~
10. to hot water boilers or other equipment for heating water caused by any condition or occurrence within such boilers or equipment, other than an explosion;
11. to property in the open caused by rain, snow, ice or sleet;
12. caused by, resulting from, contributed to, or aggravated by any of the following:



- (c) earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising, or lifting;
  - (b) flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
  - (c) water which backs up through sewers or drains;
  - (d) water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors; unless fire or explosion as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire or explosion; but these exclusions shall not apply to loss arising from theft;
13. due to voluntary parting with title or possession of any property by the insured or others if induced to do so by any fraudulent scheme or false pretense;
  14. due to unexplained or mysterious disappearance of property, or shortage of property disclosed on taking inventory;
  15. due to delay or loss of market;
  16. to property sold by the insured under conditional sale, trust agreement, installment payment or other deferred payment plan, after delivery to customers.

## SECTION I—OPTIONAL COVERAGES

The following Optional Coverages are subject to all the terms and conditions applicable to Section I of this policy, except as otherwise provided for herein.

### EMPLOYEE DISHONESTY

When coverage is designated in the Declarations for Employee Dishonesty, this policy provides coverage for loss of money and other business personal property by dishonest or fraudulent acts of the named insured's employees for an amount not exceeding the limit of liability shown in the Declarations and subject to the following conditions:

1. the limit of the Company's liability for loss shall not exceed the replacement cost thereof at the time of loss, provided, however, at the option of the insured, payment of the cost of replacing securities may be determined by the market value at the time of such settlement;
2. this policy shall not apply to loss due to any dishonest or fraudulent act by the insured or by any partner, joint venture, officer, director or trustee, whether acting alone or in collusion with others;
3. insurance hereunder shall be deemed cancelled as to any employee immediately upon discovery by the insured, or any partner or officer, of any fraudulent or dishonest act of such employee;
4. dishonest or fraudulent acts or a series of similar or related acts of any employee acting alone or in collusion with others during the policy period shall be deemed to be one occurrence for the purpose of applying the deductible and the limit of liability;
5. loss is covered only if discovered not later than one year from the end of the policy period, and then this insurance shall apply only to loss sustained during the policy period;
6. if more than one insured is covered under this policy, the liability of the Company shall not exceed the amount for which the Company would be liable if there was only one insured;
7. regardless of the number of years this policy shall continue in force, the limit of liability shown in the Declarations shall not be cumulative from year to year.

**Loss Under Prior Bond or Policy:** The Company agrees that this optional coverage applies to loss which would have been recoverable by the insured or by any predecessor in the interest of the insured under a prior bond or policy, except for the fact that the time within which to discover loss thereunder had expired provided:



1. coverage under this optional coverage shall be substituted for the prior bond or insurance policy at the time the prior bond or insurance policy is terminated, cancelled or allowed to expire;
2. the insurance under this condition shall not increase the limit of liability under Employee Dishonesty coverage;
3. such loss would have been covered under this optional coverage had this coverage subject to all its conditions and limitations at the time of such substitution, been in force when the acts or events causing such loss occurred; and
4. recovery under this optional coverage shall not exceed the smaller of the following:
  - (a) the amount which would have been recoverable under such prior bond or insurance policy had such prior bond or policy continued in force until the discovery of such loss; or
  - (b) the amount which would have been recoverable under this optional coverage had this coverage been in force when such acts or events were committed.

#### **EXTERIOR SIGNS**

When coverage is designated in the Declarations for Exterior Signs, coverage is provided for an amount not exceeding the limits of liability shown in the Declarations for loss to all exterior signs which are the property of the insured or the property of others in the care, custody or control of the insured, on the premises described in the Declarations for direct physical loss excluding wear and tear, latent defect, corrosion or rust, or mechanical breakdown.

The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions, do not apply to this optional coverage.

#### **EXTERIOR GRADE FLOOR GLASS**

When coverage is designated in the Declarations for Exterior Grade Floor Glass, this policy shall apply to all exterior grade floor and basement glass, including encasing frames and all lettering or ornamentation thereon, which are the property of the insured or the property of others in the care, custody or control of the insured in the building described in the Declarations, for direct physical loss excluding wear and tear, latent defect, corrosion or rust. Such insurance shall also include the expense of boarding up damaged openings, installing temporary plates and removing or replacing obstructions when necessary.

The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions, do not apply to this optional coverage.

#### **BOILER, PRESSURE VESSELS & AIR CONDITIONING EQUIPMENT**

When coverage is designated in the Declarations for Boiler, Pressure Vessels and Air Conditioning Equipment, this policy provides coverage for loss from an Accident to an Object, as defined herein which is owned by, leased by, or operated under the control of the insured.

**Boiler and Pressure Vessels—Object shall mean:**

1. any steam heating or hot water heating boiler;
2. any condensate return tank used in connection with a steam heating boiler;
3. any expansion tank used in connection with a hot water heating boiler;
4. any hot water heater;
5. any other fired or unfired vessel used for maintenance or service of the premises where they are located and not used in processing or manufacturing;—
6. any piping used in connection with a steam heating boiler which contain steam or condensate thereof, with valves, fittings, traps and separators thereon; and
7. any feedwater piping between any steam heating boiler and its feed pump or injector.

**Air Conditioning Equipment—Object shall mean:**

1. any "air conditioning unit" which has a capacity of at least 60,000 Btu/hr and more than 600,000 Btu/hr; including:
2. all interconnected vessels, coils and piping which contain refrigerant, within which refrigerant is circulated, together with valves and fittings such vessels, coils and piping;

3. all vessels heated directly or indirectly with the unit as a generator, radiator or concentrator and which form a part of an absorption type unit;
4. all compressors, pumps, fans and blowers used solely with such unit, together with their driving electric motors;
5. all control equipment used solely with the unit, excluding any wiring or piping leading to or from the unit; and
6. all vessels, radiators, inductors, convectors and coils, together with valves and fittings thereon, which are connected to or used with the unit and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and coils, together with valves and fittings on such piping, but excluding any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor, together with any water piping leading to or from such source of supply.

Accident shall mean a sudden and accidental breakdown of the Object covered, which manifests itself at the time of the breakdown by physical damage to the Object covered which necessitates repair or replacement of such Object.

Accident shall not mean:

1. depletion, deterioration, corrosion or erosion of material; wear and tear, leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
2. the breakdown of any vacuum tube, gas tube, brush, electronic computer, electronic data processing equipment, structure or foundation supporting the property covered or any part thereof;
3. the functioning of any safety device or protective device; nor
4. the explosion of gas or unconsumed fuel within the furnace of any Object or within the passages from the furnace of said Object to the atmosphere.

The Company shall not be liable for loss to:

1. any boiler, fired vessel or air conditioning equipment while said equipment is undergoing hydrostatic, pneumatic or gas pressure test, or while said equipment is undergoing an insulation breakdown test or is being dried out;
2. any boiler setting, any insulating or refractory material, any part of a boiler or vessel which is not under vacuum or internal pressure other than static pressure of contents (other than a condensate return tank), any reciprocating, rotating or electrical apparatus within or forming a part of a boiler or vessel, any piping not on the premises of the insured.

#### INSPECTION AND SUSPENSION

The Company shall be permitted but not obligated to inspect, at all reasonable times, any insured Object. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such Object is safe or healthful.

Upon discovery of a dangerous condition with respect to any Object, any representative of the Company may immediately suspend the insurance with respect to an Accident to said Object by written notice mailed or delivered to the insured at the mailing address shown in the Declarations, or at the location of the Object. The insured shall be credited the unearned portion of the premium paid for such suspended insurance, pro rata, for the period of suspension.



**DEDUCTIBLE**

This deductible clause does not apply to coverage as provided for Loss of Income.

1. With the exception of loss by theft, the sum of \$100 shall be deducted from the amount of loss to property in any one occurrence. This deductible shall apply:
    - (a) separately to each building, including personal property therein;
    - (b) separately to personal property in each building if no coverage is provided on the containing building;
    - (c) separately to personal property in the open (including within vehicle).The aggregate amount of this deductible in any one occurrence shall not exceed \$1,000.

Theft Deductible: With respect to loss by theft, the sum of \$250 shall be deducted from each theft loss insured hereunder.
  2. When coverage is designated in the Declarations for Employee Dishonesty, each loss under such coverage shall be adjusted separately and from the amount of each such adjusted loss the sum of \$250 shall be deducted.
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## SECTION II—COMPREHENSIVE BUSINESS LIABILITY

### COVERAGE E BUSINESS LIABILITY

The Company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **bodily injury, property damage or personal injury** caused by an **occurrence** to which this insurance applies. The total liability of the Company for all damages, including **completed operations hazard, products hazard**, and damages for care and loss of services, as a result of any one **occurrence** shall not exceed the limit of liability stated in the Declarations as applicable to each **occurrence**.

As stated in the Declarations however, the limit of liability shown under Coverage E—Business Liability is an aggregate limit for all **occurrences** during the policy period with respect to the **completed operations hazard** and **products hazard** combined.

**FIRE LEGAL LIABILITY:** The Company will also pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay for **property damage** to structures rented to or occupied by the **named insured**, including fixtures permanently attached thereto, if such **property damage** arises out of fire or explosion. The total liability of the Company for all damages as a result of any one fire or explosion, or a series or combination of such fires and explosions, shall not exceed \$50,000 for each **occurrence**.

The above limits shall apply regardless of the following:

1. the number of persons or organizations insured under this policy;
2. the number of persons or organizations who have sustained injury or damage;
3. the number of claims made or causes of action or suits brought because of injury or damage.

For the purpose of determining the limit of the Company's liability, all **bodily injury** and **property damage** arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

### RIGHT AND DUTY TO DEFEND

The Company shall have the right and duty to defend any claim or suit against the **insured** seeking damages payable under this policy, even though the allegations of the suit may be groundless, false or fraudulent. The Company may make such investigations and settlements of any claim or suit as it deems expedient. The Company is not obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

### SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

1. all expenses incurred by the Company;
2. all cost taxed against the **insured** in any suit defended by the Company and all interest on the entire amount of any judgment which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability;
3. premium on appeal bonds in any such suit;
4. premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy;
5. expenses incurred by the **insured** for first aid to others at the time of an accident for **bodily injury** to which this policy applies; and
6. reasonable expenses incurred by the **insured** at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$50 per day.

### BUSINESS LIABILITY EXCLUSIONS

Under Coverage E, this policy does not apply:

1. to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (a) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**; or
  - (b) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**.



... exclusion does not apply to the use of an automobile on premises owned by, rented to or controlled by the named insured or the ways immediately adjoining, if such automobile is not owned by or rented or loaned to any insured.

This exclusion does not apply to the use in the business of the named insured of a non-owned private passenger automobile by any person, other than the named insured, or the occasional and infrequent use of a non-owned commercial automobile by an employee of the named insured in such business:

2. to bodily injury or property damage arising out of:

- (a) the ownership, maintenance, operation, use, loading or unloading of any land motor vehicle (1) not subject to motor vehicle registration, or (2) not designed for use principally off public roads while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
- (b) the operation or use of any snowmobile or trailer designed for use therewith.

Exclusion 2(a) does not apply to any land motor vehicle not subject to motor vehicle registration provided such vehicle is maintained for use exclusively on premises owned by or rented to the named insured including the ways immediately adjoining:

3. to bodily injury or property damage arising out of the ownership, maintenance, operation, use, loading or unloading of:

- (a) any watercraft owned or operated by or rented or loaned to any insured; or
- (b) any other watercraft operated by any person in the course of his employment by any insured;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the named insured:

4. to liability assumed by the insured under any contract or agreement except a contract as defined in this policy:

5. to bodily injury or property damage arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental:

6. to any obligation of which the insured or any carrier as his insurer may be held liable under any workers' or workmen's compensation, unemployment compensation or disability benefits law, or under any similar law:

7. to bodily injury or property damage for which the insured or his indemnitee may be held liable:

- (a) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages; or
- (b) if not so engaged, as an owner or lessor of premises used for such purposes.

if such liability is imposed

- (1) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or

- (2) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (2) of this exclusion does not apply with respect to liability of the insured or his indemnitee as an owner or lessor described in (b) above.

This entire exclusion does not apply to liability imposed on the insured, the result of the giving or serving of alcoholic beverages at functions incidental to the named insured's business, provided the named insured is not engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages and provided further that there has been no intentional violation of any statute, regulation, or ordinance committed by or at the direction of the insured:



8. **damages for bodily injury or property damage** due to the negligence of or failure to render any professional service, including but not limited to:
  - (a) legal, accounting, advertising, engineering, drafting, architectural, and
  - (b) medical, dental, pharmacological, cosmetic, hearing aid, optical, or ear piercing services;
 but with respect to pharmacological services, this exclusion does not apply to any insured doing business as a retail drugstore;
9. to **bodily injury** to any employee of the insured arising out of and in the course of his employment by the insured or to any obligation of the insured to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the insured under a contract;
10. with respect to insurance afforded to any employee of the named insured other than an executive officer:
  - (a) to **bodily injury** to:
    - (1) another employee of the named insured arising out of and in the course of his employment;
    - (2) the named insured, or if the named insured is a partnership or joint venture, any partner or member thereof;
  - (b) to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by:
    - (1) another employee of the named insured;
    - (2) the named insured, or if the named insured is a partnership or joint venture, any partner or member thereof;
11. to damage to property:
  - (a) owned or occupied by or rented to the insured, or, except with respect to the use of elevators, to property held by the insured for sale or entrusted to the insured for storage or safekeeping; but this exclusion does not apply to property damage to structures rented to or occupied by the named insured, including fixtures permanently attached thereto, if such property damage arises out of fire or explosion for which coverage is specifically granted for Fire Legal Liability—Coverage E;
  - (b) except with respect to liability under a written sidetrack agreement or the use of elevators to:
    - (1) property while on premises owned by or rented to the insured for the purpose of having operations performed on such property by or on behalf of the insured;
    - (2) tools or equipment while being used by the insured in performing his operations;
    - (3) property in the custody of the insured which is to be installed, erected or used in construction by the insured;
    - (4) that particular part of any property, not on premises owned by or rented to the insured:
      - (i) upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations;
      - (ii) out of which any property damage arises; or
      - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured;
  - (c) with respect to the **completed operations hazard**, to work performed by the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

12. to **property damage** to premises alienated by the named insured arising out of such premises or any part thereof;
13. to **property damage** to the named insured's products arising out of such products or any part of such products;
14. to loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (a) a delay in or lack of performance by or on behalf of the named insured of any contract or agreement; or
  - (b) the failure of the named insured's products or work performed by or on behalf of the named insured to meet the level of performance, quality, fitness or durability warranted or represented by the named insured;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the named insured's products or work performed by or on behalf of the named insured after such products or work have been put to use by any person or organization other than an insured;
15. to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's products or work completed by or for the named insured or for any property of which such products or work form a part, if such products, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
16. to **personal injury** arising out of the willful violation of a penal statute or ordinance committed by or with knowledge or consent of any insured;
17. to **personal injury** arising out of any publication or utterance described in Item (b) of the Definitions of **personal injury**:
  - (a) if the first injurious publication or utterance of the same or similar material by or on behalf of the named insured was made prior to the effective date of this insurance; or
  - (b) concerning any organization or business enterprise or its products or services made by or at the direction of any insured with knowledge of the falsity thereof.

## SECTION II—MEDICAL PAYMENTS

### COVERAGE F MEDICAL PAYMENTS

The Company will pay up to \$1,000 for reasonable **medical expenses** incurred by any person who requires medical services because of an accident arising out of business operations with respect to which the named insured is afforded coverage for **bodily injury** liability, except for liability arising out of use of a **non-owned automobile**.

The **medical expenses** must be incurred within one year after the accident and must result directly from the accident.

The Company will not pay more than \$10,000 for all **medical expenses** incurred by all persons requiring medical services in any one accident.

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim for **medical expenses**, under oath if required, and shall after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examinations by physicians selected by the Company when and as often as the Company may reasonably require.

The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

### MEDICAL PAYMENTS EXCLUSIONS

Under Coverage F, this policy does not apply:

1. to **bodily injury** excluded under Coverage E—Business Liability;



2. to **bodily injury** to any person while engaged in maintenance and repair of the insured premises or alteration, addition or new construction at such premises;
3. to **bodily injury** arising out of operations performed for the **named insured** by independent contractors other than (a) maintenance and repair of the insured premises, or (b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
4. to **bodily injury** to the **named insured**, any partner therein, any tenant or other person regularly residing on the insured premises or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment;
5. to **bodily injury** to any other tenant if the **bodily injury** occurs on that part of the insured premises rented from the **named insured** or to any employee of such tenant if the **bodily injury** occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;
6. to **bodily injury** to any person if any benefits for such **bodily injury** are payable or required to be provided under any workers' or workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
7. to any **medical expense** for services by the **named insured**, any employee thereof or any person or organization under contract to the **named insured** to provide such services;
8. to **bodily injury** to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;
9. to **bodily injury** included within the **completed operations hazard** or the **products hazard**.

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## SECTION I AND SECTION II—WAR RISK, GOVERNMENTAL ACTION AND NUCLEAR EXCLUSIONS

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This policy under Section I and Section II shall not apply to loss, **bodily injury** or **property damage** caused, directly or indirectly, by or due to any act or condition incident to the following:

1. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
2. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or custom's regulations, confiscation by order of any government or public authority, or risk of contraband or illegal transportation or trade.

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### SECTION I ONLY

1. **Nuclear Clause:** The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy. How



Subject to the foregoing and all other terms of this policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

2. **Nuclear Clause** (Applicable only in New York): This policy does not cover loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether directly or indirectly resulting from an insured peril under this policy.
3. **Nuclear Exclusion**: Loss by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, or due to any act or condition incident to any of the foregoing is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by any of the perils insured against by this policy; and nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, is not "explosion" or "smoke". This clause applies to all perils insured against hereunder except the peril of fire, which is otherwise provided for in the nuclear clause above.

## SECTION II ONLY

It is agreed that:

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

"hazardous properties" include radioactive, toxic or explosive properties;

"nuclear material" means source material, special nuclear material or byproduct material;

(Ed. 05 76)



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

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

"waste" means any waste material (1) containing by-product material and (2) resulting from the operation of any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (1) or (2) thereof;

"nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

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

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

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

## GENERAL CONDITIONS

The following Conditions apply to Section I and Section II except as otherwise indicated. Additional Conditions or modifications of the following Conditions may appear in the specific coverage sections.

### 1. PREMIUM

All premiums for this insurance shall be computed in accordance with the Company's rules, rates, rating plans, premiums and minimum premiums applicable to the insurance afforded herein.

The Company may because of undeclared exposures or change in the insured's business operation, acquisition or use of locations not shown in the Declarations require an additional premium in accordance with the rates, rules and forms of the Company in effect at the time of the change.

Subject to the consent of this Company and subject to the premiums, rules and forms then in effect for this Company, this policy may be continued in force by payment of the required continuation premium for each successive one year period. Such continuation premium must be paid to the Company prior to each anniversary date of this policy. If not so paid, the policy shall expire on the first anniversary date that the said premium has not been received by the Company.

### 2. CANCELLATION

The named insured may cancel this policy by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company for reasons of other than nonpayment of premium by mailing to the named insured and mortgagee at the mailing address shown in the Declarations, written notice stating when, not less than thirty (30) days thereafter, such cancellation shall be effective. The mailing or delivery of notice as aforesaid shall be sufficient proof of notice.

In the event of such cancellation the returned premium shall be computed as follows:

- (a) if the Company cancels, for reasons other than nonpayment, the return premium shall be computed pro rata; and
- (b) if the named insured cancels, the return premium shall be ninety percent (90%) of the unearned premium computed on a pro rata basis.

... adjustment may be made at ... cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the insured but payment or tender of unearned premium is not a condition of cancellation.

If the insured fails to make payment of the premium for this policy or any installment payment, whether payable directly to the Company or its agent or indirectly under any premium finance plan or extension of credit, this policy may be cancelled by mailing to the insured written notice stating that not less than ten (10) days thereafter, such cancellation shall be effective.

In the event of such cancellation the earned premium shall be computed pro rata.

**3. POLICY PERIOD, TERRITORY**

- (a) Section I of this policy applies only to loss to property during the policy period while such property is within or between the fifty states of the United States of America, District of Columbia and Puerto Rico unless otherwise limited.
- (b) Section II of this policy applies only to:
  - (1) **bodily injury or property damage** which occurs within the policy territory; or
  - (2) **personal injury** committed during the policy period within the policy territory.
- (c) As respects Section II of this policy, the term policy territory means:
  - (1) the United States of America, its territories or possessions, or Canada; or
  - (2) international waters or air space, provided the **bodily injury or property damage** does not occur in the course of travel or transportation to or from any other country, state or nation; or
  - (3) anywhere in the world with respect to damages because of **bodily injury or property damage** arising out of a product which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.

**4. TIME OF INCEPTION**

To the extent that coverage in this policy replaces coverage in other policies terminating 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon Standard Time.

**5. CONCEALMENT OR FRAUD**

This policy is void if any insured has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.

**6. ASSIGNMENT**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. However, if the named insured shall die, this insurance shall apply:

- (a) to the named insured's legal representative, as the named insured, but only while acting within the scope of his duties as such; or
- (b) to the person having temporary custody of the property or the named insured but only until the appointment and qualification of the legal representative.

**7. SUBROGATION**

- (a) In the event of any payment under this policy, the Company shall be subrogated to all the insured's rights of recovery against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.
- (b) The Company shall not be bound to pay any loss if the insured has impaired any right of recovery for loss; however, it is agreed that the insured may:



- (1) respects property while in the possession of the insured, release others in writing from liability, loss prior to loss, and such release shall not affect the right of the insured to recover hereunder; and
- (2) as respects property in transit, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

**8. INSPECTION AND AUDIT**

The Company shall be permitted but not obligated to inspect the named insured's property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the named insured's books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

**9. LIBERALIZATION CLAUSE**

In the event any filing is submitted to the insurance supervisory authorities on behalf of the Company, and:

- (a) the filing is approved or accepted by the insurance authorities to be effective while this policy is in force or within 45 days prior to its inception; and
- (b) the filing includes insurance forms or other provisions that would extend or broaden this insurance by endorsement or substitution of form, without additional premium;

the benefit of such extended or broadened insurance shall inure to the benefit of the insured as though the endorsement or substitution of form had been made a part hereof.

**10. OTHER INSURANCE**

This insurance shall apply only as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy, except insurance written specifically to cover as excess over the limits of liability applicable to Section II of this policy.

The insurance provided under Coverage E—Business Liability with respect to property in the care, custody or control of the insured shall also be excess over any valid and collectible property insurance (including any deductible portion thereof) available to the insured including but not limited to Fire and Extended Coverage, Builders' Risk Coverage or Installation Risk Coverage.

**11. INSURANCE UNDER MORE THAN ONE COVERAGE, PART OR ENDORSEMENT**

In the event that more than one coverage, part or endorsement of this policy insures the same loss, damage or claim, the Company shall not be liable for more than the actual loss, or damage sustained by the insured.

**12. REPLACEMENT OF FORMS AND ENDORSEMENTS**

If the policy period in the Declarations does not indicate a termination date, the policy being issued on a continuous basis, the Company may substitute or add forms and endorsements which are authorized for its use upon any anniversary date in accordance with rules of its manuals.

**13. WAIVER OR CHANGE OF PROVISIONS**

The terms of this insurance shall not be waived, changed or modified except by endorsement issued to form a part of this policy.

## CONDITIONS APPLICABLE TO SECTION I

### 1. REPLACEMENT COST

- (a) With the exception of loss to Money and Securities, loss shall be adjusted on the basis of the replacement cost value of the property insured hereunder, but the limit of liability of the Company shall not exceed the least of:
  - (1) the full cost of replacement of such property at the same site with new material of like kind and quality without deduction for depreciation; or
  - (2) the cost of repairing the insured property within reasonable time; or
  - (3) the limit of liability applicable to such property shown on the Declarations; or
  - (4) the amount actually and necessarily expended in repairing or replacing said property or any part thereof.
- (b) The Company shall not be liable for payment of loss on a replacement cost basis unless and until actual repair or replacement is completed. The insured, however, may elect not to repair or replace, in which event loss settlement shall be made on an actual cash value basis rather than on a replacement cost basis. Should the insured elect this option, the insured's right to make further claim on a replacement cost basis shall not be prejudiced provided the Company is notified in writing within 180 days after loss of the insured's intent to make such further claim.

### 2. DUTIES OF THE NAMED INSURED AFTER A LOSS

In case of loss, the named insured shall:

- (a) give immediate written notice of such loss to the Company;
- (b) protect the building and personal property from further damage, make reasonable temporary repairs required to protect the property, and keep an accurate record of repair expenditures;
- (c) prepare an inventory of damaged personal property showing in detail the quantity, description, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
- (d) exhibit the remains of the damaged property as often as may be reasonably required by the Company and submit to examination under oath;
- (e) submit to the Company within 60 days after requested a signed, sworn statement of loss which sets forth, to the best of the named insured's 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 policies of 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 (c) above;
  - (7) receipts for extra expenses incurred and records supporting the rental value.

### 3. APPRAISAL

If the named insured and the Company fail to agree on the amount of the loss, either can demand that the amount of loss be set by appraisal. If either party



Each shall select a competent independent appraiser. Each shall notify the other of the selected appraiser's identity within twenty (20) days of receipt of the written demand.

The two appraisers shall select a competent, impartial umpire. If the appraisers are unable to agree upon an umpire within fifteen (15) days, the named insured or the Company may petition a judge of a Court of Record in the state where the insured 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 the Company, 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 loss.

Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and compensation of the umpire shall be paid equally by the named insured and the Company.

**4. COMPANY OPTIONS**

If the Company gives notice within thirty (30) days after it has received a signed, sworn statement of loss, it shall have the option to take all or any part of the property damaged at an agreed value, or to repair, rebuild or replace it with equivalent property.

**5. ABANDONMENT OF PROPERTY**

The Company need not accept any property abandoned by an insured.

**6. PAYMENT OF LOSS**

The Company will pay all adjusted claims within thirty (30) days after presentation and acceptance of the proof of loss.

**7. PRIVILEGE TO ADJUST WITH OWNER**

(a) Except as provided in (b) below, or unless another payee is specifically named in the policy, loss, if any, shall be adjusted with and payable to the named insured.

(b) In the event claim is made for damage to property of others held by the insured, the right to adjust such loss or damage with the owner or owners of the property is reserved to the Company and the receipt of payment by such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the insured for which such payment has been made.

If legal proceedings be taken to enforce a claim against the insured as respects any such loss or damage, the Company reserves the right at its option, without expense to the insured, to conduct and control the defense on behalf of and in the name of the insured. No action of the Company in such regard shall increase the liability of the Company under this policy, nor increase the limits of liability specified in the policy.

**8. SUIT**

No suit shall be brought on this policy unless the insured has complied with all the policy provisions and has commenced the suit within one year after the loss occurs.

**9. VACANCY OR UNOCCUPANCY**

(a) This Company shall not be liable for loss occurring while a described building, whether intended for occupancy by owner or tenant, is vacant beyond a period of sixty (60) consecutive days. "Vacant" or "Vacancy" means containing no contents pertaining to operations or activities customary to occupancy of the building, but a building in process of construction shall not be deemed vacant.

(b) Permission is granted for unoccupancy.

**10. MORTGAGE CLAUSE—APPLICABLE ONLY TO BUILDINGS**

This clause is effective if a mortgagee is named in the Declarations. The word "Mortgagee" includes "Trustee". Loss to buildings shall be payable to the



mortgagee, as interest may appear on all present or future mortgages on the buildings described in the Declarations in order of precedence of mortgages on them.

As it applies to the interest of any mortgagee designated in the Declarations, this insurance shall not be affected by any of the following:

- (a) any act or neglect of the mortgagor or owner of the described buildings;
- (b) any foreclosure or other proceedings or notice of sale relating to the property;
- (c) any change in the title or ownership of the property;
- (d) occupancy of the premises for purposes more hazardous than are permitted by this policy;

provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay the premium.

The mortgagee shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of the mortgagee. Unless permitted by this policy, such change of ownership or occupancy or increase of hazard shall be noted on the policy and the mortgagee shall on demand pay the premium for the increased hazard for the term it existed under this policy. If such premium is not paid, this policy shall be null and void.

The Company reserves the right to cancel this policy at any time as provided by its terms. If so cancelled, this policy shall continue in force for the benefit only of the mortgagee for ten days after notice to the mortgagee of such cancellation and shall then cease. The Company shall have the right to cancel this agreement on ten days notice to the mortgagee.

When the Company shall pay the mortgagee any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the mortgagee to whom such payment shall have been made, under the mortgage debt. In lieu of taking such subrogation, the Company may, at its option, pay to the mortgagee the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities. However, no subrogation shall impair the right of the mortgagee to recover the full amount of said mortgagee's claim.

**11. RECOVERIES**

In the event the Company has made a payment for loss under the policy and a subsequent recovery is made of the lost or damaged property, the insured shall be entitled to all recoveries in excess of the amount paid by the Company, less only the actual cost of effecting such recoveries.

**12. LOSS CLAUSE**

Any loss hereunder shall not reduce the amount of this insurance.

**13. NO BENEFIT TO BAILEE**

This insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

**14. NO CONTROL**

This insurance shall not be prejudiced:

- (a) by any act or neglect of the owner of any building if the insured is not the owner thereof, or by any act or neglect of any occupant (other than the insured) of any building, when such act or neglect of the owner or occupant is not within the control of the insured; or
- (b) by failure of the insured to comply with any warranty or condition contained in any endorsement attached to this policy with regard to any portion of the premises over which the insured has no control.

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## CONDITIONS APPLICABLE TO SECTION II

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### 1. ACTION AGAINST THE COMPANY

No action shall lie against the Company unless:

- (a) there shall have been full compliance with all of the terms of this policy; and
- (b) the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of insurance afforded by this policy.

No person or organization shall have any right under this policy to join the Company as a party to any action against the insured to determine the insured's liability nor shall the Company be impleaded by the insured or his legal representative.

Bankruptcy or insolvency of the insured or of the insured's estate shall not relieve the Company of its obligations hereunder.

### 2. FINANCIAL RESPONSIBILITY LAWS

This policy may not be certified as proof of financial responsibility under the provisions of any financial responsibility law.

### 3. INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

- (a) In the event of an occurrence, the insured shall give to the Company or its authorized agents, as soon as practicable, written notice containing:
    - (1) particulars sufficient to identify the insured;
    - (2) reasonably obtainable information with respect to the time, place and circumstances; and
    - (3) names and addresses of the injured and of available witnesses.
  - (b) If claim is made or suit is brought against the insured, the insured shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
  - (c) The insured shall cooperate with the Company, and upon the Company's request, assist in the following:
    - (1) making of settlements;
    - (2) conducting suits;
    - (3) enforcing any right of contribution or indemnity against any person or organization who may be liable to the insured because of injury or damage with respect to which insurance is afforded under this policy.
  - (d) The insured shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
  - (e) The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.
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## SECTION 1 - DEFINITIONS

The Definition Section is an integral part of the policy and shall be applied as if the definitions appearing were included each time the words they define are used in the policy.

When used in the provisions applicable to Section II of this policy (including endorsements forming a part hereof):

**automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto);

**bodily injury** means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

**completed operations hazard** includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of the **named insured** under the **contract** have been completed;
- (b) when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed; or
- (c) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of (a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof, or (b) the existence of tools, uninstalled equipment or abandoned or unused materials;

**commercial automobile** means an **automobile** of the truck type or other **automobile** designed for the transportation of material or merchandise over public roads;

**contract** means any written contract or agreement wherein the **named insured** has expressly assumed liability for damages to which this policy applies, provided, that such liability shall not be construed as including liability under a warranty of the fitness or quality of the **named insured's** products or a warranty that work performed by or on behalf of the **insured** will be done in a workman-like manner;

**insured** means each of the following to the extent set forth below:

- (a) if the **named insured** is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the **named insured** with respect to the conduct of such a business;
- (b) if the **named insured** is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the **named insured** is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, member of the board of trustees, directors or governors or stockholder thereof while acting within the scope of his duties as such;



( ) y employee of the named insured ac within the duties as such:

- (e) any person or organization while acting as real estate man named insured.

The insurance afforded applies separately to each insured against is made, or suit is brought, except with respect to the limit of the company's liability.

This insurance does not apply to **bodily injury** or **property damage** or **personal injury** arising out of the conduct of any partnership or joint venture of which the insured is a partner or member and which is not designated in this policy as a named insured;

**medical expenses** means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services;

**named insured** means the person or organization named in Item 1 of the Declarations of this policy;

**named insured's products** means goods or products manufactured, sold, handled or distributed by the named insured or by others trading under his name, including any container thereof (other than a vehicle), but the named insured's products shall not include a vending machine or any property other than such container rented to or located for use of others but not sold;

**non-owned automobile** means an automobile not owned in whole or in part by, registered in the name of, hired by, leased by or loaned to the named insured, or if the named insured is a partnership, any partner therein;

**occurrence** means an accident, including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the insured and with respect to **personal injury**, the commission of an offense, or a series of similar or related offenses;

**personal injury** means injury which arises out of one or more of the following offenses committed in the conduct of the named insured's business:

- (a) false arrest, detention or imprisonment, or malicious prosecution;
- (b) the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the named insured;
- (c) wrongful entry or eviction, or other invasion of the right of private occupancy;

**private passenger automobile** means a four-wheel private passenger or station wagon type automobile;

**products hazard** includes **bodily injury** and **property damage** arising out of the named insured's products or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs:

- (a) after physical possession of such property has been relinquished to others; and
- (b) away from premises owned by, or rented to the named insured.

However, if the business of the named insured includes the selling, handling or distribution of the insured's product for consumption on premises owned by or rented to the named insured part (b) above shall not apply.

**property damage** means (a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an occurrence during the policy period.

(A stock insurance company, herein called the company)

- ☐ THE OHIO CASUALTY OF INSURANCE COMPANY  
☐ AMERICAN FIRE AND CASUALTY COMPANY  
☒ WEST AMERICAN INSURANCE COMPANY



# The Ohio Casualty Group of Insurance Companies

136 North Third Street, Hamilton, Ohio 45025

## DECLARATIONS

## BUSINESSOWNERS PC

Item 1	<b>STANDARD SPECIAL</b> <input checked="" type="checkbox"/>	<b>POLICY NUMBER</b> XBW(90)50 26 05 24	<b>RENEWAL OF NUMBER</b> XBW(89)50 26 05
1.	<b>Named Insured</b> James E. Owens, ETAL (See Form 3218) <b>Mailing Address</b> C/O James E. Owens-Landmark Realty (No., Street, Town or City, County, State, Zip Code) 2468-B East Little Creek Road Norfolk, Virginia 23518	<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/>	
2.	<b>Policy Period:</b> From: 10-01-89 To: 10-01-90	Beginning and ending at 12 noon Standard Time (CST, California and Oregon) at the Address of the Insured (See Form 3218)	
3.	<b>Mortgages:</b> 1. Atlantic Permanent Savings Bank FSB, 740 Boush St., Norfolk, VA 23518 (Name and Address) 2. Century Development Co., Box 1418, Sarasota, Florida 34230		
4.	<b>Business of Named Insured</b> Real Estate		
5.	In Consideration of the premium, Insurance is provided the named insured with respect to those premises described in the Schedule below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:		
<b>SCHEDULE</b>			
<b>Loc. No. 1 Described Premises:</b> No., Street, Town or City, County, State, Zip Code (Enter "Same" if same location as above)		<b>Occupancy</b>	
See BP2022 Attached		Apartments	
<b>SECTION I - BUILDING, BUSINESS PERSONAL PROPERTY, LOSS OF INCOME, MONEY &amp; SECURITIES</b>			
<b>Coverage A - Building(s)</b>		<b>Limits of Liability</b>	
		Loc. No. 1	Loc. No.
<b>Coverage B - Business Personal Property</b>		\$ See BP2022	
Automatic Increase in Insurance. Coverage A - Building(s) shall be automatically increased by 2% or ____ %, whichever is greater, at the end of each period of three months after the inception date of the policy.			
<b>Coverage C - Loss of Income - Actual Loss Sustained, Not Exceeding 12 Consecutive Months.</b>			
<b>Coverage D - Money and Securities - Included Only Under Special Businessowners Policy</b>		\$10,000.	On P.
		\$2,000.	Off P.
<b>SECTION II - COMPREHENSIVE BUSINESS LIABILITY COVERAGE</b>			
<b>Coverage E - Business Liability</b>		<b>Limits of Liability</b>	
The limit of liability with respect to the completed operations and products hazards combined is an aggregate limit for all occurrences during the policy period.		\$ 1,000,000. each occ.	
<b>Fire Legal Liability</b>		\$50,000.	each occ.
<b>Coverage F - Medical Payments</b>		\$1,000.	each
		\$10,000.	each
6. Optional Coverages: The following optional coverages are afforded under this policy only when designated by an "X" in the boxes shown opposite.		<b>Employee Dishonesty</b>	\$5,000. each occ.
		<b>Exterior Signs</b>	\$
		<b>Exterior Grade Floor Glass</b>	Included Under Cov. A or Cov. F
		<b>Burglary and Robbery - Available Only Under Standard Businessowners Policy</b>	Refer to Policy
		<b>Boiler, Pressure Vessels &amp; Air Conditioning Equip.</b>	Included Under Cov. A or Cov. F
BU0002(5-76), BU0003(5-81), BU0004(4-84), BU0132(7-79), BU0134(4-86), BP2022(4-83), IL0002(4-77), IL0018(10-84), IL0256(10-86),			
7.	These Declarations and endorsements, if any, issued to form a part of this policy, including the following forms and endorsements attached at inception, complete the above numbered policy:		
8.	<b>Annual Policy Premium, including Optional Coverages</b>	GU271(6-86), L9235(7-78), 3218	\$ 4,743.

Agent: Hamilton Agency, Inc.  
Norfolk, Virginia

Countersignature Date:

Address:

Countersigned by

Author:



IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid unless countersigned by the duly authorized Agent of this Company at the agency hereinbefore mentioned.


*J. L. Daniel*

Secretary

*Joseph L. Marum* President

May 24, 1990

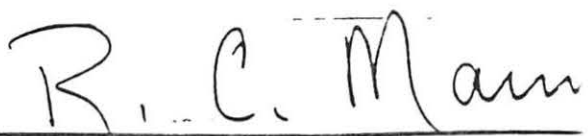
William R. Kugel, being first duly sworn, says that he is Assistant Secretary of West American Insurance Company of the City of Anaheim, State of California and that he has full authority to act on behalf of West American Insurance Company. William R. Kugel says that he has caused to be prepared a true copy of Policy Number XEW (90) 50 26 05 24 issued by said Company in favor of James E. Owens, ETAL (See Form 3218) C/O James E. Owens-Landmark Realty for the period 10/01/89 to 10/01/90; that copy of said Policy Number XEW (90) 50 26 05 24 is hereto attached.

  
\_\_\_\_\_  
William R. Kugel  
\_\_\_\_\_  
Assistant Secretary

STATE OF OHIO

COUNTY OF BUTLER

On this 24th day of May, A.D. 1990, personally appeared before me the above William R. Kugel personally known to be the same person described in and who executed the foregoing instrument, who after being first duly sworn, acknowledged to me that he executed the same.

  
\_\_\_\_\_

R. C. MANN  
Notary Public, State of Ohio  
My Commission Expires Oct 25, 1992





# The Ohio Casualty Group of Insurance Companies

THE OHIO CASUALTY INSURANCE COMPANY  
AMERICAN FIRE AND CASUALTY COMPANY  
WEST AMERICAN INSURANCE COMPANY

## BEAM

(90)50 26 05 24

NUMBER

Insured: James E. Owens, ETAL (See Form 3218) Agent: Hamilton Agency, Inc.  
C/O James E. Owens-Landmark Realty P.O. Box 1498  
2468-B East Little Creek Road Norfolk, Virginia 23501  
Norfolk, Virginia 23518

Date of Summary: 10-01-89

45-04-0367

This summary of insurance and premiums does not amend, extend or otherwise alter the terms and conditions of the policies forming this agreement. Refer to the declarations of the individual policies for the schedule of coverages, amounts of insurance, limits of liability and effective dates of coverage. Coverage is provided only by the policies below for which a premium is shown. The premium(s) shown may be estimated and subject to adjustment set forth in the policy conditions or declarations page.

### SUMMARY OF INSURANCE AND PREMIUMS

Coverage Prefix	Coverage	Advance Annual Premium
	Property	\$
	Liability	\$
	Inland Marine	\$
	Crime	\$
	Commercial Package	\$
	Automobile	\$
	Garage	\$
	Workers' Compensation	\$
	Excess Liability	\$
XBW	Businessowners	\$ 4,743.
		\$
		\$
Total Advance Annual Premium		\$ 4,743.

H a r b o r v i e w A s s o c



**BUSINESSOWNERS  
NON-OWNED  
SNOWMOBILE  
ENDORSEMENT**

Under Coverage E—Business Liability Exclusions. Exclusion 2 (b) is replaced by:

(2) the operation or use of any snowmobile or trailer designed for use therewith

(i) owned or operated by or rented or loaned to any insured, or

(ii) operated by any person in the course of his employment by any insured.



**BUSINESSOWNERS  
EMPLOYERS  
LIABILITY  
AMENDATORY  
ENDORSEMENT**

Under Coverage E — Business Liability Exclusions Exclusion 9 relating to **bodily injury** to any employee of the **insured** is deleted and replaced by the following:

This insurance does not apply:

- (a) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** for which the **insured** may be held liable as an employer or in any other capacity;
- (b) to any obligation of the **insured** to indemnify or contribute with another because of damages arising out of the **bodily injury**; or
- (c) to **bodily injury** sustained by the spouse, child, parent, brother, or sister of an employee of the **insured** as a consequence of **bodily injury** to such employee arising out of and in the course of his employment by the **insured**;

This exclusion applies to all claims and suits by any person or organization for damages because of such **bodily injury** including damages for care and loss of services.

This exclusion does not apply to liability assumed by the **insured** under a contract.

This Endorsement must be attached to Change Endorsement when issued after the Policy is written.



**BUSINESSOWNERS  
STANDARD FORM  
FIRE POLICY  
ENDORSEMENT  
VIRGINIA**

This form contains the provisions of the Standard Fire Policy. Whenever the condition of this form can be construed to perform a liberalization of conditions found elsewhere in Section I coverage relating to insurance against loss or damage by fire, lightning or removal from premises endangered by fire or lightning, the terms and conditions of the Standard Fire Policy shall apply.

In Consideration of the Provisions and Stipulations Herein or Added Hereto and of the Premium Above Specified (or specified in endorsement attached hereto), this Company for the term specified in the Declarations from inception date shown in the Declaration At Noon (Standard Time) to expiration date shown in the Declaration At Noon (Standard Time) at location of property involved, to an amount not exceeding the limit of liability specified in the Declarations, does insure the insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss but not exceeding the amount which it would cost to repair or replace the property with material of like kind and quality within a reasonable time after such loss, without allowance for any increased cost of repair, or reconstruction by reason of any ordinance or law regulating construction or repair, and without compensation for loss resulting from interruption of business or manufacture, nor in any event for more than the interest of the insured, against all DIRECT LOSS BY FIRE, LIGHTNING AND OTHER PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described herein while located or contained as described in this policy, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from the perils insured against in this policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy together with such other provisions, stipulations and agreements as may be added hereto, as provided in the policy.



1. **Concealment.** This policy shall be void if, whether  
2. **Fraud.** before or after a loss, the insured has will-  
3. fully concealed or misrepresented any ma-  
4. terial fact or circumstance concerning this insurance or the  
5. subject thereof, or the interest of the insured therein, or in case  
6. of any fraud or false swearing by the insured relating thereto.  
7. **Uninsurable.** This policy shall not cover accounts, bills,  
8. and currency, deeds, evidences of debt, money or  
9. **excepted property.** securities; nor, unless specifically named  
10. hereon in writing, bullion or manuscripts.  
11. **Perils not** This Company shall not be liable for loss by  
12. **included.** fire or other perils insured against in this  
13. policy caused, directly or indirectly, by: (a)  
14. enemy attack by armed forces, including action taken by mili-  
15. tary, naval or air forces in resisting an actual or an immediately  
16. impending enemy attack; (b) invasion; (c) insurrection; (d)  
17. rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)  
18. order of any civil authority except acts of destruction at the time  
19. of and for the purpose of preventing the spread of fire, provided  
20. that such fire did not originate from any of the perils excluded  
21. by this policy; (i) neglect of the insured to use all reasonable  
22. means to save and preserve the property at and after a loss, or  
23. when the property is endangered by fire in neighboring prem-  
24. ises; (j) nor shall this Company be liable for loss by theft.  
25. **Other insurance.** Other insurance may be prohibited or the  
26. amount of insurance may be limited by en-  
27. dorsement attached hereto.  
28. **Conditions suspending or restricting insurance.** Unless other-  
29. wise provided in writing added hereto this Company shall not  
30. be liable for loss occurring  
31. (a) while the hazard is increased by any means within the con-  
32. trol or knowledge of the insured; or  
33. (b) while a described building, whether intended for occupancy  
34. by owner or tenant, is vacant or unoccupied beyond a period of  
35. sixty consecutive days; or  
36. (c) as a result of explosion or riot, unless fire ensue, and in  
37. that event for loss by fire only.  
38. **Other perils.** Any other peril to be insured against or sub-  
39. **or subjects.** ject of insurance to be covered in this policy  
40. shall be by endorsement in writing hereon or  
41. added hereto.  
42. **Added provisions.** The extent of the application of insurance  
43. under this policy and of the contribution to  
44. be made by this Company in case of loss, and any other provi-  
45. sion or agreement not inconsistent with the provisions of this  
46. policy, may be provided for in writing added hereto, but no provi-  
47. sion may be waived except such as by the terms of this policy  
48. is subject to change.  
49. **Waiver.** No permission affecting this insurance shall  
50. **provisions.** exist, or waiver of any provision be valid,  
51. unless granted hereon or expressed in writing  
52. added hereto. No provision, stipulation or forfeiture shall be  
53. held to be waived by any requirement or proceeding on the part  
54. of this Company relating to appraisal or to any examination  
55. provided for herein.  
56. **Cancellation.** This policy shall be cancelled at any time  
57. of policy, at the request of the insured, in which case  
58. this Company shall, upon demand and sur-  
59. render of this policy, refund the excess of paid premium above  
60. the customary short rates for the expired time. This policy  
61. may be cancelled at any time by this Company by giving  
62. to the insured a five days' written notice of cancellation with  
63. or without tender of the excess of paid premium above the pro-  
64. rata premium for the expired time, which excess, if not ten-  
65. dered, shall be refunded on demand. Notice of cancellation shall  
66. state that said excess premium (if not tendered) will be re-  
67. funded on demand.  
68. **Mortgagee** If loss hereunder is made payable in whole  
69. **interests and** or in part to a designated mortgagee not  
70. **obligations.** named herein as the insured, such interest in  
71. this policy may be cancelled by giving to such  
72. mortgagee a ten days' written notice of can-  
73. cellation.  
74. If the insured fails to render proof of loss such mortgagee, upon  
75. notice, shall render proof of loss in the form herein specified  
76. within sixty (60) days thereafter and shall be subject to the pro-  
77. visions hereof relating to appraisal and time of payment and of  
78. bringing suit. If this Company shall claim that no liability ex-  
79. isted as to the mortgagee or owner, it shall, to the extent of pay-  
80. ment of loss to the mortgagee, be subrogated to all the mort-  
81. gagee's rights of recovery, but without impairing mortgagee's  
82. right to sue; or it may pay off the mortgage debt and receive  
83. an assignment thereof and of the mortgage. Other provisions  
84. relating to the interests and obligations of such mortgagee may  
85. be added hereto by agreement in writing.  
86. **Pro rata liability.** This Company shall not be liable for a greater

87. proportion of any loss than the amount  
88. hereby insured shall bear to the whole insurance covering the  
89. property against the peril involved, whether collectible or not.  
90. **Requirements in** The insured shall give immediate written  
91. **case loss occurs.** notice to this Company of any loss, protect  
92. the property from further damage, forthwith  
93. separate the damaged and undamaged personal property, put  
94. it in the best possible order, and furnish a complete inventory  
95. of the destroyed or damaged property setting forth for each item,  
96. or by category if itemization is not reasonably practicable,  
97. the amount of loss claimed. The company may, in addition  
98. require the insured to furnish a complete inventory of  
99. the destroyed, damaged and undamaged property, showing in  
100. detail quantities, costs, actual cash value and amount of loss  
101. claimed; and within sixty days after the loss, unless such time  
102. is extended in writing by this Company, the insured shall render  
103. to this Company a proof of loss, signed and sworn to by the  
104. insured, stating the knowledge and belief of the insured as to  
105. the following: the time and origin of the loss, the interest of the  
106. insured and of all others in the property, the actual cash value of  
107. each item thereof and the amount of loss thereto, all encum-  
108. brances thereon, all other contracts of insurance, whether valid  
109. or not, covering any of said property, any changes in the title,  
110. use, occupation, location, possession or exposures of said prop-  
111. erty since the issuing of this policy, by whom and for what  
112. purpose any building herein described and the several parts  
113. thereof were occupied at the time of loss and whether or not it  
114. then stood on leased ground, and shall furnish a copy of all the  
115. descriptions and schedules in all policies and, if required, verified  
116. plans and specifications of any building, fixtures or machinery  
117. destroyed or damaged. The insured, as often as may be reason-  
118. ably required, shall exhibit to any person designated by this  
119. Company all that remains of any property herein described, and  
120. submit to examinations under oath by any person named by this  
121. Company, and subscribe the same; and, as often as may be  
122. reasonably required, shall produce for examination all books of  
123. account, bills, invoices and other vouchers, or certified copies  
124. thereof if originals be lost, at such reasonable time and place as  
125. may be designated by this Company or its representative, and  
126. shall permit extracts and copies thereof to be made.  
127. **Appraisal.** In case the insured and this Company shall  
128. fail to agree as to the actual cash value of  
129. the amount of loss, then, on the written demand of either, each  
130. shall select a competent and disinterested appraiser and notify  
131. the other of the appraiser selected within twenty days of such  
132. demand. The appraisers shall first select a competent and dis-  
133. interested umpire; and failing for fifteen days to agree upon  
134. such umpire, then, on request of the insured or this Company  
135. such umpire shall be selected by a judge of a court of record in  
136. the state in which the property covered is located. The ap-  
137. praisers shall then appraise the loss, stating separately actual  
138. cash value and loss to each item; and, failing to agree, shall  
139. submit their differences, orally, to the umpire. An award in writ-  
140. ing, so itemized, of any two when filed with this Company shall  
141. determine the amount of actual cash value and loss. Each  
142. appraiser shall be paid by the party selecting him and the ex-  
143. penses of appraiser and umpire shall be paid by the parties  
144. equally, provided, however, if the written demand is made by the  
145. Company, then the insured shall be reimbursed by this Company for  
146. the reasonable cost of the insured's appraiser and the insured  
147. portion of the cost of the umpire.  
148. **Compromise.** It shall be optional with this Company to  
149. **options.** take all, or any part, of the property at the  
150. agreed or appraised value, and also to re-  
151. pair, rebuild or replace the property destroyed or damaged with  
152. other of like kind and quality within a reasonable time, on giv-  
153. ing notice of its intention so to do within thirty days after the  
154. receipt of the proof of loss herein required.  
155. **Abandonment.** There can be no abandonment to this Com-  
156. pany of any property.  
157. **When loss** The amount of loss for which this Company  
158. **payable.** may be liable shall be payable sixty days  
159. after proof of loss, as herein provided.  
160. received by this Company and ascertainment of the loss is made  
161. either by agreement between the insured and this Company or  
162. pressed in writing or by the filing with this Company of a  
163. award as herein provided.  
164. **Suit.** No suit or action on this policy for the recov-  
165. ery of any claim shall be sustainable in a  
166. court of law or equity unless all the requirements of this policy  
167. shall have been complied with, and unless commenced with-  
168. in two years next after incurrence of the loss.  
169. **Subrogation.** This Company may require from the insured  
170. an assignment of all right of recovery against  
171. any party for loss to the extent that payment therefor is made  
172. by this Company.



**BUSINESSOWNERS  
AMENDATORY  
ENDORSEMENT**

I. The following is added to COVERAGE B BUSINESS PERSONAL PROPERTY, Page 2 of 23 in the SPECIAL BUSINESSOWNERS POLICY:

**DAMAGE TO BUILDINGS FROM THEFT, BURGLARY or ROBBERY.**

This policy also covers loss (except by fire or explosion) to

- (1) that part of the building and
- (2) equipment pertaining to the service of the building in that part of the building occupied by the insured and containing property covered directly resulting from theft, burglary or robbery (including attempted theft, burglary or robbery) provided the insured is liable for such damage.

In no event shall this coverage apply:

- (1) to glass (other than glass building blocks) or to any lettering or ornamentation.
- (2) to building property or equipment removed from the premises.

II. The following paragraph is added to COVERAGE C LOSS OF INCOME, Page 2 of 23:

**MEDIA FOR ELECTRONIC DATA PROCESSING:**

The Company shall only be liable for loss of income resulting from destruction of media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data contained on such records for not exceeding:

- (1) 30 consecutive calendar days; or
  - (2) the length of time that would be required to rebuild, repair or replace such other property described as has been damaged or destroyed:
- whichever is the greater length of time.

III. PROPERTY SUBJECT TO LIMITATIONS, Page 3 of 23 in the SPECIAL BUSINESSOWNERS POLICY is amended as follows:

Revise the beginning of the second sentence to read:

Except for loss caused by

- (a) fire, lightning, windstorm, hail, explosion, smoke, aircraft, vehicles, riot, civil commotion, and leakage or accidental discharge from automatic fire protective systems; and
- (b) vandalism or malicious mischief with respect only to items 2, 3 and 4 below.

IV. (Applicable in all states except Maine, Michigan, New Hampshire, New Mexico, North Carolina and Virginia).

Condition "4. TIME OF INCEPTION," Page 16 of 23 of the GENERAL CONDITIONS is replaced by the following:

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 A.M. Standard Time.

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.

V. Condition "7. SUBROGATION," Pages 16 and 17 of 23 of the GENERAL CONDITIONS is deleted and replaced by the following:

**7. SUBROGATION.**

- (a) In the event of any payment under this policy, the Company shall be subrogated to all insured's rights of recovery against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.



(b) This insurance shall not be invalidated should the insured waive in writing a loss any or all right of recovery as to the property described.

(c) The insured shall do nothing after loss to prejudice the Company's rights of subrogation.

VI. The following exclusion is added to SECTION I—PERILS AND EXCLUSIONS, Page 5 of 23:

caused by volcanic eruption unless direct loss by fire or breakage of glass or safety glazing material ensues. In this event, this Company shall be liable for only the direct loss to the property insured caused by the ensuing fire and if an insured peril, the ensuing breakage of glass or safety glazing material.

Volcanic eruption means the eruption, explosion or effusion of a volcano.

VII. EXTERIOR GRADE FLOOR GLASS, Page 6 of 23 in the SPECIAL BUSINESSOWNERS POLICY is amended as follows:

Replace the second paragraph with the following:

The following do not apply to this optional coverage:

1. Under SECTION I—PROPERTY COVERAGE, the PROPERTY SUBJECT TO LIMITATIONS provision and,
2. The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions.

VIII. The SPECIAL BUSINESSOWNERS POLICY is amended as follows:

A. The following additional coverage is added to SECTION I—PROPERTY COVERAGES:

Additional Coverage—Collapse

This policy insures against risk of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

- a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief; breakage of glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this policy;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of people or personal property;
- e. weight of rain which collects on a roof;
- f. use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Company shall not be liable for loss to the following types of property, if otherwise covered in this policy, under items b., c., d., e. and f., unless the loss is a direct result of the collapse of a building:

outdoor radio or television antennas including their lead-in wiring, masts or towers; awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

This Additional Coverage does not increase the amount(s) of insurance provided in this policy.

B. SECTION I—PERILS AND EXCLUSIONS

1. PERILS INSURED is deleted and replaced by the following:

This policy insures against risk of direct physical loss unless the loss is excluded in Exclusions below, subject to all the provisions contained herein.

The following is added to the EXCLUSIONS section:

This policy does not insure any loss caused directly or indirectly by any of the following exclusions in this policy. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. Ordinance or law;
- b. Power, heating or cooling failure;
- c. Earth movement;
- d. Volcanic eruption;
- e. Flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray;
- f. Water which backs up through sewers or drains;
- g. Water below the surface of the ground;
- h. War Risk and Governmental Action;
- i. Nuclear Clause and Nuclear Exclusion.

3. The following exclusions are added to the EXCLUSIONS section:

- a. The Company shall not be liable for loss caused by collapse, except as provided in the Collapse Additional Coverage. If a peril not otherwise excluded ensues on the described premises, this Company will pay only for loss caused by the ensuing peril.
- b. The Company shall not be liable for loss caused by any of the following. However, any ensuing loss not excluded or excepted in this policy is covered.

(1) Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with any of the following exclusions in this policy relating to:

- (a) Ordinance or law;
- (b) Power, heating or cooling failure;
- (c) Earth movement;
- (d) Volcanic eruption;
- (e) Flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray;
- (f) Water which backs up through sewers or drains;
- (g) Water below the surface of the ground;
- (h) War Risk and Governmental Action;
- (i) Nuclear Clause and Nuclear Exclusion;

(2) Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;

(3) Faulty, inadequate or defective:

- (a) planning, zoning, development, surveying, siting;
- (b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (c) materials used in repair, construction, renovation or remodeling or
- (d) maintenance;

of part or all of any property whether on or off the described premises.



4. Exclu 6.(d) faulty design, materials or workmanship is deleted.  
5. Company shall not be liable for loss or damage caused by the release, discharge or dispersal of pollutants unless the release, discharge or dispersal is itself caused by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building, vandalism, malicious mischief or leakage or accidental discharge from automatic fire protective systems. But if loss by any of the above twelve perils ensues, then this Company shall be liable for only loss caused by the ensuing peril.

IX. The following is added under SECTION I—PROPERTY COVERAGES to PROPERTY NOT COVERED:

This policy does not cover land (including land on which covered property is located) or water.

X. The following is added under SECTION I—PROPERTY COVERAGES to the DEBRIS REMOVAL provisions, Page 1 of 23:

The total liability under this policy for debris removal expense only shall not exceed a) \$5,000, plus b) 25% of: i) the amount recoverable under this policy for loss to property plus ii) the deductible in this policy applicable to such loss. Nor will this insurance cover debris removal expenses reported to the Company more than 180 days after the earlier of the date of direct loss or the expiration of this policy.

This Debris Removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore or replace polluted land or water.

XI. The following is added to COVERAGE A BUILDINGS, Page 1 of 23:

POLLUTANTS CLEAN UP AND REMOVAL

This policy covers expense to extract pollutants from land or water at the described premises if the release, discharge or dispersal of the pollutants is occasioned by loss caused by any of the perils insured against in this policy during the policy period. Such expenses must be reported to the Company within 180 days after the earlier of the date of direct loss or the expiration of this policy.

The liability of the Company for loss under this coverage shall not exceed \$10,000 in the aggregate for the sum of all such expense incurred arising out of insured perils occurring during each separate twelve month period of this policy. This limit applies as an additional amount of insurance.

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

XII. The following is added to COVERAGE C LOSS OF INCOME, Page 2 of 23:

Loss of income shall not be payable for any increased period of time required due to the enforcement of any law regulating the prevention, control, repair, clean-up or restoration of environmental damage.

This endorsement must be attached to the Businessowners Policy Change Endorsement when issued after the policy is written.

## SUPPLEMENTAL DECLARATIONS ENDORSEMENT

# BEAM

## SCHEDULE

Loc. No.	Described Premises (Address, City, State, Zip Code)	Occupancy	Section I Limit of Liability	
			Coverage A Building	Coverage B Contents
1.	9548 24th Bay Street Norfolk, Virginia 23518	Apts.	94,000.	NIL
2.	9552 24th Bay Street Norfolk, Virginia 23518	Apts.	94,000.	NIL
3.	9556 24th Bay Street Norfolk, Virginia 23518	Apts.	463,000.	NIL
4.	9620 13th Bay Street Norfolk, Virginia 23518	Apts.	140,000.	NIL
5.	9620 13th Bay Street Norfolk, Virginia 23518	Apts.	218,000.	NIL

Refer to Item 5 of the policy declarations for Section II limit of liability.





IL 00 02  
(Ed. 04 77)

#### EFFECTIVE TIME ENDORSEMENT

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12.01 a.m. standard time.  
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

**AMENDATORY ENDORSEMENT  
PREJUDGMENT INTEREST**

The following is added to the Supplementary Payments provision in this policy:

The Company will pay, in addition to the applicable limit of liability, prejudgment interest awarded against the insured on that part of the judgment the Company pays. If the Company makes an offer to pay the applicable limit of its liability, the Company will not pay any prejudgment interest based on that period of time after the offer.



AMENDATORY ENDORSEMENT

IL 02 56  
(Ed. 10 86)

VIRGINIA

A. The provisions of this policy pertaining to cancellation by the Company are amended as follows:

1. This policy may be cancelled by the Company by sending written notice of cancellation by registered or certified mail or by delivering written notice to the named insured, including the reason for cancellation, at least:
  - a. 15 days before the effective date of cancellation if the Company cancels for nonpayment of premium; or
  - b. 45 days before the effective date of cancellation if the Company cancels for any other reason.

B. The following condition is added:

NONRENEWAL

If the Company decides not to renew this policy, the Company will send written notice of nonrenewal by registered or certified mail or by delivering written notice to the named insured, at the mailing address shown in this policy, including the reason for nonrenewal, at least:

- a. 15 days before the expiration date if the nonrenewal is due to nonpayment of premium; or
- b. 45 days before the effective date of cancellation if the nonrenewal is for any other reason.

The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.

GU 271  
(Ed. 6-86)

### POLLUTION EXCLUSION

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**BUSINESSOWNERS POLICY  
COMPREHENSIVE GENERAL LIABILITY INSURANCE  
CONTRACTUAL LIABILITY INSURANCE  
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE  
OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE  
OWNERS', LANDLORDS' AND TENANTS' LIABILITY INSURANCE  
SMP LIABILITY INSURANCE  
STOREKEEPERS INSURANCE  
CONTRACTORS LIABILITY  
RESTAURANT LIABILITY  
BEAUTY SHOP - BARBER SHOP  
FUNERAL DIRECTORS  
VETERINARIANS  
RAILROAD PROTECTIVE**

This endorsement, effective

(12:01 A.M., standard time)

, forms a part of Policy No.

issued to

by

Authorized Representative

It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants is replaced by the following:

- (1) to bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - (a) at or from premises owned, rented or occupied by the named insured;
  - (b) at or from any site or location used by or for the named insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the named insured or any person or organization for whom the named insured may be legally responsible; or
  - (d) at or from any site or location on which the named insured or any contractors or subcontractors working directly or indirectly on behalf of the named insured are performing operations:
    - (i) if the pollutants are brought on or to the site or location in connection with such operations; or
    - (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
- (2) to any loss, cost or expense arising out of any governmental direction or request that the named insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

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

Subparagraphs (a) and (d) (i) of paragraph (1) of this exclusion do not apply to bodily injury or property damage caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.



GENERAL ENDORSEMENT

BEAM

NAMED INSURED

James E. Owens, William Weeks, Thomas A. Connor,  
Margaret Cody, Jean Ford, David L. Huffman and Michael  
J. Coyle T/A Harborview Associates

Nothing herein contained shall vary, alter, waive or extend any of the terms, representations, conditions or agreements of the policy other than as above stated.

To be attached to and forming a part of Policy No. XBW(90)50 25 05 24 issued  
to Harborview Associates by THE OHIO CASUALTY INSURANCE CO.

This endorsement effective 10-01-89

Hamilton Agency, Inc. Agent

*Joseph L. Marum*  
President

Form 3218 7-59-250M

End. No. \_\_\_\_\_ Date Typed 07-05-89np

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

S. F. (JANE DOE), an infant, by her  
mother and next friend,  
K. F. (SARA DOE),

and

SARA DOE, Individually,  
Plaintiffs,

v.

AT LAW NO. L90-3278

CENTURY 21 LANDMARK REALTY,  
SERVE: Thomas A. Connor  
Registered Agent  
333 W. Freemason Street  
Norfolk, VA 23510

PLAINTIFFS DEMAND A  
TRIAL BY JURY

SERVE

HARBOR-VIEW ASSOCIATES,  
A General Partnership,  
SERVE: James E. Owens  
1211 Candlewood Drive  
Virginia Beach, VA 23464

JAMES E. OWENS,  
1211 Candlewood Drive  
Virginia Beach, VA 23464

BILL F. WEEKS,  
4604 Fern Oak Court  
Virginia Beach, VA 23464

THOMAS A. CONNOR,  
333 W. Freemason Street  
Norfolk, VA 23510

MARGARET CODY,  
5305 Etheridge Circle  
Virginia Beach, VA 23464

MICHAEL J. COYLE,  
5539 Virginia Beach Boulevard  
Virginia Beach, VA 23464

DAVID L. HUFFMAN,  
564 Caren Drive  
Virginia Beach, VA 23452

and

Law Offices Of  
EIT. DRESCHER & BREIT  
Norfolk, Virginia 23510

EXHIBIT B



JEAN J. FORD,  
5313 West Overhold Drive  
Virginia Beach, VA 23462

Defendants.

AMENDED MOTION FOR JUDGMENT

Plaintiffs, S. F. (hereinafter referred to as "Jane Doe"), an infant, by her mother and next friend, K. F. (hereinafter referred to as "Sara Doe"), and Sara Doe, individually, by counsel, for her Motion for Judgment against defendants, Century 21 Landmark Realty, Harbor View Associates, James E. Owens, Bill F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), says as follows:

COUNT I

1. Plaintiff Jane Doe, an infant of tender years, is eight (8) years of age. At all times relevant to this action, she resided with her parents upon the premises located at 9620 13th Bay Street in the City of Norfolk, Virginia.

2. Plaintiff Sara Doe is the mother and next friend of plaintiff Jane Doe. At all times relevant to this action, she resided upon the premises located at 9620 13th Bay Street in the City of Norfolk, Virginia.

3. Defendant Century 21 Landmark Realty is, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing

of the apartment complex located at 9620 13th Bay Street in the City of Norfolk, Virginia.

4. Defendant Harbor View Associates is, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street in the City of Norfolk, Virginia.

5. Defendant James E. Owens was, at all times relevant to this action, the managing general partner of the defendant partnership, and in that capacity owned, operated, controlled, managed, leased and hired all employees of the property located at 9620 13th Bay Street in the City of Norfolk, Virginia.

6. Defendants William F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street in the City of Norfolk, Virginia.

7. That on or about November and December, 1989, ~~plaintiffs leased the premises owned, operated and maintained by~~ the Defendants located at 9620 13th Bay Street in the City of Norfolk, Virginia.

8. That on or about November and December, 1989, Defendants employed one Charles R. Vette as resident manager to manage, supervise and control the premises located at 9620 13th



Bay Street in the City of Norfolk, Virginia, and in particular, the area of the residence of the plaintiff, Jane Doe, an infant.

9. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants and guests of tenants, giving him a "cloak of trust and responsibility" that tenants could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

10. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, Jane Doe, including rape, sodomy, fellatio and other crimes against nature while acting within the scope of his employment with the defendants.

11. That Defendants negligently hired, selected, retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.

12. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, and knew or should have known Charles R. Vette was unfit for the employment situation.

13. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, Jane Doe, sustained serious and permanent injuries.

14. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require her to incur medical expenses in the future; have resulted in the lost earnings because she is unable to work at her calling and loss of earnings and lessening of earning capacity that she may reasonably be expected to sustain in the future.

15. That at the time of the said negligence complained of the said Jane Doe was a member of Sara Doe's household and was dependent upon her for maintenance and support and the said Sara Doe was legally and morally obligated to furnish the said Jane Doe with maintenance and support. That as a result thereof, the plaintiff, Sara Doe, has been caused to lose the services of her said daughter and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said Jane Doe is emancipated.

#### COUNT II

16. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 15 as if fully set forth herein.



17. That Defendants owned, operated, maintained, controlled and leased the aforementioned property, and owed a duty to the plaintiffs to operate, maintain and control the property in a reasonably safe condition.

18. Notwithstanding the aforementioned duty, the Defendants, you and each of you, negligently leased the aforementioned property, causing the plaintiffs to receive serious and permanent injuries by an employee of Defendants.

19. That as a direct and proximate result of the aforementioned negligence, plaintiff Jane Doe received serious and permanent injuries.

### COUNT III

20. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 19, inclusive of Count I and Count II of this Motion for Judgment as if fully set forth herein.

21. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

22. Notwithstanding the aforementioned duty, Defendants, ~~as the landlord of the premises,~~ failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

23. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and

permanent injuries and are entitled to recover the damages therefore.

COUNT IV

24. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 23, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

25. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

S. F. (JANE DOE), an infant, by her  
mother and next friend,  
K. F. (SARA DOE),  
and  
SARA DOE, Individually

By Bicce Hobbs  
Of Counsel



Jeffrey A. Breit  
Billie Hobbs  
BREIT, DRESCHER & BREIT  
Tazewell Building  
100 Brooke Avenue  
Norfolk, VA 23510  
(804) 622-6000

Law Offices Of  
BREIT, DRESCHER & BREIT  
Norfolk, Virginia 23510

## CERTIFIED COPY

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

THE WEST AMERICAN INSURANCE COMPANY, (

Plaintiff, )

v. ( AT LAW NO.

S.F. (JANE DOE), an infant, ( L91-2481

by HER MOTHER AND NEXT FRIEND, )

K.F. (SARA DOE), et al., (

Defendants. )

## TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

June 15, 1994

Before:

THE HONORABLE JOHN E. CLARKSON, Judge

-----  
TAYLOE ASSOCIATES, INC.

Registered Professional Reporters

Telephone: (804) 461-1984

Norfolk, Virginia



1     Appearances:

2

3             On behalf of the Plaintiff:

4             DAVID ROBINSON, ESQUIRE

5             Hirschler, Fleischer, Weinberg, Cox & Allen

6             701 East Byrd Street

7             Richmond, Virginia 23219

8             (804) 771-9500

9

10

11            On behalf of the Defendants:

12            BILLIE J. HOBBS, ESQUIRE

13            JEFFREY BREIT, ESQUIRE

14            Breit, Drescher & Breit

15            999 Waterside Drive

16            Norfolk, Virginia 23510

17            (804) 670-3884

18

19

20

21

22

23

24

25

## INDEX

## EXHIBITS

ON BEHALF OF THE PLAINTIFF: Page  
Plaintiff-No. 1: Exhibit Book: 16



1 (The hearing convened at 11:10 a.m.)

2 MR. ROBINSON: Judge, again, if I may for  
3 the record, I am David Robinson. I represent the  
4 plaintiff in this case. We have some housekeeping  
5 matters; in that, one of the defendants who is an  
6 insured of the West American's policy is Thomas  
7 Connor, who, as you probably know, is an attorney.

8 THE COURT: Right.. That was one of the  
9 considerations that I was told, as to whether or not I  
10 should recuse myself. And I didn't think that I  
11 should.

12 MR. ROBINSON: I don't see any reason for  
13 you to, Your Honor. The only problem is that  
14 Mr. Connor has filed for bankruptcy under Chapter 7.  
15 And in looking at 362 of the bankruptcy code, the  
16 automatic stay probably stays this action against  
17 him. We have discussed it among counsel, and what we  
18 would like to do, subject to the Court's approval, is  
19 to basically stay this case or continue it as against  
20 Mr. Connor, and then just proceed to the rest of the  
21 parties.

22 THE COURT: I don't know this, but I  
23 would assume that if we decided for the other parties,  
24 it would probably be, pretty well, decided for him.

25 MR. ROBINSON: Yes, sir. I think that

1 would probably be the case.

2 THE COURT: It looks like an awful lot --  
3 I am just seeing, someone has written in -- I don't  
4 know whose writing it is, it's not my handwriting --  
5 it looks like there are some defaults.

6 MS. HOBBS: There are some defaults, Your  
7 Honor.

8 THE COURT: Like Century 21, default.  
9 And Harbor View Associates, default. And James Owens,  
10 bankruptcy.

11 MR. ROBINSON: James Owens and Bill  
12 Weeks, both of whom are insureds, have filed for  
13 bankruptcy. And my understanding is that they have  
14 been discharged.

15 THE COURT: And Owens and Weeks is  
16 bankruptcy. Connor, they have got default.

17 MS. HOBBS: Yes, Your Honor. He has  
18 never responded to this lawsuit.

19 THE COURT: So he is in default.

20 MS. HOBBS: Yes, sir.

21 THE COURT: And Margaret Cody, they've  
22 got default. Mitchell Coyle, they've got, no service,  
23 deceased, with a question mark.

24 MR. ROBINSON: I believe he is deceased.

25 THE COURT: Dave Huffman, default. And

1 Jean Ford, pro se, maybe, Howard Gordon.

2 MR. ROBINSON: I can shed some light on  
3 that, Your Honor. I have spoken to Mr. Gordon and he  
4 is not representing Miss Ford in this matter. He was  
5 helping her with related matters. That is how his  
6 name got mentioned.

7 THE COURT: It looks like then, that  
8 either people are in default ---

9 MR. ROBINSON: I think it would be  
10 correct to say that everyone in this case who is a  
11 defendant is in default except for the persons who are  
12 represented by The Jeffrey Breit Law Offices.

13 THE COURT: Which would be Jane Doe and  
14 Sara Doe?

15 MS. HOBBS: That's correct.

16 MR. ROBINSON: And there is an amended  
17 motion for declaratory judgment which added the other  
18 claimants as well, for a total of seven minors in this  
19 case. What we have, Your Honor, is we -- I prepared a  
20 sketch order which provides for the case to be stayed  
21 as against Mr. Connor just to make sure that we don't  
22 have any problems with the automatic stay.

23 THE COURT: Any objection to that?

24 MS. HOBBS: No, Your Honor. I have  
25 agreed to sign that.



1 MR. ROBINSON: And I have also prepared  
2 one as far as Mr. Coyle since it appears that he is  
3 deceased which, in essence, does the same thing; the  
4 matter is abated as against him. And I would like to  
5 submit these orders for your consideration.

6 THE COURT: Sounds like they are going to  
7 be approved for that question.

8 MR. ROBINSON: May I approach the bench?

9 THE COURT: Sure. We are very informal  
10 here. This is not the Federal Court.

11 MR. ROBINSON: I am from Richmond. While  
12 I am here I might wish to --

13 MS. HOBBS: Is this just the policy?

14 MR. ROBINSON: Right. And the lawsuits  
15 and --

16 MS. HOBBS: Answers to interrogatories.

17 MR. ROBINSON: Right. This is an exhibit  
18 book which we prepared for you. You have everything  
19 that is in here, already.

20 MS. HOBBS: Your Honor, you have all  
21 those documents.

22 THE COURT: Now, the other attorneys -- I  
23 see Michael Price, and Martin Boelens, and Jean Ford.  
24 And they have all been noticed as to the hearing?

25 MS. HOBBS: Yes, Your Honor.

1 MR. ROBINSON: Yes. And I have spoken  
2 with all of them, and they told me over the telephone,  
3 that they had no intention of being here, with the  
4 exception of Ms. Ford. She didn't say one way or the  
5 other.

6 MS. HOBBS: They have all been notified,  
7 Your Honor.

8 THE COURT: All right. I have entered  
9 both.

10 MR. ROBINSON: Thank you, Judge.

11 THE COURT: All right. That is it for  
12 housekeeping, I guess. Any further housekeeping?

13 MS. HOBBS: I think that's it.

14 MR. ROBINSON: We are ready to proceed.

15 THE COURT: All right. Let me do this:  
16 I would like to, if I may, I think if I remember,  
17 you-all were in on some motion, but it involves an  
18 apartment complex or apartment in the city of -- looks  
19 like, Virginia Beach.

20 MS. HOBBS: Norfolk, Your Honor.

21 THE COURT: In Ocean View Court.  
22 Apparently, some children were sexually involved with  
23 one of the employees.

24 MS. HOBBS: That's correct. We represent  
25 those children and their parents. And the facts of

1 the case are --

2 THE COURT: This is a declaratory  
3 judgment as to their insurance coverage?

4 MR. ROBINSON: Yes, sir.

5 MS. HOBBS: It's actually not an issue of  
6 coverage, it's an issue of whether or not this amounts  
7 to one occurrence or several occurrences.

8 THE COURT: Single occurrence or --

9 MS. HOBBS: Single occurrence or multiple  
10 occurrences is the issue. It's not really whether or  
11 not there is coverage. Evidently, they have conceded  
12 that there is coverage, it's just a matter of how  
13 much.

14 MR. ROBINSON: We are defending under a  
15 reservation of rights situation. But the issue of  
16 coverage is not an issue, per se.

17 THE COURT: How many children were  
18 involved?

19 MS. HOBBS: Seven children.

20 THE COURT: Seven children. And the  
21 insurance company would be arguing that that is all  
22 one occurrence?

23 MR. ROBINSON: One occurrence. And we  
24 have the law and the policy to prove that to you.

25 THE COURT: Let's take the worst



1 scenario. I don't know what happened to them. Let's  
2 say that seven children were all raped at different  
3 times by the same individual. That would be one  
4 single occurrence?

5 MR. ROBINSON: It actually depends upon  
6 the allegations against the insured. And I would be  
7 prepared to just go ahead with my argument, now, if  
8 that is acceptable.

9 THE COURT: That's fine. I didn't mean  
10 to interrupt. I just think I understand the facts.

11 MR. ROBINSON: I won't spend a whole lot  
12 of time on the facts then.

13 THE COURT: All right.

14 MR. ROBINSON: Judge, let me also just  
15 for the record introduce to you Mr. Dan  
16 Blanchard, Sr., who is the branch claims manager for  
17 the Ohio Casualty Insurance Company, of which West  
18 American is a member.

19 THE COURT: Nice to have you with us.

20 MR. BLANCHARD: Thank you, sir.

21 MR. BREIT: I made him leave the Wells  
22 Fargo truck down on the street.

23 THE COURT: Always nice to have people  
24 who know what they're doing.

25 MR. ROBINSON: To reiterate, Judge, this

1 is the declaratory judgment action where we are  
2 interpreting the number of occurrences under the  
3 policy. That is issue number one. Issue number two  
4 is whether there was coverage under these  
5 circumstances and under the allegations of the  
6 personal injury cases for punitive damages.

7           There is no question of liability.  
8 That's not being decided in this case. It's just the  
9 coverage. The defendants fall into three categories;  
10 you have the insured under the policy which is Harbor  
11 View Associates which is a partnership, and the  
12 individual insureds, they are all listed in your  
13 materials in front of you.

14           You have Century 21 Landmark Realty, who  
15 is in default. And they are the alleged rental agent  
16 for the property. And then you have seven minor  
17 children, one of which is Shauna Fraguada -- if I am  
18 pronouncing her name correctly -- who is Jane Doe in  
19 the case. Her and her mother were the only tenants at  
20 this apartment complex.

21           All the other children who were allegedly  
22 molested were neighbors or invitees, it is alleged to  
23 be invitees to the apartment complex. But only the  
24 girl was a tenant, the others who were boys were all  
25 neighbors. You have seven lawsuits which were brought

1 in the personal injury case. Out of the seven, there  
2 is one girl and the six boys.

3 What is imperative for the Court to  
4 understand is the basis of the allegations against the  
5 insured which were raised from those lawsuits; namely,  
6 that the insured, Harbor View Associates, and the  
7 others were negligent in hiring, selecting, retaining,  
8 and supervising a person by the name of Charles Vette,  
9 V-E-T-T-E, who allegedly sexually molested these  
10 children.

11 There is no allegations, whatsoever, that  
12 any members of Harbor View Associates were involved  
13 personally in the molestations; just a question of  
14 negligent hiring, as I know you are aware of, the J.  
15 versus Victory Tabernacle case.

16 THE COURT: I learned a good lesson there  
17 from a law review article.

18 MR. ROBINSON: Yes, sir, I am sure that  
19 you could.

20 THE COURT: Wait, I think the case turned  
21 on the law review article, Justice Thomas.

22 MR. ROBINSON: I don't remember exactly.  
23 I know that they did find that negligent hiring is a  
24 valid cause of action.

25 THE COURT: I think the authority was the



1 law review.

2 MR. ROBINSON: What is being alleged in  
3 this case is that there was a negligent hiring of this  
4 man. The specific allegation is that the Harbor View  
5 Associates or Century 21 -- it is not quite clear who  
6 hired him in what capacity -- should have conducted a  
7 criminal background check; that if they had conducted  
8 a criminal background check, they would have found out  
9 that he had been convicted of prior felonies,  
10 including, I believe, sexual molestation, and then,  
11 accordingly, they would not have hired him. That's  
12 the gist of the underlying personal injury cases.

13 THE COURT: That you must make a  
14 background check before you hire someone?

15 MR. ROBINSON: Yes, sir. And, obviously,  
16 while we are not deciding that question here -- that  
17 is a question of the liability -- it is important in  
18 order to determine the coverage, what the allegations  
19 are, obviously, and the underlying suits.

20 The business owner's liability policy  
21 which was issued here by West American Insurance  
22 Company to all these individual people trading as  
23 Harbor View Associates, as the partnership, contains  
24 language in the policy which specifies that there is  
25 only going to be one occurrence in a situation. And

1 based upon that language and the case law that is  
2 applicable, what we will prove to you, Your Honor, is  
3 that you have to focus and utilize a cause analysis as  
4 opposed to an effects analysis, and that looking at  
5 the cause of the injuries that are alleged here, it is  
6 the negligent hiring of Charles Vette. That happened  
7 once. The man was hired at one discrete point of  
8 time.

9 THE COURT: You are not talking about the  
10 rapes.

11 MR. ROBINSON: Exactly.

12 THE COURT: What is the negligence? The  
13 negligence was the hiring.

14 MR. ROBINSON: The hiring. And  
15 everything flows from that point onward. If Harbor  
16 View Associates made an error here, which we don't  
17 admit, but assuming they did, the error was hiring  
18 this man. And all the injuries to all the claimants  
19 flow from that area, one occurrence; therefore,  
20 liability is one million per occurrence. And that is  
21 our argument here today, that there was only one  
22 occurrence and \$1 million in coverage. If I  
23 understand the argument advanced by --

24 THE COURT: What about supervision of  
25 this man?

1 MR. ROBINSON: Yes, sir.

2 THE COURT: What about, in other words,  
3 hiring, maintaining, and supervision? What if they  
4 said that each of these rapes occurred on every day  
5 right in front of the whole corporation and they just  
6 didn't do anything about it?

7 MR. ROBINSON: I understand what you are  
8 saying.

9 THE COURT: Would that be --

10 MR. ROBINSON: No. It would not be -- it  
11 wouldn't change the analysis. And there is two  
12 reasons for that. One --

13 THE COURT: That is my jury. Go see what  
14 we have got. I am sorry to interrupt.

15 MR. ROBINSON: I understand completely.

16 THE COURT: I will give you all the time  
17 you want.

18 THE BAILIFF: They have a question, Your  
19 Honor.

20 THE COURT: Looks like you're on.

21 (A brief recess was taken.)

22 MR. ROBINSON: Judge, why don't I back up  
23 a little bit and we will pick up on what your question  
24 was, about the negligent supervision. First of all,  
25 let me clarify because I am not sure that I made it as



1 clear as I should, that of the seven claimants that we  
2 are talking about here, the seven minors, only the  
3 girl was a tenant at the apartment complex.

4 THE COURT: Right. And the others were  
5 either invitees or visitors.

6 MR. ROBINSON: That's right. They were  
7 not tenants at the complex itself.

8 THE COURT: What is the significance of  
9 that? They wouldn't be covered under the policy?

10 MR. ROBINSON: Well, that would be an  
11 argument in the liability cases, but I just want it to  
12 be clear to the Court, the status of the various  
13 tenants. But another thing I would like to do, just  
14 for the record, if I may, is to move my exhibit book  
15 into evidence.

16 THE COURT: Any objection to that?

17 MS. HOBBS: I have no objection.

18 THE COURT: All right. I will make it  
19 Plaintiff's Exhibit No. 1.

20 (The document referenced was marked as  
21 Plaintiff's Exhibit No. 1.)

22 MR. ROBINSON: Thank you, Judge. In  
23 order to answer your question on the negligent  
24 supervision, what we need to do is look at the  
25 language of the policy itself. In the abstract, you

1 can get a bunch of different answers under different  
2 situations. We are not dealing in the abstract. We  
3 are dealing with a policy that has specific language  
4 and specific limitations. I would like to do that if  
5 I may. -- If you look in the exhibit book under tab one,  
6 that is the policy.

7 And the first part of it is the special  
8 business owners policy which are the insuring  
9 provisions of the policy. And if you turn to page  
10 23 -- I know I am not telling you anything that you do  
11 not already know, but an occurrence is defined as, "an  
12 accident including continuous or repeated exposure to  
13 conditions which results in bodily injury neither  
14 expected nor intended from the standpoint of the  
15 insured."

16 With that in mind, we turn back in the  
17 policy to page 9 which is the liability section of the  
18 policy. This is what is key, you have your general  
19 insuring language, Judge, under coverage E business  
20 liability. "The company will pay on behalf of the  
21 insured, all sums that the insured are legally  
22 obligated to pay as damages because of bodily injury  
23 caused by an occurrence to which this insurance  
24 applies."

25 If you follow down a little bit, you can

1 see at the bottom section of that section, and this is  
2 the key language that we believe answers your question  
3 about the negligent supervision, "for the purpose of  
4 determining the limit of the company's liability, all  
5 bodily injury and property damage arising out of a  
6 continuous or repeated exposure to substantially the  
7 same general conditions shall be considered as arising  
8 out of one occurrence."

9 THE COURT: I missed that. That is on  
10 page 9?

11 MR. ROBINSON: Yes, sir. And see where  
12 the first line is that divides the page?

13 THE COURT: "For the purpose of  
14 determining the liability"?

15 MR. ROBINSON: Yes.

16 THE COURT: Okay.

17 MR. ROBINSON: "All bodily injury or  
18 property damage arising out of a continuous or  
19 repeated exposure to substantially the same general  
20 conditions shall be considered as arising out of one  
21 occurrence."

22 THE COURT: You are saying that the  
23 general conditions were the question of negligent  
24 hiring.

25 MR. ROBINSON: The question of negligent



1 hiring is the general conditions that you are talking  
2 about here, are exposure to Charles Vette, the person  
3 that is alleged to be negligently hired. If you have  
4 any sort of -- if in the personal injury case the  
5 plaintiff's were able to prove any instances of  
6 negligent retention or supervision on top of negligent  
7 hiring -- which I don't think they would be able to  
8 do, but assuming they were, you would have a situation  
9 which it's continuing or repeated exposure to  
10 substantially the same general conditions.

11 THE COURT: Let me ask a question. Let's  
12 say that in one case they alleged that the defendants  
13 were negligent in hiring this man.

14 MR. ROBINSON: Yes, sir.

15 THE COURT: And then, in the next case,  
16 they said that they were really negligent in retaining  
17 this man because they knew or should have known that  
18 he was sexually abusing children. And in the third  
19 case, they said that he was negligent -- they were  
20 negligent in supervising this man. Now, would that be  
21 three different occurrences?

22 MR. ROBINSON: No. You still have one  
23 occurrence.

24 THE COURT: And that is the hiring,  
25 supervising, and retaining.

1 MR. ROBINSON: Because what they did, the  
2 allegations is that they were negligent putting  
3 Charles Vette in a position where he could abuse these  
4 children. And what we have to remember is that all  
5 seven of these lawsuits -- and I am sure you had an  
6 opportunity to look at them, they are all included in  
7 your exhibit book -- have, essentially, the same  
8 allegations, which were, that they were negligent in  
9 hiring, retaining, supervising, and selecting, as  
10 well.

11 And so again, what they are trying to do,  
12 you may call it one -- you might be able to have one  
13 cause of action here and another cause of action  
14 there. And then, the error, if it was an error, was  
15 putting Charles Vette in a position where he could  
16 abuse these children.

17 To expand upon that, and this also helps  
18 demonstrate our point -- if you look, again, on page  
19 9, you will see that it says that, "The above limits  
20 shall apply regardless of the following: One, number  
21 of persons or organizations insured under this policy;  
22 two, the number of persons or organizations who have  
23 sustained injury or damage; and three, the number of  
24 claims made or causes of action or suits brought  
25 because of injury or damage."

1           The language is in the policy itself  
2 "causes of action," and the negligent hiring is one  
3 cause of action; perhaps, negligent retention is  
4 another. But they are all pointing to the exact same  
5 facts.

6           THE COURT: Let me ask you this: If a  
7 door slams on people, like you go in a grocery store  
8 and step on a pedal and the door opens, but in this  
9 case, it slammed on one person, two persons, three  
10 persons, that is one occurrence because it is the same  
11 continuous or repeated exposure to substantially the  
12 same conditions.

13           MR. ROBINSON: Well, again, in this case,  
14 you have the same person who is doing the alleged  
15 molestation.

16           THE COURT: But you have the same door.  
17 In other words, the door -- you were negligent in not  
18 fixing that door. You were negligent in not hiring  
19 the right guy.

20           MR. ROBINSON: I see where you are going  
21 on it. And I think that under the case law that we  
22 have and the policy that we have, again, you would be  
23 looking at one occurrence. And, perhaps, that seems a  
24 little counterintuitive, but I think if I can proceed  
25 with the cases and discussions, you will see the



1 reason for that.

2 THE COURT: I am only trying to  
3 understand the issues. Go ahead.

4 MR. ROBINSON: In determining the number  
5 of occurrences, the courts have generally developed  
6 two tests; the cause test, and the effects test.  
7 Under the cause test, it is the negligent act of the  
8 insured which is determined to be the occurrence.  
9 Under the effects test, it is each result of the  
10 negligence, each claim, each injury is the  
11 occurrence.

12 Now, this policy mandates the use of the  
13 cause test. And I say that because, if you look at  
14 the language of the policy, what is an occurrence; an  
15 accident including continuous or repeated exposure to  
16 conditions which results in bodily injury. So you  
17 have the cause which results in bodily injury; the  
18 event in which the damage was the result.

19 It is also shown by the policy language  
20 which talks about the limit of liability, which, as I  
21 mentioned, is one million per occurrence, applied  
22 regardless of the number of persons who sustained  
23 injury or damage, and also regardless of the number of  
24 claims made or causes of action or suits brought  
25 because of the injury or damage.

1           On the other hand -- so it is clear that  
2 the cause test is the correct test under this policy,  
3 under the terms of the policy. For comparison sake  
4 and to help you understand the difference between the  
5 cause and the effect test, look -- for example, an  
6 effect test situation.

7           Say, you have a situation where you have  
8 a private pilot who has, say, \$1 million in insurance  
9 liability coverage per occurrence. And he's flying  
10 around, and he flies around coming on in to land at  
11 the airport, and he is negligent and ends up crashing  
12 into a 747 with 250 people on board, and the thing  
13 goes up in a ball of flames, and everyone is killed.  
14 Under the effects test, you have 250 people on board,  
15 you would have 250 occurrences, you would have \$250  
16 million worth of insurance coverage.

17           Under the cause test, which is the  
18 majority test, which is adopted by the policy, and the  
19 majority test, and the test used in Virginia courts --  
20 as you can see from our brief that we filed -- there  
21 would be one occurrence because there is one act of  
22 negligence: The pilot flies in and makes the one  
23 mistake and crashes into the 747. That is the act of  
24 negligence. That is the occurrence. That is the  
25 accident.

1                   And that serves to illustrate, somewhat,  
2 I hope the difference between cause and effect. What  
3 the defendants in this case are arguing is that each  
4 -- at least, as is apparent from their interrogatory  
5 answers, which are also in the exhibit book -- is that  
6 each instance or episode of sexual abuse --

7                   THE COURT: Each rape or whatever.

8                   MR. ROBINSON: Is an occurrence. And in  
9 some instances, with the girl who is the tenant, there  
10 is seven to ten instances of abuse alleged. And for  
11 some of the boys, none of which were tenants, there  
12 may be one --

13                  THE COURT: So if there were seven abuses  
14 and \$50,000 per occurrence, it is \$350 thousand.

15                  MR. ROBINSON: It is a one  
16 million-per-occurrence policy. So they're alleging a  
17 total of approximately 29 occurrences, depending on  
18 how you count them. So you have \$29 million in  
19 coverage. And by arguing the effects test like that,  
20 what you end up having is a situation where you have  
21 unlimited insurance coverage. You have, essentially,  
22 a no-limits policy. You have no way that the --

23                  THE COURT: The plane flies into the  
24 Empire State Building and a hundred thousand people  
25 are injured.



1           MR. ROBINSON: And there is no way that  
2 is a rational result. There is no way that the  
3 insurance companies could set their policy or premiums  
4 or do any of that. That is why the courts have  
5 developed the cause test rather than the effects  
6 test. There has been only two Virginia cases that we  
7 have discovered that have addressed this issue:  
8 American Casualty Company of Reading versus Heary,  
9 which was Judge Clarke's case, Eastern District. And  
10 Norfolk and Western Railroad Company versus Accident  
11 and Casualty Insurance Company, which is a Western  
12 District case by Judge Turk. I have the cites, but  
13 both of them are in the brief.

14           In the 1977 case in the Eastern District,  
15 American Casualty Company, the situation was an  
16 automobile case in which the Court found that there  
17 was a single occurrence. The insured's car crashed  
18 into a telephone pole guy wire, a minute later the  
19 wire broke causing the phone cables to fall across the  
20 highway going in both directions. And a car -- and  
21 two cars in total, both directions, were ensnared in  
22 the cable. And the question was, was this one  
23 occurrence or two occurrences or how many occurrences  
24 was this.

25           And Judge Clarke said that the cause test

1 was the only rational view. And he considered it to  
2 have the time-honored acceptance by the Virginia Bench  
3 and Bar, and found there was only one occurrence.  
4 And, Judge, I have -- I don't know what your  
5 facilities are here -- I have copies of most of these  
6 cases, if that would be of any use to you.

7 MS. HOBBS: I supplied them all to the  
8 Court.

9 MR. ROBINSON: Okay. Do you have copies  
10 of --

11 THE COURT: I think so.

12 MR. ROBINSON: Did you also supply copies  
13 of our cases?

14 MS. HOBBS: Only those that are in your  
15 brief. But that is definitely in your file, the Heary  
16 case, Your Honor. Not the ones in your case that  
17 aren't briefed.

18 MR. ROBINSON: Okay.

19 THE COURT: Let me check on that. I had  
20 this on my desk. This is the cases that Miss Hobbs  
21 sent me.

22 MR. ROBINSON: If I can approach the  
23 bench?

24 THE COURT: Sure.

25 MR. ROBINSON: Here are three other cases

1 that we find of importance as well. I don't know if  
2 you have those available to you. The other case, of  
3 course, was the Norfolk and Western case by Judge Turk  
4 in the Western District. And he stated the cause test  
5 had been validated by the law of Virginia. It is  
6 clear by both Virginia case law, by the fact that it  
7 is the majority approach in other states, and also the  
8 explicit language of the policy, that the cause test  
9 is the test that should be applied by the Court.

10 The question is: How is that applied,  
11 what is the next step? When you are looking at the  
12 cause test and applying the cause test, you have to  
13 look at the proximate cause of the injuries. If you  
14 have one proximate cause, you have only one  
15 occurrence, even though you may have multiple injuries  
16 to multiple persons, even though the injuries may be  
17 of different magnitudes, and even if they extend over  
18 a period of time.

19 The focus has to be upon the underlying  
20 circumstances which result in the injuries, and not on  
21 the number of persons injured or the number of  
22 claims. And the focus has to be on the conduct of the  
23 insured, not the conduct of the victims or in this  
24 case the conduct of Charles Vette.

25 This is best illustrated by looking at a



1 couple of cases that I just gave you; the Travelers  
2 Indemnity case versus Olive's Sporting Goods Inc.,  
3 which is a 1989 decision of the Arkansas Supreme  
4 Court. The situation in this case -- this case was  
5 cited in my brief, is that the sporting goods store  
6 sold a Colt 45 and a 12-gauge shotgun to a person  
7 named Wayne Crossley.

8 Crossley was, evidently, somewhat  
9 deranged. The Court said -- characterized it -- in a  
10 bizarre incident, Crossley went out and shot a  
11 policeman, killed and wounded several other persons,  
12 and then committed suicide with the guns. Several  
13 lawsuits were filed by the victims. And in each case,  
14 the allegation was that the sporting goods store was  
15 negligent in selling these guns to Crossley.

16 The actual reason for the negligence  
17 isn't gone into by the Court, but those were the  
18 allegations. The sporting goods store brought a DEC  
19 action against its carrier, Travelers, to determine  
20 the amount of coverage. And what is of importance is  
21 that the policy, in this case, in the Travelers case,  
22 is the same definition of occurrence as the policy in  
23 West American's policy here.

24 And the trial Court found that each  
25 injury was a separate occurrence under the policy.

1 The Supreme Court reversed -- the Arkansas Supreme  
2 Court reversed. It utilized the cause test. They  
3 found that it was one occurrence. The allegations  
4 were negligent hiring -- not negligent hiring, but  
5 rather negligent sale of the weapons to Crossley.

6           You had to look at it from the viewpoint  
7 of the insured, Olive's Sporting Goods, not from the  
8 victims. In fact, they said, from the viewpoint of  
9 the victims, you have multiple occurrences because of  
10 several people shot and injured. But from the  
11 viewpoint of the insured, the sporting goods company,  
12 there was one occurrence.

13           THE COURT: Wrongful sale.

14           MR. ROBINSON: Exactly. It also made the  
15 point that if you had each injury constituting an  
16 occurrence, in the use of the effects test, you would  
17 put a no-limit policy in effect. So they upheld that  
18 it was one occurrence. That is analogous to our  
19 situation which you have the negligent hiring, which  
20 was done once, of Charles Vette.

21           The other case which is applicable is the  
22 State Farm Fire and Casualty Company versus Elizabeth  
23 N., which is a California appellate case, 1992. In  
24 this case, several children were, unfortunately,  
25 repeatedly molested by the husband of their baby

1     sitter. The children brought suit. The allegations  
2     were negligent care and negligent supervision.

3             THE COURT: That's pretty close.

4             MR. ROBINSON: Yes, sir. The children  
5     argued that each act of negligence equalled an  
6     occurrence, and they said there were multiple  
7     occurrences per child because there were multiple  
8     instances of sexual abuse. The Court disagreed. And  
9     in doing so, it relied upon the language which is,  
10    essentially, the same language in West American's  
11    policy, in that, the policy language had the provision  
12    that continuous or repeated exposure to substantially  
13    the same general conditions shall be considered the  
14    result of one occurrence.

15            And in utilizing that language, the Court  
16    found that the multiple injuries suffered by each  
17    child resulted from a repeated exposure to  
18    substantially the same general conditions, even though  
19    each child was molested over a period of time and at  
20    different times and different instances by the husband  
21    of the baby sitter.

22            And the Court also made the point that if  
23    each act of liability constituted a separate  
24    occurrence, if each act of negligent supervision was a  
25    separate occurrence, then that would nullify the clear



1 language of the policy's limit of liability clause;  
2 that being the bit about continuous or repeated  
3 exposure to substantially the same general  
4 conditions.

5 I should note that in this case, they  
6 found that there was an occurrence per child, which is  
7 not what we are arguing in our case. But State Farm  
8 had waived any issues other than whether the acts or  
9 omissions required more than one occurrence per child;  
10 a waiver and a concession which is unwarranted in this  
11 case and is not made by West American. But the  
12 principle is the same here.

13 Here, what the defendant's went to court  
14 to focus on is each episode of molestation being an  
15 occurrence. Instead, the Court must focus upon the  
16 insured and their conduct and what the insured,  
17 supposedly, did wrong and not on the claimants'  
18 injuries or on Vette's conduct.

19 No one from Harbor View Associates abused  
20 these children, Vette did. And the alleged cause of  
21 all this is the negligent selection, hiring,  
22 retention, and supervision. What is it that the  
23 claimants are alleging that Harbor View Associates did  
24 wrong? Again, it is the negligent hiring, retention,  
25 and supervision of Vette.

1                   If there was any error, it was putting  
2 Vette in a position where he could do those terrible  
3 acts. That error was already done when they hired  
4 Vette. Basically, that was -- the hiring started the  
5 problem. That is where all the injuries flow from,  
6 that one point. It is a situation --

7                   THE COURT: If all the children were  
8 lined up like cars and Vette has smashed into all the  
9 cars, under this policy that would be one occurrence.

10                  MR. ROBINSON: Yes, sir, it would. It  
11 would. And the negligent hiring of Vette, of course,  
12 was a single event. It is not alleged to be  
13 otherwise. It is a single occurrence. All the  
14 claimants must point to that exact same event, that  
15 exact same discrete point in time when Vette was  
16 hired. And all the allegations as to negligent  
17 retention and supervision, again, are a continuation  
18 of that same negligence.

19                  And that is, especially, the case in  
20 light of the explicit language of the policy limiting  
21 liability, stating that all bodily injury arising out  
22 of the continuous or repeated exposure to  
23 substantially the same general condition shall be  
24 considered as arising out of one occurrence. That  
25 being the case, since there is no more than one

1 occurrence in this situation, there is \$1 million in  
2 liability coverage, at most.

3 And that's what we would move the Court  
4 to rule in this case, that there is one occurrence  
5 with no more than \$1 million in coverage. And, Judge,  
6 at this point, you might remember that I had mentioned  
7 that there were really two issues in the case. That  
8 is my argument on the first issue, and I am prepared  
9 to go on to the second -- or if you wish to hear  
10 counsel for the defendants.

11 THE COURT: Why don't we take them one at  
12 a time. It may or may not be necessary.

13 MR. ROBINSON: Yes, sir, Your Honor.

14 THE COURT: All right. Miss Hobbs, I  
15 gather you're going to do the heavy work today.

16 MS. HOBBS: That's correct, Your Honor.

17 THE COURT: I think we all realize that  
18 each -- and I will use it just to make it as bad as  
19 possible -- each rape is an individual occurrence.

20 MS. HOBBS: That's correct.

21 THE COURT: As far as the policy is  
22 concerned, that is what we are thinking about because  
23 their liability would not rise any higher in terms of  
24 the policy.

25 MS. HOBBS: Well, Your Honor, we agree,



1 first of all, that the cause test is what applies ..  
2 here. That's what has been --

3 THE COURT: That takes care of one issue.

4 MS. HOBBS: The cause test is the  
5 majority rule, and indeed, it is the rule in  
6 Virginia. We agree with that. But I do want to make  
7 a couple of -- make mention of a couple of facts that  
8 I am not sure came out during plaintiff's argument.

9 First of all, Your Honor, I want to make  
10 sure that you know that the person that we are talking  
11 about here, Charles Vette, was the resident manager.  
12 He was not just a maintenance person or something like  
13 that. This is somebody that they hired as the  
14 resident manager for the property. He was the person  
15 in charge of keys, he was the person who wrote checks.

16 THE COURT: He was the head person there.

17 MS. HOBBS: He was the head person  
18 there. And after he was hired, they had a property  
19 manager who quit as a result of that. When she found  
20 out this fellow was hired, she quit. And that  
21 person's testimony has been taken. Just so the Court  
22 has a little background into what's been going on in  
23 the personal injury case. And as I said, we do agree  
24 that the cause analysis is the one that this Court has  
25 to take. There are, as Counsel mentioned, only two

1 Virginia cases which have been decided and which have  
2 used the cause analysis.

3 The first one was the Heary case which is  
4 the one that Counsel mentioned that involved the  
5 automobile accident. After the Heary case, the  
6 Norfolk and Western case was decided in Roanoke. And  
7 in the Norfolk and Western case, the judge determined  
8 that there were multiple occurrences, not one,  
9 utilizing the cause analysis.

10 Now, in that case, what had happened was  
11 Norfolk and Western had put into place some machinery  
12 which, ultimately, caused multiple injuries to  
13 multiple persons; some hearing problems that these  
14 people endured. What the Court said was, unlike the  
15 Heary case, this case involves multiple machinery and  
16 multiple hearing problems -- multiple sounds, and that  
17 these sounds were the cause of the injuries that these  
18 people had endured.

19 It specifically -- the Court in Roanoke,  
20 specifically, distinguished Heary on the basis that,  
21 in Heary, the injuries that were suffered by the other  
22 people were instantaneous. And this case is not like  
23 an automobile accident in which everything happens  
24 quickly. This -- the instrumentality was put in place  
25 and then later, over a period of time --

1 THE COURT: Different sounds, different  
2 rapes.

3 MS. HOBBS: That's correct, Your Honor.  
4 And that is how the Norfolk and Western case is more  
5 like the case at bar than the Heary case. And we  
6 would argue that the Norfolk and Western case, which  
7 uses the cause analysis, is the one that is applicable  
8 to this case, not the Heary case, because this case is  
9 not like an accident where the injuries are  
10 instantaneous.

11 THE COURT: Bam, bam, bam -- this is one  
12 day, next day.

13 MS. HOBBS: That's correct, Your Honor.  
14 Now, I do want to make mention, also, of the fact that  
15 the cause test is used by the courts for just one very  
16 limited purpose, not to determine whether coverage  
17 exists, but for determining the amount of coverage.  
18 That's the only reason that this test is ever used.  
19 And the sole purpose for applying the cause test is to  
20 determine the limits of coverage.

21 Secondly, Your Honor, the only way that  
22 an injury can be said to have resulted from one  
23 occurrence is if there was but one proximate  
24 uninterrupted and continuing cause which resulted in  
25 all of the injuries and damage. And we both agree on



1 that. We all agree on that; that is what the case law  
2 is, there has to be just one proximate cause. And our  
3 argument is, Your Honor, there is not just one  
4 proximate cause, there are several causes.

5 THE COURT: But the one proximate cause  
6 is that they hired the wrong guy. Isn't that it?

7 MS. HOBBS: That is an initial proximate  
8 cause, Your Honor. But there are other intervening  
9 causes.

10 THE COURT: What are they?

11 MS. HOBBS: Charles Vette molested each  
12 one of those children. Each one of those is an  
13 individual cause, and that there is coverage for each  
14 one of those acts.

15 THE COURT: And it is your understanding  
16 that if he had -- again, I used the word rape, I know  
17 it's sexual assault -- whatever it is, let's say he  
18 had raped a hundred children, they would be  
19 responsible for \$100 million.

20 MS. HOBBS: If he had raped a hundred  
21 children --

22 THE COURT: A hundred children, line them  
23 all up, and one day, one after the other.

24 MS. HOBBS: Well, it is our argument, to  
25 find otherwise simply defies common sense. And it

1 goes against the grain of fundamental fairness simply  
2 because what they are saying is if only one person had  
3 been molested, if only one child had been molested by  
4 Charles Vette, then the same amount of coverage would  
5 exist for that one person that exists for all of these  
6 children. And that simply goes against the grain,  
7 Your Honor. I don't know how else to argue it.

8 THE COURT: If he raped a hundred  
9 children, then they would be responsible -- for \$1,000  
10 premium -- for \$100 million.

11 MS. HOBBS: If he had raped a hundred  
12 children.

13 THE COURT: Yes. Could anyone write  
14 insurance with that problem?

15 MS. HOBBS: Well, Your Honor, I would  
16 argue that there is a public policy reason to make  
17 sure that that is the way this is interpreted.

18 THE COURT: What you are saying is, maybe  
19 they should have said that in their policy: Look, we  
20 don't care how many accidents you have, how many  
21 occurrences, the most we are going to pay for any  
22 reason, whatsoever, is \$1 million.

23 MS. HOBBS: That's correct, Your Honor.

24 THE COURT: Okay. I am just -- in other  
25 words, that would simply take care of it, there would

1 be no question about that.

2 MS. HOBBS: That's right, Your Honor.

3 THE COURT: If they had said --

4 MS. HOBBS: But that is not the way they  
5 said it. And that is --

6 THE COURT: So the issue is: How did  
7 they write their policy.

8 MS. HOBBS: Your Honor, I would argue  
9 that that is not true because the policy provisions  
10 that are in this policy are no different than any of  
11 the policy provisions that are in the other cases.  
12 The real analysis is the cause analysis beyond -- over  
13 and above, beyond the policy itself.

14 THE COURT: We all agree that the cause  
15 test is the test we have got to use.

16 MS. HOBBS: And the only issue for the  
17 Court to decide today is what the cause is for  
18 purposes of determining what the term "occurrence"  
19 means.

20 THE COURT: They say the cause is the  
21 company hired the wrong guy and didn't supervise him  
22 and didn't check him out. You are saying the cause is  
23 that the guy was a sex maniac and he, on different  
24 occasions, attacked those children.

25 MS. HOBBS: That's right, Your Honor.



1 And I do want to point out that the case that was  
2 cited by Counsel, out of California, the child  
3 molestation case, we have a case that goes the other  
4 way, Your Honor. And it is cited in our brief, it is  
5 the Fells Acre Day School case. That case is out of  
6 Massachusetts. It is cited in our brief, and Your  
7 Honor has a copy of that one as well.

8 THE COURT: Okay. Let me get it because  
9 you sent me all these cases and I just haven't had  
10 time to read them.

11 MS. HOBBS: I understand, Your Honor.

12 THE COURT: Okay. Fells Acres Day  
13 School, here it is. I am still on headnote No. 25. I  
14 am trying to get through it -- under, what they are  
15 calling, "Special Multiparallel Policy." We are not  
16 dealing with that in the case, though, are we?

17 MS. HOBBS: It is a different kind of  
18 policy, Your Honor, but I don't think that is relevant  
19 for purposes of occurrence.

20 THE COURT: Do you have the headnote  
21 that, maybe, will get me right into it?

22 MS. HOBBS: 27, Your Honor.

23 THE COURT: 27, all right. Okay, now, I  
24 haven't read anything but the head note: "Alleged  
25 numerous discrete acts of abuse of children in care of

1 day care center, negligence and breach of duty by  
2 different individual defendants and corporate  
3 defendant at different locations could not be  
4 considered single occurrence limiting insurance  
5 coverage to applicable per occurrence amount."

6 All right. Now, in this case -- the  
7 California case, I guess, they said this defendant was  
8 negligent, this defendant was negligent. In your  
9 case, aren't you saying one defendant was negligent;  
10 that is, the corporation, for hiring this guy?

11 MS. HOBBS: Right. And each one of the  
12 incidents involving this guy is a separate  
13 occurrence. That's our argument, Your Honor.

14 THE COURT: This case had many different  
15 allegations of negligence on different defendants.

16 MS. HOBBS: Right. We have allegations  
17 of negligence with respect to each one of the other  
18 insureds in the case also.

19 THE COURT: In other words, you are  
20 saying they are negligent because he raped all of  
21 them. But the same negligent hiring is just one guy.

22 MS. HOBBS: Right, they initially -- but  
23 we don't have to focus on that, Your Honor. If Your  
24 Honor would review the Norfolk and Western case, it  
25 would probably become more clear. The Norfolk and

1 Western case is the one that says what happens when  
2 you have an instrumentality that you put in place, and  
3 over a period of time that instrumentality caused  
4 injuries to people.

5 Even applying the cause analysis in a  
6 case such as that, there are multiple occurrences, not  
7 just one. Charles Vette is the instrumentality that  
8 was put into place in this case. And that's our  
9 argument under Virginia law, Your Honor. Now, they  
10 have, as I mentioned, they have cited the Elizabeth N.  
11 case, and we have cited this case.

12 These are the only two child molestation  
13 cases which deal with the occurrence issue. They are  
14 the only ones that you can find that have anything to  
15 do with the child molestation and the occurrence  
16 issue. No case has ever been decided in which the  
17 insureds -- no case has ever been decided which says  
18 there is only one limit of coverage for a group of  
19 children, because the Elizabeth N. case does not say  
20 that.

21 It says that each child has the total  
22 limits of the policy. That's what the Elizabeth N.  
23 case says. So there has never been a case decided  
24 which says that one policy limit applies to all the  
25 molested children.



1 THE COURT: You make a difference between  
2 the molested children and Heary problem engineers?

3 MS. HOBBS: No, Your Honor.

4 THE COURT: Okay.

5 MS. HOBBS: I am just saying there are  
6 really only two cases which are completely, factually  
7 on point involving child molestation.

8 THE COURT: What you are saying is that  
9 you are really relying on Virginia law on the Norfolk  
10 and Western case.

11 MS. HOBBS: That's correct, Your Honor.

12 THE COURT: Let me just look at this real  
13 quick. I am just -- when you are trying to get the  
14 law -- but the big picture is, it just seems to me,  
15 that if there was a catastrophe -- a building blows up  
16 and a whole neighborhood is destroyed, thousands of  
17 people in Ocean View are killed -- it just seems to me  
18 that it would be a real hardship on the defendant  
19 insurance company if all of a sudden they were faced  
20 with \$100 million.

21 MR. BREIT: Excuse me, Your Honor.

22 MS. HOBBS: I think he wants to make an  
23 argument.

24 THE COURT: I'll take all the help I can  
25 get from anyone.

1 MR. BREIT: It's important at this point  
2 because of the point that you are making in looking at  
3 their specific policy. On their specific policy, page  
4 9 of the policy.

5 THE COURT: Right.

6 MR. BREIT: Right above the section that  
7 says "Right and duty to defend," that paragraph right  
8 there. That is the catastrophe which says, in your  
9 mind, and rightfully so, okay, the building has been  
10 hit by the plane, that is a continuous event which  
11 happened all out of one incident, which gives them the  
12 right to say we give you a million-dollar policy.  
13 That is what we meant. But we don't have a continuous  
14 repeated event here. Each one of these is a different  
15 event, broken away.

16 THE COURT: No question, each rape is  
17 different. No question, each rape is an occurrence.

18 MR. BREIT: What's important about this  
19 paragraph is that, in here, they specifically --  
20 remember, insurance law of Virginia, they've got to be  
21 specific and not any doubt to the insured. They are  
22 saying, here, when that occurs, when that continuous  
23 repeated exposure, that is one occurrence.

24 But they don't have any similar language  
25 that would cover an event like this, like you have in

1 malpractice policies; we're going to give you a  
2 million-dollar policy, but it's going to cover you for  
3 the year no matter how many events occur in that  
4 year. That's how most of the malpractice policies are  
5 written in Virginia. They give you a limit, but they  
6 say no matter how many events occur during that one  
7 year, that is your limit of liability.

8           And in this policy, they leave out that  
9 specific language. They only have this paragraph  
10 which is specific, but it doesn't relate to our  
11 event. Our event is, in fact, separate, broken  
12 intervals. And whether the Court says there is \$7  
13 million of coverage because there is seven kids or  
14 whether or not if Shawna Fraguada has \$10 million in  
15 coverage, I have the same moral problem with that.  
16 How many times does a woman get raped and get to add a  
17 million-dollar policy to her limit.

18           But I have no problem when they look at  
19 the specifics in the policy, when you are saying there  
20 is seven children, seven different events. If he  
21 lined them all up, if that was -- obviously it's an  
22 impossibility -- and there is one event where I am  
23 raping seven children at the same time, then they have  
24 this repeated and continuous from one incident.

25           But we don't -- we all agree they are



1 from separate times and dates, and in multiple times  
2 and places for some of the children. And that is why,  
3 when they write, specifically, here -- they leave out  
4 specific language for a year, and try to bootstrap  
5 this language and say this was all one occurrence  
6 because we did this one event where we hired this guy  
7 badly. That can't fly. That makes no logical sense.  
8 The building does make logical sense. How could  
9 anyone insure when they have something as bad as  
10 that?

11 But they have the duty of saying, well,  
12 this guy -- if we do something under general liability  
13 policy, we have -- we are going to give you a policy  
14 for the whole year. But they don't do that. So you  
15 can have different people getting hurt at the same  
16 cause, like the door where it comes back and hits  
17 somebody. Six weeks later, somebody else gets hit.

18 You don't hear insurance companies say,  
19 it is only the one door, we only give coverage one  
20 time. We never see that kind of case because it's not  
21 a continuous regular thing, where the door hits,  
22 someone bumps into me, I bump into Billie, she bumps  
23 into the third person; that's in continuous sequence.

24 And that's why this language, to me, is  
25 so important because they've got to live with their

1 own language. And the law says if it's not  
2 specifically there, they are out of luck. Sorry for  
3 interrupting.

4 MS. HOBBS: I appreciate it.

5 THE COURT: You, like me, will take all  
6 the help you can get.

7 MS. HOBBS: That's right, Your Honor.

8 THE COURT: Okay. I'm with you so far.

9 MS. HOBBS: Did you want to take a look  
10 at the Norfolk and Western case?

11 THE COURT: Yes. This is the case that  
12 you are really relying upon as far as Virginia law.

13 MS. HOBBS: That's correct, Your Honor.

14 THE COURT: Okay. Why don't you have a  
15 seat. I may impose upon the one o'clock limit a  
16 little. I got down to seven, finally, "railroad's  
17 alleged neglect in failing to protect its employees  
18 from hazards of noise exposure is not a single  
19 occurrence out of which all noise induced hearing loss  
20 -- railroad to allow all claims and satisfies the  
21 self-insured, and under excess policies, many  
22 different sounds damaged hearing of many employees, in  
23 many places, over the course of many years, indicating  
24 multiple occurrences created multiple injuries."

25 I guess what you are arguing is -- what

1 they are arguing is that there are not many different  
2 sounds. The sound is all the same. They argue, I  
3 think, that the sound is the negligent hiring. And  
4 the negligent hiring damaged many little girls, in  
5 many places, over the course of many years, including  
6 multiple rapes, created multiple injuries. I think  
7 that's what they would be arguing; there are not  
8 multiple sounds.

9 MS. HOBBS: There are multiple sounds,  
10 Your Honor, and that's our argument.

11 THE COURT: All right. The multiple  
12 sounds are, in each case, it is wrongly hired, wrongly  
13 retained, wrongly supervised.

14 MS. HOBBS: The multiple sounds, Your  
15 Honor, are the multiple rapes -- as you refer to  
16 them -- the multiple molestations; those are the  
17 multiple sounds. What happened in the Norfolk and  
18 Western is that they put an instrumentality in place,  
19 a dangerous instrumentality, and over a period of  
20 time, this instrumentality injured people.

21 THE COURT: So what you are arguing is --  
22 the instrumentality over here in the railroad, and  
23 employee over here on the ---

24 MS. HOBBS: That's correct, Your Honor,  
25 that's the analysis.



1 THE COURT: Okay.

2 MS. HOBBS: I would also, Your Honor,  
3 like to cite to you the Dow versus Associated  
4 Indemnity case which is cited, also, in our brief, and  
5 I think Your Honor has a copy of it, in which the  
6 employees in that particular case were -- had  
7 committed several fraudulent acts.

8 So the issue was whether the occurrence  
9 was the initial and sole direction of the company to  
10 act in a certain manner or the fraudulent acts -- each  
11 fraudulent act performed in furtherance of that  
12 direction. And there was a very thoughtful analysis  
13 of the occurrence issue from the cause analysis  
14 standpoint.

15 And if I may quote from that case. What  
16 the Court said is, "If an employee committed two  
17 assaults in furtherance" --

18 THE COURT: What page are you on?

19 MS. HOBBS: 1531, Your Honor. "If an  
20 employee committed two assaults in furtherance of one  
21 direction from his employer, there would be two  
22 occurrences. To be consistent" -- and this is  
23 consistent with the facts of that particular case --  
24 "To be consistent, the commission of fraud upon two  
25 parties pursuant to the direction of management would

1 have to be two occurrences."

2 And that is similar to the case at bar,  
3 Your Honor. And that is what we would argue is  
4 applicable here. There is one hiring, but after that  
5 hiring, this individual performed multiple assaults.  
6 And each one of those assaults, under the cause  
7 analysis, under the majority view, under Virginia law,  
8 was an occurrence. And therefore, the policy limits  
9 would apply with respect to each occurrence.

10 THE COURT: All right, thank you. Now,  
11 we will move into argument number two.

12 MR. ROBINSON: Can I have rebuttal,  
13 briefly?

14 THE COURT: Sure. Yes, sir.

15 MR. ROBINSON: What they are arguing,  
16 Judge, is that each act of sexual molestation is an  
17 occurrence. And they are confusing cause with  
18 effect. Each act of sexual molestation is not the  
19 cause, but rather, it is the effect. It is the  
20 sounds, to use the analogy of the Norfolk and Western  
21 case. You have to look at the allegations of the  
22 lawsuit and the specific points of the policy.

23 In that regard, the limit of liability  
24 language talks about the fact that all bodily injury  
25 and property damage arising out of a continuous -- and

1 that was language that Mr. Breit focused on -- or  
2 repeated exposure to substantially the same general  
3 condition shall be considered as arising out of one  
4 occurrence.

5 : It's not only continuous. She says, we  
6 don't have continuous exposure. It says continuous or  
7 repeated. And that is the language of the policy.  
8 And that's what you have here.

9 THE COURT: But it is not repeated.  
10 Their argument is, it is not repeated if you do it to  
11 different people.

12 MR. ROBINSON: They're arguing that, and  
13 they're also arguing that it is not repeated even if  
14 you do it to the same person. If you look at their  
15 interrogatory responses, they alleged that Shauna  
16 Fraguada had seven to ten occurrences because she was  
17 sexually abused by Vette seven or ten times; that John  
18 Hammond has how many occurrences because he was abused  
19 by Vette two or three times. And having multiple  
20 occurrences per child as well as each child.

21 To follow up, what that does is puts a  
22 no-limit policy in effect. Let's look at the Norfolk  
23 and Western Railroad case because that seems to be the  
24 case in which they are putting most of their eggs in  
25 that basket. In this case, the allegations were that



1     there was a negligent failure on the part of the  
2     railroad to adequately protect its employees from  
3     noise-induced hearing loss, which the Court found to  
4     be an occupational disease.

5     And one of the issues was, essentially,  
6     how many occurrences did this result in? And what you  
7     had from that case was the railroad's system-wide  
8     negligence across the whole state or beyond the state  
9     as the case may be, its system-wide negligence. Here,  
10    in our case, you have the discrete, one-time hiring of  
11    one man, Charles Vette. You have one sound.

12                 In the Norfolk and Western case, the  
13    damages were caused by, the Court said, a wide variety  
14    of machines at a number of locations creating a  
15    variety of sounds over many years. In our case, you  
16    have the claimants being sexually molested by one man,  
17    Vette, not a wide variety of machines; at one  
18    location, his apartment.

19                 THE COURT: But this railroad case goes  
20    on to say, it says, "many different sounds damaged the  
21    hearing of many employees, in many places, over the  
22    course of many years," making this case one in which  
23    multiple occurrences created multiple injuries. For  
24    the purpose of interpreting the policy language, a  
25    relevant occurrence might be the generation of noise

1 by a particular machine -- Vette -- or by a number of  
2 machines in a particular physical plant.

3 It may even be the railroad's negligence  
4 with regard to employees who work around a particular  
5 machine or in a particular plant. The occurrence  
6 contemplated by the language of the policies cannot,  
7 logically, be the railroad's system-wide negligence  
8 with respect to its employees.

9 MR. ROBINSON: Judge Turk decided this  
10 case correctly. But the facts are totally different  
11 from the facts in our case. And even more importantly  
12 or just as importantly that the facts were different,  
13 the policy was different. For example, the occurrence  
14 in the Norfolk case policy defined occurrence as one  
15 happening or series of happenings arising out of, or  
16 due to one event.

17 We have the more standard definition of  
18 occurrence which talks about an accident including  
19 continuous or repeated -- there is the word again --  
20 exposure to conditions. The Norfolk policy had -- and  
21 you can look through the case -- it had nothing in  
22 there equivalent to our limitation of liability  
23 language that all bodily injury arising out of a  
24 continuous or repeated exposure to substantially the  
25 same general conditions shall be considered as arising

1 out of one occurrence.

2           The policies and language were different,  
3 they didn't have the limitations and liability, you  
4 had a system-wide negligence in which you had many  
5 machines, a number of locations, a variety of sounds,  
6 many years. In contrast, here you have one man. And  
7 you have to look at what is being alleged; that they  
8 were -- that the insured, Harbor View Associates, was  
9 negligent in hiring this man. And that took place at  
10 one time. The molestations all took place in one  
11 location. And the facts are different, and the policy  
12 is different.

13           THE COURT: Let me interrupt. Limits of  
14 liability, this is on your -- what do you call it --  
15 declaration page, where it says, "Limits of liability,  
16 \$1 million each occurrence." Now, why do they put in  
17 "each occurrence" if you really want to limit it to  
18 \$1 million, which is what you really want to do? You  
19 want to limit this policy, no matter what, to \$1  
20 million. Why do they put in "each occurrence"? If  
21 you didn't put it in, there wouldn't be any question.

22           MR. ROBINSON: It is an occurrence-based  
23 policy. The concept that you are talking about is  
24 putting an aggregate limit on the policy. And except  
25 for completed operations and products hazards, which



1 isn't applicable here, this isn't an aggregate limit  
2 under the policy. That is something which states  
3 which the policy says it is. But you still have to  
4 look at the language of the policy, the other  
5 language.

6 THE COURT: In other words, if Vette went  
7 out and raped somebody, negligent hiring, you would  
8 pay up to \$1 million. And then, if they hired another  
9 driver, and the driver went out and hit the school  
10 bus, that would be another million.

11 MR. ROBINSON: If they hired Charles  
12 Vette, and he went out and sexually molested several  
13 people, our position would be, one occurrence. And  
14 then, they fire Charles Vette and hire another -- and  
15 they have incredibly bad luck -- and person number two  
16 does the same thing. Well, then, you are going to  
17 have another set of occurrences because you hired  
18 another person. It is like the situation in Norfolk  
19 and Western; you have a different machine, a variety,  
20 a number of machines, not one machine in Norfolk and  
21 Western. If there was, there may have been a  
22 different result.

23 THE COURT: If they hire a hundred  
24 different Vettes, and they really had bad luck, and  
25 Vettes one through a hundred all rape somebody, then

1 you would have \$100 million.

2 MR. ROBINSON: Under those facts, that  
3 would be the case. And the insurance company would be  
4 up the creek, financially. But that is not the  
5 situation that we have here. They hired one man who  
6 performed these various sexual molestation events.  
7 And what they are trying to do is look at it from the  
8 viewpoint of the victims as to the number of  
9 occurrences rather the insured. And that is what the  
10 policy and cases mandate, the viewpoint of the  
11 insured.

12 I direct you to the Travelers case, the  
13 negligent sale of the weapon. The Court,  
14 specifically, talked about that. Well, from the  
15 viewpoint of the victims, obviously, there is more  
16 than one occurrence. But under the terms and language  
17 of the policy, you are looking at it from the  
18 viewpoint of the insured, is one occurrence, the sale  
19 of the gun to Wayne Crossley in that situation.

20 Here is one occurrence, the hiring of  
21 Charles Vette. The mistake, if there was a mistake  
22 made at that point, that's when it was made. Anything  
23 that follows after that is repeated and continuous  
24 exposure to substantially the same general  
25 conditions.

1 THE COURT: And yours is a negligence  
2 policy?

3 MR. ROBINSON: Yes.

4 THE COURT: It is a negligence policy.  
5 In other words, you have to be negligent, negligent  
6 hiring.

7 MR. ROBINSON: Well, the company is  
8 obligated to pay on behalf of the insured all sums  
9 which the insured shall become legally obligated to  
10 pay as damages because of bodily injury caused by an  
11 occurrence. And an occurrence is defined as an  
12 accident including continuous or repeated exposure to  
13 generally the same conditions. So there would have to  
14 be --

15 THE COURT: I guess this is an accident  
16 as far as the --

17 MR. ROBINSON: From the viewpoint of the  
18 insured. What they are trying to do is put a  
19 no-limits policy in effect. If you look at the  
20 Worcester case, which they rely upon, out of  
21 Massachusetts, there you had many people, you had  
22 different localities in which the abuse took place;  
23 that is a distinguishing factor. And, again, there  
24 was no discussion of the limit of liability language  
25 that we have in our case here.



1           So that is how that case would be  
2 distinguished, Your Honor. So I guess, in conclusion,  
3 what you have here is an unfortunate event that took  
4 place at the hiring of Charles Vette. That took place  
5 at one time, one place. That was the cause, the  
6 effects of which were multiple, because that does not  
7 make multiple occurrences under the law and under the  
8 explicit insuring limitation language of the policy.

9           MR. BREIT: Before you go to number two,  
10 can I say one thing, Judge? The definition of  
11 occurrence is on page 23, "Occurrence means an  
12 accident," etcetera, etcetera. If you take their  
13 argument to its logical extreme, it is the same  
14 argument that you made, Judge, when we argued the  
15 motion to amend their declaratory judgment action --  
16 which I argued, and you brought up the suggestion.

17           If they hired Vette as a driver, and he  
18 went down the road as a negligent hiring of a lousy  
19 driver, and causes a five-car accident, that is an  
20 accident where there is five people involved in one.  
21 But if he goes down the road and gets in an accident  
22 on Monday, kills two people, goes down the road on  
23 Wednesday, kills two people and goes on down the road  
24 and has all kinds of different accidents, each one of  
25 those is an accident.

1           And their language is so explicit, but  
2 let's not read into it continuous and repeated  
3 exposure to conditions. This isn't a condition. The  
4 intent of the policy -- what's important for purposes  
5 of interpretation, a condition is like a hearing loss  
6 or asbestos exposure where we have something that is  
7 that kind of condition.

8           Hiring a guy who is a child molester, and  
9 a convicted child molester, is not a condition; it is  
10 an accident. And the accident occurred a whole bunch  
11 of different places. And in this case, it happened on  
12 a series of ninety days to a series of seven children  
13 who had thirty different events.

14           That's why their language is so important  
15 in light of the Norfolk and Western case and the other  
16 exclusion. They don't put the language in there.  
17 Their own language is ambiguous, and ambiguous  
18 language hurts them under Virginia law.

19           MR. ROBINSON: All I would say is that I  
20 noted that their brief made absolutely no reference,  
21 that I could see, to our policy. You need to look at  
22 the limitation language in our policy, and you need to  
23 look at the allegations of the lawsuits to match them  
24 up. And you will see that everything stems from the  
25 same event. And in combination with the limitation

1 language and the continuous or repeated exposure to  
2 substantially the same general conditions -- the  
3 general conditions were Charles Vette -- you have one  
4 occurrence, maximum, here. If I can go into the  
5 second issue.

6 THE COURT: Let me make a suggestion. I  
7 can see it, right now, you-all are way ahead of me.  
8 What I would like you to do -- and argue all you want  
9 today -- I am going to get it typed up, and I will  
10 review it. I think that would be the best and logical  
11 thing. And I would like your opinion, because when  
12 all this money is involved, I am not going to be the  
13 last one to hear it.

14 MR. ROBINSON: Yes, Your Honor. I  
15 expected that you would probably take it under  
16 advisement. There are complicated issues here.

17 THE COURT: There are. And I think you  
18 have to study the cases in relation to this policy.

19 MR. ROBINSON: Yes, sir, I believe you  
20 do. I can be very brief. Our second argument --

21 THE COURT: Get it all on the record.

22 MR. ROBINSON: Point number two, argument  
23 number two, it doesn't have anything to do with number  
24 of occurrences. What it does have to do with is  
25 liability for punitive damages. In these cases, and



1 each case, each lawsuit, each claimant and his parents  
2 seek \$1 million in punitive damages.

3           So Western American is facing exposure to  
4 seven million in punitive damages, assuming that  
5 liability and the basis for punitive damages are found  
6 in the personal injury cases, which, of course, we  
7 believe will not be the case. The policy, again,  
8 talks about -- defines occurrence, it being an  
9 occurrence policy, as an accident which results in  
10 body injury neither expected nor intended from the  
11 standpoint of the insured.

12           You have to look at the allegations of  
13 the lawsuits. Each of the lawsuits has the identical  
14 same allegation upon which they base their claim for  
15 punitive damages, and that is, the actions of Harbor  
16 View Associates were, quote, so willful, malicious,  
17 and atrocious, end quote, as to justify punitive  
18 damages.

19           If these actions are found to have been  
20 willful, malicious, and atrocious as alleged, then  
21 they cannot also have resulted in bodily injury  
22 neither expected nor intended. And to elaborate on  
23 that, you need to look at what is malicious. Black's  
24 talks about malicious as being "a wrongful act  
25 intentionally done without legal justification or

1     excuse. An unlawful act done willfully or purposely  
2     to injure."

3                     And some of the other cases talk about  
4     malice as being any wrongful act done willfully or  
5     purposely. Other cases talk about a wrongful act done  
6     intentionally without just cause or excuse; a wrongful  
7     act done intentionally or without just cause or  
8     excuse. And the malice may be inferred from acts and  
9     conducts which necessarily result in the injury. All  
10    those tie into the malice.

11                    Also, they allege that it is atrocious.  
12    What an atrocious act is, is "conduct that is  
13    outrageously or wantonly wicked, criminal, violent,  
14    cruel, extremely horrible, shocking," again, from  
15    Black's Law Dictionary. The situation that you have  
16    here is, you need to look at the allegations of the  
17    pleadings. And then, in the brief they filed in  
18    response, they harp upon the fact of willful -- you  
19    can have, for example, willful negligence which is not  
20    intentional, and we really don't dispute that. And  
21    that's the case they cite.

22                    THE COURT: Willful negligence is not  
23    intended. In other words, like, if someone got drunk  
24    and drove.

25                    MR. ROBINSON: Perhaps. But they go

1 beyond that. They not only allege that it was  
2 willful, they allege that it was malicious. Malice  
3 implies the desire to hurt. They allege that it was  
4 atrocious. You can't have something that is  
5 atrocious, an act that is atrocious, without knowing  
6 the consequences of that act.

7           So that being the case, under the facts  
8 of this case -- and other cases may be different,  
9 we'll concede. But under the facts of this case,  
10 there is no coverage for intentional acts under the  
11 policy or for malicious, atrocious, and willful acts.  
12 And since that is the only basis on which they base  
13 their punitive damages, there is no grounds for  
14 punitive damages under the policy as well.

15           So we would move the Court to find and  
16 declare that there would be no coverage to the extent  
17 that, in the personal injury cases, that the actions  
18 of Harbor View Associates and the insureds are found  
19 to be malicious -- willful, malicious, and atrocious;  
20 and that there is not coverage for punitive damages  
21 under the facts of this case. Thank you, Your Honor.

22           MS. HOBBS: I will be brief, Your Honor.  
23 There is, of course, A statute which says that it is  
24 not against public policy for an insured to provide  
25 coverage, that is 38.337.



1 THE COURT: They can.

2 MS. HOBBS: They can provide that  
3 coverage. This is also upheld in USAA versus Webb  
4 case. What they are attempting to hang their hat on,  
5 Your Honor, is the language in the policy saying  
6 injuries not expected nor intended. And they argue  
7 that this excludes intentional conduct. We agree that  
8 there is an exclusion for intentional conduct. There  
9 is no question about that, they don't have to insure  
10 for intentional conduct.

11 Not expected, not intended, however, Your  
12 Honor, does not reach willful and wanton conduct.  
13 Willful and wanton conduct is a form of negligence, as  
14 I have stated in our brief. It is a higher form of  
15 negligence, but still, it is a form of negligence as  
16 opposed to an intentional act. Therefore, not  
17 expected, not intended does not apply to that  
18 conduct.

19 Willful and wanton doesn't mean expected  
20 or intended. In any event, at the very least, an  
21 ambiguity exists with respect to that. And we would  
22 argue, in the event of ambiguity, under Virginia law,  
23 clearly there must be construction against the insurer  
24 and in favor of indemnity, Your Honor.

25 MR. ROBINSON: I would make just two

1 points in response, Your Honor. Number one, as is  
2 just stated by Miss Hobbs, now, and is clear from  
3 their brief on that point, they focus on willful and  
4 wanton. There is no allegation of wanton conduct.  
5 The allegation is that it is willful, malicious, and  
6 atrocious.

7 Those are the allegations of their own  
8 pleadings. And that is what you have to focus on.  
9 They are talking apples and oranges. And then number  
10 two is, we are not arguing that under some cases,  
11 under some facts, you might not have a situation where  
12 punitive damages would be covered under this policy.  
13 We are arguing, under the facts in this case, their  
14 specific allegations of their own pleadings, it  
15 doesn't fall within the covered language. Thank you,  
16 Your Honor.

17 THE COURT: Anything else?

18 MS. HOBBS: Nothing, Your Honor.

19 THE COURT: Anything else from anyone?

20 MR. BREIT: I am quiet.

21 THE COURT: And I commend you for your  
22 good thoughts on timeliness. This is interesting. I  
23 look forward to reading the cases, and I will get back  
24 to you.

25 (The hearing was concluded at 1:20 p.m.)

## COURT REPORTER'S CERTIFICATE

I, Mary L. Labonte, Court Reporter, certify that I recorded verbatim by stenotype the proceedings in the captioned cause before the Honorable John E. Clarkson, Judge of said Court, Norfolk, Virginia, on June 15, 1994.

I further certify that to the best of my knowledge and belief, the foregoing transcript constitutes a true and correct transcript of the said proceedings.

Given under my hand this 18<sup>th</sup> day of August, 1994, at City, Virginia.

Mary L. Labonte

Mary L. Labonte



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# **SPECIAL BUSINESSOWNERS POLICY**

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The Definition Section contains the definitions of the words printed in bold face in Section II of the policy. The Definition Section is an integral part of the policy and shall be applied as if the definitions appearing were included each time the words they define are used in the policy.

## SECTION I—PROPERTY COVERAGES

### COVERAGE A BUILDINGS

This policy covers the replacement cost of the building(s) at the premises described in the Declarations for which a limit of liability is shown, including, all while on the premises, the following:

1. all garages, storage buildings and appurtenant structures usual to the occupancy of the insured;
2. fixtures, machinery and equipment constituting a permanent part of and pertaining to the service of the building;
3. personal property of the insured used for the maintenance and service of the building, including fire extinguishing apparatus, floor coverings, and appliances for refrigerating, ventilating, cooking, dishwashing and laundering;
4. outdoor furniture and yard fixtures;
5. personal property owned by the insured in apartments or rooms furnished by the insured as landlord;
6. trees, shrubs and plants at the described premises for not more than \$250 on any one tree, shrub or plant, including expense incurred for removing all debris thereof, however, the total liability of the Company shall not exceed \$1,000 in the aggregate for any one loss.

**DEBRIS REMOVAL:** This policy covers, as an additional amount of insurance, expenses incurred in the removal of the debris of the property covered occasioned by loss as insured against in this policy.

**AUTOMATIC INCREASE IN INSURANCE:** The limit of liability shown in the Declarations with respect to Coverage A—Buildings shall automatically be increased at the end of each period of three months after inception date of this policy by the percentage shown in the Declarations.

### COVERAGE B BUSINESS PERSONAL PROPERTY

This policy covers replacement cost of the Business Personal Property owned by the insured, usual to the occupancy of the insured, at the premises described in the Declarations for which a limit of liability is shown, including:

1. similar property held by the insured and belonging in whole or in part to others but not exceeding the amount for which the insured is legally liable, including the value of labor, materials, and charges furnished, performed or incurred by the insured; and
2. tenant's improvements and betterments, meaning the insured's use interest in fixtures, alterations, installations or additions comprising a part of the building occupied but not owned by the insured and made or acquired at the expense of the insured, exclusive of rent paid by the insured, but which are not legally subject to removal by the insured;

while (1) in or on the building(s), or (2) in the open (including within vehicles) on or within 100 feet of the described premises.

**DEBRIS REMOVAL:** This policy covers, as an additional amount of insurance, expenses incurred in the removal of the debris of the property covered occasioned by loss as insured against in this policy.

**SEASONAL AUTOMATIC INCREASE:** When a limit of liability is shown in the Declarations for Coverage B—Business Personal Property, the limit of liability for Coverage B is automatically increased by 25% to provide for seasonal variations. However, this increase shall not apply unless the limit of liability shown in the Declarations is 100% or more of the insured's average monthly values for the 12 months immediately preceding the date of loss, or in the event the insured has been in business for less than 12 months, such shorter period of time.

**PERSONAL PROPERTY OFF PREMISES:** When a limit of liability is shown in the Declarations for Coverage B—Business Personal Property, this policy also covers the business personal property of the insured (excluding money and securities) and similar property held by the insured and belonging in whole or in part to others for not more than \$1,000 for all losses arising out of any one occurrence while such property is in due course of transit, or otherwise temporarily away from the described premises.



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**PERSONAL PROPERTY AT NEWLY ACQUIRED LOCATIONS:** When a limit of liability is shown in the Declarations for Coverage B—Business Personal Property, this policy also covers the business personal property of the insured for not exceeding \$10,000 while at premises owned, leased or operated by the insured, other than those described in the Declarations, but this coverage shall cease thirty (30) days from the date of acquisition of such premises or on the date values at such locations are reported to the Company or on the expiration date of the policy, whichever occurs first.

**COVERAGE C  
LOSS OF  
INCOME**

This policy covers the actual business loss sustained by the insured and the expenses necessarily incurred to resume normal business operations resulting from the interruption of business or the untenability of the premises when the building or the personal property is damaged as a direct result of an insured peril. The actual business loss sustained by the insured shall not exceed:

1. the reduction in gross earnings, less charges and expenses which do not necessarily continue during the interruption of business; and
2. the reduction in rents, less charges and expenses which do not necessarily continue during the period of untenability.

The actual business loss sustained shall not include charges and expenses which do not necessarily continue during the interruption of business or during the untenability of the premises.

Loss of income shall be payable for only such length of time as would be required to resume normal business operations but not exceeding such length of time as would be required to rebuild, repair or replace such part of the building or personal property as has been damaged or destroyed as a direct result of an insured peril. Such loss shall not exceed twelve consecutive months from the date of loss and shall not be limited by the expiration date of this policy. The insured is required to resume normal business operations as promptly as possible and shall use all available means to eliminate any unnecessary delay.

The term "normal business operations" of the insured means the condition that would have existed had no loss occurred.

**RESUMPTION OF OPERATIONS:** It is a condition of this insurance that if the insured could reduce the loss resulting from the interruption of business:

1. by complete or partial resumption of operation of the property herein described, whether damaged or not; or
2. by making use of merchandise or other property at the locations described herein or elsewhere; or
3. by making use of stock at the locations described herein or elsewhere;

such reduction shall be taken into account in arriving at the amount of loss hereunder.

**LIMITATIONS:** The Company shall not be liable for any increase of loss which may be occasioned by:

1. interference at the described premises by strikers or other persons with rebuilding, repairing or replacing the property or with the resumption or continuation of business; or
2. the suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business, and then the Company shall be liable for only such loss as affects the insured's earnings during, and limited to, the period of indemnity covered under this policy.

**COVERAGE D  
MONEY AND  
SECURITIES**

This policy covers money and securities used in the conduct of the insured's business for an amount not exceeding the limits of liability shown in the Declarations as follows:

1. On Premises: While in or on the premises described in the Declarations, or within a bank or savings institution; and
2. Off Premises: While enroute to or from such described premises, bank or savings institution, or within the living quarters of the custodian of such funds

The insured shall keep records of all the insured property in such manner that the Company can accurately determine therefrom the amount of loss.

The limit of the Company's liability for loss shall not exceed the applicable limit of liability stated in the Declarations, nor

1. what it would cost at the time of loss to replace the property with other of like kind and quality, or
2. the actual cash value thereof at the time of loss.

provided, however, at the option of the insured, payment of the cost of replacing securities may be determined by the market value at the time of such settlement.

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**PROPERTY  
NOT  
COVERED**

This policy does not cover:

1. exterior signs unless insured under Optional Coverages;
2. growing crops and lawns;
3. aircraft, automobiles, motortrucks and other vehicles subject to motor vehicle registration, or watercraft (including motors, equipment and accessories) while afloat.

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**PROPERTY  
SUBJECT TO  
LIMITATIONS**

The following property is subject to the limitations described below:

1. valuable papers and records meaning books of account, manuscripts, abstracts, drawings, card index systems and other records (except film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing) are covered for not exceeding the cost of blank books, cards or other blank material plus the cost of labor incurred by the insured for transcribing or copying such records; and
2. film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing are covered for not exceeding the cost of such media in unexposed or blank form.

Except for loss caused by fire, lightning, windstorm, hail, explosion, smoke, aircraft, vehicles, riot, civil commotion and leakage or accidental discharge from automatic fire protective systems:

1. glass constituting a part of the building is not covered against loss for more than \$50 per plate, pane, multiple plate insulating unit, radiant heating panel, jalousie, louver or shutter, nor for more than \$250 in any one occurrence;
2. glass, glassware, statuary, marbles, bric-a-brac, porcelains and other articles of a fragile or brittle nature are not covered against loss by breakage. This limitation shall not apply to bottles or similar containers of property for sale, or sold but not delivered, nor to lenses of photographic or scientific instruments;
3. fur and fur garments are covered for not exceeding loss in the aggregate of \$1,000 in any one occurrence; and
4. jewelry and watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals are covered for not exceeding loss in the aggregate of \$1,000 in any one occurrence. This limitation shall not apply to jewelry and watches valued at \$25 or less per item.

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## **SECTION I—PERILS AND EXCLUSIONS**

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**PERILS  
INSURED**

This policy insures against all risks of direct physical loss, subject to all the provisions contained herein.

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**EXCLUSIONS**

The Company shall not be liable for loss:

1. occasioned directly or indirectly by enforcement of any ordinance or law regulating the construction, repair or demolition of buildings or structures;
2. caused by or resulting from power, heating or cooling failure or due to change in temperature or humidity unless the change results from physical damage to the building or to equipment contained therein caused by a peril not otherwise excluded; also, the Company shall not be liable for any such loss resulting from riot, riot attending a strike, civil commotion, or vandalism or malicious mischief;



3. caused by any electrical injury or disturbance of electrical appliances, devices, fixtures or wiring caused by electrical currents artificially generated unless fire as insured against ensues and then this Company shall be liable for only loss caused by the ensuing fire;
4. caused by pilferage, appropriation or concealment of any property covered or any fraudulent, dishonest or criminal act done by or at the instigation of any insured, partner or joint venture, including any officer, director, trustee, employee or agent thereof, or any person to whom the property covered may be entrusted;
5. caused by leakage or overflow from plumbing, heating, air conditioning or other equipment or appliances (except fire protective systems) caused by or resulting from freezing while the described building is vacant or unoccupied, unless the insured shall have exercised due diligence with respect to maintaining heat in the buildings or unless such equipment and appliances had been drained and the water supply shut off during such vacancy or unoccupancy;
6. caused by:
  - (a) wear and tear, marring or scratching;
  - (b) deterioration, inherent vice, latent defect;
  - (c) mechanical breakdown of machines, including rupture or bursting caused by centrifugal force;
  - (d) faulty design, materials or workmanship;
  - (e) rust, mold, wet or dry rot, contamination;
  - (f) dampness or dryness of atmosphere, changes in or extremes of temperature;
  - (g) smog, smoke from agricultural smudging or industrial operations;
  - (h) birds, vermin, rodents, insects or animals;unless loss by fire, smoke (other than smoke from agricultural smudging or industrial operations), explosion, collapse of a building, glass breakage or water not otherwise excluded ensues, then this policy shall cover only such ensuing loss.

If loss by water not otherwise excluded ensues, this policy shall also cover the cost of tearing out and replacing of any part of the building covered required to effect repairs to the plumbing, heating or air conditioning system or domestic appliance but excluding loss to the system or appliance from which the water escapes:
7. due to any and all settling, shrinking, cracking, bulging or expansion of driveways, sidewalks, swimming pools, pavements, foundations, walls, floors, roofs or ceilings;
8. caused by explosion of steam boilers, steam pipes, steam turbines or steam engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom) if owned by, leased by or operated under the control of the insured, or for any ensuing loss except by fire or explosion not otherwise excluded, and then the Company shall be liable for only such ensuing loss;
9. to steam boilers, steam pipes, steam turbines or steam engines caused by any condition or occurrence within such boilers, pipes, turbines or engines (except direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox, or combustion chamber of any fired vessel or within the flues or passages which conduct the gases of combustion therefrom);
10. to hot water boilers or other equipment for heating water caused by any condition or occurrence within such boilers or equipment, other than an explosion;
11. to property in the open caused by rain, snow, ice or sleet;
12. caused by, resulting from, contributed to, or aggravated by any of the following:



- (a) earth movement, including but not limited to earthquake, landslide, mudflow, earth sinking, earth rising or shifting;
  - (b) flood, surface water, waves, tidal water or tidal waves, overflow of streams or other bodies of water, or spray from any of the foregoing, all whether driven by wind or not;
  - (c) water which backs up through sewers or drains;
  - (d) water below the surface of the ground including that which exerts pressure on or flows, seeps or leaks through sidewalks, driveways, foundations, walls, basement or other floors, or through doors, windows or any other openings in such sidewalks, driveways, foundations, walls or floors; unless fire or explosion as insured against ensues, and then this Company shall be liable for only loss caused by the ensuing fire or explosion; but these exclusions shall not apply to loss arising from theft;
- 13. due to voluntary parting with title or possession of any property by the insured or others if induced to do so by any fraudulent scheme or false pretense;
  - 14. due to unexplained or mysterious disappearance of property, or shortage of property disclosed on taking inventory;
  - 15. due to delay or loss of market;
  - 16. to property sold by the insured under conditional sale, trust agreement, installment payment or other deferred payment plan, after delivery to customers.

## SECTION I—OPTIONAL COVERAGES

The following Optional Coverages are subject to all the terms and conditions applicable to Section I of this policy, except as otherwise provided for herein.

### EMPLOYEE DISHONESTY

When coverage is designated in the Declarations for Employee Dishonesty, this policy provides coverage for loss of money and other business personal property by dishonest or fraudulent acts of the named insured's employees for an amount not exceeding the limit of liability shown in the Declarations and subject to the following conditions:

- 1. the limit of the Company's liability for loss shall not exceed the replacement cost thereof at the time of loss, provided, however, at the option of the insured, payment of the cost of replacing securities may be determined by the market value at the time of such settlement;
- 2. this policy shall not apply to loss due to any dishonest or fraudulent act by the insured or by any partner, joint venture, officer, director or trustee, whether acting alone or in collusion with others;
- 3. insurance hereunder shall be deemed cancelled as to any employee immediately upon discovery by the insured, or any partner or officer, of any fraudulent or dishonest act of such employee;
- 4. dishonest or fraudulent acts or a series of similar or related acts of any employee acting alone or in collusion with others during the policy period shall be deemed to be one occurrence for the purpose of applying the deductible and the limit of liability;
- 5. loss is covered only if discovered not later than one year from the end of the policy period, and then this insurance shall apply only to loss sustained during the policy period;
- 6. if more than one insured is covered under this policy, the liability of the Company shall not exceed the amount for which the Company would be liable if there was only one insured;
- 7. regardless of the number of years this policy shall continue in force, the limit of liability shown in the Declarations shall not be cumulative from year to year.

Loss Under Prior Bond or Policy: The Company agrees that this optional coverage applies to loss which would have been recoverable by the insured or by any predecessor in the interest of the insured under a prior bond or policy, except for the fact that the time within which to discover loss thereunder had expired; provided:

1. coverage under this optional coverage substituted for the prior bond or insurance policy at the time the prior bond or insurance policy is terminated, cancelled or allowed to expire;
2. the insurance under this condition shall not increase the limit of liability under Employee Dishonesty coverage;
3. such loss would have been covered under this optional coverage had this coverage subject to all its conditions and limitations at the time of such substitution, been in force when the acts or events causing such loss occurred; and
4. recovery under this optional coverage shall not exceed the smaller of the following:
  - (a) the amount which would have been recoverable under such prior bond or insurance policy had such prior bond or policy continued in force until the discovery of such loss; or
  - (b) the amount which would have been recoverable under this optional coverage had this coverage been in force when such acts or events were committed.

#### **EXTERIOR SIGNS**

When coverage is designated in the Declarations for Exterior Signs, coverage is provided for an amount not exceeding the limits of liability shown in the Declarations for loss to all exterior signs which are the property of the insured or the property of others in the care, custody or control of the insured, on the premises described in the Declarations for direct physical loss excluding wear and tear, latent defect, corrosion or rust, or mechanical breakdown.

The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions, do not apply to this optional coverage.

#### **EXTERIOR GRADE FLOOR GLASS**

When coverage is designated in the Declarations for Exterior Grade Floor Glass, this policy shall apply to all exterior grade floor and basement glass, including encasing frames and all lettering or ornamentation thereon, which are the property of the insured or the property of others in the care, custody or control of the insured in the building described in the Declarations, for direct physical loss excluding wear and tear, latent defect, corrosion or rust. Such insurance shall also include the expense of boarding up damaged openings, installing temporary plates and removing or replacing obstructions when necessary.

The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions, do not apply to this optional coverage.

#### **BOILER, PRESSURE VESSELS & AIR CONDITIONING EQUIPMENT**

When coverage is designated in the Declarations for Boiler, Pressure Vessels and Air Conditioning Equipment, this policy provides coverage for loss from an Accident to an Object, as defined herein which is owned by, leased by, or operated under the control of the insured.

Boiler and Pressure Vessels—Object shall mean:

1. any steam heating or hot water heating boiler;
2. any condensate return tank used in connection with a steam heating boiler;
3. any expansion tank used in connection with a hot water heating boiler;
4. any hot water heater;
5. any other fired or unfired vessel used for maintenance or service of the premises where they are located and not used in processing or manufacturing;
6. any piping used in connection with a steam heating boiler which contains steam or condensate thereof, with valves, fittings, traps and separators thereon; and
7. any feedwater piping between any steam heating boiler and its feed pump or injector.

Air Conditioning Equipment—Object shall mean:

1. any "air conditioning unit" which has a capacity of at least 60,000 Btu/hr and not more than 600,000 Btu/hr, including;
2. all interconnected vessels, coils and piping which contain refrigerant, or within which refrigerant is circulated, together with valves and fittings on such vessels, coils and piping;



3. any vessel heated directly or indirectly, which functions as a generator, re-generator or concentrator and which forms a part of an absorption type unit;
4. all compressors, pumps, fans and blowers used solely with such unit, together with their driving electric motors;
5. all control equipment used solely with the unit, excluding any wiring or piping leading to or from the unit; and
6. all vessels, radiators, inductors, convectors and coils, together with valves and fittings thereon, which are connected to or used with the unit and within which steam, water, brine or other solution is circulated for cooling, humidifying or space heating; and all piping containing water, brine or other solution interconnecting such vessels, radiators, inductors, convectors and coils, together with valves and fittings on such piping, but excluding any vessel, cooling tower, reservoir or other source of supply of cooling water for any condenser or compressor, together with any water piping leading to or from such source of supply.

Accident shall mean a sudden and accidental breakdown of the Object covered, which manifests itself at the time of the breakdown by physical damage to the Object covered which necessitates repair or replacement of such Object.

Accident shall not mean:

1. depletion, deterioration, corrosion or erosion of material; wear and tear; leakage at any valve, fitting, shaft seal, gland packing, joint or connection;
2. the breakdown of any vacuum tube, gas tube, brush, electronic computer, electronic data processing equipment, structure or foundation supporting the property covered or any part thereof;
3. the functioning of any safety device or protective device; nor
4. the explosion of gas or unconsumed fuel within the furnace of any Object or within the passages from the furnace of said Object to the atmosphere.

The Company shall not be liable for loss to:

1. any boiler, fired vessel or air conditioning equipment while said equipment is undergoing hydrostatic, pneumatic or gas pressure test, or while said equipment is undergoing an insulation breakdown test or is being dried out;
2. any boiler setting, any insulating or refractory material, any part of a boiler or vessel which is not under vacuum or internal pressure other than static pressure of contents (other than a condensate return tank), any reciprocating, rotating or electrical apparatus within or forming a part of a boiler or vessel, any piping not on the premises of the insured.

#### **INSPECTION AND SUSPENSION**

The Company shall be permitted but not obligated to inspect, at all reasonable times, any insured Object. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the named insured or others, to determine or warrant that such Object is safe or healthful.

Upon discovery of a dangerous condition with respect to any Object, any representative of the Company may immediately suspend the insurance with respect to an Accident to said Object by written notice mailed or delivered to the insured at the mailing address shown in the Declarations, or at the location of the Object. The insured shall be credited the unearned portion of the premium paid for such suspended insurance, pro rata, for the period of suspension.



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## SECTION I—DEDUCTIBLE

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### DEDUCTIBLE

This deductible clause does not apply to coverage as provided for Loss of Income.

1. With the exception of loss by theft, the sum of \$100 shall be deducted from the amount of loss to property in any one occurrence. This deductible shall apply:
    - (a) separately to each building, including personal property therein;
    - (b) separately to personal property in each building if no coverage is provided on the containing building;
    - (c) separately to personal property in the open (including within vehicles).The aggregate amount of this deductible in any one occurrence shall not exceed \$1,000.

Theft Deductible: With respect to loss by theft, the sum of \$250 shall be deducted from each theft loss insured hereunder.
  2. When coverage is designated in the Declarations for Employee Dishonesty, each loss under such coverage shall be adjusted separately and from the amount of each such adjusted loss the sum of \$250 shall be deducted.
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## SECTION II—COMPREHENSIVE BUSINESS LIABILITY

### COVERAGE E BUSINESS LIABILITY

The Company will pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay as damages because of **bodily injury, property damage** or **personal injury** caused by an **occurrence** to which this insurance applies.

The total liability of the Company for all damages, including **completed operations hazard, products hazard**, and damages for care and loss of services, as a result of any one **occurrence** shall not exceed the limit of liability stated in the Declarations as applicable to each **occurrence**.

As stated in the Declarations however, the limit of liability shown under Coverage E—Business Liability is an aggregate limit for all **occurrences** during the policy period with respect to the **completed operations hazard** and **products hazard** combined.

**FIRE LEGAL LIABILITY:** The Company will also pay on behalf of the **insured** all sums which the **insured** shall become legally obligated to pay for **property damage** to structures rented to or occupied by the **named insured**, including fixtures permanently attached thereto, if such **property damage** arises out of fire or explosion. The total liability of the Company for all damages as a result of any one fire or explosion, or a series or combination of such fires and explosions, shall not exceed \$50,000 for each **occurrence**.

The above limits shall apply regardless of the following:

1. the number of persons or organizations insured under this policy;
2. the number of persons or organizations who have sustained injury or damage;
3. the number of claims made or causes of action or suits brought because of injury or damage.

For the purpose of determining the limit of the Company's liability, all **bodily injury** and **property damage** arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.

### RIGHT AND DUTY TO DEFEND

The Company shall have the right and duty to defend any claim or suit against the **insured** seeking damages payable under this policy, even though the allegations of the suit may be groundless, false or fraudulent. The Company may make such investigations and settlements of any claim or suit as it deems expedient. The Company is not obligated to pay any claim or judgment or to defend any suit after the applicable limit of the Company's liability has been exhausted by payment of judgments or settlements.

### SUPPLEMENTARY PAYMENTS

The Company will pay, in addition to the applicable limit of liability:

1. all expenses incurred by the Company;
2. all cost taxed against the **insured** in any suit defended by the Company and all interest on the entire amount of any judgment which accrues after entry of the judgment and before the Company has paid or tendered or deposited in court that part of the judgment which does not exceed the limit of the Company's liability;
3. premium on appeal bonds in any such suit;
4. premiums on bonds to release attachments in any such suit for an amount not in excess of the applicable limit of liability of this policy;
5. expenses incurred by the **insured** for first aid to others at the time of an accident for **bodily injury** to which this policy applies; and
6. reasonable expenses incurred by the **insured** at the Company's request in assisting the Company in the investigation or defense of any claim or suit, including actual loss of earnings not to exceed \$50 per day.

### BUSINESS LIABILITY EXCLUSIONS

Under Coverage E, this policy does not apply:

1. to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:
  - (a) any **automobile** or aircraft owned or operated by or rented or loaned to any **insured**; or
  - (b) any other **automobile** or aircraft operated by any person in the course of his employment by any **insured**.



This exclusion does not apply to the parking of an **automobile** on premises owned by, rented to or controlled by the **named insured** or the ways immediately adjoining, if such **automobile** is not owned by or rented or loaned to any **insured**.

This exclusion does not apply to the use in the business of the **named insured** of a non-owned **private passenger automobile** by any person, other than the **named insured**, or the occasional and infrequent use of a non-owned **commercial automobile** by an employee of the **named insured** in such business:

2. to **bodily injury** or **property damage** arising out of:

- (a) the ownership, maintenance, operation, use, loading or unloading of any land motor vehicle (1) not subject to motor vehicle registration, or (2) not designed for use principally off public roads while being used in any prearranged or organized racing, speed or demolition contest or in any stunting activity or in practice or preparation for any such contest or activity; or
- (b) the operation or use of any snowmobile or trailer designed for use therewith.

Exclusion 2(a) does not apply to any land motor vehicle not subject to motor vehicle registration provided such vehicle is maintained for use exclusively on premises owned by or rented to the **named insured** including the ways immediately adjoining:

3. to **bodily injury** or **property damage** arising out of the ownership, maintenance, operation, use, loading or unloading of:

- (a) any watercraft owned or operated by or rented or loaned to any **insured**; or
- (b) any other watercraft operated by any person in the course of his employment by any **insured**;

but this exclusion does not apply to watercraft while ashore on premises owned by, rented to or controlled by the **named insured**;

4. to liability assumed by the **insured** under any **contract** or agreement except a **contract** as defined in this policy;

5. to **bodily injury** or **property damage** arising out of the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water; but this exclusion does not apply if such discharge, dispersal, release or escape is sudden and accidental;

6. to any obligation of which the **insured** or any carrier as his insurer may be held liable under any workers' or workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;

7. to **bodily injury** or **property damage** for which the **insured** or his indemnitee may be held liable:

- (a) as a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages; or
- (b) if not so engaged, as an owner or lessor of premises used for such purposes.

if such liability is imposed

- (1) by, or because of the violation of any statute, ordinance or regulation pertaining to the sale, gift, distribution or use of any alcoholic beverage, or
- (2) by reason of the selling, serving or giving of any alcoholic beverage to a minor or to a person under the influence of alcohol or which causes or contributes to the intoxication of any person;

but part (2) of this exclusion does not apply with respect to liability of the **insured** or his indemnitee as an owner or lessor described in (b) above.

This entire exclusion does not apply to liability imposed on the **insured** as the result of the giving or serving of alcoholic beverages at functions incidental to the **named insured's** business, provided the **named insured** is not engaged in the business of manufacturing, distributing, selling or serving of alcoholic beverages and provided further that there has been no intentional violation of any statute, regulation, or ordinance committed by or at the direction of the **insured**;



8. to **bodily injury** or **property damage** due to rendering of or failure to render any professional service, including but not limited to:
- (a) legal, accounting, advertising, engineering, drafting, architectural, and
  - (b) medical, dental, pharmacological, cosmetic, hearing aid, optical, or ear piercing services;
- but with respect to pharmacological services, this exclusion does not apply to any **insured** doing business as a retail drugstore;
9. to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** or to any obligation of the **insured** to indemnify another because of damages arising out of such injury; but this exclusion does not apply to liability assumed by the **insured** under a **contract**;
10. with respect to insurance afforded to any employee of the **named insured** other than an executive officer:
- (a) to **bodily injury** to:
    - (1) another employee of the **named insured** arising out of and in the course of his employment;
    - (2) the **named insured**, or if the **named insured** is a partnership or joint venture, any partner or member thereof;
  - (b) to **property damage** to property owned, occupied or used by, rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by:
    - (1) another employee of the **named insured**;
    - (2) the **named insured**, or if the **named insured** is a partnership or joint venture, any partner or member thereof;
11. to damage to property:
- (a) owned or occupied by or rented to the **insured**, or, except with respect to the use of elevators, to property held by the **insured** for sale or entrusted to the **insured** for storage or safekeeping; but this exclusion does not apply to **property damage** to structures rented to or occupied by the **named insured**, including fixtures permanently attached thereto, if such **property damage** arises out of fire or explosion for which coverage is specifically granted for Fire Legal Liability—Coverage E;
  - (b) except with respect to liability under a written sidetrack agreement or the use of elevators to:
    - (1) property while on premises owned by or rented to the **insured** for the purpose of having operations performed on such property by or on behalf of the **insured**;
    - (2) tools or equipment while being used by the **insured** in performing his operations;
    - (3) property in the custody of the **insured** which is to be installed, erected or used in construction by the **insured**;
    - (4) that particular part of any property, not on premises owned by or rented to the **insured**:
      - (i) upon which operations are being performed by or on behalf of the **insured** at the time of the **property damage** arising out of such operations;
      - (ii) out of which any **property damage** arises; or
      - (iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **insured**;
  - (c) with respect to the **completed operations hazard**, to work performed by the **named insured** arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith;

12. **property damage** to premises alienated by the **named insured** arising out of such premises or any part thereof;
13. to **property damage** to the **named insured's products** arising out of such **products** or any part of such **products**;
14. to loss of use of tangible property which has not been physically injured or destroyed resulting from:
  - (a) a delay in or lack of performance by or on behalf of the **named insured** of any **contract** or agreement; or
  - (b) the failure of the **named insured's products** or work performed by or on behalf of the **named insured** to meet the level of performance, quality, fitness or durability warranted or represented by the **named insured**;

but this exclusion does not apply to loss of use of other tangible property resulting from the sudden and accidental physical injury to or destruction of the **named insured's products** or work performed by or on behalf of the **named insured** after such **products** or work have been put to use by any person or organization other than an **insured**;
15. to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the **named insured's products** or work completed by or for the **named insured** or for any property of which such **products** or work form a part, if such **products**, work or property are withdrawn from the market or from use because of any known or suspected defect or deficiency therein;
16. to **personal injury** arising out of the willful violation of a penal statute or ordinance committed by or with knowledge or consent of any **insured**;
17. to **personal injury** arising out of any publication or utterance described in Item (b) of the Definitions of **personal injury**:
  - (a) if the first injurious publication or utterance of the same or similar material by or on behalf of the **named insured** was made prior to the effective date of this insurance; or
  - (b) concerning any organization or business enterprise or its **products** or services made by or at the direction of any **insured** with knowledge of the falsity thereof.

## SECTION II—MEDICAL PAYMENTS

### COVERAGE F MEDICAL PAYMENTS

The Company will pay up to \$1,000 for reasonable **medical expenses** incurred by any person who requires medical services because of an accident arising out of business operations with respect to which the **named insured** is afforded coverage for **bodily injury** liability, except for liability arising out of use of a **non-owned automobile**.

The **medical expenses** must be incurred within one year after the accident and must result directly from the accident.

The Company will not pay more than \$10,000 for all **medical expenses** incurred by all persons requiring medical services in any one accident.

As soon as practicable the injured person or someone on his behalf shall give to the Company written proof of claim for **medical expenses**, under oath if required, and shall after each request from the Company, execute authorization to enable the Company to obtain medical reports and copies of records. The injured person shall submit to physical examinations by physicians selected by the Company when and as often as the Company may reasonably require.

The Company may pay the injured person or any person or organization rendering the services and the payment shall reduce the amount payable hereunder for such injury. Payment hereunder shall not constitute an admission of liability of any person or, except hereunder, of the Company.

### MEDICAL PAYMENTS EXCLUSIONS

Under Coverage F, this policy does not apply:

1. to **bodily injury** excluded under Coverage E—Business Liability;



2. to **bodily injury** to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;
3. to **bodily injury** arising out of operations performed for the **named insured** by independent contractors other than (a) maintenance and repair of the insured premises, or (b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
4. to **bodily injury** to the **named insured**, any partner therein, any tenant or other person regularly residing on the insured premises or any employee of any of the foregoing if the **bodily injury** arises out of and in the course of his employment;
5. to **bodily injury** to any other tenant if the **bodily injury** occurs on that part of the insured premises rented from the **named insured** or to any employee of such tenant if the **bodily injury** occurs on the tenant's part of the insured premises and arises out of and in the course of his employment for the tenant;
6. to **bodily injury** to any person if any benefits for such **bodily injury** are payable or required to be provided under any workers' or workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
7. to any **medical expense** for services by the **named insured**, any employee thereof or any person or organization under **contract** to the **named insured** to provide such services;
8. to **bodily injury** to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest;
9. to **bodily injury** included within the **completed operations hazard** or the **products hazard**.

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## SECTION I AND SECTION II—WAR RISK, GOVERNMENTAL ACTION AND NUCLEAR EXCLUSIONS

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This policy under Section I and Section II shall not apply to loss, **bodily injury** or **property damage** caused, directly or indirectly, by or due to any act or condition incident to the following:

1. hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack (a) by any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or forces, it being understood that any discharge, explosion or use of any weapon of war employing nuclear fission or fusion shall be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces;
2. insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence; seizure or destruction under quarantine or custom's regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

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### SECTION I ONLY

1. Nuclear Clause: The word "fire" in this policy is not intended to and does not embrace nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and loss by nuclear reaction or nuclear radiation or radioactive contamination is not intended to be and is not insured against by this policy, whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by "fire" or any other perils insured against by this policy. How-



Premium adjustment may be made at the time cancellation is effected and, if not then made, shall be made as soon as practicable after cancellation becomes effective. The Company's check or the check of its representative mailed or delivered as aforesaid shall be a sufficient tender of any refund of premium due to the **insured** but payment or tender of unearned premium is not a condition of cancellation.

If the **insured** fails to make payment of the premium for this policy or any installment payment, whether payable directly to the Company or its agent or indirectly under any premium finance plan or extension of credit, this policy may be cancelled by mailing to the **insured** written notice stating that not less than ten (10) days thereafter, such cancellation shall be effective.

In the event of such cancellation the earned premium shall be computed pro rata.

### 3. **POLICY PERIOD, TERRITORY**

- (a) Section I of this policy applies only to loss to property during the policy period while such property is within or between the fifty states of the United States of America, District of Columbia and Puerto Rico unless otherwise limited.
- (b) Section II of this policy applies only to:
  - (1) **bodily injury** or **property damage** which occurs within the policy territory; or
  - (2) **personal injury** committed during the policy period within the policy territory.
- (c) As respects Section II of this policy, the term policy territory means:
  - (1) the United States of America, its territories or possessions, or Canada; or
  - (2) international waters or air space, provided the **bodily injury** or **property damage** does not occur in the course of travel or transportation to or from any other country, state or nation; or
  - (3) anywhere in the world with respect to damages because of **bodily injury** or **property damage** arising out of a **product** which was sold for use or consumption within the territory described in paragraph (1) above, provided the original suit for such damages is brought within such territory.

### 4. **TIME OF INCEPTION**

To the extent that coverage in this policy replaces coverage in other policies terminating 12:01 A.M. (Standard Time) on the inception date of this policy, this policy shall be effective at 12:01 A.M. (Standard Time) instead of at Noon Standard Time.

### 5. **CONCEALMENT OR FRAUD**

This policy is void if any **insured** has intentionally concealed or misrepresented any material fact or circumstance relating to this insurance.

### 6. **ASSIGNMENT**

Assignment of interest under this policy shall not bind the Company until its consent is endorsed hereon. However, if the **named insured** shall die, this insurance shall apply:

- (a) to the **named insured's** legal representative, as the **named insured**, but only while acting within the scope of his duties as such; or
- (b) to the person having temporary custody of the property of the **named insured** but only until the appointment and qualification of the legal representative.

### 7. **SUBROGATION**

- (a) In the event of any payment under this policy, the Company shall be subrogated to all the **insured's** rights of recovery against any person or organization and the **insured** shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **insured** shall do nothing after loss to prejudice such rights.
- (b) The Company shall not be bound to pay any loss if the **insured** has impaired any right of recovery for loss; however, it is agreed that the **insured** may:

- (1) respects property while on the premises of the **insured**, release others in writing from liability for loss prior to loss, and such release shall not affect the right of the **insured** to recover hereunder; and
- (2) as respects property in transit, accept such bills of lading, receipts or contracts of transportation as are ordinarily issued by carriers containing a limitation as to the value of such goods or merchandise.

8. **INSPECTION AND AUDIT**

The Company shall be permitted but not obligated to inspect the **named insured's** property and operations at any time. Neither the Company's right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **named insured** or others, to determine or warrant that such property or operations are safe or healthful, or are in compliance with any law, rule or regulation.

The Company may examine and audit the **named insured's** books and records at any time during the policy period and extensions thereof and within three years after the final termination of this policy, as far as they relate to the subject matter of this insurance.

9. **LIBERALIZATION CLAUSE**

In the event any filing is submitted to the insurance supervisory authorities on behalf of the Company, and:

- (a) the filing is approved or accepted by the insurance authorities to be effective while this policy is in force or within 45 days prior to its inception; and
- (b) the filing includes insurance forms or other provisions that would extend or broaden this insurance by endorsement or substitution of form, without additional premium;

the benefit of such extended or broadened insurance shall inure to the benefit of the **insured** as though the endorsement or substitution of form had been made a part hereof.

10. **OTHER INSURANCE**

This insurance shall apply only as excess insurance over any other valid and collectible insurance which would apply in the absence of this policy, except insurance written specifically to cover as excess over the limits of liability applicable to Section II of this policy.

The insurance provided under Coverage E—Business Liability with respect to property in the care, custody or control of the **insured** shall also be excess over any valid and collectible property insurance (including any deductible portion thereof) available to the **insured** including but not limited to Fire and Extended Coverage, Builders' Risk Coverage or Installation Risk Coverage.

11. **INSURANCE UNDER MORE THAN ONE COVERAGE, PART OR ENDORSEMENT**

In the event that more than one coverage, part or endorsement of this policy insures the same loss, damage or claim, the Company shall not be liable for more than the actual loss, or damage sustained by the **insured**.

12. **REPLACEMENT OF FORMS AND ENDORSEMENTS**

If the policy period in the Declarations does not indicate a termination date, the policy being issued on a continuous basis, the Company may substitute or add forms and endorsements which are authorized for its use upon any anniversary date in accordance with rules of its manuals.

13. **WAIVER OR CHANGE OF PROVISIONS**

The terms of this insurance shall not be waived, changed or modified except by endorsement issued to form a part of this policy.



## **CONDITIONS APPLICABLE TO SECTION I**

### **1. REPLACEMENT COST**

- (a) With the exception of loss to Money and Securities, loss shall be adjusted on the basis of the replacement cost value of the property insured hereunder, but the limit of liability of the Company shall not exceed the least of:
  - (1) the full cost of replacement of such property at the same site with new material of like kind and quality without deduction for depreciation; or
  - (2) the cost of repairing the insured property within reasonable time; or
  - (3) the limit of liability applicable to such property shown on the Declarations; or
  - (4) the amount actually and necessarily expended in repairing or replacing said property or any part thereof.
- (b) The Company shall not be liable for payment of loss on a replacement cost basis unless and until actual repair or replacement is completed. The insured, however, may elect not to repair or replace, in which event loss settlement shall be made on an actual cash value basis rather than on a replacement cost basis. Should the insured elect this option, the insured's right to make further claim on a replacement cost basis shall not be prejudiced provided the Company is notified in writing within 180 days after loss of the insured's intent to make such further claim.

### **2. DUTIES OF THE NAMED INSURED AFTER A LOSS**

In case of loss, the named insured shall:

- (a) give immediate written notice of such loss to the Company;
- (b) protect the building and personal property from further damage, make reasonable temporary repairs required to protect the property, and keep an accurate record of repair expenditures;
- (c) prepare an inventory of damaged personal property showing in detail the quantity, description, replacement cost and amount of loss. Attach to the inventory all bills, receipts and related documents that substantiate the figures in the inventory;
- (d) exhibit the remains of the damaged property as often as may be reasonably required by the Company and submit to examination under oath;
- (e) submit to the Company within 60 days after requested a signed, sworn statement of loss which sets forth, to the best of the named insured's 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 policies of 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 (c) above;
  - (7) receipts for extra expenses incurred and records supporting the rental value.

### **3. APPRAISAL**

If the named insured and the Company fail to agree on the amount of the loss, either can demand that the amount of loss be set by appraisal. If either party



makes a written demand for appraisal, each shall select a competent independent appraiser. Each shall notify the other of the selected appraiser's identity within twenty (20) days of receipt of the written demand.

The two appraisers shall select a competent, impartial umpire. If the appraisers are unable to agree upon an umpire within fifteen (15) days, the named insured or the Company may petition a judge of a Court of Record in the state where the insured 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 the Company, 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 loss.

Each appraiser shall be paid by the party selecting that appraiser. Other expenses of the appraisal and compensation of the umpire shall be paid equally by the named insured and the Company.

**4. COMPANY OPTIONS**

If the Company gives notice within thirty (30) days after it has received a signed, sworn statement of loss, it shall have the option to take all or any part of the property damaged at an agreed value, or to repair, rebuild or replace it with equivalent property.

**5. ABANDONMENT OF PROPERTY**

The Company need not accept any property abandoned by an insured.

**6. PAYMENT OF LOSS**

The Company will pay all adjusted claims within thirty (30) days after presentation and acceptance of the proof of loss.

**7. PRIVILEGE TO ADJUST WITH OWNER**

(a) Except as provided in (b) below, or unless another payee is specifically named in the policy, loss, if any, shall be adjusted with and payable to the named insured.

(b) In the event claim is made for damage to property of others held by the insured, the right to adjust such loss or damage with the owner or owners of the property is reserved to the Company and the receipt of payment by such owner or owners in satisfaction thereof shall be in full satisfaction of any claim of the insured for which such payment has been made.

If legal proceedings be taken to enforce a claim against the insured as respects any such loss or damage, the Company reserves the right at its option, without expense to the insured, to conduct and control the defense on behalf of and in the name of the insured. No action of the Company in such regard shall increase the liability of the Company under this policy, nor increase the limits of liability specified in the policy.

**8. SUIT**

No suit shall be brought on this policy unless the insured has complied with all the policy provisions and has commenced the suit within one year after the loss occurs.

**9. VACANCY OR UNOCCUPANCY**

(a) This Company shall not be liable for loss occurring while a described building, whether intended for occupancy by owner or tenant, is vacant beyond a period of sixty (60) consecutive days. "Vacant" or "Vacancy" means containing no contents pertaining to operations or activities customary to occupancy of the building, but a building in process of construction shall not be deemed vacant.

(b) Permission is granted for unoccupancy.

**10. MORTGAGE CLAUSE—APPLICABLE ONLY TO BUILDINGS**

This clause is effective if a mortgagee is named in the Declarations. The word "Mortgagee" includes "Trustee". Loss to buildings shall be payable to the

named mortgagee, as interest may appear under all present or future mortgages on the buildings described in the Declarations in order of precedence of mortgages on them.

As it applies to the interest of any mortgagee designated in the Declarations, this insurance shall not be affected by any of the following:

- (a) any act or neglect of the mortgagor or owner of the described buildings;
- (b) any foreclosure or other proceedings or notice of sale relating to the property;
- (c) any change in the title or ownership of the property;
- (d) occupancy of the premises for purposes more hazardous than are permitted by this policy;

provided, that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall, on demand, pay the premium.

The mortgagee shall notify the Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of the mortgagee. Unless permitted by this policy, such change of ownership or occupancy or increase of hazard shall be noted on the policy and the mortgagee shall on demand pay the premium for the increased hazard for the term it existed under this policy. If such premium is not paid, this policy shall be null and void.

The Company reserves the right to cancel this policy at any time as provided by its terms. If so cancelled, this policy shall continue in force for the benefit only of the mortgagee for ten days after notice to the mortgagee of such cancellation and shall then cease. The Company shall have the right to cancel this agreement on ten days notice to the mortgagee.

When the Company shall pay the mortgagee any sum for loss under this policy, and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Company shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the mortgagee to whom such payment shall have been made, under the mortgage debt. In lieu of taking such subrogation, the Company may, at its option, pay to the mortgagee the whole principal due or to grow due on the mortgage, with interest accrued and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities. However, no subrogation shall impair the right of the mortgagee to recover the full amount of said mortgagee's claim.

11. **RECOVERIES**

In the event the Company has made a payment for loss under the policy and a subsequent recovery is made of the lost or damaged property, the insured shall be entitled to all recoveries in excess of the amount paid by the Company, less only the actual cost of effecting such recoveries.

12. **LOSS CLAUSE**

Any loss hereunder shall not reduce the amount of this insurance.

13. **NO BENEFIT TO BAILEE**

This insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

14. **NO CONTROL**

This insurance shall not be prejudiced:

- (a) by any act or neglect of the owner of any building if the insured is not the owner thereof, or by any act or neglect of any occupant (other than the insured) of any building, when such act or neglect of the owner or occupant is not within the control of the insured; or
- (b) by failure of the insured to comply with any warranty or condition contained in any endorsement attached to this policy with regard to any portion of the premises over which the insured has no control

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## CONDITIONS APPLICABLE TO SECTION II

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### 1. ACTION AGAINST THE COMPANY :

No action shall lie against the Company unless:

- (a) there shall have been full compliance with all of the terms of this policy; and
- (b) the amount of the **insured's** obligation to pay shall have been finally determined either by judgment against the **insured** after actual trial or by written agreement of the **insured**, the claimant and the Company.

Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of insurance afforded by this policy.

No person or organization shall have any right under this policy to join the Company as a party to any action against the **insured** to determine the **insured's** liability nor shall the Company be impleaded by the **insured** or his legal representative.

Bankruptcy or insolvency of the **insured** or of the **insured's** estate shall not relieve the Company of its obligations hereunder.

### 2. FINANCIAL RESPONSIBILITY LAWS

This policy may not be certified as proof of financial responsibility under the provisions of any financial responsibility law.

### 3. INSURED'S DUTIES IN THE EVENT OF OCCURRENCE, CLAIM OR SUIT

- (a) In the event of an **occurrence**, the **insured** shall give to the Company or its authorized agents, as soon as practicable, written notice containing:
    - (1) particulars sufficient to identify the **insured**;
    - (2) reasonably obtainable information with respect to the time, place and circumstances; and
    - (3) names and addresses of the injured and of available witnesses.
  - (b) If claim is made or suit is brought against the **insured**, the **insured** shall immediately forward to the Company every demand, notice, summons or other process received by him or his representative.
  - (c) The **insured** shall cooperate with the Company, and upon the Company's request, assist in the following:
    - (1) making of settlements;
    - (2) conducting suits;
    - (3) enforcing any right of contribution or indemnity against any person or organization who may be liable to the **insured** because of injury or damage with respect to which insurance is afforded under this policy.
  - (d) The **insured** shall attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
  - (e) The **insured** shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for first aid to others at the time of accident.
-



## SECTION II—DEFINITIONS

The Definition Section is an integral part of the policy and shall be applied as if the definitions appearing were included each time the words they define are used in the policy.

When used in the provisions applicable to Section II of this policy (including endorsements forming a part hereof):

**automobile** means a land motor vehicle, trailer or semi-trailer designed for travel on public roads (including any machinery or apparatus attached thereto);

**bodily injury** means bodily injury, sickness or disease sustained by any person which occurs during the policy period, including death at any time resulting therefrom;

**completed operations hazard** includes **bodily injury** and **property damage** arising out of operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs after such operations have been completed or abandoned and occurs away from premises owned by or rented to the **named insured**. Operations include materials, parts or equipment furnished in connection therewith. Operations shall be deemed completed at the earliest of the following times:

- (a) when all operations to be performed by or on behalf of the **named insured** under the **contract** have been completed;
- (b) when all operations to be performed by or on behalf of the **named insured** at the site of the operations have been completed; or
- (c) when the portion of the work out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

Operations which may require further service or maintenance work, or correction, repair or replacement because of any defect or deficiency, but which are otherwise complete, shall be deemed completed.

The **completed operations hazard** does not include **bodily injury** or **property damage** arising out of (a) operations in connection with the transportation of property, unless the **bodily injury** or **property damage** arises out of a condition in or on a vehicle created by the loading or unloading thereof, or (b) the existence of tools, uninstalled equipment or abandoned or unused materials;

**commercial automobile** means an **automobile** of the truck type or other **automobile** designed for the transportation of material or merchandise over public roads;

**contract** means any written contract or agreement wherein the **named insured** has expressly assumed liability for damages to which this policy applies, provided, that such liability shall not be construed as including liability under a warranty of the fitness or quality of the **named insured's products** or a warranty that work performed by or on behalf of the **insured** will be done in a workman-like manner;

**insured** means each of the following to the extent set forth below:

- (a) if the **named insured** is designated in the Declarations as an individual, the person so designated but only with respect to the conduct of a business of which he is the sole proprietor, and the spouse of the **named insured** with respect to the conduct of such a business;
- (b) if the **named insured** is designated in the Declarations as a partnership or joint venture, the partnership or joint venture so designated and any partner or member thereof but only with respect to his liability as such;
- (c) if the **named insured** is designated in the Declarations as other than an individual, partnership or joint venture, the organization so designated and any executive officer, member of the board of trustees, directors or governors or stockholder thereof while acting within the scope of his duties as such;

- (d) any employee of the **named insured** while acting within the scope of his duties as such;
- (e) any person or organization while acting as real estate manager for the **named insured**.

The insurance afforded applies separately to each **insured** against whom claim is made, or suit is brought, except with respect to the limit of the Company's liability.

This insurance does not apply to **bodily injury** or **property damage** or **personal injury** arising out of the conduct of any partnership or joint venture of which the **insured** is a partner or member and which is not designated in this policy as a **named insured**;

**medical expenses** means expenses for necessary medical, surgical, x-ray and dental services, including prosthetic devices and necessary ambulance, hospital, professional nursing and funeral services;

**named insured** means the person or organization named in Item 1 of the Declarations of this policy;

**named insured's products** means goods or products manufactured, sold, handled or distributed by the **named insured** or by others trading under his name, including any container thereof (other than a vehicle), but the **named insured's products** shall not include a vending machine or any property other than such container rented to or located for use of others but not sold;

**non-owned automobile** means an **automobile** not owned in whole or in part by, registered in the name of, hired by, leased by or loaned to the **named insured**, or if the **named insured** is a partnership, any partner therein;

**occurrence** means an accident, including continuous or repeated exposure to conditions, which results in **bodily injury** or **property damage** neither expected nor intended from the standpoint of the **insured** and with respect to **personal injury**, the commission of an offense, or a series of similar or related offenses;

**personal injury** means injury which arises out of one or more of the following offenses committed in the conduct of the **named insured's** business:

- (a) false arrest, detention or imprisonment, or malicious prosecution;
- (b) the publication or utterance of a libel or slander or of other defamatory or disparaging material, or a publication or utterance in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting or telecasting activities conducted by or on behalf of the **named insured**;
- (c) wrongful entry or eviction, or other invasion of the right of private occupancy;

**private passenger automobile** means a four-wheel private passenger or station wagon type **automobile**;

**products hazard** includes **bodily injury** and **property damage** arising out of the **named insured's products** or reliance upon a representation or warranty made at any time with respect thereto, but only if the **bodily injury** or **property damage** occurs:

- (a) after physical possession of such property has been relinquished to others; and
- (b) away from premises owned by, or rented to the **named insured**.

However, if the business of the **named insured** includes the selling, handling or distribution of the **insured's product** for consumption on premises owned by or rented to the **named insured** part (b) above shall not apply.

**property damage** means (a) physical injury to or destruction of tangible property which occurs during the policy period, including the loss of use thereof at any time resulting therefrom, or (b) loss of use of tangible property which has not been physically injured or destroyed provided such loss of use is caused by an **occurrence** during the policy period.



INSURANCE IS PROVIDED BY THE COMPANY DESIGNATED BELOW

(A stock insurance company, herein called the company)

- ☐ THE OHIO CASUALTY INSURANCE COMPANY  
☐ AMERICAN FIRE AND CASUALTY COMPANY  
☒ WEST AMERICAN INSURANCE COMPANY



**The Ohio Casualty Group** of Insurance Companies  
 136 North Third Street, Hamilton, Ohio 45025

DECLARATIONS

BUSINESSOWNERS POLICY

Item	STANDARD SPECIAL <input checked="" type="checkbox"/>	POLICY NUMBER	XBW(90)50 26 05 24	RENEWAL OF NUMBER	XBW(89)50 26 05 24
1.	Named Insured Mailing Address (No., Street, Town or City, County, State, Zip Code)	James E. Owens, ETAL (See Form 3218) C/O James E. Owens-Landmark Realty 2468-B East Little Creek Road Norfolk, Virginia 23518			<input type="checkbox"/> Individual <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/>
2.	Policy Period:	From: 10-01-89	To: 10-01-90	Beginning and ending at 12 noon Standard Time (12:01 A.M. in California and Oregon) at the Address of the Insured stated above.	
3.	Mortgagee:	1. Atlantic Permanent Savings Bank FSB, 740 Boush St., Norfolk, VA 23518 (Name and Address) 2. Century Development Co., Box 1418, Sarasota, Florida 34230			
4.	Business of Named Insured	Real Estate			
5.	In Consideration of the premium, Insurance is provided the named insured with respect to those premises described in the Schedule below and with respect to those coverages and kinds of property for which a specific limit of liability is shown, subject to all of the terms of this policy including forms and endorsements made a part hereof:				
<b>SCHEDULE</b>					
Loc. No.	Described Premises: No., Street, Town or City, County, State, Zip Code (Enter "Same" if same location as above)			Occupancy	
	See BP2022 Attached			Apartments	
<b>SECTION I - BUILDING, BUSINESS PERSONAL PROPERTY, LOSS OF INCOME, MONEY &amp; SECURITIES</b>				<b>Limits of Liability</b>	
				Loc. No. 1	Loc. No. 2
Coverage A - Building(s)				\$ See BP2022	
Coverage B - Business Personal Property				\$	\$
Automatic Increase in Insurance. Coverage A - Building(s) shall be automatically increased by 2% or ____ %, whichever is greater, at the end of each period of three months after the inception date of the policy.					
Coverage C - Loss of Income - Actual Loss Sustained, Not Exceeding 12 Consecutive Months.					
Coverage D - Money and Securities - Included Only Under Special Businessowners Policy				\$10,000. \$2,000.	On Premises Off Premises
<b>SECTION II - COMPREHENSIVE BUSINESS LIABILITY COVERAGE</b>				<b>Limits of Liability</b>	
Coverage E - Business Liability The limit of liability with respect to the completed operations and products hazards combined is an aggregate limit for all occurrences during the policy period.				\$ 1,000,000. each occurrence	
Fire Legal Liability				\$50,000.	each occurrence
Coverage F - Medical Payments				\$1,000. \$10,000.	each person each accident
6.	Optional Coverages: The following optional coverages are afforded under this policy only when designated by an "X" in the box(es) shown opposite.		Employee Dishonesty	\$5,000.	each occurrence
			Exterior Signs	\$	
			Exterior Grade Floor Glass	Included Under Cov. A or Cov. B	
			Burglary and Robbery - Available Only Under Standard Businessowners Policy	Refer to Policy	
			Boiler, Pressure Vessels & Air Conditioning Equip.	Included Under Cov. A or Cov. B	
BU0002(5-76), BU0003(5-81), BU0004(4-84), BU0132(7-79), BU0134(4-86), BP2022(4-83), IL0002(4-77), IL0018(10-84), IL0256(10-86),					
7.	These Declarations and endorsements, if any, issued to form a part of this policy, including the following forms and endorsements attached at inception, complete the above numbered policy:				
8.	Annual Policy Premium, including Optional Coverages		GU271(6-86), L9235(7-78), 3218	\$	4,743.

Agent: Hamilton Agency, Inc.  
 Norfolk, Virginia

Countersignature Date:

Address:

Countersigned by:

Authorized Agent:





# The Ohio Casualty Group of Insurance Companies

THE OHIO CASUALTY INSURANCE COMPANY  
AMERICAN FIRE AND CASUALTY COMPANY  
WEST AMERICAN INSURANCE COMPANY

## BEAM

(90)50 26 05 24

NUMBER

Insured: James E. Owens, ETAL (See Form 3218) Agent: Hamilton Agency, Inc.  
C/O James E. Owens-Landmark Realty P.O. Box 1498  
2468-B East Little Creek Road Norfolk, Virginia 23501  
Norfolk, Virginia 23518

Date of Summary: 10-01-89

45-04-0367

This summary of insurance and premiums does not amend, extend or otherwise alter the terms and conditions of the policies forming this account. Refer to the declarations of the individual policies for the schedule of coverages, amounts of insurance, limits of liability and effective dates of coverage. Coverage is provided only by the policies below for which a premium is shown. The premium(s) shown may be estimated and subject to audit as set forth in the policy conditions or declarations page.

### SUMMARY OF INSURANCE AND PREMIUMS

Coverage Prefix	Coverage	Advance Annual Premium
	Property	\$
	Liability	\$
	Inland Marine	\$
	Crime	\$
	Commercial Package	\$
	Automobile	\$
	Garage	\$
	Workers' Compensation	\$
	Excess Liability	\$
XBW	Businessowners	\$ 4,743.
		\$
		\$
	Total Advance Annual Premium	\$ 4,743.

H a r b o r v i e w A s s o c



BUSINESSOWNERS  
NON-OWNED  
SNOWMOBILE  
ENDORSEMENT

Under Coverage E—Business Liability Exclusions, Exclusion 2 (b) is replaced by:  
(2) the operation or use of any snowmobile or trailer designed for use therewith  
(i) owned or operated by or rented or loaned to any insured, or  
(ii) operated by any person in the course of his employment by any insured.

**BUSINESSOWNERS  
EMPLOYERS  
LIABILITY  
AMENDATORY  
ENDORSEMENT**

Under Coverage E — Business Liability Exclusions Exclusion 9, relating to **bodily injury** to any employee of the **insured** is deleted and replaced by the following:

This insurance does not apply:

- (a) to **bodily injury** to any employee of the **insured** arising out of and in the course of his employment by the **insured** for which the **insured** may be held liable as an employer or in any other capacity;
- (b) to any obligation of the **insured** to indemnify or contribute with another because of damages arising out of the **bodily injury**; or
- (c) to **bodily injury** sustained by the spouse, child, parent, brother, or sister of an employee of the **insured** as a consequence of **bodily injury** to such employee arising out of and in the course of his employment by the **insured**;

This exclusion applies to all claims and suits by any person or organization for damages because of such **bodily injury** including damages for care and loss of services.

This exclusion does not apply to liability assumed by the **insured** under a **contract**.

This Endorsement must be attached to Change Endorsement when issued after the Policy is written.



1 **Concealment.** This entire policy shall be void if, whether  
2 **Fraud.** before or after a loss, the insured has wil-  
3 fully concealed or misrepresented any ma-  
4 terial fact or circumstance concerning this insurance or the  
5 subject thereof, or the interest of the insured therein, or in case  
6 of any fraud or false swearing by the insured relating thereto.  
7 **Uninsurable** This policy shall not cover accounts, bills,  
8 and currency, deeds, evidences of debt, money or  
9 **excepted property.** securities; nor, unless specifically named  
10 hereon in writing, bullion or manuscripts.  
11 **Perils not** This Company shall not be liable for loss by  
12 **included.** fire or other perils insured against in this  
13 policy caused, directly or indirectly, by: (a)  
14 enemy attack by armed forces, including action taken by mili-  
15 tary, naval or air forces in resisting an actual or an immediately  
16 impending enemy attack; (b) invasion; (c) insurrection; (d)  
17 rebellion; (e) revolution; (f) civil war; (g) usurped power; (h)  
18 order of any civil authority except acts of destruction at the time  
19 of and for the purpose of preventing the spread of fire, provided  
20 that such fire did not originate from any of the perils excluded  
21 by this policy; (i) neglect of the insured to use all reasonable  
22 means to save and preserve the property at and after a loss, or  
23 when the property is endangered by fire in neighboring prem-  
24 ises; (j) nor shall this Company be liable for loss by theft.  
25 **Other Insurance.** Other insurance may be prohibited or the  
26 amount of insurance may be limited by en-  
27 dorsement attached hereto.  
28 **Conditions suspending or restricting insurance.** Unless other-  
29 wise provided in writing added hereto this Company shall not  
30 be liable for loss occurring:  
31 (a) while the hazard is increased by any means within the con-  
32 trol or knowledge of the insured; or  
33 (b) while a described building, whether intended for occupancy  
34 by owner or tenant, is vacant or unoccupied beyond a period of  
35 sixty consecutive days; or  
36 (c) as a result of explosion or riot, unless fire ensue, and in  
37 that event for loss by fire only.  
38 **Other perils.** Any other peril to be insured against or sub-  
39 **or subjects.** ject of insurance to be covered in this policy  
40 shall be by endorsement in writing hereon or  
41 added hereto.  
42 **Added provisions.** The extent of the application of insurance  
43 under this policy and of the contribution to  
44 be made by this Company in case of loss, and any other pro-  
45 vision or agreement not inconsistent with the provisions of this  
46 policy, may be provided for in writing added hereto, but no pro-  
47 vision may be waived except such as by the terms of this policy  
48 is subject to change.  
49 **Waiver.** No permission affecting this insurance shall  
50 **provisions.** exist, or waiver of any provision be valid,  
51 unless granted herein or expressed in writing  
52 added hereto. No provision, stipulation or forfeiture shall be  
53 held to be waived by any requirement or proceeding on the part  
54 of this Company relating to appraisal or to any examination  
55 provided for herein.  
56 **Cancellation** This policy shall be cancelled at any time  
57 **of policy.** at the request of the insured, in which case  
58 this Company shall, upon demand and sur-  
59 render of this policy, refund the excess of paid premium above  
60 the customary short rates for the expired time. This poli-  
61 cy may be cancelled at any time by this Company by giving  
62 to the insured a five days' written notice of cancellation with  
63 or without tender of the excess of paid premium above the pro  
64 rata premium for the expired time, which excess, if not ten-  
65 dered, shall be refunded on demand. Notice of cancellation shall  
66 state that said excess premium (if not tendered) will be re-  
67 funded on demand.  
68 **Mortgagee** If loss hereunder is made payable in whole  
69 **interests and** or in part, to a designated mortgagee not  
70 **obligations.** named herein as the insured, such interest in  
71 this policy may be cancelled by giving to such  
72 mortgagee a ten days' written notice of can-  
73 cellation.  
74 If the insured fails to render proof of loss such mortgagee, upon  
75 notice, shall render proof of loss in the form herein specified  
76 within sixty (60) days thereafter and shall be subject to the pro-  
77 visions hereof relating to appraisal and time of payment and of  
78 bringing suit. If this Company shall claim that no liability  
79 existed as to the mortgagor or owner, it shall, to the extent of pay-  
80 ment of loss to the mortgagee, be subrogated to all the mort-  
81 gagee's rights of recovery, but without impairing mortgagee's  
82 right to sue; or it may pay off the mortgage debt and require  
83 an assignment thereof and of the mortgage. Other provisions  
84 relating to the interests and obligations of such mortgagee may  
85 be added hereto by agreement in writing.  
86 **Pro rata liability.** This Company shall not be liable for a greater

87 proportion of any loss than the amount  
88 hereby insured shall bear to the whole insurance covering the  
89 property against the peril involved, whether collectible or not.  
90 **Requirements in** The insured shall give immediate written  
91 **case loss occurs.** notice to this Company of any loss, protect  
92 the property from further damage, forthwith  
93 separate the damaged and undamaged personal property, put  
94 it in the best possible order, and furnish a complete inventory  
95 of the destroyed or damaged property setting forth for each item,  
96 or by category if itemization is not reasonably practicable,  
97 the amount of loss claimed. The company may, in addition,  
98 require the insured to furnish a complete inventory of  
99 the destroyed, damaged and undamaged property, showing in  
100 detail quantities, costs, actual cash value and amount of loss  
101 claimed; and within sixty days after the loss, unless such time  
102 is extended in writing by this Company, the Insured shall render  
103 to this Company a proof of loss, signed and sworn to by the  
104 insured, stating the knowledge and belief of the insured as to  
105 the following: the time and origin of the loss, the interest of the  
106 insured and of all others in the property, the actual cash value of  
107 each item thereof and the amount of loss thereto, all encum-  
108 brances thereon, all other contracts of insurance, whether valid  
109 or not, covering any of said property, any changes in the title,  
110 use, occupation, location, possession or exposures of said prop-  
111 erty since the issuing of this policy, by whom and for what  
112 purpose any building herein described and the several parts  
113 thereof were occupied at the time of loss; and whether or not it  
114 then stood on leased ground, and shall furnish a copy of all the  
115 descriptions and schedules in all policies and, if required, verified  
116 plans and specifications of any building, fixtures or machinery  
117 destroyed or damaged. The insured, as often as may be reason-  
118 ably required, shall exhibit to any person designated by this  
119 Company all that remains of any property herein described, and  
120 submit to examinations under oath by any person named by this  
121 Company, and subscribe the same; and, as often as may be  
122 reasonably required, shall produce for examination all books of  
123 account, bills, invoices and other vouchers, or certified copies  
124 thereof if originals be lost, at such reasonable time and place as  
125 may be designated by this Company or its representative, and  
126 shall permit extracts and copies thereof to be made.  
127 **Appraisal.** In case the insured and this Company shall  
128 fail to agree as to the actual cash value or  
129 the amount of loss, then, on the written demand of either, each  
130 shall select a competent and disinterested appraiser and notify  
131 the other of the appraiser selected within twenty days of such  
132 demand. The appraisers shall first select a competent and dis-  
133 interested umpire; and failing for fifteen days to agree upon  
134 such umpire, then, on request of the insured or this Company,  
135 such umpire shall be selected by a judge of a court of record in  
136 the state in which the property covered is located. The ap-  
137 praisers shall then appraise the loss, stating separately actual  
138 cash value and loss to each item; and, failing to agree, shall  
139 submit their differences, only, to the umpire. An award in writ-  
140 ing, so itemized, of any two when filed with this Company shall  
141 determine the amount of actual cash value and loss. Each  
142 appraiser shall be paid by the party selecting him and the ex-  
143 penses of appraisal and umpire shall be paid by the parties  
144 equally; provided, however, if the written demand is made by this  
145 Company, then the insured shall be reimbursed by this Company for  
146 the reasonable cost of the insured's appraiser and the insured's  
147 portion of the cost of the umpire.  
148 **Company's** It shall be optional with this Company to  
149 **options.** take all, or any part, of the property at the  
150 agreed or appraised value, and also to re-  
151 pair, rebuild or replace the property destroyed or damaged with  
152 other of like kind and quality within a reasonable time, on giv-  
153 ing notice of its intention so to do within thirty days after the  
154 receipt of the proof of loss herein required.  
155 **Abandonment.** There can be no abandonment to this Com-  
156 pany of any property.  
157 **When loss** The amount of loss for which this Company  
158 **payable.** may be liable shall be payable sixty days  
159 after proof of loss, as herein provided, is  
160 received by this Company and ascertainment of the loss is made  
161 either by agreement between the insured and this Company ex-  
162 pressed in writing or by the filing with this Company of an  
163 award as herein provided.  
164 **Suit.** No suit or action on this policy for the recov-  
165 ery of any claim shall be sustainable in any  
166 court of law or equity unless all the requirements of this policy  
167 shall have been complied with, and unless commenced within  
168 two years next after inception of the loss.  
169 **Subrogation.** This Company may require from the insured  
170 an assignment of all right of recovery against  
171 any party for loss to the extent that payment therefor is made  
172 by this Company.



**BUSINESSOWNERS  
AMENDATORY  
ENDORSEMENT**

- I. The following is added to COVERAGE B BUSINESS PERSONAL PROPERTY, Page 2 of 23 in the SPECIAL BUSINESSOWNERS POLICY:  
**DAMAGE TO BUILDINGS FROM THEFT, BURGLARY or ROBBERY.**

This policy also covers loss (except by fire or explosion) to

- (1) that part of the building and
- (2) equipment pertaining to the service of the building in that part of the building occupied by the insured and containing property covered directly resulting from theft, burglary or robbery (including attempted theft, burglary or robbery) provided the insured is liable for such damage.

In no event shall this coverage apply:

- (1) to glass (other than glass building blocks) or to any lettering or ornamentation.
- (2) to building property or equipment removed from the premises.

- II. The following paragraph is added to COVERAGE C LOSS OF INCOME, Page 2 of 23:

**MEDIA FOR ELECTRONIC DATA PROCESSING:**

The Company shall only be liable for loss of income resulting from destruction of media for, or programming records pertaining to, electronic data processing or electronically controlled equipment, including data contained on such records for not exceeding:

- (1) 30 consecutive calendar days; or
- (2) the length of time that would be required to rebuild, repair or replace such other property described as has been damaged or destroyed; whichever is the greater length of time.

- III. PROPERTY SUBJECT TO LIMITATIONS, Page 3 of 23 in the SPECIAL BUSINESSOWNERS POLICY is amended as follows:

Revise the beginning of the second sentence to read:

Except for loss caused by

- (a) fire, lightning, windstorm, hail, explosion, smoke, aircraft, vehicles, riot, civil commotion, and leakage or accidental discharge from automatic fire protective systems; and
- (b) vandalism or malicious mischief with respect only to items 2, 3 and 4 below:

- IV. (Applicable in all states except Maine, Michigan, New Hampshire, New Mexico, North Carolina and Virginia).

Condition "4. TIME OF INCEPTION," Page 16 of 23 of the GENERAL CONDITIONS is replaced by the following:

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 A.M. Standard Time.

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.

- V. Condition "7. SUBROGATION," Pages 16 and 17 of 23 of the GENERAL CONDITIONS is deleted and replaced by the following:

**7. SUBROGATION.**

- (a) In the event of any payment under this policy, the Company shall be subrogated to all Insured's rights of recovery against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights.

(b) This insurance shall not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for loss occurring to the property described.

(c) The insured shall do nothing after loss to prejudice the Company's rights of subrogation.

VI. The following exclusion is added to SECTION I—PERILS AND EXCLUSIONS, Page 5 of 23:

caused by volcanic eruption unless direct loss by fire or breakage of glass or safety glazing material ensues. In this event, this Company shall be liable for only the direct loss to the property insured caused by the ensuing fire and if an insured peril, the ensuing breakage of glass or safety glazing material.

Volcanic eruption means the eruption, explosion or effusion of a volcano.

VII. EXTERIOR GRADE FLOOR GLASS, Page 6 of 23 in the SPECIAL BUSINESSOWNERS POLICY is amended as follows:

Replace the second paragraph with the following:

The following do not apply to this optional coverage:

1. Under SECTION I—PROPERTY COVERAGE, the PROPERTY SUBJECT TO LIMITATIONS provision and,
2. The PERILS AND EXCLUSIONS provisions contained in this policy, except the Section I—War Risk, Governmental Action and Nuclear Exclusions.

VIII. The SPECIAL BUSINESSOWNERS POLICY is amended as follows:

A. The following additional coverage is added to SECTION I—PROPERTY COVERAGE:

Additional Coverage—Collapse

This policy insures against risk of direct physical loss involving collapse of a building or any part of a building caused only by one or more of the following:

- a. fire; lightning; windstorm; hail; explosion; smoke; aircraft; vehicles; riot; civil commotion; vandalism or malicious mischief; breakage of glass; falling objects; weight of snow, ice or sleet; water damage; all only as insured against in this policy;
- b. hidden decay;
- c. hidden insect or vermin damage;
- d. weight of people or personal property;
- e. weight of rain which collects on a roof;
- f. use of defective materials or methods in construction, remodeling or renovation if the collapse occurs during the course of the construction, remodeling or renovation.

This Company shall not be liable for loss to the following types of property, if otherwise covered in this policy, under items b., c., d., e. and f. unless the loss is a direct result of the collapse of a building:

outdoor radio or television antennas, including their lead-in wiring, masts or towers; awnings; gutters and downspouts; yard fixtures; outdoor swimming pools; fences; piers, wharves and docks; beach or diving platforms or appurtenances; retaining walls; walks, roadways and other paved surfaces.

Collapse does not include settling, cracking, shrinkage, bulging or expansion.

This Additional Coverage does not increase the amount(s) of insurance provided in this policy.

B. SECTION I—PERILS AND EXCLUSIONS

1. PERILS INSURED is deleted and replaced by the following:

This policy insures against risk of direct physical loss unless the loss is excluded in Exclusions below, subject to all the provisions contained herein.



The following is added to the EXCLUSIONS section:

This policy does not insure under Sec 1 for loss caused directly or indirectly by any of the following exclusions in this policy. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

- a. Ordinance or law;
- b. Power, heating or cooling failure;
- c. Earth movement;
- d. Volcanic eruption;
- e. Flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray;
- f. Water which backs up through sewers or drains;
- g. Water below the surface of the ground;
- h. War Risk and Governmental Action;
- i. Nuclear Clause and Nuclear Exclusion.

3. The following exclusions are added to the EXCLUSIONS section:

- a. The Company shall not be liable for loss caused by collapse, except as provided in the Collapse Additional Coverage. If a peril not otherwise excluded ensues on the described premises, this Company will pay only for loss caused by the ensuing peril.
- b. The Company shall not be liable for loss caused by any of the following. However, any ensuing loss not excluded or excepted in this policy is covered.

(1) Weather conditions. However, this exclusion only applies if weather conditions contribute in any way with any of the following exclusions in this policy relating to:

- (a) Ordinance or law;
- (b) Power, heating or cooling failure;
- (c) Earth movement;
- (d) Volcanic eruption;
- (e) Flood, surface water, waves, tidal water or tidal wave, overflow of streams or other bodies of water, or spray;
- (f) Water which backs up through sewers or drains;
- (g) Water below the surface of the ground;
- (h) War Risk and Governmental Action;
- (i) Nuclear Clause and Nuclear Exclusion;

(2) Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body;

(3) Faulty, inadequate or defective:

- (a) planning, zoning, development, surveying, siting;
- (b) design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (c) materials used in repair, construction, renovation or remodeling or
- (d) maintenance;

of part or all of any property whether on or off the described premises.

4. Exclu 6.(d) faulty design, materials or workmanship is deleted.

5. The Company shall not be liable for loss caused by the release, discharge or dispersal of pollutants unless the release, discharge or dispersal is itself caused by fire, lightning, aircraft, explosion, riot, civil commotion, smoke, vehicles, windstorm or hail to property contained in any building, vandalism, malicious mischief or leakage or accidental discharge from automatic fire protective systems. But if loss by any of the above twelve perils ensues, then this Company shall be liable for only loss caused by the ensuing peril.

IX. The following is added under SECTION I—PROPERTY COVERAGES to PROPERTY NOT COVERED:

This policy does not cover land (including land on which covered property is located) or water.

X. The following is added under SECTION I—PROPERTY COVERAGES to the DEBRIS REMOVAL provisions, Page 1 of 23:

The total liability under this policy for debris removal expense only shall not exceed a) \$5,000, plus b) 25% of: i) the amount recoverable under this policy for loss to property plus ii) the deductible in this policy applicable to such loss. Nor will this insurance cover debris removal expenses reported to the Company more than 180 days after the earlier of the date of direct loss or the expiration of this policy.

This Debris Removal coverage does not apply to the cost to extract pollutants from land or water, or to remove, restore or replace polluted land or water.

XI. The following is added to COVERAGE A BUILDINGS, Page 1 of 23:  
POLLUTANTS CLEAN UP AND REMOVAL

This policy covers expense to extract pollutants from land or water at the described premises if the release, discharge or dispersal of the pollutants is occasioned by loss caused by any of the perils insured against in this policy during the policy period. Such expenses must be reported to the Company within 180 days after the earlier of the date of direct loss or the expiration of this policy.

The liability of the Company for loss under this coverage shall not exceed \$10,000 in the aggregate for the sum of all such expense incurred arising out of insured perils occurring during each separate twelve month period of this policy. This limit applies as an additional amount of insurance.

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

XII. The following is added to COVERAGE C LOSS OF INCOME, Page 2 of 23:

Loss of income shall not be payable for any increased period of time required due to the enforcement of any law regulating the prevention, control, repair, clean-up or restoration of environmental damage.

This endorsement must be attached to the Businessowners Policy Change Endorsement when issued after the policy is written.



## BUSINESSOWNERS

## SUPPLEMENTAL DECLARATIONS ENDORSEMENT

**BEAM**

Location of described premises, as stated in the Declarations, includes the following and insurance is provided the named insured with respect to those premises described below and with respect to those coverages and kinds of property for which a specific limit of liability is shown below and in the declarations, subject to all the terms of this policy including forms and endorsements made a part hereof:

## SCHEDULE

Loc. No.	Described Premises (Address, City, State, Zip Code)	Occupancy	Section I Limit of Liability	
			Coverage A Building	Coverage B Contents
1.	9548 24th Bay Street Norfolk, Virginia 23518	Apts.	94,000.	NIL
2.	9552 24th Bay Street Norfolk, Virginia 23518	Apts.	94,000.	NIL
3.	9556 24th Bay Street Norfolk, Virginia 23518	Apts.	463,000.	NIL
4.	9620 13th Bay Street Norfolk, Virginia 23518	Apts.	140,000.	NIL
5.	9620 13th Bay Street Norfolk, Virginia 23518	Apts.	218,000.	NIL

Refer to Item 5 of the policy declarations for Section II limit of liability.





IL 00 02  
(Ed. 04 77)

### EFFECTIVE TIME ENDORSEMENT

The time of inception and the time of expiration of this policy and of any schedule or endorsement attached shall be 12:01 a.m. standard time.

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.

**AMENDATORY ENDORSEMENT  
PREJUDGMENT INTEREST**

The following is added to the Supplementary Payments provision in this policy:

The Company will pay, in addition to the applicable limit of liability, prejudgment interest awarded against the insured on that part of the judgment the Company pays. If the Company makes an offer to pay the applicable limit of its liability, the Company will not pay any prejudgment interest based on that period of time after the offer.

AMENDATORY ENDORSEMENT

IL 02 56  
(Ed. 10 86)

VIRGINIA

A. The provisions of this policy pertaining to cancellation by the Company are amended as follows:

1. This policy may be cancelled by the Company by sending written notice of cancellation by registered or certified mail or by delivering written notice to the named insured, including the reason for cancellation, at least:
  - a. 15 days before the effective date of cancellation if the Company cancels for nonpayment of premium; or
  - b. 45 days before the effective date of cancellation if the Company cancels for any other reason.

B. The following condition is added:

NONRENEWAL

If the Company decides not to renew this policy, the Company will send written notice of nonrenewal by registered or certified mail or by delivering written notice to the named insured, at the mailing address shown in this policy, including the reason for nonrenewal, at least:

- a. 15 days before the expiration date if the nonrenewal is due to nonpayment of premium; or
- b. 45 days before the effective date of cancellation if the nonrenewal is for any other reason.



(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

CU 271  
(Ed. 6-86)

### POLLUTION EXCLUSION

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following:

**BUSINESSOWNERS POLICY  
COMPREHENSIVE GENERAL LIABILITY INSURANCE  
CONTRACTUAL LIABILITY INSURANCE  
MANUFACTURERS' AND CONTRACTORS' LIABILITY INSURANCE  
OWNERS' AND CONTRACTORS' PROTECTIVE LIABILITY INSURANCE  
OWNERS; LANDLORDS' AND TENANTS' LIABILITY INSURANCE  
SMP LIABILITY INSURANCE  
STOREKEEPERS INSURANCE  
CONTRACTORS LIABILITY  
RESTAURANT LIABILITY  
BEAUTY SHOP - BARBER SHOP  
FUNERAL DIRECTORS  
VETERINARIANS  
RAILROAD PROTECTIVE**

This endorsement, effective

(12:01 A.M., standard time)

, forms a part of Policy No.

issued to

by

\_\_\_\_\_  
Authorized Representative

It is agreed that the exclusion relating to the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants is replaced by the following:

- (1) to bodily injury or property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - (a) at or from premises owned, rented or occupied by the named insured;
  - (b) at or from any site or location used by or for the named insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) which are at any time transported, handled, stored, treated, disposed of, or processed as waste by or for the named insured or any person or organization for whom the named insured may be legally responsible; or
  - (d) at or from any site or location on which the named insured or any contractors or subcontractors working directly or indirectly on behalf of the named insured are performing operations:
    - (i) if the pollutants are brought on or to the site or location in connection with such operations; or
    - (ii) if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the pollutants.
- (2) to any loss, cost or expense arising out of any governmental direction or request that the named insured test for, monitor, clean up, remove, contain, treat, detoxify or neutralize pollutants.

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

Subparagraphs (a) and (d) (i) of paragraph (1) of this exclusion do not apply to bodily injury or property damage caused by heat, smoke or fumes from a hostile fire. As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

(The Attaching Clause need be completed only when this endorsement is issued subsequent to preparation of the policy.)

LIABILITY

L 9235  
(Ed. 7-78)

GL 00 19  
AMENDATORY ENDORSEMENT - ADDITIONAL DEFINITION

This endorsement, effective \_\_\_\_\_, forms a part of policy No. \_\_\_\_\_  
(12:01 A. M., standard time)

issued to \_\_\_\_\_

by \_\_\_\_\_

.....  
Authorized Representative

It is agreed that the following definition is added:

"loading or unloading", with respect to an automobile, means the handling of property after it is moved from the place where it is accepted for movement into or onto an automobile or while it is in or on an automobile or while it is being moved from an automobile to the place where it is finally delivered, but "loading or unloading" does not include the movement of property by means of a mechanical device (other than a hand truck) not attached to the automobile.

GENERAL ENDORSEMENT

BEAM

NAMED INSURED

James E. Owens, William Weeks, Thomas A. Connor,  
Margaret Cody, Jean Ford, David L. Huffman and Michael  
J. Coyle T/A Harborview Associates

Nothing herein contained shall vary, alter, waive or extend any of the terms, representations, conditions or agreements of the policy other than as above stated.

To be attached to and forming a part of Policy No. XBW(90)50 26 05 24 issued  
to Harborview Associates by THE OHIO CASUALTY INSURANCE CO.

This endorsement effective 10-01-89

Hamilton Agency, Inc. Agent

*Joseph L. Marston*  
President


3218 7-59-250M

End. No. \_\_\_\_\_ Date Typed 07-05-89np



May 24. 1990

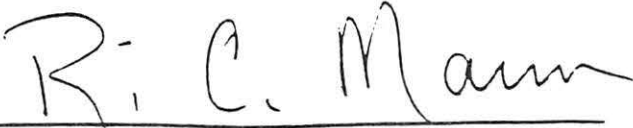
William R. Kugel, being first duly sworn, says that he is Assistant Secretary of West American Insurance Company of the City of Anaheim, State of California and that he has full authority to act on behalf of West American Insurance Company. William R. Kugel says that he has caused to be prepared a true copy of Policy Number XBW (90) 50 26 05 24 issued by said Company in favor of James E. Owens, ETAL (See Form 3218) C/O James E. Owens-Landmark Realty for the period 10/01/89 to 10/01/90; that copy of said Policy Number XBW (90) 50 26 05 24 is hereto attached.

  
\_\_\_\_\_  
William R. Kugel  
\_\_\_\_\_  
Assistant Secretary

STATE OF OHIO

COUNTY OF BUTLER

On this 24th day of May, A.D. 1990, personally appeared before me the above William R. Kugel personally known to be the same person described in and who executed the foregoing instrument, who after being first duly sworn, acknowledged to me that he executed the same.

  
\_\_\_\_\_

R. C. MANN  
Notary Public, State of Ohio

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK  
THE WEST AMERICAN INSURANCE COMPANY,

Plaintiff,

vs.

AT LAW NO. L91-2481

S.F. (JANE DOE), an infant, et al.,

Defendants.

**DEFENDANTS' ANSWERS TO FIRST SET OF INTERROGATORIES AND  
RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW, the defendants S.F. (Jane Doe), K.F. (Sara Doe) et al., by counsel, and provides the following Answers to Interrogatories propounded by the plaintiff, The West American Insurance Company, by counsel, on or about March 4, 1994:

1. Please state if you contend that the Named Insureds' alleged negligence in the hiring, selection, retention and supervision of Charles R. Vette ("Vette") presents more than a single "occurrence" under the Policy. If so, state how many total "occurrences" you contend are presented by the alleged negligence, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

**ANSWER:** Yes. Each molestation of each defendant was a single occurrence.

Shauna Goss-Fraduada - seven to ten occurrences (see dep. pp. 48 & 49).

Glenn Hammond - six occurrences (see attached warrants of arrest).

James Hammond - four occurrences (see attached warrants of arrest).

Farod Miller	- two occurrences (see attached warrants of arrest).
Jessie McBride	- three occurrences (see attached warrants of arrest).
Michael Page	- three occurrences (see attached warrants of arrest).
Christopher Page	- one occurrence (see attached warrants of arrest).

Defendants reserve the right to supplement this answer to include other occurrences.

2. State how many "occurrences" under the Policy you contend are presented by the Named Insureds' alleged negligent hiring of Vette, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: See answer to Interrogatory #1.

3. State how many "occurrences" under the Policy you contend are presented by the Named Insureds' alleged negligent selection of Vette, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: See answer to Interrogatory #1.

4. State how many "occurrences" under the Policy you contend are presented by the Named Insureds' alleged negligent retention of Vette, provide a detailed explanation of the basis of your contention, and identify all facts, communications and



documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: See answer to Interrogatory #1.

5. State how many "occurrences" under the Policy you contend are presented by the Named Insureds' alleged negligent supervision of Vette, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: See answer to Interrogatory #1.

6. Please state if you still contend that the Named Insureds are liable to you for any conduct other than the alleged negligent hiring, retention, selection and supervision of Vette (i.e., the alleged failure to maintain "fit premises", "negligent leasing", etc.). If so, provide a detailed explanation of the basis of your contention, state the number of "occurrences" which you contend this presents under the Policy, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: See answer to Interrogatory #1.

7. Please state whether it is your contention that the alleged multiple attacks on Jane Doe by Vette (and/or by any other person) amount to more than one

"occurrence" under the Policy. If so, state the number of "occurrences" which you contend are presented by the alleged multiple attacks, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: Yes. See answer to Interrogatory #1.

8. Please state whether it is your contention that the alleged multiple attacks by Vette (and/or any other person) on each of the Other Children amount to more than one "occurrence" under the Policy. If so, state the number of "occurrences" per child which you contend are presented by the alleged attacks, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: Yes. See answer to Interrogatory #1.

9. Please state if you contend that the total insurance coverage available from West American to the Named Insureds under the Policy with respect to all the claims brought by Jane Doe and Sara Doe and, also, all such claims made by the Other Children (and their parents), exceeds the Policy's limit of liability of \$1 million dollars. If so, please state the entire amount of coverage which you contend is available to each such person, provide a detailed explanation of the basis of your contention, and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: Yes. The plaintiffs are entitled to \$1 million coverage for each occurrence. See answer to Interrogatory #1 for the number of occurrences.

10. State all facts upon which you base your allegations that the Named Insureds were negligent in hiring Vette. Identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your allegations.

ANSWER: Vette had a criminal record which, if checked, would have alerted any reasonable employer that he was unfit and would be dangerous in a position as a resident manager for a complex surrounded by children. The insureds did not even bother to check.

11. State all facts upon which you base your allegations that the Named Insureds were negligent in selecting Vette. Identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your allegations.

ANSWER: See answer to Interrogatory #1.

12. State all facts upon which you base your allegations that the Named Insureds were negligent in retaining Vette. Identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your allegations.

ANSWER: See answer to Interrogatory #1.

13. State all facts upon which you base your allegations that the Named Insureds were negligent in supervising Vette. Identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your allegations.



ANSWER: If the insureds had bothered to check the premises, they would have discovered that Vette was involved in sexually molesting these children.

14. If you contend that the policy obligates West American to indemnify the Named Insureds if they are found liable for damages arising out of their intentional conduct, state in full detail the basis for your contention and identify all facts, communications and documents (of which you have knowledge) that refer to, relate to, evidence or support your contention.

ANSWER: Defendants do not contend that the policy indemnifies the insureds for their intentional acts.

15. If you contend or believe that West American or any agent or representative of West American has made an admission against interest, whether in writing or orally, regarding the subject matter of this lawsuit (hereinafter "Admission"),

- (a) identify the person(s) who made such Admission(s);
- (b) set forth the facts or matters which were contained in the Admission(s);
- (c) describe the time, place and circumstances under which each such Admission(s) were made;
- (d) identify the person(s) to whom the Admission(s) were made; and
- (e) identify all documents and communications, of which you have knowledge, which refer to, relate to, or evidence such Admission(s).

ANSWER: Objection. Work product.

16. Identify each person whom you expect to call as an expert witness at trial,

state the subject matter on which the expert is expected to testify, and state the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion.

ANSWER: Will supplement.

**RESPONSE TO REQUEST FOR PRODUCTION OF DOCUMENTS**

1. All documents identified in your responses to the foregoing interrogatories.

RESPONSE: None.

2. All documents used by you in preparing your responses to the foregoing interrogatories.

RESPONSE: None

3. All documents to which you referred, but did not use, in preparing your responses to the foregoing interrogatories.

RESPONSE: See transcript of Vette trial.

4. All documents used, or referred to, by you in preparing your Answer To Amended Motion For Declaratory Judgment filed herein.

RESPONSE: Objection. Overbroad.

5. All documents used by you in preparing each of your Motions For Judgment

in the following cases pending in the Circuit Court of the City of Norfolk: case number CL90-3278 and case numbers CL93-4432 through CL93-4437.

RESPONSE: Objection. Overbroad.

6. All documents which you expect to utilized, have marked for identification, or introduced at the trial or any hearing in this case.

RESPONSE: Objection. Work product.

S.F. (JANE DOE), an infant, et al.,

BY: 

OF COUNSEL

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
(804) 622-6000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via facsimile and regular mail to David W. Robinson, Esquire, HIRSCHLER, FLEISCHER, WEINBERG, COX & ALLEN, The Federal Reserve Bank Building, 701 East Byrd Street, Richmond, Virginia, 23219 and mailed to Richard Y. Atlee, Esquire, HALL, FOX, ATLEE AND ROBINSON, P.C., Crestar Bank Building, 11817 Canon Boulevard, Suite 604, Newport News, Virginia 23606.



# WARRANT OF ARREST - FELONY

VA. CODE ANN. §19.2-11.1

City of Norfolk

General District Court ☐ Criminal ☐ Traffic  
☐ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about between 12-1-89 & 12-31-89 did unlawfully and feloniously in violation of Section 18.2-67.1(1), Code of Virginia:

Did commit oral sodomy on Glen Hammond, W/M, age 12

Occ 9620 13th Bay St. #3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

W. R. Crank, IPD 0808, Complainant.

1-19-90 10:05PM

DATE AND TIME ISSUED

Clerk Magistrate Judge

FORM DC 312 5/86 (114 9-015 8/89)

HEARING DATE

CASE NO.

VEITE, Charles Raymond

In Custody Jail

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT	WT	HT	WT	EYES	HAIR
W	M	5 10 37						

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:



# WARRANT OF ARREST - FELONY

VA CODE ANR §18.2-36-32

General District Court

☐ Criminal ☐ Traffic  
☐ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about between 11-1-89 & 11-30-89 did unlawfully and feloniously in violation of Section 18.2-67.1(1), Code of Virginia:

Did commit oral sodomy on Glen Hammond, Jr., W/41, age 12

Occ. 9620 13th Bay St. #3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

The undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

M R Crank HPD 0008, Complainant.

1-19-90 9:45PM  
DATE AND TIME ISSUED

☒ CLERK ☐ MAGISTRATE ☐ JUDGE

HEARING DATE

CASE NO.

VEITE, Charles Raymond

In-Custody-Jail

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT	WT	HT	WT	EYES	HAIR
		5-10-87						

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

for SHERIFF

Attorney for the Accused:



# WARRANT OF ARREST — FELONY

VA. CODE ANN. §19.2-15.72

Honorable  
CITY OF NORFOLK

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about between 12-1-89 & 12-31-89 did unlawfully and feloniously in violation of Section

19.2-67.1(1) Code of Virginia:

Did force Glen Hammond, Jr., 11/11, age 12, to commit oral sodomy on him

Occ. 9620 13th Bay St. #3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

11 R Crank, JPD 0302, Complainant.

1-19-90 9:50PM

DATE AND TIME ISSUED

CLEAR MAGISTRATE JUDGE

FORM DC-312 5/86 (114 9-015 8/89)

HEARING DATE

CASE NO.

VEITE, Charles Raymond

ACCUSED

In Custody- Jail

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

DATE	SEX	DOB	DOB	VA	PT	IN	WGT	HT	HAIR
11-11-89	M	5-19	19	17					

ARRESTED BY

11/11/89

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA CODE ANN. §19.2-71, 72

City or County: Harrisonburg General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about between 11-1-89 & 11-30-89 did unlawfully and feloniously in violation of Section

19.2-67.3, Code of Virginia:

Did commit aggravated sexual battery on Glen Hammond, Jr., W/H, age 12

by fondling him

Occ. 9620 13th Bay St. #3

check if applicable:  
☐ commercial motor vehicle ☐ hazardous materials

The undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

XXXXXXXXXXXXXXXXXXXX H. R. Crank MPD 0808, Complainant.

1-19-89 9:40 PM  
DATE AND TIME ISSUED

James M. Crank  
CLERK OF COURSE

HEARING DATE: CASE NO.

WHITE, Charles Raymond  
Accused

In Custody Jail  
ADDRESS LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT.	WT.	EYES	HAIR
<u>W</u>	<u>M</u>	<u>5-19-37</u>	<u>5</u>	<u>137</u>	<u></u>	<u></u>

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

for SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA CODE ANN. §18.2-16, 18

City of Richmond

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about Between 12-1-89 & 12-31-89 did unlawfully and feloniously in violation of Section

18.2-67.3, Code of Virginia:

Did commit aggravated sexual battery on Glen Hammond, W/H, age 12 by  
fondling him

Occ. 9620 13th Day St, #3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

R Crank (IPD 0609), Complainant.

1-19-90 DATE AND TIME ISSUED

☐ CLERK ☒ MAGISTRATE ☐ JUDGE

HEARING DATE

CASE NO.

...VETTE, Charles Raymond

...In Custody-Jail

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT.	WT.	HAIR
W	M	5 19 37			

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:



# WARRANT OF ARREST - FELONY

VA. CODE ANN. §18.2-26.2

NORFOLK  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

on about between 11/1/89 & 12/31/89 did unlawfully and feloniously in violation of Section

18.2-67.3

Code of Virginia:

Did commit aggravated sexual battery on James Hammond, W/H, age 11.

occ: 9620 13th Bay St. Apt. 3

HEARING DATE

CASE NO.

VETER, Charles Raymond  
ACCUSED

In custody

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

DATE	SEX	DOB	HT	WT	EYES	HAIR
W. H.	05	19	37			

521 40 9245

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:

check if applicable:  
☐ commercial motor vehicle ☐ hazardous materials

If the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

Det. H. R. Crank, 0608, Yth-Pur., No Ct. Date, Norfolk Police Department, Complainant.

January 19, 1990 at 10:32 PM

DATE AND TIME ISSUED

J. D. Davis  
F. D. Davis

CLEAR ☐ MAGISTRATE ☐ JUDGE

# WARRANT OF ARREST - FELONY

VA. CODE ANN. §19.2-PL-72

NORFOLK

CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about Between 11/1/89 & 12/31/89 did unlawfully and feloniously in violation of Section

19.2-67.3

DATE

Code of Virginia:

Did commit aggravated sexual battery on James Hammond, W/H, age 11.

occ: 9620 13th Bay St. Apt. 3

HEARING DATE:

CASE NO.

VETTE, Charles Raymond

ACCUSED

In custody

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

LAST	FIRST	MI.	DOB	MO	DAY	YR.	HT.	WT.	DOB.	EYES	HAIR
V	H	05	19	37							
DOB	521 40 9245										

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

SADIE NO. AGENCY AND JURISDICTION

for SHERIFF

Attorney for the Accused:

check if applicable: ☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

Inv. H. R. Crunk, 0803, Yth-Pur., No Ct. Date, Norfolk Police Department

Complainant.

*F. D. Davis*  
F. D. Davis

January 19, 1990 at 10:30 PM

DATE AND TIME ISSUED

CLERK ☒ MAGISTRATE ☐ JUDGE

## VA CODE ANN §16.2-14, 70

CITY OF CHICAGO

DATE AND TIME ELAPSED

☐ CLERK    ☒ MAGISTRATE    ☐ JUDGE

FORM DC-312 5/86 (114 9-015 8/89)

HEARING DATE				CASE NO.			
<b>VEITE, Charles Raymond</b> ACCUSED							
In custody ADDRESS/LOCATION							
COMPLETE DATA BELOW IF KNOWN							
DATE	SEX	DOB	DOB	YR	FL	HT	WGT
W	H	05	19	37			
521 40 9245							
Commonwealth of Virginia <b>WARRANT OF ARREST</b> <b>FELONY</b>							
EXECUTED by arresting the Accused named above on this day:							
DATE AND TIME							
ARRESTING OFFICER							
BADGE NO., AGENCY AND JURISDICTION							
SHERIFF							
Attorney for the Accused:							



# WARRANT OF ARREST — FELONY

VA. CODE ANN. §19.2-71, 72

NORFOLK  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about Between 11/1/89 & 12/31/89 did unlawfully and feloniously in violation of Section

18.2-67.1

, Code of Virginia:

Did force James Hammond, W/H, age 11 to commit oral sodomy on him.

occ: 9620 13th Bay St. Apt. 3

check if applicable:  
☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

Inv. H. R. Crank, 0808, Yth-Bur., No Ct. Date, Norfolk Police Department, Complainant.

January 19, 1990 at 10:27 PM  
DATE AND TIME ISSUED

*F. D. Davis*  
F. D. Davis

CLERK ☒ MAGISTRATE ☐ JUDGE

FORM DC-312 5/86 (114 9-015 8/89)

HEARING DATE

CASE NO.

VETTE, Charles Raymond

ACCUSED

In custody

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT.	WT.	EYES	HAIR
W	H	05 19 37				

1521-40 9245

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

for SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA. CODE ANN. § 19.2-11, -12

\_\_\_\_\_  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

or about between 5PM and 7:30PM 11-27-89 did unlawfully and feloniously in violation of Section  
18.2-67.1(1) \_\_\_\_\_, Code of Virginia: \_\_\_\_\_

Did commit oral sodomy on Farod Miller, B/M, age 10

Occ. 9620 18th Bay St. #3

☐ check if applicable:  
☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

II R Crank HPD 0608

Complainant.

1-19-90 8:35PM  
DATE AND TIME ISSUED

James M. Connerly  
CLERK ☒ MAGISTRATE ☐ JUDGE

FORM DC-312 5/86 (114 9-015 8/89)

HEARING DATE CASE NO.

\_\_\_\_\_  
VETTE, Charles Raymond

\_\_\_\_\_  
In Custody Jail  
ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT.	WT.	EYES	HAIR
W	M	5 19 37				

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA. CODE ANN. §19.2-71-72

Horfolk  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☐ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on or about between 5PM & 7:30PM 11-27-89 did unlawfully and feloniously in violation of Section

18.2-67.3

Code of Virginia:

Did commit aggravated sexual battery on Farid Miller, D/H, age 10,  
by fondling him

Occ. 9620 13th Bay St. #3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

H R Crank HPD 0803

Complainant.

1-19-90 8:40PM

DATE AND TIME ISSUED

*W. M. Crank*  
CLERK MAGISTRATE JUDGE

HEARING DATE CASE NO.

VEITE, Charles Raymond

In Custody-Jail

ADDRESS/LOCATION

COMPLETE DATA BELOW IF KNOWN

RACE	SEX	DOB	HT	WT	EYES	HAIR
W	M	5/19/37				

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:



# WARRANT OF ARREST - FELONY

VA. CODE ANN. §15.2-71, 72

NOFFOLK  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on BETWEEN 8:30PM ON 12/23/87 & 11:00AM ON  
or about DECEMBER 24, 1987 did unlawfully and feloniously in violation of Section

18.2-67.3

, Code of Virginia:

DID COMMIT AGGRAVATED SEXUAL BATTERY ON JESSIE MCGRIDE, F/M, AGE 33.

OCC: 9470 13TH DAY ST. APT. 3

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

W. M. P. CRANK, 04713-YTH-SUR, NOCT. DATE, NOFFOLK POLICE DEPARTMENT, Complainant.

JANUARY 19, 1988 AT 1:52AM

DATE AND TIME ISSUED

*A. D. Davis*  
F. D. DAVIS

☐ CLERK ☒ MAGISTRATE ☐ JUDGE

FORM DC-312 5/84 (114-9-015 2/89)

HEARING DATE

CASE NO.

WETTER, CHARLES RAYMOND  
ACCUSED

9470 13TH DAY ST. APT 3

ADDRESS/LOCATION

NOFFOLK

COMPLETE DATA BELOW IF KNOWN

DATE	SEX	DOB	DOB	YR	FT	IN	WGT	EYES	HAIR
4	M	75	12	37					
DOB									

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BAND NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

HOPEWELL

CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

about DECEMBER 24, 1977 did unlawfully in violation of Section

18.2-47.3

Code of Virginia:

TO FORCE JESSIE MCINTIRE, JR., AGE 33, TO COMMIT ARAI SCROTHY ON 11/11.

LOC: 13TH DAY ST. APT. 3

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

I.V. M. R. CRANE, DADA, YTH-DUP, MOCT. DATE, HOPEWELL POLICE DEPARTMENT, Complainant.

JANUARY 29, 1978 AT 1:40 AM

DATE AND TIME ISSUED

CLERK OF MAGISTRATE JUDGE

FORM DC-312 (REV. 11-14-76) (11/77)

HEARING DATE

CASE NO.

ACCUSED:

WITTE, CHARLES RAYMOND

LAST NAME, FIRST NAME, MIDDLE INITIAL

13TH DAY ST. APT. 3

ADDRESS/LOCATION

HOPEWELL

COMPLETE DATA BELOW IF KNOWN

DATE	SEX	DOB	AGE	YE	FE	HT	WT	EYES	HAIR
4	M	05	18	37					

DOB: 05/18/37

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

☐ EXECUTED by arresting the Accused named above on this day:

DATE AND TIME

ARRESTING OFFICER'S

RANGE NO., AGENCY AND JURISDICTION

SHEBEN

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA. CODE ANN. §16.1-261, 271

HOPKINS  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on  
about 12/23/89 at 8:37 PM ON 12/23/89 at 8:37 PM ON  
about 12/23/89 at 8:37 PM ON 12/23/89 at 8:37 PM ON did unlawfully in violation of Section

86.2-1.7.1

ORAL

Code of Virginia:

TO COMMIT SEXUAL SODOMY ON JESSIE MCBRIDE, 7/1, AGE 31.

ACC: 12/23/89 12TH DAY ST. APT. 2

HEARING DATE		CASE NO.	
ACCUSED:			
JETT, CHARLES RAYMOND			
LAST NAME, FIRST NAME, MIDDLE INITIAL			
12/23 12TH DAY ST. APT. 2			
ADDRESS/LOCATION			
HOPKINS			
COMPLETE DATA BELOW IF KNOWN			
DATE	TIME	DOB	TO
12/23/89	8:37 PM	12/23/89	8:37 PM
FE	IN	DET	EYES
523	47	1245	
Commonwealth of Virginia			
WARRANT OF ARREST			
FELONY			
<input type="checkbox"/> EXECUTED by arresting the Accused named above on this day:			
DATE AND TIME			
ARRESTING OFFICER			
BADGE NO., AGENCY AND JURISDICTION			
SHERIFF			
Attorney for the Accused:			

check if applicable:

☐ commercial motor vehicle ☐ hazardous materials

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

THU. H. P. CRANK, 12/23/89, 12TH DAY ST. APT. 2, HOPKINS POLICE DEPARTMENT, Complainant.

JANUARY 19, 1990 AT 1:13 PM  
DATE AND TIME ISSUED

J. D. DAVIS

CLERK OF MAGISTRATE JUDGE

FORM DC-312 (10/89) (114-9-013) (1/87)





# WARRANT OF ARREST - FELONY

VA CODE ANN. § 19.2-16.1

NORFOLK

CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on

BETWEEN 4:00PM ON 12/23/87 & 10:30PM ON

about DECEMBER 24, 1987 did unlawfully and feloniously in violation of Section

18.2-17.1 (2)

Code of Virginia:

M DID, BY FORCE, COMMIT ORAL SEXUITY ON MICHAEL PAGE, W/M, AGE 13.

OCC: 7620 13TH BAY ST APT. 3

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

TIM. M. P. CENK, 7503 YTH-WP, 40CT. DATE, NORFOLK POLICE DEPARTMENT, Complainant.

JANUARY 19, 1990 AT 2:02PM

DATE AND TIME ISSUED

*F. D. Davis*  
 F. D. DAVIS

☐ CLERK ☒ MAGISTRATE ☐ JUDGE

FORM DC-312 5/86 (114-9-015 8/89)

HEARING DATE

CASE NO.

WITTS, CHARLES STEPHAN  
 ACCUSED

7620 13TH BAY ST. APT. 3  
 ADDRESS/LOCATION

NORFOLK

COMPLETE DATA BELOW IF KNOWN

DATE	SEX	DOB	DOB	VL	FT	IN	WEI	HTS	WGT
12/23/87	M	05	19	37					
DOB									

523 40 9245

Commonwealth of Virginia

## WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
 named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

for SHERIFF

Attorney for the Accused:

# WARRANT OF ARREST - FELONY

VA. CODE ANN. § 19.2-71, 77

HOPKINS  
CITY OR COUNTY

General District Court ☐ Criminal ☐ Traffic  
☒ Juvenile and Domestic Relations District Court

## TO ANY AUTHORIZED OFFICER:

You are hereby commanded in the name of the Commonwealth of Virginia forthwith to arrest and bring the Accused before this Court to answer the charge that the Accused, within this city or county, on DECEMBER 24, 1987 did unlawfully and feloniously in violation of Section

18.2-371 (1), Code of Virginia:

OTO EXPOSE HIS GENITALS TO MICHAEL PAGE, 4/M, AGE 17.

OCC: 521 13TH DAY ST. APT. 3

I, the undersigned, have found probable cause to believe that the Accused committed the offense charged, based on the sworn statements of

T.M. P. CRANE, 3503 YTH-HE, HOCT. DATE, HOPKINS POLICE DEPARTMENT, Complainant.

JANUARY 19, 1988 AT 2:37AM

DATE AND TIME ISSUED

*J. S. Davis*  
F. S. DAVIS

☐ CLERK ☒ MAGISTRATE ☐ JUDGE

FORM DC-312 5/86 (114-9-015 8/89)

HEARING DATE CASE NO.

WETTER, CHARLES RAYMOND  
ACCUSED

521 13TH DAY ST. APT. 3  
ADDRESS/LOCATION

HOPKINS

COMPLETE DATA BELOW IF KNOWN

DATE	MO	DAY	YR	PT	ST	ZIP	SEX	DOB
11	11	15	19	37				

DOB: 521 47 9245

## Commonwealth of Virginia WARRANT OF ARREST FELONY

EXECUTED by arresting the Accused  
named above on this day:

DATE AND TIME

ARRESTING OFFICER

BADGE NO., AGENCY AND JURISDICTION

SHERIFF

Attorney for the Accused:





VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

S. F. (JANE DOE), an infant, by her  
mother and next friend,  
K. F. (SARA DOE),

and

SARA DOE, Individually,  
  
Plaintiffs,

v.

CENTURY 21 LANDMARK REALTY,  
SERVE: Thomas A. Connor  
Registered Agent  
333 W. Freemason Street  
Norfolk, VA 23510

HARBOR VIEW ASSOCIATES,  
A General Partnership,  
SERVE: James E. Owens  
1211 Candlewood Drive  
Virginia Beach, VA 23464

JAMES E. OWENS,  
1211 Candlewood Drive  
Virginia Beach, VA 23464

BILL F. WEEKS,  
4604 Fern Oak Court  
Virginia Beach, VA 23464

THOMAS A. CONNOR,  
333 W. Freemason Street  
Norfolk, VA 23510

MARGARET CODY,  
5305 Etheridge Circle  
Virginia Beach, VA 23464

MICHAEL J. COYLE,  
5539 Virginia Beach Boulevard  
Virginia Beach, VA

DAVID L. HUFFMAN,  
564 Caren Drive  
Virginia Beach, VA 23452

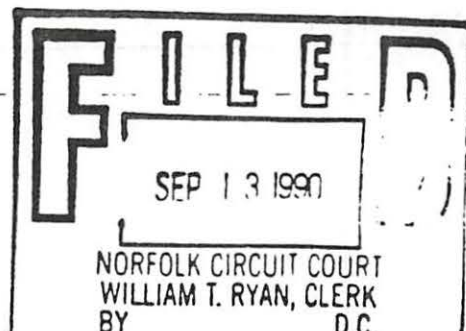
and

AT LAW NO. **L90-3276**

PLAINTIFFS DEMAND A  
TRIAL BY JURY

COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

*William T. Ryan* a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.



JEAN J. FORD,  
5313 West Overhold Drive  
Virginia Beach, VA 23462

Defendants.

AMENDED MOTION FOR JUDGMENT

Plaintiffs, S. F. (hereinafter referred to as "Jane Doe"), an infant, by her mother and next friend, K. F. (hereinafter referred to as "Sara Doe"), and Sara Doe, individually, by counsel, for her Motion for Judgment against defendants, Century 21 Landmark Realty, Harbor View Associates, James E. Owens, Bill F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), says as follows:

COUNT I

1. Plaintiff Jane Doe, an infant of tender years, is eight (8) years of age. At all times relevant to this action, she resided with her parents upon the premises located at 9620 13th Bay Street in the City of Norfolk, Virginia.

2. Plaintiff Sara Doe is the mother and next friend of plaintiff Jane Doe. At all times relevant to this action, she resided upon the premises located at 9620 13th Bay Street in the City of Norfolk, Virginia.

3. Defendant Century 21 Landmark Realty is, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing



of the apartment complex located at 9620 13th Bay Street in the City of Norfolk, Virginia.

4. Defendant Harbor View Associates is, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street in the City of Norfolk, Virginia.

5. Defendant James E. Owens was, at all times relevant to this action, the managing general partner of the defendant partnership, and in that capacity owned, operated, controlled, managed, leased and hired all employees of the property located at 9620 13th Bay Street in the City of Norfolk, Virginia.

6. Defendants William F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street in the City of Norfolk, Virginia.

7. That on or about November and December, 1989, plaintiffs leased the premises owned, operated and maintained by the Defendants located at 9620 13th Bay Street in the City of Norfolk, Virginia.

8. That on or about November and December, 1989, Defendants employed one Charles R. Vette as resident manager to manage, supervise and control the premises located at 9620 13th

Bay Street in the City of Norfolk, Virginia, and in particular, the area of the residence of the plaintiff, Jane Doe, an infant.

9. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises units and apartments and would be in a position of responsibility and trust with all tenants and guests of tenants, giving him a "cloak of trust and responsibility" that tenants could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

10. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, Jane Doe, including rape, sodomy, fellatio and other crimes against nature while acting within the scope of his employment with the defendants.

11. That Defendants negligently hired, selected, retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.

12. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, and knew or should have known Charles R. Vette was unfit for the employment situation.

13. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, Jane Doe, sustained serious and permanent injuries.

14. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require her to incur medical expenses in the future; have resulted in the lost earnings because she is unable to work at her calling and loss of earnings and lessening of earning capacity that she may reasonably be expected to sustain in the future.

15. That at the time of the said negligence complained of the said Jane Doe was a member of Sara Doe's household and was dependent upon her for maintenance and support and the said Sara Doe was legally and morally obligated to furnish the said Jane Doe with maintenance and support. That as a result thereof, the plaintiff, Sara Doe, has been caused to lose the services of her said daughter and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said Jane Doe is emancipated.

#### COUNT II

16. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 15 as if fully set forth herein.



17. That Defendants owned, operated, maintained, controlled and leased the aforementioned property, and owed a duty to the plaintiffs to operate, maintain and control the property in a reasonably safe condition.

18. Notwithstanding the aforementioned duty, the Defendants, you and each of you, negligently leased the aforementioned property, causing the plaintiffs to receive serious and permanent injuries by an employee of Defendants.

19. That as a direct and proximate result of the aforementioned negligence, plaintiff Jane Doe received serious and permanent injuries.

### COUNT III

20. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 19, inclusive of Count I and Count II of this Motion for Judgment as if fully set forth herein.

21. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

22. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

23. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and

permanent injuries and are entitled to recover the damages therefore.

COUNT IV

24. The plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 23, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

25. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

S. F. (JANE DOE), an infant, by her  
mother and next friend,  
K. F. (SARA DOE),  
and  
SARA DOE, Individually

By Bicette Hobbs  
Of Counsel

Jeffrey A. Breit  
Billie Hobbs  
BREIT, DRESCHER & BREIT  
Tazewell Building  
100 Brooke Avenue  
Norfolk, VA 23510  
(804) 622-6000



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

M. P. (JOHN DOE), an infant, by his  
mother and next friend,  
D. H. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93-4132**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a  
CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

HARBOR VIEW ASSOCIATES,  
a general partnership,  
SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 West Freemason Street  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462,

Defendants.

PLAINTIFFS DEMAND A  
TRIAL BY JURY

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT  
BY Karen Slater, a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

## MOTION FOR JUDGMENT

Plaintiffs, M. P. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend D. H. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

### Count I

1. Plaintiff, John Doe, an infant of tender years, is seventeen (17) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.
2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.
3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.
4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.
5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including sodomy, fellatio, aggravated sexual battery and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

## COUNT III

19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

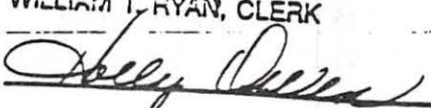
20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

M. P. (JOHN DOE), an infant, by his mother  
and next friend,  
D. H. (MARY DOE) and  
MARY DOE, individually

BY:   
Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

Filed for \_\_\_\_\_ day of Dec 19 93  
Filing Fee \$ 25  
Court Fee \$ 100  
Clerk Fee \$ 4  
LSD Fee \$ 2  
Total \$ 131  
WILLIAM T. RYAN, CLERK  
 D.C.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

F. M. (JOHN DOE), an infant, by his  
mother and next friend,  
L. B. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93 413**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a

CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

PLAINTIFFS DEMAND A  
TRIAL BY JURY

HARBOR VIEW ASSOCIATES,  
a general partnership,

SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462,

Defendants.

A COPY TESTE: \_\_\_\_\_  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY Walter Slater, a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

## MOTION FOR JUDGMENT

Plaintiffs, F. M. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend L. B. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

### Count I

1. Plaintiff, John Doe, an infant of tender years, is fourteen (14) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.
2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.
3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.
4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.
5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 920 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including sodomy, fellatio, aggravated sexual battery and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

## COUNT III

19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

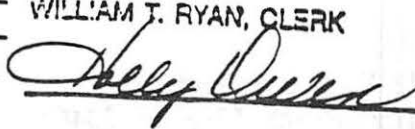
20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

F. M. (JOHN DOE), an infant, by his mother  
and next friend,  
L. B. (MARY DOE) and  
MARY DOE, individually

BY:   
Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

Filed in the District Office the 1 day of Dec, 19 93  
Fees: \$ 25—  
Tax: \$ 100—  
Total \$ 125—  
Teste:  
WILLIAM T. RYAN, CLERK  
 D.C.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

C. P. (JOHN DOE), an infant, by his  
mother and next friend,  
D. H. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93-4134**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a  
CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

PLAINTIFFS DEMAND A  
TRIAL BY JURY

HARBOR VIEW ASSOCIATES,  
a general partnership,  
SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462,

Defendants.

A COPY TESTE: -

WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

*by Karen Slater* a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan

## MOTION FOR JUDGMENT

Plaintiffs, C. P. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend D. H. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

### Count I

1. Plaintiff, John Doe, an infant of tender years, is fourteen (14) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.
2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.
3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.
4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.
5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including aggravated sexual battery and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

## COUNT III

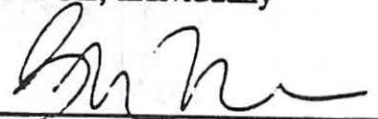
19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

C. P. (JOHN DOE), an infant, by his mother  
and next friend,  
D. H. (MARY DOE) and  
MARY DOE, individually

BY:

  
Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

Filed in the Clerk's Office the 1 day of Dec, 19 93  
Fees: \$ 25—  
Costs: \$ 100—  
Total: \$ 125—  
Teste: \$ 4—  
Total: \$ 131—  
WILLIAM T. RYAN, CLERK

 D.C.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

J. M. (JOHN DOE), an infant, by his  
mother and next friend,  
N. P. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93-4435**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a

CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

PLAINTIFFS DEMAND A  
TRIAL BY JURY

HARBOR VIEW ASSOCIATES,  
a general partnership,

SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462,

Defendants.

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY Karen Stater, a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

## MOTION FOR JUDGMENT

Plaintiffs, J. M. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend N. P. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

### Count I

1. Plaintiff, John Doe, an infant of tender years, is fifteen (15) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.
2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.
3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.
4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.
5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including sodomy, fellatio, aggravated sexual battery and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

## COUNT III

19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

J. M. (JOHN DOE), an infant, by his mother  
and next friend,  
N. P. (MARY DOE) and  
MARY DOE, individually

BY: 

Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

At the Court's Office this 1 day of Dec, 19 98

FILED	\$ <u>25</u> -
STAMP	\$ <u>100</u> -
LEGAL AID TAX	\$ <u>4</u> -
LEGAL AID	\$ <u>2</u> -
TOTAL \$	\$ <u>131</u> -

Teste:

WILLIAM T. RYAN, CLERK -

 D.C.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

J. H. (JOHN DOE), an infant, by his  
mother and next friend,  
J. M. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93-4136**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a  
CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

HARBOR VIEW ASSOCIATES,  
a general partnership,  
SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462,

Defendants.

PLAINTIFFS DEMAND A  
TRIAL BY JURY

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY Karen Slater a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan

## MOTION FOR JUDGMENT

Plaintiffs, J. H. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend J. M. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

### Count I

1. Plaintiff, John Doe, an infant of tender years, is fifteen (15) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.
2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.
3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.
4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.
5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including sodomy, fellatio, aggravated sexual battery and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

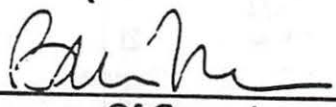
## COUNT III

19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

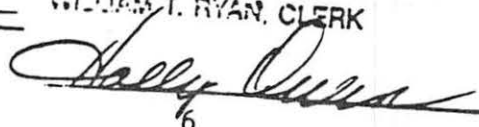
WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

J. H. (JOHN DOE), an infant, by  
his mother and next friend,  
J. M. (MARY DOE) and  
MARY DOE, individually

BY:   
Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

Law Offices Of  
IT. DRESCHER & BREIT  
Norfolk, Virginia 23510

Filed in Office this 1 day of Dec 19 93  
Fees: \$ 25—  
Tax: \$ 100—  
Total: \$ 4—  
Taxes: \$ 2—  
Total: \$ 131—  
Teste:  
WILLIAM T. RYAN, CLERK  
 D.C.  
6



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

G. H. (JOHN DOE), an infant, by his  
mother and next friend,  
J. M. (MARY DOE)  
and  
MARY DOE, individually,

Plaintiffs,

v.

AT LAW NO. **L93-4137**

LANDMARK REALTY OF NORFOLK, INC.,  
f/k/a  
CENTURY 21 LANDMARK REALTY, INC.  
SERVE: Thomas A. Connor, Registered Agent  
333 West Freemason Street  
Suite 102  
Norfolk, Virginia 23510

PLAINTIFFS DEMAND A  
TRIAL BY JURY

HARBOR VIEW ASSOCIATES,  
a general partnership,  
SERVE: Thomas A. Connor, General Partner  
Suite 102  
333 W. Freemason Street  
Norfolk, Virginia

THOMAS A. CONNOR  
SERVE: 333 W. Freemason Street  
Norfolk, Virginia

DAVID L. HUFFMAN  
SERVE: 564 Caren Drive  
Virginia Beach, Virginia 23452

and

JEAN J. FORD  
SERVE: 5313 West Overhold Drive  
Virginia Beach, Virginia 23462

Defendants.

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY Walter Stater a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

### MOTION FOR JUDGMENT

Plaintiffs, G. H. (hereinafter referred to as "John Doe"), an infant, by his mother and next friend J. M. (hereinafter referred to as "Mary Doe"), and Mary Doe, individually, by counsel, for their Motion for Judgment against defendants, Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc. (hereinafter referred to as "Landmark"), Harbor View Associates, a general partnership, Thomas A. Connor, David L. Huffman and Jean J. Ford (hereinafter sometimes referred to collectively as "Defendants"), say as follows:

#### Count I

1. Plaintiff, John Doe, an infant of tender years, is sixteen (16) years of age. At all times relevant herein, he resided in the City of Norfolk, Virginia.

2. Plaintiff Mary Doe is the mother and next friend of the infant plaintiff, John Doe. At all times relevant herein, she resided in the City of Norfolk.

3. Defendant Landmark is now, and at all times relevant to this action has been, a Virginia corporation, operating and existing pursuant to the laws of the Commonwealth of Virginia, which is responsible for the operation and leasing of the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

4. At all times relevant herein, the infant plaintiff was an invitee upon the aforementioned premises.

5. Defendant Harbor View Associates is now, and at all times relevant to this action has been, a Virginia general partnership, which owns, operates and controls the apartment complex located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

6. Defendants Thomas A. Connor, David L. Huffman and Jean J. Ford are, and at all times relevant to this action have been, partners in the defendant partnership, Harbor View Associates, and in that capacity, own, operate, control, manage, lease and hire all employees for the property located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

7. On or about November and December, 1989, Defendants employed one Charles R. Vette as a resident manager to manage, supervise and control the premises located at 9620 13th Bay Street, #3, in the City of Norfolk, Virginia.

8. That at the time of his employ and in his capacity as resident manager, it was known by Defendants that Charles R. Vette would have access to the premises' units and apartments and would be in a position of responsibility and trust with all tenants, guests of tenants and other invitees, giving him a cloak of trust and responsibility that tenants, their guests and other invitees could go to him with their problems with the confidence that as a resident manager he was a person in whom they could trust and confide.

9. That on or about the months of November and December, 1989, Charles R. Vette committed sexual acts of misconduct against the infant plaintiff, John Doe, including sodomy, fellatio, aggravated sexual battery, masturbation and other crimes against nature while acting within the scope of his employment for the defendants.

10. That Defendants negligently hired, selected and retained and supervised Charles R. Vette knowing that Charles R. Vette was an unfit person in an employment situation involving unreasonable risk of harm to others.



11. That Defendants knew or should have known that Charles R. Vette had a history of criminal behavior, was a known child molester, had been convicted of child molestation and was on parole at the time of the hiring, that many young children frequented the premises, and knew or should have known Charles R. Vette was unfit for the employment situation.

12. That as a direct and proximate result of Defendants' negligence, the infant plaintiff, John Doe, sustained serious and permanent injuries.

13. That these injuries to the infant plaintiff have caused, continue to cause and will in the future cause great physical pain, mental anguish and inconvenience; have required the plaintiff to expend large sums of money for medical expenses and will require him to incur medical expenses in the future; have resulted in the lost earnings and lessening of earning capacity that he may reasonably be expected to sustain in the future.

14. That at the time of the said negligence complained of the said John Doe was a member of Mary Doe's household and was dependent upon her for maintenance and support and the said Mary Doe was legally and morally obligated to furnish the said John Doe with maintenance and support. That as a result thereof, the plaintiff, Mary Doe, has been caused to lose the services of her said son and has been compelled to expend large sums of money for medical and hospital services when necessary, and the conditions of these respects have existed ever since the date of the incident, do now exist and will in the future exist until the said John Doe is emancipated.

## COUNT II

15. The plaintiffs reallege, repeat and reaver paragraphs numbered 1 through 14, inclusive of Count I and Count II of this Motion for Judgment as if fully set further herein.

16. That at the aforementioned date and time, Defendants owed a duty to the infant plaintiff to maintain a fit premises so that all areas of the aforementioned property were in a safe condition.

17. Notwithstanding the aforementioned duty, Defendants, as the landlord of the premises, failed to maintain a fit premises in accordance with Section 55-248.13 of the Code of Virginia (1950), as amended.

18. That as a direct and proximate result of the Defendants' failure to comply with Section 55-248.13 of the Code of Virginia (1950), as amended, plaintiffs sustained serious and permanent injuries and are entitled to recover the damages therefore.

## COUNT III

19. The Plaintiffs reallege, repeat, and reaver paragraphs numbered 1 through 18, inclusive of Count I, Count II and Count III of this Motion for Judgment as if fully set forth herein.

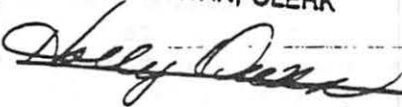
20. The plaintiffs allege that the acts of the Defendants, you and each of you, were so willful, malicious and atrocious that the plaintiffs are entitled to punitive damages.

WHEREFORE, plaintiffs move the Court for a judgment and award against you, and each of you, for compensatory damages in the sum of FOUR MILLION FIVE HUNDRED THOUSAND (\$4,500,000.00) DOLLARS with interest and costs and for punitive damages in the sum of ONE MILLION (\$1,000,000.00) DOLLARS with interest and costs aforesaid.

G. H. (JOHN DOE), an infant, by his mother  
and next friend,  
J. M. (MARY DOE) and  
MARY DOE, individually

BY:   
Of Counsel

Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
804/622-6000

Filed in the Clerk's Office the 1 day of Dec, 1993  
Filing Tax \$ 25  
Fee \$ 100  
Law Libr Tax \$ 4 Testa:  
Legal Aid \$ 2  
Total \$ 131  
WILLIAM T. RYAN, CLERK  
 D.C.





FOURTH JUDICIAL CIRCUIT OF VIRGINIA  
CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN E. CLARKSON  
JUDGE

July 26, 1994

100 ST. PAUL'S BOULEVARD  
NORFOLK, VIRGINIA 23510

David W. Robinson, Esq.  
Hirschler, Fleischer, Weinberg,  
Cox & Allen  
The Federal Reserve Bank Building  
701 East Byrd Street  
Richmond, Virginia 23219

Billie J. Hobbs, Esq.  
Breit Drescher & Breit  
1000 Dominion Tower  
Norfolk, Virginia 23510

Re: The West American Insurance Company v.  
S.F. (Jane Doe) et al., Law No. L91-2481

Dear Mr. Robinson and Mrs. Hobbs:

I have had the opportunity to read your memoranda, the transcript of your arguments and all of your cited cases.

The negligence alleged in each of the seven law suits is that the insureds negligently hired, selected, retained and supervised Vette. He thereafter committed criminal acts on each child while acting within the scope of his employment.

What is meant by "each occurrence" is our issue. I find, "the cause approach is the majority view and the more modern view". American Casualty Company of Reading, Pa. v. Heary, 432 FedSupp. 995 (1977). Additionally, I find that the policy clearly states on the Declarations page

"Coverage E - Business Liability

The limit of liability with respect to the completed operations and products hazards combined is an aggregate limit for all occurrences during the policy period. - .... Limits of liability \$1,000,000 each occurrence".

David W. Robinson, Esq.  
Billie J. Hobbs, Esq.  
July 26, 1994  
Page Two

On page 9 of 23 of the policy, under Coverage E - Business Liability, the policy states

"The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, property damage or personal injury caused by an occurrence to which this insurance applies.

"The total liability of the company for all damages including completed operations hazard, products hazard, and damages for care and loss of services, as a result of any one occurrence shall not exceed the limit of liability stated in the Declarations as applicable to each occurrence. .... The above limits shall apply regardless of the following:

1. the number of persons or organizations insured under this policy;
2. the number of persons or organizations who have sustained injury or damage;
3. the number of claims made or causes of action or suits brought because of injury or damage.

"For the purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence."

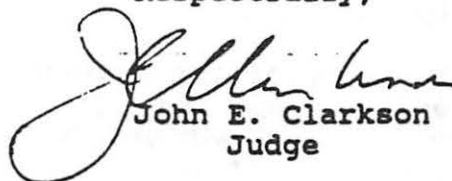
I find the one occurrence the hiring of Mr. Vette. I further find that plaintiff has no duty under their policy to indemnify the insureds for an award of punitive damages based upon their "...willful, malicious and atrocious" acts as alleged in the motion for judgment.

David W. Robinson, Esq.  
Billie J. Hobbs, Esq.  
July 26, 1994  
Page Three

Therefore, I find in favor of plaintiff in accordance with its amended motion for declaratory judgment and ask that Mr. Robinson prepare an appropriate order and after endorsement of counsel, forward to me for entry.

With best wishes to both, I am

Respectfully,

  
John E. Clarkson  
Judge

JEC:emp



V I R G I N I A:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

THE WEST AMERICAN INSURANCE COMPANY )  
Plaintiff, )

vs. )

At Law No. L91-2481

S.F. (JANE DOE), et al. )  
Defendants. )

**FINAL ORDER**

This action for declaratory judgment came before the Court on June 15, 1994 for trial pursuant to § 8.01-184 of the Code of Virginia (1950), as amended, upon plaintiff's Amended Motion For Declaratory Judgment, plaintiff's Motion For Summary Judgment and supporting memoranda, the Motion For Summary Judgment and briefs filed by defendants S.F. (Jane Doe) et al., the stipulated evidence and exhibits, and was argued by counsel.

IT APPEARING TO THE COURT that the plaintiff, West American Insurance Company (hereinafter "West American"), issued insurance policy number XBW(90) 50260524, with an effective policy period of October 1, 1989 through October 1, 1990 (hereinafter "Policy") to its insureds and defendants herein, James E. Owens, Bill F. Weeks, Thomas A. Connor, Margaret Cody, Michael J. Coyle, David L. Huffman and Jean J. Ford, trading as Harbor View Associates (hereinafter collectively referred to as "Named Insureds"); and

IT FURTHER APPEARING that defendant herein, Shauna Fraguada, an infant, has filed a lawsuit in this Court by her mother and next friend, defendant Kecia Fraguada (a/k/a Barnes, a/k/a Mills, a/k/a Wilson) (who is also an individual plaintiff in that case), which lawsuit is styled S.F. (Jane Doe), et al. v. Century 21

Landmark Realty, et al., Case No. L90-3278 (hereinafter referred to as "the Jane Doe Case"), wherein Century 21 Landmark Realty (hereinafter "Landmark") and Named Insureds are defendants; and

IT FURTHER APPEARING that said plaintiffs in the Jane Doe Case allege, inter alia, that Landmark and/or the Named Insureds negligently hired, selected, retained and supervised an alleged employee, Charles R. Vette, who thereafter allegedly committed criminal acts of a sexual nature against Shauna Fraguada; and

IT FURTHER APPEARING TO THE COURT that six other cases have been filed in this Court by six infants (hereinafter referred to as "the Other Claimants") and their respective mothers (who have sued therein both as next friends and individually), which cases are listed in the footnote below<sup>1/</sup> and are hereinafter referred to collectively as "the Related Cases"; and

IT FURTHER APPEARING that the plaintiffs in the Related Cases also allege that Landmark Realty of Norfolk, Inc. f/k/a

- 
- <sup>1/</sup>
- (1) M.P. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4432;
  - (2) F.M. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4433;
  - (3) C.P. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4434;
  - (4) J.M. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4435;
  - (5) J.H. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4436; and
  - (6) G.H. (John Doe) et al. v. Landmark Realty of Norfolk, Inc., f/k/a Century 21 Landmark Realty, Inc., et al.; Law No. CL93-4437.

Century 21 Landmark Realty, Inc. and/or certain of the Named Insureds, inter alia, negligently hired, selected, retained and supervised Charles R. Vette, who thereafter allegedly committed criminal acts of a sexual nature against the Other Claimants; and

IT FURTHER APPEARING that the plaintiffs in both the Jane Doe Case and the Related Cases further allege that the actions of Landmark and/or the Named Insureds were "so willful, malicious and atrocious" that said plaintiffs are entitled to an award of punitive damages from Landmark and/or the Named Insureds; and

IT FURTHER APPEARING TO THE COURT that on July 26, 1991, West American filed its original Motion For Declaratory Judgment against defendants Jane Doe (a/k/a Shauna Fraguada), Sara Doe (a/k/a Kecia Fraguada), Landmark, and the Named Insureds, which pleading sought a declaration from this Court that, inter alia, West American has no duty under the Policy to indemnify the Named Insureds in the Jane Doe Case for any award against them arising out of their intentional conduct; and

IT FURTHER APPEARING that on November 19, 1993, this Court entered an Order permitting West American to file an Amended Motion For Declaratory Judgment herein, which pleading was deemed under said Order to be filed as of November 19, 1993; and

IT FURTHER APPEARING that the Amended Motion For Declaratory Judgment added the Other Claimants and their parents and/or guardians as defendants, all of whom are listed below;<sup>2/</sup> and

---

<sup>2/</sup> The additional defendants are: James (a/k/a John or Jesse) Hammond (a/k/a Hammonds), an infant; Glen Paul Hammond (a/k/a Hammonds),  
(continued...)



IT FURTHER APPEARING TO THE COURT that West American, in accordance with its Amended Motion For Declaratory Judgment and memoranda filed herein, seeks a declaration from this Court that: (1) it has no duty to indemnify the Named Insureds for any award made against them in the Jane Doe Case or the Related Cases arising out of the Named Insureds' intentional conduct; (2) that all allegations in the Jane Doe Case and the Related Cases that the Named Insureds were negligent in hiring, selecting, retaining and supervising Charles R. Vette constitute, in their entirety, no more than one "occurrence" as defined under the Policy; (3) that all claims set forth in the Jane Doe Case and the Related Cases constitute in their entirety no more than one "occurrence" under the Policy; and (4) that the entire amount of insurance coverage available from West American to the Named Insureds under its Policy with respect to all claims stated in the Jane Doe Case and the Related Cases does not exceed, in its entirety, the Policy's limit of liability of \$1 million; and

IT FURTHER APPEARING TO THE COURT that the Policy contains a limit of liability of \$1 million for "each occurrence" and, also, that the Policy states in pertinent part as follows:

---

<sup>2/</sup> (...continued)

an infant; the aforesaid infants' parents or guardians (including their mother, Julia Hope Myers); Jessie McBride, an infant; his parents or guardians (including his mother, Nancy Ann Pompee); Farod Aziz Miller, an infant; his parents or guardians (including his mother, Lisa Johnson Belcher); Christopher David Paige, an infant; Michael Shane Paige, an infant; and their parents or guardians (including their mother, Donna Frances Paige Hall).

The Company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, property damage, or personal injury caused by an occurrence to which this insurance applies.

The total liability of the Company for all damages, including completed operations hazard, products hazard, and damages for care and loss of services, as a result of any one occurrence shall not exceed the limit of liability stated in the Declarations as applicable to each occurrence.... The above limits shall apply regardless of the following:

1. the number of persons or organizations insured under this policy;
2. the number of persons or organizations who have sustained injury or damage;
3. the number of claims made or causes of action or suits brought because of injury or damage.

For purpose of determining the limit of the Company's liability, all bodily injury and property damage arising out of a continuous or repeated exposure to substantially the same general conditions shall be considered as arising out of one occurrence.

UPON CONSIDERATION WHEREOF, for the reasons stated in the briefs filed by the parties, for the reasons stated by counsel at trial, for the reasons stated in this Court's letter to counsel dated July 26, 1994, and for other good cause shown, and pursuant to § 8.01-184 of the Code of Virginia (1950), as amended, the Court FINDS, DECLARES, ORDERS, ADJUDGES AND DECREES as follows:

(1) that all claims set forth in the Jane Doe Case and the Related Cases alleging that the Named Insureds were negligent in the hiring, selection, retention, and/or supervision of Charles R. Vette constitute, in their entirety, no more than a single "occurrence" under the definitions and provisions of the Policy;

(2) that all claims whatsoever stated in the Jane Doe Case and the Related Cases against the Named Insureds constitute in

their entirety no more than a single "occurrence" under the definitions and provisions of the Policy;

(3) that the applicable limit of liability stated in the Policy is \$1 million for each "occurrence";

(4) that since all the allegations of the Jane Doe Case and the Related Cases, together, do not state or present more than a single "occurrence" under the Policy, the entire amount of insurance coverage available to the Named Insureds from West American under the Policy (and assuming all other requirements under the Policy for indemnification are also satisfied by the Named Insureds) for all claims stated in the Jane Doe Case and the Related Cases, together, does not exceed \$1 million; and

(5) that West American has no duty to indemnify the Named Insureds for any damages or awards made against them in the Jane Doe Case or the Related Cases, including any award of punitive damages, that is based upon the Named Insureds' alleged "willful, malicious and atrocious" acts as alleged therein.

It is further ORDERED that since this Court has decreed that there is only One Million and 00/100 (\$1,000,000.00) Dollars of available coverage under the Policy and that there are multiple claims under the Policy relating to assaults by Charles Vette, the aggregate total of which may exceed the One Million and 00/100 (\$1,000,000.00) Dollars in coverage, the Court does further ORDER that the One Million and 00/100 (\$1,000,000.00) Dollar insurance proceeds shall not be distributed to any of the defendants whose claims are now pending, until such time as all of the claims have



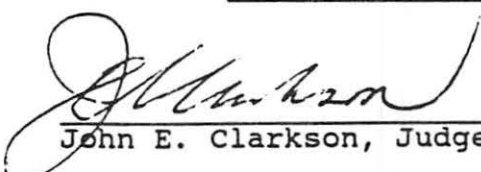
been reduced to judgment, at which time the Court will determine the proper distribution of these proceeds. In the event of a final verdict and/or judgment for any defendant, that portion of the One Million and 00/100 (\$1,000,000.00) Dollar insurance proceeds shall be paid into the Court. The Court's decision to require that the insurance be paid into the Court is based upon a representation from counsel that all of the defendants with claims pending against the Policy as a result of the actions of Charles Vette have agreed to this resolution of the insurance proceeds.

The Court recognizes the objections and exceptions to its rulings by defendants' counsel set forth below, upon the grounds stated in said defendants' briefs and at trial.

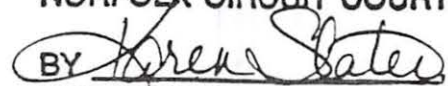
It FURTHER APPEARING that this Order has been presented to this Court for entry after proper notice to all parties, it is also ORDERED that the requirements of Rule 1:13 as to endorsement and/or presentment of this Order to all counsel of record is hereby modified and dispensed with.

Notwithstanding the foregoing, the Clerk of this Court is directed to mail a certified copy of this Order, as entered, to all counsel of record and unrepresented parties and to place this matter among the ended causes.

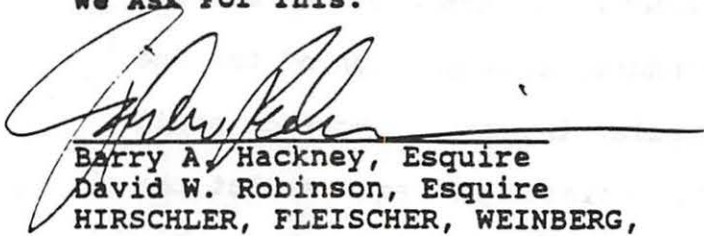
ENTERED: Oct. 21, 1994

  
John E. Clarkson, Judge

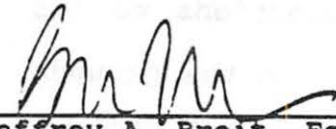
A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

7  
BY   
Deputy Clerk authorized to sign  
on behalf of William T. Ryan

**We Ask For This:**

  
Barry A. Hackney, Esquire  
David W. Robinson, Esquire  
HIRSCHLER, FLEISCHER, WEINBERG,  
COX & ALLEN, a Professional Corporation  
Post Office Box 500  
Richmond, Virginia 23204-0500  
Counsel for plaintiff West American Insurance Company

**Seen And Objected To:**

  
Jeffrey A. Breit, Esquire  
Billie Hobbs, Esquire  
Breit, Drescher & Breit  
1000 Dominion Tower, 999 Waterside Drive  
Norfolk, Virginia 23510  
Counsel for defendants Shauna Fraguada and Kecia Fraguada, and  
also for defendants John & Glen Hammond, Jessie McBride, Farod  
Miller, Christopher D. Paige, Michael S. Paige, minors, and  
the parents and guardians of aforesaid infant defendants

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK  
THE WEST AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

At Law No: L91-2481

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), and SARA DOE,  
et als.,

Defendants.

NOTICE OF APPEAL

Notice is hereby given that S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND, K.F. (SARA DOE), and SARA DOE,  
Individually; C.P. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, D.H. (MARY DOE) and MARY DOE, Individually; M.P. (JOHN  
DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, D.H. (MARY DOE)  
and MARY DOE, Individually; J.M. (JOHN DOE), an infant, BY HIS  
MOTHER AND NEXT FRIEND, N.P. (MARY DOE) and MARY DOE,  
Individually; J.H. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, J.M. (MARY DOE) and MARY DOE, Individually; and G.H.  
(JOHN DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, J.M. (MARY  
DOE) and MARY DOE, Individually; the defendants above named,  
hereby appeal to the Virginia Supreme Court from the Order  
entered in this action on the 21st day of October, 1994.

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), et als.

By: 

Of Counsel



Jeffrey A. Breit, Esquire  
Va. Bar No. 18876  
Billie Hobbs, Esquire  
Va. Bar No: 30746  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
(804) 622-6000

CERTIFICATE

I certify that on this 27<sup>th</sup> day of October, 1994, I  
mailed a copy of the foregoing pleading to Barry A. Hackney,  
Esquire and David W. Robinson, Esquire, HIRSCHLER, FLEISCHER,  
WEINBERG, COX & ALLEN, P. O. Box 500, Richmond, Virginia 23204-  
0500.

Billie Hobbs

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK  
THE WEST AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

At Law No: L91-2481

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), and SARA DOE,  
et als.,

Defendants.

NOTICE OF FILING OF TRANSCRIPT

Now come defendants, S.F. (JANE DOE), an infant, BY HER  
MOTHER AND NEXT FRIEND, K.F. (SARA DOE), and SARA DOE,  
Individually; C.P. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, D.H. (MARY DOE) and MARY DOE, Individually; M.P. (JOHN  
DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, D.H. (MARY DOE)  
and MARY DOE, Individually; J.M. (JOHN DOE), an infant, BY HIS  
MOTHER AND NEXT FRIEND, N.P. (MARY DOE) and MARY DOE,  
Individually; J.H. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, J.M. (MARY DOE) and MARY DOE, Individually; and G.H.  
(JOHN DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, J.M. (MARY  
DOE) and MARY DOE, Individually; by counsel, pursuant to Rule  
~~5:11 of the Rules of the Supreme Court of Virginia herewith files~~  
the transcript of the trial before the Honorable John E.  
Clarkson, which took place on June 15, 1994.

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), et als.

By:   
Of Counsel

Jeffrey A. Breit, Esquire  
Va. Bar No. 18876  
Billie Hobbs, Esquire  
Va. Bar No: 30746  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
(804) 622-6000

CERTIFICATE

I certify that on this 31<sup>st</sup> day of October, 1994, I  
mailed a copy of the foregoing pleading to Barry A. Hackney,  
Esquire and David W. Robinson, Esquire, HIRSCHLER, FLEISCHER,  
WEINBERG, COX & ALLEN, P. O. Box 500, Richmond, Virginia 23204-  
0500.





VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK  
THE WEST AMERICAN INSURANCE COMPANY,

Plaintiff,

v.

At Law No: L91-2481

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), and SARA DOE,  
et als.,

Defendants.

AMENDED NOTICE OF APPEAL

Notice is hereby given that S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND, K.F. (SARA DOE), and SARA DOE,  
Individually; C.P. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, D.H. (MARY DOE) and MARY DOE, Individually; M.P. (JOHN  
DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, D.H. (MARY DOE)  
and MARY DOE, Individually; J.M. (JOHN DOE), an infant, BY HIS  
MOTHER AND NEXT FRIEND, N.P. (MARY DOE) and MARY DOE,  
Individually; J.H. (JOHN DOE), an infant, BY HIS MOTHER AND NEXT  
FRIEND, J.M. (MARY DOE) and MARY DOE, Individually; and G.H.  
(JOHN DOE), an infant, BY HIS MOTHER AND NEXT FRIEND, J.M. (MARY  
DOE) and MARY DOE, Individually; the defendants above named,  
hereby appeal to the Virginia Supreme Court from the Order  
entered in this action on the 21st day of October, 1994.

Defendants certify that the transcript of the trial before  
the Honorable John E. Clarkson which occurred on June 15, 1994  
has been ordered and filed with the Court.

S.F. (JANE DOE), an infant, BY  
HER MOTHER AND NEXT FRIEND,  
K.F. (SARA DOE), et als.

By: 

Of Counsel

Jeffrey A. Breit, Esquire  
Va. Bar No. 18876  
Billie Hobbs, Esquire  
Va. Bar No: 30746  
BREIT, DRESCHER & BREIT  
1000 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510  
(804) 622-6000

CERTIFICATE

I certify that on this 10<sup>th</sup> day of November, 1994, I  
mailed a copy of the foregoing pleading to Barry A. Hackney,  
Esquire and David W. Robinson, Esquire, HIRSCHLER, FLEISCHER,  
WEINBERG, COX & ALLEN, P. O. Box 500, Richmond, Virginia 23204-  
0500.



ASSIGNMENTS OF ERROR

- A. THE TRIAL COURT ERRED IN RULING THAT ALL OF VETTE'S ASSAULTS AMOUNTED TO ONE OCCURRENCE AS OPPOSED TO MULTIPLE OCCURRENCES UNDER THE WEST AMERICAN POLICY, BECAUSE THE POLICY LANGUAGE IS AMBIGUOUS AND, THEREFORE, MUST BE CONSTRUED IN FAVOR OF INDEMNITY.
- B. THE TRIAL COURT ERRED IN ITS APPLICATION OF THE CAUSE ANALYSIS.
- C. THE TRIAL COURT ERRED IN RULING THAT ALL OF VETTE'S ASSAULTS AMOUNTED TO ONE OCCURRENCE BECAUSE EVEN IF EACH INDIVIDUAL ASSAULT WERE NOT DEEMED ONE OCCURRENCE, THE MOLESTATION OF EACH CHILD SHOULD TRIGGER THE POLICY LIMITS FOR EACH INDIVIDUAL CHILD.





