

IN THE SUPREME COURT OF FLORIDA

Case No.: SC08-2068

Lower Court Case No.: 07-13827-FF

Michael Penzer, Etc.,

Plaintiff- Appellant,

vs.

Transportation Insurance Company

Defendant-Respondent.

**AMICUS CURIAE BRIEF OF
UNITED POLICYHOLDERS**

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STATEMENT OF INTEREST OF AMICUS CURIAE

United Policyholders is a non-profit corporation founded in 1991 to educate the public, the judiciary, and elected officials on insurance issues and the rights of policyholders. The organization is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. United Policyholders is funded by donations and grants from individuals, businesses, and foundations and governed by an eight-member Board of Directors. United Policyholders operates nationwide.

While much of its work is aimed at individuals and businesses affected by disasters, United Policyholders actively monitors legal and marketplace developments affecting the interests of all policyholders. United Policyholders publishes free-of-charge materials that give practical guidance to property and business owners on buying coverage and on claims through our website, www.unitedpolicyholders.org, and our Roadmap to Recovery program. The organization frequently testifies at legislative and other public hearings and participates as an official consumer representative in the proceedings of the National Association of Insurance Commissioners.

A diverse range of personal and commercial line policyholders throughout the United States regularly communicate their insurance concerns to United Policyholders. In turn, the organization advances policyholders' interests in courts nationwide by filing amicus curiae briefs in cases involving important insurance

principles. United Policyholders advances the shared interest that commercial and personal lines policyholders have in equitable insurance practices. The organization's activities are supported by grants and donations from individuals, businesses and foundations.

United Policyholders has filed amicus curiae briefs on behalf of policyholders in more than 240 cases throughout the United States in the past six years. A significant number of those cases have been adjudicated in Florida courts.¹ United Policyholders has filed amicus curiae briefs in numerous cases before the United States Supreme Court.² The U.S. Supreme Court cited United Policyholders' amicus curiae brief in Humana, Inc. v. Forsyth, 525 U.S. 299 (1999). United Policyholders was the only national consumer organization to

¹ Tristar Lodging, Inc. v. Arch Specialty Ins. Co., 215 Fed. Appx. 879 (11th Cir. 2007); XL Specialty Ins. Co. v. Aircraft Holdings, LLC., 929 So.2d 578 (Fla. 2006); Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co., 913 So.2d 532 (Fla. 2005); Fayad v. Clarendon Nat'l Ins. Co., 899 So.2d 1082 (2004); Nationwide Mut. Ins. Co. v. Richardson, 832 A.2d 752 (D.C. 2003) (companion case to Nationwide Mut. Fire Ins. Co. v. Beville, 845 So.2d 891 (Fla. 2003)); Allstate Indem. Co. v. Ruiz, 796 So.2d 535 (Fla. 2001); Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co., 711 So.2d 1135 (Fla. 1998); Nationwide Mut. Ins. Co. v. Chillura, 952 So.2d 547 (Fla. 2d DCA Jan. 19, 2007).

² See, e.g., Metropolitan Life Ins. Co. v. Glenn, 128 S. Ct. 2343 (2008); Philip Morris USA v. Williams, 547 U.S. 1162 (2006); Aetna Health, Inc. v. Davila, 542 U.S. 200 (2004); Fuller-Austin Insulation Co. v. Highlands Ins. Co., 549 U.S. 946 (2006); F.L. Aerospace v. Aetna Cas. & Sur. Co., 498 U.S. 911 (1990).

submit an amicus curiae brief in the landmark case of State Farm v. Campbell, 538 U.S. 408 (2003).

United Policyholders has a vital interest in ensuring that insurance companies fulfill the promises they make to their policyholders. While insurance companies are in business to earn profit through risk assumption, businesses and individuals rely on insurance to protect property and livelihoods. United Policyholders seeks to prevent insurance companies from shifting risk back to policyholders through schemes that are not authorized by insurance contracts or public policy. The organization works to counterbalance the widely represented interests of insurance companies by serving as an advocate for large and small policyholders in forums throughout the country.

In the case at bar, United Policyholders seeks to appear as amicus curiae to address certain questions before the Court that are of significance well beyond the application of law to the specific facts of this litigation. These important issues will affect policyholders nationwide. It should be noted that no party to this case has contributed directly or indirectly to the preparation of this brief.³

³ Anderson Kill's subsidiary, Anderson Kill Loss Advisors, has a relationship with several public loss adjusters. None of those adjusters are involved in this case.

SUMMARY OF THE ARGUMENT

Amicus Curiae, United Policyholders, adopt the position of defendant-appellant Michael Penzer, Etc., who seeks insurance coverage from Transportation Insurance Company (“Transportation”) for the defense against the accusation of advertising injury alleged by Michael Penzer, the assignee of Southeast Wireless, Inc. (“Southeast”). Penzer and Southeast entered into a class action settlement of claims that Southeast violated the Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227 (2000), based on unsolicited facsimile transmissions it sent to Penzer and others. See id. at § 227 (b)(1)(C).

Generally, the TCPA makes it unlawful for a person to send an unsolicited advertisement to a telephone facsimile machine unless: 1) the sender has an established business relationship with the recipient, or 2) the recipient voluntarily made available his or her facsimile number for public distribution. Id. at § 227 (b)(1)(c), (C)(i)(ii) (emphasis added). The TCPA defines “unsolicited advertisement” as “any material advertising the commercial availability or quality of any property, goods, or services which is transmitted to any person without that person’s prior express invitation or permission, in writing or otherwise.” Id. at § 227 (a)(5). Essentially, the TCPA operates to bar businesses from advertising to both residences and other businesses by “blast fax.”

The TCPA reflects Congress' attempt to protect consumers against invasive marketing tactics that have flourished over the past few decades thanks to inexpensive, easy-to-use technology. One of the TCPA's functions is to protect the privacy rights of individuals who receive certain types of unsolicited advertisements, including those sent by facsimile. Before passing the Act, the United States Congress specifically found that "[u]nrestricted telemarketing . . . can be an intrusive invasion of privacy." H.R. Rep. No. 102-317 at 2 (1991). By limiting the Act's protections to advertising and not to other written material, Congress recognized that advertising can have a uniquely intrusive quality when sent to persons who have not requested it.

The typical advertising injury clause requires an insurance company to defend any lawsuit seeking damages for advertising injuries — typically defined as “oral or written publication of material . . . that violates a person's right to privacy.” See, e.g., Technaoro Inc., v. U.S. Fid. & Guar. Co., No. 05 Civ. 9216(GEL), 2006 WL 3230299, at *1 (S.D.N.Y. Nov. 7, 2006). While insurance companies have argued that violations under the TCPA are not covered by the typical advertising injury clause, many courts have held otherwise.

A simple accident like transmitting a fax to a company or individual who is not a customer could be enough to trigger a claim under this statute. Insurance companies, however, routinely wrongfully deny insurance coverage for defense

costs accrued in defending claims asserting violations of the TCPA. Recent insurance industry attempts to deny coverage for claims brought under the Blast Fax Statute have been repeatedly rejected by courts in several states, including Georgia, Illinois, Kansas, North Carolina, Texas, and Virginia — all which have held that allegations arising under the TCPA are covered for purposes of paying defense costs. Most courts now hold that insurance companies have a duty to defend policyholders for violations of the TCPA under a Comprehensive General Liability (“CGL”) policy’s “advertising injury” clause.⁴ This is true even when the

⁴ Park Univ. Enters. v. Am. Cas. Co. of Reading, Pa., 442 F.3d 1239, 1250-51 (10th Cir. 2006) (noting that private information need not be revealed in the facsimile to trigger an insurance company’s duty to defend a policyholder from liability); Universal Underwriters Ins. Co. v. Lou Fusz Auto. Network, 401 F.3d 876, 881-82 (8th Cir. 2005); Western Rim Inc. Advisors v. Gulf Ins Co., 269 F. Supp.2d 836, 848 (N.D.Tex. 2003) aff’d mem., 96 Fed. Appx. 960 (5th Cir. 2004); American Home Assurance v. McLeod USA, 475 F. Supp. 2d 766, 771 (N.D. Ill. 2007); Valley Forge Ins. Co. v. Swiderski Electronics, 860 N.E. 2d 307, 319, 323 (Ill. 2006); Nutmeg Ins. Co., v. Employers Ins. Co. of Wausau, No. Civ.A. 3:04-CV-1762B, 2006 WL 453235, at *10 (N.D. Tex. Feb. 24, 2006) (stating that the average person would reasonably understand that he would be covered under the advertising injury provision because the transmission of an unwanted facsimile constitutes an intrusion on seclusion, and hence violates one’s right of privacy); LensCrafters Inc. v. Liberty Mut. Fire Ins. Co., No. C 04-1001 SBA, 2005 WL 146896, at *1 (N.D. Cal. Jan. 20, 2005). Indeed, one of Transportation’s main arguments against coverage is that the policy at issue only covers “an intrusion into seclusion that communicates private information.” See Penzer v. Trans. Ins. Co., 545 F.3d 1303,1308 (11th Cir. 2008). As seen from many of the above-cited decisions, private information need not be revealed within the facsimile in order for coverage to be afforded for

transmission does not disseminate private information in the facsimile. The policyholders who purchase CGL policies, moreover, are promised the broadest insurance coverage possible. The insurance industry, as well as Transportation specifically, makes this representation to policyholders when it decides to sell such coverage. Case law, public policy, and long-standing rules of insurance interpretation principles compel the conclusion that the Court rule in favor of insurance coverage.

ANALYSIS

I. A POLICYHOLDER IS PROMISED THE BROADEST INSURANCE COVERAGE POSSIBLE WHEN IT IS SOLD A COMPREHENSIVE GENERAL LIABILITY POLICY

The purpose of insurance is to insure. Policyholders, moreover, do not buy insurance coverage disputes — they buy coverage. Indeed, as stated by insurance companies themselves, CGL policies are touted as providing the broadest insurance coverage available.

A. Insurance Companies, Including Transportation, Hold Out to the Public That a CGL Policy Is Intended to Provide the Broadest Coverage Available

The Insurance Services Office, Inc. (“ISO”) is a trade association of insurance companies that develops standard form policies and rates for use by the

(footnote continued)

violation of the TCPA — such facsimiles are still considered violative of a person’s right to privacy and an unwanted intrusion.

insurance industry.⁵ The advertising injury liability coverage provision in a CGL insurance policy provides insurance to policyholders for injury arising out of numerous offenses such as the sending of unsolicited advertisements to a telephone facsimile machine. Insurance companies themselves have recognized that a broad interpretation of advertising injury was originally intended.

Around 1976, in order to provide expanded coverage under the standard form CGL policy, ISO filed in all states, on behalf of its subscribers, members and service purchasers, a "BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT G222." ISO included an "Explanatory Memorandum" with its filing. The memorandum regarding the endorsement, including the advertising injury endorsement, shows that the insurance industry intended to sell exceedingly broad coverage. Indeed, it was described as the broadest package of insurance available to the average policyholder. The memorandum states, in part:

⁵ The United States Supreme Court has observed the following regarding standard form insurance policies and ISO:

Insurance Services Office, Inc. (ISO), an association of approximately 1,400 domestic property and casualty insurance companies . . . is the almost exclusive source of support services in this country for CGL insurance. ISO develops standard policy forms and files or lodges them with each State's insurance regulators; most CGL insurance written in the United States is written on these forms.

Hartford Fire Ins. Co. v. California, 509 U.S. 764, 772 (1993).

"This endorsement was developed for use with the Comprehensive General Liability Policy only since this endorsement is designed to expand on the broad coverage already provided by the CGL Policy

We believe that the coverage afforded under this endorsement is the broadest package of coverage available to the average insured

The following is a general description of the coverages provided under this endorsement: . . .

Advertising injury covers the insured for various types of injuries . . . arising out of the insured's advertising, promotional or publicity activities."

(emphasis added) (Appendix Exhibit A). The ISO Explanatory Memorandum shows how broadly ISO interpreted the coverage of the broad form endorsement, including the advertising injury coverage provision. ISO itself touted the broad grant of coverage. ISO did not narrowly define advertising but represented that coverage was provided for injury "arising out of . . . advertising, promotional or publicity activities."

Transportation is a wholly owned subsidiary of CNA, which was a member of ISO during the pertinent period and remains a member today. In fact, CNA currently advertises CGL policies on its website, stating that "CGL is offered using standard Insurance Services Office (ISO) coverage parts and endorsements."⁶ Additionally, Transportation itself has been an ISO subscriber since November 3,

⁶ <http://www.cna.com/> (search "CGL policies"; then follow link for "Commercial General Liability").

1976. As a subsidiary of CNA, and a subscriber of ISO itself, Transportation has represented that ISO was responsible for drafting the language of the advertising injury coverage provision. Transportation should not be allowed to reap the benefits of selling CGL policies, yet be permitted to renege on the broad representation made by ISO when the advertising injury coverage provisions were sold. To do so would not only be tantamount to manipulation of the insurance coverage system, but would also constitute a breach of Transportation's obligation to be fair and honest with its policyholders.⁷ Insurance companies should not be permitted to avoid their obligations to the courts, administrative bodies and policyholders by taking inconsistent positions.

When selling insurance policies, Transportation intended that the policyholder read the advertising injury provision broadly. This Court should hold Transportation to its interpretation at the time the policies were sold now that a claim has been made.

B. Inherent in Appellant's Policy Was Transportation's Broad Duty to Defend

⁷ Indeed, implicit in the duty of good faith and fair dealing is the insurer's obligation to be fair and honest with its insureds and to give equal consideration to the insured's interests. Appleman, Insurance Law and Practices, § 8878 (1994), 12. The duty of good faith and fair dealing that an insurer owes an insured obligates the insurer to refrain from: (1) engaging in unfounded refusal to pay policy proceeds; (2) causing unfounded delay in making payment; and (3) deceiving the insured. Id.

Under Southeast's insurance policy, Transportation had the duty to indemnify and defend claims that fell under an "advertising injury" provision covering an "injury arising out of . . . [o]ral or written publication of material that violates a person's right of privacy." Penzer v. Trans. Ins. Co., 545 F.3d 1303, 1305 (11th Cir. 2008). It is a widely accepted legal premise that an insurance company's duty to defend is broader than its duty to indemnify. U.S. Fire Ins. Co. v Hayden Bonded Storage Co., 930 So. 2d 686, 691 (Fla. 4th DCA 2006). In fact, an insurance company's duty to defend actually rises to the level of a fiduciary duty, requiring an insurance company "to use [on behalf of its insured] the same degree of care and diligence as a person of ordinary care and prudence should exercise in the management of his own business." Id. In practice, in order to trigger an insurance company's duty to defend, the policyholder need only put the insurance company on notice of the claim — a formal demand is not necessary. Id. The duty to defend is technically not activated until a suit is instituted, however, various actions have been held to be the functional equivalent of a suit. Allan D. Windt, Insurance Claims & Disputes: Representation of Insurance Companies & Insureds §4:1 (2008). A possibility of coverage triggers the duty, and all doubts as to whether the duty exists must be resolved against the insurance company and in favor of the policyholder. Id.; Lawyers Title Ins. Corp. v. JDC (America) Corp., 52 F.3d 1575, 1579 (11th Cir. 1995).

C. Maintenance of the Integrity of the Judicial Process Requires That This Court Prevent Insurance Companies from Contradicting Themselves and Shirking Their Responsibility to Provide Coverage

Three important public policies are fostered by barring insurance companies from repudiating their pro-policyholder representations: 1) the prevention of inconsistent judicial results, which would weaken public confidence in the judiciary; 2) the prevention of intentional inconsistency by powerful “repeat litigants” seeking to manipulate the judicial process; and 3) the prevention of unnecessary litigation, which diminishes the efficiency of the judicial system.⁸

Insurance companies should be bound by the representations they make, such as the ISO explanatory memorandum quoted above. Similarly, because the liability insurance policies at issue are standard-form, their meaning should not depend upon the insurance company’s self-serving interpretation of its terms.

II. THE LANGUAGE OF INSURANCE POLICIES MUST BE CONSTRUED LIBERALLY IN FAVOR OF THE POLICYHOLDER AND STRICTLY AGAINST THE INSURANCE COMPANY THAT PREPARED THE POLICY

Florida courts, like those in nearly all jurisdictions, have adopted the general rule that insurance policies must be construed against the insurance company, in favor of the policyholder, and in favor of granting insurance coverage. Blue Cross & Blue Shield of Fla., Inc. v. Steck, 778 So. 2d 374, 376 (Fla. 2d DCA 2001);

⁸ See generally Rand G. Boyers, Precluding Inconsistent Statements: The Doctrine of Judicial Estoppel, 80 NW. U.L. Rev. 1244 (1986).

Orion Ins. Co. v. Cox, 681 So. 2d 760, 763 (Fla. 4th DCA 1996) (noting that insurance policies are “construed liberally to give greater coverage to the insured”).

Ambiguous policy terms, moreover, must be interpreted to the benefit of the policyholder. See Flaxman v. Gov’t Employees Ins. Co., No. 4D07-4780, 2008 WL 4722976, at *2 (Fla. 4th DCA Oct. 29, 2008); Itnor Corp. v. Markel Int’l Ins. Co., Ltd., 981 So. 2d 661, 663 (Fla. 3d DCA 2008); U.S. Fire Ins. Co. v. J.S.U.B., Inc., 979 So. 2d 871, 886 (Fla. 2007). In the event that the Court finds any of the policy terms ambiguous, Florida law mandates that such ambiguity be resolved in favor of insurance coverage for appellants. See id. Additionally, ambiguities in exclusionary provisions are construed liberally in favor of the policyholder and strictly against the insurance company that drafted the policy. First Specialty Ins. Co. v. Caliber One Indem. Co., 988 So. 2d 708, 712 (Fla. 2d DCA 2008); National Indem. Co. of the South v. Landscape Mgmt. Co., Inc., 963 So. 2d 361, 363 (Fla. 4th DCA 2007); Continental Ins. Co. v. Collinsworth, 898 So. 2d 1085, 1088 (Fla. 5th DCA 2005) (adding that when an exclusion clause is subject to interpretation, it should be construed even more strictly against the insurance company than coverage provisions). This particular rule of law could be important for appellant, as Transportation argued in the District court that certain policy exclusions prevented coverage. Penzer, 2008 WL 4662164, at *5. Although the Eleventh

Circuit did not find this argument persuasive, this rule is nonetheless important to note, as it provides additional support for the principle that a policyholder is entitled to an inference of broad coverage.

III. UNSOLICITED FACSIMILE TRANSMISSIONS WHICH DO NOT REVEAL ONE'S PRIVATE INFORMATION POTENTIALLY VIOLATE ONE'S RIGHT TO PRIVACY, ENTITLING A CGL POLICYHOLDER TO "ADVERTISING INJURY" COVERAGE

As noted by the Eleventh Circuit, the terms "oral or written publication" and "right of privacy" often are not defined. *Id.* at *2. The insurance company and the policyholder, therefore, often dispute the meaning of these terms and whether such terms are implicated by a violation of the TCPA. Despite the insurance companies argument, however, many courts hold that insurance companies have a duty to defend policyholders for violations of the TCPA under a policy's "advertising injury" clause even where the content of the material published does not reveal private information. See Park Univ. Enters. v. American Cas. Co. of Reading, Pa., 442 F.3d 1239, 1251 (10th Cir. 2006). Contrary to a view popular among insurance companies, it is not the content of the published material that must violate the right to privacy. Rather, the fact that an individual is subjected to an unwanted intrusion in the form of an unsolicited facsimile is enough to constitute a potential violation of one's right to privacy and thus trigger an insurance company's duty to defend.

In Park University Enterprises v. American Casualty Company of Reading, Pa., 442 F.3d 1239, 1251 (10th Cir. 2006), the United States Court of Appeals for the Tenth Circuit, for example, found a duty to defend for violation of the TCPA even where no private information was revealed. In Park, the insurance company asserted an identical argument to what Transportation is now making: that “Advertising Injury” coverage is limited to intrusions that communicate private information. The Tenth Circuit rejected this argument, finding in favor of coverage. Id. at 1249. Citing the District Court opinion, the Tenth Circuit was of the view that the plain and ordinary meaning of privacy includes the right to be left alone, unburdened by unsolicited facsimiles. Id. The insurance company could have, the court said, imposed a more restrictive and technical legal definition to the term “privacy” but failed to do so. Id. at 1250 (“[The insurance company] failed to provide specific terms in the policy to narrow the scope of privacy interest violations for which it intended to provide coverage, and we decline to permit it to do so now.”).

The Supreme Court of Illinois came to the same conclusion in Valley Forge Insurance Company v. Swiderski Electronics, 860 N.E.2d 307, 319 (Ill. 2006). In Valley Forge, the insurance company, like Transportation here, argued that coverage is applicable only where the content of the published material reveals private information that violates a person’s right of privacy. The court stated that,

in order to adopt the insurance company's policy interpretation, it would have to rewrite the definition of "right to privacy". Id. at 318. This, the court said, "we will not do." Id. The court noted that the fact that some types of advertising injury appear to involve harm caused by content does not compel the court to restrict coverage to those situations. Id. at 318.

The court determined that "publication" meant communication or "announcing to the public" and that the word "material" was broad enough to include advertisements. Id. at 317. Based on standard dictionary definitions, the court concluded that the plain meaning of "right to privacy" is an interest in seclusion in addition to an interest in secrecy of personal information. Id. at 317 (emphasis added). The court noted the dictionary definitions of both "right of privacy" (the right of a person and the person's property to be free from unwarranted exposure) and "invasion of privacy" (an intrusion into one's personal activities). Id. Both concepts, the court stated, put unsolicited facsimile advertisements into the purview of covered advertising injuries. Id. While the former constitutes an intentional interference with a person's seclusion, the latter involves a public revelation of private information in an objectionable manner." Id. Accordingly, said the court, the policy language — "material that violates a person's right of privacy" — could also reasonably be understood to refer to material that violates a person's seclusion. From this analysis, the court held that

the unsolicited fax advertisements fell squarely within the definition of “advertising injury.” Id.

Our conclusion in this case that the insurers owe [the policyholder] a duty to defend pursuant to the policies’ “advertising injury” provision is consistent with the conclusion reached by the majority of federal courts of appeals that have considered the applicability of “advertising injury” coverage to TCPA fax-ad claims. In addition, our conclusion is consistent with that reached by the majority of courts that have examined policy language identical to the language at issue here.

860 N.E.2d at 319. Therefore, the duty to defend for violation of the TCPA is not limited to contexts in which it is the content of the facsimile that invades a person’s privacy.

In American Home Assurance v. McLeod USA, 475 F.Supp.2d 766, 771 (N.D. Ill. Feb. 2, 2007), the Northern District Court of Illinois held that the insurance company had a duty to defend the policyholder for “blast fax” lawsuits under the TCPA, even where the underlying unsolicited advertisements did not reveal private information. Applying Iowa law, the court held that, like the Illinois Supreme Court, Iowa would interpret “advertising injury” to include TCPA blast-fax suits. Id. at 771 (noting the approach “of the vast majority of courts that have looked at this issue,” the court concluded that the insurers had a duty to defend the insured”).

Myriad courts have come to the same conclusion, deciding that intrusions that do not reveal private information still violate one's right to privacy and constitute a covered advertising injury.⁹ As seen from many of the above-cited decisions, private information need not be revealed within the facsimile in order for coverage to be afforded for violation of the TCPA — such facsimiles are still considered violative of a person's right to privacy.

CONCLUSION

Transportation's position is contrary to the fundamental tenets of insurance law and significant public policy interests. Additionally, Transportation's assertions are in conflict with its own representations to policyholders. Transportation cannot be allowed to manipulate the interpretation of policies for the purpose of improperly denying insurance to its policyholders. Finally, case law from many jurisdictions around the country makes clear that insurance companies

⁹ Univ. Underwriters Ins. Co. v. Lou Fusz Auto. Network, 401 F.3d 876, 881 (8th Cir. 2005); Western Rim Inc. Advisors v. Gulf Ins Co., 269 F. Supp.2d 836 848 (N.D.Tex. 2003) aff'd mem., 96 Fed.Appx. 960 (5th Cir. 2004); Nutmeg Ins. Co., v. Employers Ins. Co. of Wausau, No. Civ.A. 3:04-CV-1762B, 2006 WL 453235, at *10 (N.D. Tex. Feb. 24, 2006) (noting no requirement that private information be revealed, stating that the average person would reasonably understand that he would be covered under the advertising injury provision because the transmission of an unwanted facsimile constitutes an intrusion on seclusion, and hence violates one's right of privacy); LensCrafters Inc. v. Liberty Mut. Fire Ins. Co., No. C 04-1001 SBA, 2005 WL 146896, at *1 (N.D. Cal. Jan. 20, 2005).

have a duty to defend for violations of the TCPA under a CGL policy's "advertising injury" clause even when the facsimile transmission does not disseminate private information. Despite the absence of private information, an unsolicited facsimile arguably can still constitute an unwarranted intrusion and violation of one's right to privacy and activate the defense obligation.

For all the foregoing reasons, United Policyholders respectfully requests that this Court answer the Eleventh Circuit's certified question in the affirmative, and the case be returned to the Eleventh Circuit for the issuance of instructions to the district court to enter judgment in favor of coverage.

Dated: December 11, 2008

Respectfully submitted:

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing
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I HEREBY CERTIFY that the foregoing brief was prepared using
Times New Roman 14-point font.

R. Hugh Lumpkin by JAH

R. Hugh Lumpkin, Esq.

EXHIBIT A

ORIGINAL
DO NOT REMOVE FROM FILE

Circular

May 5, 1976

**BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT G222 FILED
COUNTRYWIDE**

General Liability GL 76-38
(Rates and Rules/Forms)

ADVANCE
PLANNING
NOTICE

This circular is intended exclusively for ISO affiliated insurers for their information and advance planning.

ISO
ACTION

We have filed, in all jurisdictions, a standard Broad Form Comprehensive General Liability Endorsement G222 which will provide a number of "fringe coverages" under a single endorsement.

COMPANY
ACTION

According to the applicable rating laws in various states, companies must file this endorsement themselves in the following jurisdictions:

- . Colorado
- . Michigan
- . Wisconsin
- . Kansas
- . Missouri

COMMENT

This endorsement was developed for use with a Comprehensive General Liability Policy only since it is designed to expand the broad coverages already provided by the CGL policy.

An explanatory memorandum, endorsement G222, an advisory guide and a suggested rating procedure are attached.

PROPOSED
EFFECTIVE
DATE

It is proposed that this endorsement may be attached to any policy written on or after July 1, 1976.

AVAILABILITY
OF
ENDORSEMENT

This endorsement will be available through our Central Distribution System two weeks prior to the effective date.

FUTURE
ISO
ACTION

We will also issue another explanatory memorandum, which will set forth in further detail the intent of each coverage provided under this new endorsement as an aid to companies in the application of this endorsement. We will keep you advised of the status of this revision.

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Insurance Services Office, 160 Water Street, New York, New York 10033 (212) 487-5000

IA-10-771

This document is not intended to be a representation of any insurance policy. It is not to be used as a contract. It is subject to the terms, conditions, coverages, exclusions, and limitations of the actual policy.

ISO

COPIES OF ORIGINAL

POOR QUALITY ORIGINAL

ATTACHMENTS

- Explanatory Memorandum
 - Endorsement C222
 - Advisory Guide
 - Suggested Rating Procedure
-

Wally T. S. Wang

Wally T. S. Wang
Assistant Manager
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POOR QUALITY ORIGINAL

EXPLANATORY MEMORANDUM

The purpose of this filing is to introduce a new standard Broad Form Comprehensive General Liability Endorsement which will provide a number of so-called "fringe coverages" under a single endorsement. This endorsement was developed for use with the Comprehensive General Liability Policy only since this endorsement is designed to expand on the broad coverage already provided by the CGL policy. A copy of this endorsement is attached.

It has become common practice for insurance companies to offer a package of "fringe coverages" to their insureds under a single endorsement for a single premium charge. Until now, package endorsements have been filed on an independent basis and vary as to coverage from company to company.

This endorsement was developed based on an expression of need from producer organizations as well as various insurance companies for a standardized form. Furthermore, it fills a need for those insureds who previously found such coverage unavailable in a package form. We believe that the coverage afforded under this endorsement is the broadest package of coverage available to the average insured.

This endorsement will be rated on an individual risk basis since the potential exposure to loss as respects coverage provided under this endorsement will vary from risk-to-risk.

The following is a general description of the coverages provided under this endorsement:

1. Contractual Liability Coverage

Blanket contractual liability coverage is provided for bodily injury and property damage arising out of liability assumed under oral or written contracts.

2. Personal Injury and Advertising Injury Liability Coverage

Personal injury covers such exposures as false arrest, detention, imprisonment or malicious prosecution; libel, slander and wrongful entry or eviction or other invasion of the right of private occupancy.

Advertising injury covers the insured for various types of injuries such as piracy, unfair competition, infringement of copyright, etc., arising out of the insured's advertising, promotional or publicity activities.

3. Premises Medical Payments Coverage

The coverage is identical to that provided by the Standard Coverage Part for Premises Medical Payments Insurance.

4. Host Liquor Law Liability Coverage

The liquor law liability exclusion has been amended to extend host liquor law liability coverage to the named insured.

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5. Fire Legal Liability Coverage - Real Property

Coverage is provided for fire damage to structures, including fixtures permanently attached thereto, while rented to or leased to the named insured. The basic limit of liability for this coverage is \$50,000, however, higher limits are available.

6. Broad Form Property Damage Liability Coverage - (Including Completed Operations)

Extends coverage by limiting the policy exclusion pertaining to the property of others under the care, custody or control of the named insured and the exclusion pertaining to the work performed by or on behalf of the named insured.

7. Incidental Medical Malpractice Liability Coverage

Coverage is provided for an insured who is not engaged in the health care business but whose employees are involved in the rendering of certain types of medical professional services. For instance, an insured has a doctor and nurse staffed infirmary in his factory for the treatment of employment related injuries. Schools, department stores, etc., have a similar exposure.

8. Non-Owned Watercraft Liability Coverage (under 26 feet in length)

Coverage is extended to watercraft under 26 feet in length provided such watercraft is not owned by the named insured or is not being used to carry persons or property for a charge. This coverage is particularly useful for those insureds who rent or lease watercraft or may have employees who use their own watercraft for business purposes e.g. salesmen.

9. Limited Worldwide Liability Coverage

Policy territory definition is amended to cover liability arising out of the activities of the named insured and his employees while temporarily outside the United States of America, its territories or possessions or Canada, provided the original suit for damages is brought within the United States of America, its territories or possessions or Canada.

10. Additional Persons Insured

Coverage is extended to all employees as additional insureds. Coverage is also extended to the spouse of a partner if the named insured is a partnership.

11. Extended Bodily Injury Coverage

Coverage is provided for any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

12. Automatic Coverage - Newly Acquired Organizations (90 days)

Coverage is automatically extended for up to 90 days to the named insured for any newly acquired or formed organization over which the named insured maintains ownership or majority interest.

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This endorsement forms a part of the policy to which attached, effective on the inception date of the policy unless otherwise stated herein.

(The following information is required only when this endorsement is issued subsequent to preparation of policy.)

Endorsement Effective	Policy No.	Endorsement No.
Named Insured		
Additional Premium \$ _____		Countersigned by _____ (Authorized Representative)

This endorsement modifies such insurance as is afforded by the provisions of the policy relating to the following designated insurance:
COMPREHENSIVE GENERAL LIABILITY INSURANCE

BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT

SCHEDULE

Personal Injury and Advertising Injury Liability

Aggregate Limit shall be the per occurrence bodily injury liability limit unless otherwise indicated herein.

Limit of Liability \$ _____ Aggregate

Limit of Liability - Premises Medical Payments Coverage: \$1,000 each Person unless otherwise indicated herein \$ _____ each person.

Limit of Liability - Fire Legal Liability Coverage: \$50,000 per occurrence unless otherwise indicated herein: \$ _____ per occurrence.

Premium Basis

Advance Premium

_____ % OF THE TOTAL COMPREHENSIVE GENERAL LIABILITY BODILY INJURY AND PROPERTY DAMAGE PREMIUM AS OTHERWISE DETERMINED \$ _____

MINIMUM PREMIUM \$ _____

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THIS ENDORSEMENT IS SUBJECT TO THE TERMS AND CONDITIONS OF THE POLICY TO WHICH IT IS ATTACHED. IT DOES NOT ALTER OR SUPPLEMENT THE COVERAGE PROVIDED BY THE POLICY UNLESS OTHERWISE SPECIFICALLY STATED HEREIN.

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C O M M O N W E L T H

I. CONTRACTUAL LIABILITY COVERAGE

- (A) The definition of incidental contract is extended to include any contract or agreement relating to the conduct of the named insured's business.
- (B) The insurance afforded with respect to liability assumed under an incidental contract is subject to the following additional exclusions:
 - (1) to bodily injury or property damage for which the insured has assumed liability under any incidental contract, if such injury or damage occurred prior to the execution of the incidental contract;
 - (2) if the insured is an architect, engineer or surveyor, to bodily injury or property damage arising out of the rendering or failure to render professional services by such insured, including
 - (a) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, and
 - (b) supervisory, inspection or engineering services;
 - (3) if the indemnitee of the insured is an architect, engineer or surveyor, to the liability of the indemnitee, his agents or employees, arising out of
 - (a) the preparation or approval or the failure to prepare or approve maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or
 - (b) the giving of or the failure to give directions or instructions by the indemnitee, his agents or employees, provided such giving or failure to give is the primary cause of the bodily injury or property damage.
 - (4) to any obligation for which the insured may be held liable in an action on a contract by a third party beneficiary for bodily injury or property damage arising out of a project for a public authority; but this exclusion does not apply to an action by the public authority or any other person or organization engaged in the project.
 - (5) to bodily injury or property damage arising out of operations, within 50 feet of any railroad property, affecting any railroad bridge or trestle, tracks, road beds, tunnel, underpass or crossing; but this exclusion does not apply to sidetrack agreements.
- (C) The following exclusions applicable to Coverages A (Bodily Injury) and B (Property Damage) do not apply to this Contractual Liability Coverage: (b), (c) (2), (d) and (e).
- (D) The following additional condition applies:

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Arbitration

The company shall be entitled to exercise all of the insured's rights in the choice of arbitrators and in the conduct of any arbitration proceeding.

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II. PERSONAL INJURY AND ADVERTISING INJURY LIABILITY COVERAGE

- (A) The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of personal injury or advertising injury to which this insurance applies, sustained by any person or organization and arising out of the conduct of the named insured's business, within the policy territory, and the company shall have the right and duty to defend any suit against the insured seeking damages on account of such injury, even if any of the allegations of the suit are groundless, false or fraudulent, and may make such investigation and settlement of any claim or suit as it deems expedient, but the company shall not be 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.
- (B) This insurance does not apply:
- (1) to liability assumed by the insured under any contract or agreement;
 - (2) to personal injury or advertising injury arising out of the wilful violation of a penal statute or ordinance committed by or with the knowledge or consent of the insured;
 - (3) to personal injury or advertising injury arising out of a publication or utterance of a libel or slander, or a publication or utterance in violation of an individual's right of privacy, 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;
 - (4) to personal injury or advertising injury arising out of libel or slander or the publication or utterance of defamatory or disparaging material concerning any person or organization or goods, products or services, or in violation of an individual's right of privacy, made by or at the direction of the insured with knowledge of the falsity thereof;
 - (5) to personal injury or advertising 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 the declarations of the policy as a named insured;
 - (6) to advertising injury arising out of
 - (a) failure of performance of contract, but this exclusion does not apply to the unauthorized appropriation of ideas based upon alleged breach of implied contract, or
 - (b) infringement of trademark, service mark or trade name, other than titles or slogans, by use thereof on or in connection with goods, products or services sold, offered for sale or advertised, or

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(c) incorrect description or mistake in advertised price of goods, products or services sold, offered for sale or advertised;

(7) with respect to advertising injury

(a) to any insured in the business of advertising, broadcasting, publishing or telecasting, or

(b) to any injury arising out of any act committed by the insured with actual malice.

(C) Limits of Liability

Regardless of the number of (1) insureds hereunder, (2) persons or organizations who sustain injury or damage, or (3) claims made or suits brought on account of personal injury or advertising injury the total limit of the company's liability under this coverage for all damages shall not exceed the limit of liability stated in this endorsement as "aggregate".

(D) Additional Definitions

"Advertising Injury" means injury arising out of an offense committed during the policy period occurring in the course of the named insured's advertising activities, if such injury arises out of libel, slander, defamation, violation of right of privacy, piracy, unfair competition, or infringement of copyright, title or slogan.

"Personal Injury" means injury arising out of one or more of the following offenses committed during the policy period:

1. false arrest, detention, imprisonment, or malicious prosecution;
2. wrongful entry or eviction or other invasion of the right of private occupancy;
3. a publication or utterance
 - (a) of a libel or slander or other defamatory or disparaging material, or
 - (b) in violation of an individual's right of privacy; except publications or utterances in the course of or related to advertising, broadcasting, publishing or telecasting activities conducted by or on behalf of the named insured shall not be deemed personal injury.

III. PREMISES MEDICAL PAYMENTS COVERAGE

The company will pay to or for each person who sustains bodily injury caused by accident all reasonable medical expense incurred within one year from the date of the accident on account of such bodily injury, provided such bodily injury arises out of (a) a condition in the insured premises or (b) operations with respect to which the named insured is afforded coverage for bodily injury liability under the policy.

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This insurance does not apply:

(A) to bodily injury

- (1) 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;

but this exclusion does not apply to the parking of an automobile on the insured premises, if such automobile is not owned by or rented or loaned to any insured;

(2) arising out of

- (a) the ownership, maintenance, operation, use, loading or unloading of any mobile equipment 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
- X (b) the operation or use of any snowmobile or trailer designed for use therewith;

(3) 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 the insured premises;

(4) arising out of and in the course of the transportation of mobile equipment by an automobile owned or operated by or rented or loaned to the named insured;

(B) to bodily injury

- (1) included within the completed operations hazard or the products hazard;
- (2) arising out of operations performed for the named insured by independent contractors other than
 - (a) maintenance and repair of the insured premises or

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- (b) structural alterations at such premises which do not involve changing the size of or moving buildings or other structures;
- (3) resulting from the selling, serving or giving of any alcoholic beverage
 - (a) in violation of any statute, ordinance or regulation,
 - (b) to a minor,
 - (c) to a person under the influence of alcohol, or
 - (d) which causes or contributes to the intoxication of any person,

if the named insured is a person or organization engaged in the business of manufacturing, distributing, selling or serving alcoholic beverages, or if not so engaged, is an owner or lessor of premises used for such purposes, but only part (a) of this exclusion (B) (3) applies when the named insured is such an owner or lessor;
- (4) due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing;
- (C) to bodily injury
 - (1) 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 therewith;
 - (2) 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 a 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;
 - (3) to any person while engaged in maintenance and repair of the insured premises or alteration, demolition or new construction at such premises;
 - (4) to any person if any benefits for such bodily injury are payable or required to be provided under any workmen's compensation, unemployment compensation or disability benefits law, or under any similar law;
 - (5) to any person practicing, instructing or participating in any physical training, sport, athletic activity or contest whether on a formal or informal basis.

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- (6) if the named insured is a club, to any member of the named insured.
- (7) if the named insured is a hotel, motel, or tourist court, to any guest of the named insured.
- (D) 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.

LIMITS OF LIABILITY

The limit of liability for Premises Medical Payments Coverage is \$1,000 each person unless otherwise stated in the schedule of this endorsement. The limit of liability applicable to "each person" is the limit of the company's liability for all medical expense for bodily injury to any one person as the result of any one accident; but subject to the above provision respecting "each person", the total liability of the company under Premises Medical Payments Coverage for all medical expense for bodily injury to two or more persons as the result of any one accident shall not exceed the limit of bodily injury liability stated in the policy as applicable to "each occurrence".

When more than one medical payments coverage afforded by the policy applies to the loss, the company shall not be liable for more than the amount of the highest applicable limit of liability.

ADDITIONAL DEFINITIONS

When used herein:

"insured premises" means all premises owned by or rented to the named insured with respect to which the named insured is afforded coverage for bodily injury liability under this policy, and includes the ways immediately adjoining on land;

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

ADDITIONAL CONDITION

Medical Reports; Proof and Payment of Claim

As soon as practicable the injured person or someone on his behalf shall give to the company written proof of claim, 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 examination 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.

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IV. HOST LIQUOR LAW LIABILITY COVERAGE

Exclusion (h) does not apply with respect to liability of the insured or his indemnitee arising out 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.

V. FIRE LEGAL LIABILITY COVERAGE - REAL PROPERTY

With respect to property damage to structures or portions thereof rented to or leased to the named insured, including fixtures permanently attached thereto, if such property damage arises out of fire;

(A) All of the exclusions of the policy, other than the Nuclear Energy Liability Exclusion (Broad Form), are deleted and replaced by the following:

This insurance does not apply to liability assumed by the insured under any contract or agreement.

(B) The limit of property damage liability as respects this Fire Legal Liability Coverage -- Real Property is \$50,000 each occurrence unless otherwise stated in the Schedule of this endorsement.

(C) The Fire Legal Liability Coverage - Real Property shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof), available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VI. BROAD FORM PROPERTY DAMAGE LIABILITY COVERAGE (Including Completed Operations)

The insurance for property damage liability applies, subject to the following additional provisions:

A. Exclusions (k) and (o) are replaced by the following:

(1) to property 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,

(2) except with respect to liability under a written sidetrack agreement or the use of elevators

(a) to 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,

(b) to tools or equipment while being used by the insured in performing his operations,

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- (c) to property in the custody of the insured which is to be installed, erected or used in construction by the insured,
- (d) to 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, or
 - (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;
- (3) with respect to the completed operations hazard and with respect to any classification stated in the policy or in the company's manual as "including completed operations", to property damage to work performed by the named insured arising out of such work or any portion thereof, or out of such materials, parts or equipment furnished in connection therewith,

B. The Broad Form Property Damage Liability Coverage shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the insured, such as, but not limited to, Fire, Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the Other Insurance Condition of the policy is amended accordingly.

VII. INCIDENTAL MEDICAL MALPRACTICE LIABILITY COVERAGE

The definition of bodily injury is amended to include Incidental Medical Malpractice Injury.

Incidental Medical Malpractice Injury means injury arising out of the rendering of or failure to render, during the policy period, the following services:

- (A) medical, surgical, dental, x-ray or nursing service or treatment or the furnishing of food or beverages in connection therewith; or
- (B) the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances.

This coverage does not apply to:

- (1) expenses incurred by the insured for first-aid to others at the time of an accident and the "Supplementary Payments" provision and the "Insured's Duties in the Event of Occurrence, Claim or Suit" Condition are amended accordingly; or

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- (2) any insured engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.
- (3) injury caused by any indemnitee if such indemnitee is engaged in the business or occupation of providing any of the services described under VII (A) and (B) above.

VIII. NON-OWNED WATERCRAFT LIABILITY COVERAGE (under 26 feet in length)

Exclusion (e) does not apply to any watercraft under 26 feet in length provided such watercraft is neither owned by the named insured nor being used to carry persons or property for a charge.

Where the insured is, irrespective of this coverage, covered or protected against any loss or claim which would otherwise have been paid by the company under this endorsement, there shall be no contribution or participation by this company on the basis of excess, contributing, deficiency, concurrent, or double insurance or otherwise.

IX. LIMITED WORLDWIDE LIABILITY COVERAGE

The definition of policy territory is amended to include the following:

- 4. Anywhere in the world with respect to bodily injury, property damage, personal injury or advertising injury arising out of the activities of any insured permanently domiciled in the United States of America though temporarily outside the United States of America, its territories and possessions or Canada, provided the original suit for damages because of any such injury or damage is brought within the United States of America, its territories or possessions or Canada.

Such insurance as is afforded by paragraph 4. above shall not apply:

- (a) to bodily injury or property damage included within the completed operations hazard or the products hazard;
- (b) to premises medical payments coverage.

X. ADDITIONAL PERSONS INSURED

As respects bodily injury, property damage and advertising injury and personal injury coverages, under the provision "Persons Insured", the following are added as insureds:

- (1) Spouse - Partnership - If the named insured is a partnership, the spouse of a partner but only with respect to the conduct of the business of the named insured.

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- (2) Employee - Any employee of the named insured while acting within the scope of his duties as such, but the insurance afforded to such employee does not apply:
- (a) to bodily injury or personal injury to another employee of the named insured arising out of or in the course of his employment;
 - (b) to personal injury or advertising injury to the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof, or the spouse of any of the foregoing;
 - (c) 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 another employee of the named insured, or by the named insured or, if the named insured is a partnership or joint venture, any partner or member thereof or by the spouse of any of the foregoing.

XI. EXTENDED BODILY INJURY COVERAGE

The definition of occurrence includes any intentional act by or at the direction of the insured which results in bodily injury, if such injury arises solely from the use of reasonable force for the purpose of protecting persons or property.

XII. AUTOMATIC COVERAGE - NEWLY ACQUIRED ORGANIZATIONS (90 DAYS)

The word insured shall include as named insured any organization which is acquired or formed by the named insured and over which the named insured maintains ownership or majority interest, other than a joint venture, provided this insurance does not apply to bodily injury, property damage, personal injury and advertising injury with respect to which such new organization under this policy is also an insured under any other similar liability or indemnity policy or would be an insured under any such policy but for exhaustion of its limits of liability. The insurance afforded hereby shall terminate 90 days from the date any such organization is acquired or formed by the named insured.

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Broad Form Comprehensive General Liability Endorsement

Advisory Guide

Since underwriting control is a company prerogative, this guide is not intended to govern or interfere in any company's underwriting practice. The purpose of this guide is to point out the special exposures which may exist with respect to certain types of risks and thus provide some basic information for underwriters regarding the use of the Broad Form Comprehensive General Liability Endorsement.

The attached material is designed to assist underwriters to recognize those risks which possess a greater exposure than average as respects certain coverages afforded under the Broad Form Comprehensive General Liability Endorsement. A check mark indicates that a significant exposure may exist which may warrant special underwriting and pricing consideration.

Also, certain coverages afforded under this endorsement present special potential hazards in connection with specific risks. The following are some examples of these risks which may warrant special underwriting and pricing consideration in the application of this endorsement.

1. Risks involving bailee type operations; such as but not limited to truckmen, warehousemen, laundry and automobile garages, etc., may have unusual exposure under Contractual and Broad Form Property Damage Coverages.
2. Risks such as but not limited to, marinas, wharf and waterfront properties and those risks which are water oriented, may have unusual exposure with respect to Non-Owned Watercraft Coverage.
3. Risks whose business involves foreign operations; such as but not limited to, importers and exporters, travel agencies, etc., may have greater exposure under Worldwide Coverage.
4. Risks other than clubs, hotels and motel operations⁺, which involve mass occupancy; such as but not limited to, theaters, churches, sports and amusement activities, etc., may have greater exposure under Premises Medical Payments Coverage.
⁺Coverage for these risks is excluded under this form.
5. Risks such as but not limited to department stores, schools, colleges, camps, manufacturers, day care centers, municipalities, etc., with medical care facilities; such as infirmaries, clinics, etc., may have greater exposure under the Incidental Medical Malpractice Coverage.
6. Risks involving operations which present a potential fire hazard; such as but not limited to, restaurants, manufacturers and distributors of highly combustible materials or products, etc., may have greater exposure under the Fire Legal Liability Coverage.
7. Risks that maintain or provide a security service; such as but not limited to, department stores, contractors, hotels and motels, etc., may have greater exposure under Extended Bodily Injury, Personal Injury and Broad Form Property Damage Liability Coverages.

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In addition, when the products-completed operations premium is a substantial part of the general liability premium, some distortion in calculation of premium for this endorsement may result. Special underwriting and pricing consideration is suggested.

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SUGGESTED RATING PROCEDURE FOR
BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT G222

Since the potential exposure to loss as respects coverage provided under endorsement G222 will vary from risk-to-risk, the following suggested rating procedure was designed for average risk accounts only. In the application of this suggested rating procedure, companies should utilize the information provided in the Advisory Guide to determine the special exposures for certain risks as respects certain coverages afforded under this endorsement. Special underwriting or pricing consideration should be given if the situation is warranted.

Premium Base: The total annual premium for the Comprehensive General Liability coverage -

Including: Premises
 Operations
 Owners and Contractors Protective
 Products and Completed Operations

Excluding: Contractual
 Broad Form Property Damage
 Personal Injury
 Fire Legal Liability
 Premiums Medical Payments
 Additional Insured - Employees
 Incidental Malpractice
 Host Liquor
 "d", "e", "x", "c", "u" hazards
 Any other "fringe" coverages

Rates: 15% flat charge

Minimum Premiums: \$15.00 G.I. \$10.00 P.H. (not subject to short rate adjustment and not subject to increase for increased limits)

Eligibility: The suggested 15% flat charge applies to any class of business written under a CGL policy except:

1. construction contractors or subcontractors excluding artisan type
2. oil or gas producing risks and related operations
3. municipalities or governmental subdivisions
4. detectives, guards and watchmen

For risks listed above, 30% flat charge is suggested.

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BROAD FORM COMPREHENSIVE GENERAL LIABILITY ENDORSEMENT G 222

RATING PROCEDURE

Rates: (a) rated

Minimum Premiums: (a) rated

Coding: For statistical purposes, Code No. 99999 applies to all premiums and losses developed from the application of this endorsement.

In order to assist companies in rating the coverages provided under endorsement G222, attached is a suggested rating procedure.

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