DC-20-05751

LOMBARDI'S INC.; LOMBARDI'S FAMILY CONCEPTS, INC.; PENNE SNIDER, LLC; PENNE PRESTON, LLC; ALBERTO LOMBARDI INTERESTS, LLC; TAVERNA DOMAIN AUSTIN, LP; CAFÉ TOULOUSE RIVER OAKS DISTRICT, LP; CAFÉ MONACO HPV, LLC; PENNE LAKEWOOD, LLC; TAVERNA BUCKHEAD, LP; TAVERNA AUSTIN, L.L.C.; TAVERNA FT. WORTH, LLC; TOULOUSE KNOX BISTRO, LLC; TAVERNA ARMSTRONG, L.L.C.; TOULOUSE DOMAIN AUSTIN, LP; BISTRO 31 LEGACY, LP; TAVERNA LEGACY, LP; AND LOMBARDI'S OF DESERT PASSAGE, INC.	§	**IN THE DISTRICT COURT OF**
PLAINTIFFS,	§	
V.	§	**DALLAS COUNTY, TEXAS**
INDEMNITY INSURANCE COMPANY OF NORTH AMERICA,	§	
DEFENDANT.	§	**14th JUDICIAL DISTRICT**

PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT'S AMENDED RULE 91A MOTION TO DISMISS

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Defendant Indemnity Insurance Company of North America ("Chubb"): (1) has not demonstrated it has proffered the only (or even most) reasonable construction of its policy of insurance; (2) invokes "exclusions" that are not part of its contractual bargain with the Lombardi Plaintiffs;[1] (3) in any event misconstrues the exclusions; and (4) otherwise attempts to exploit a series of internally inconsistent, ambiguous, and quite likely poorly drafted policy terms to facilitate *post hoc* advantage for itself. None of these tactics are proper. Chubb's *Amended Motion to Dismiss Pursuant to Rule 91A* (the "Rule 91A Motion") should be denied.

I. SUMMARY OF RESPONSE

Texas Rule of Civil Procedure 91A, coupled with controlling insurance law principles, obligate Chubb to demonstrate its policy of insurance is susceptible to *only* an interpretation conclusively supporting its rationales for denying coverage. Yet Chubb's approach has been to proffer dubious constructions of the policy, without addressing competing (and more sound) constructions that favor the Lombardi Plaintiffs.

Chubb in fact ignores words, phrases, and entire structural conventions used in its policy, as if they should not be regarded to convey meaning. None of this is remotely defensible under the Rule 91A principles or Texas insurance law.

For instance, Chubb relies almost exclusively on cases from *other* jurisdictions that construed policies covering *only* physical loss or damage "to" property, whereas Chubb drafted its

[1] Lombardi's Inc., Lombardi's Family Concepts, Inc., Penne Snider, LLC, Penne Preston, LLC, Alberto Lombardi Interests, LLC, Taverna Domain Austin, LP, Café Toulouse River Oaks District, Café Monaco HPV, LLC, Penne Lakewood, LLC, Taverna Buckhead, LP, Taverna Austin, L.L.C., Taverna Ft. Worth, LLC, Toulouse Knox Bistro, LLC, Taverna Armstrong, L.L.C., Toulouse Domain Austin, LP, Bistro 31 Legacy, LP, Taverna Legacy, LP, Taverna Buckhead LP, and Lombardi's of Desert Passage, Inc.

policy to *disjunctively* afford coverage: (1) for physical "damage *to*" covered properties, or (2) when there is a "loss *of*" the insureds' ability to physically utilize the properties.

At minimum, the Lombardi Plaintiffs have averred physical loss "of" their properties, by alleging disruptions to their ability to *physically* access and utilize portions of the properties were necessary to *prevent* the spread of "COVID-19."[2] But Chubb's response has been to flout axioms of the English language, insisting the preposition "of" has no utility to convey meaning distinct from "to," and that "loss" conveys no meaning different from "damage." But if Chubb actually believed that (it surely did not), it proffers no explanation why it drafted its policy to use *both* sets of phrases, *disjunctively*.

Chubb also ignores its proposed construction necessitates illogical tensions between provisions in *its* specific policy—which apparently were *not* at issue in the other cases Chubb cites. For instance, a "Bodily injury" provision in Chubb's policy disclaims coverage if "sickness or disease" is reasonably foreseeable, i.e., "expected," from the Lombardi Plaintiffs' perspective. A similar mitigation mandate required the Lombardi Plaintiffs to "[t]ake reasonable steps to protect the Covered Property from further damage . . . ." The practical import of these conditions is the Lombardi Plaintiffs were *obligated* to take steps to prevent foreseeable sickness or disease and property damage—lest they jeopardize entitlement to complementary coverages.

Yet now that the Lombardi Plaintiffs have lost use of their properties as necessary to preempt *precisely* such risks—Chubb responds by contending the consequences of the preventive measures fall outside of coverage. Chubb therefore proposes a paradoxical construction of its policy, whereby steps to ensure *certain* coverages, actually foreclose *pertinent* coverages. This

[2] Although *not* essential to coverage, there also are fact questions whether there was actual "damage to" the Lombardi Plaintiffs' property, *see* pp. 4 – 5, 16 – 17 *infra*, which cannot be adjudicated through Rule 91A practice.

reasoning is indicative of a policy either not written to support Chubb's internally discordant characterizations—or so poorly written that Chubb cannot exploit the confusion to its advantage.

Chubb proffers a final line of attack, contending an "Ordinance Or Law" exclusion and a "Virus" exclusion purportedly foreclose coverage. The most prominent error with Chubb's reasoning is the terms of the policy *disclaim* application of the exclusions to the coverage invoked by the Lombardi Plaintiffs. There consequently is no contractual basis for their application, but in no event were the exclusions drafted to accomplish what Chubb *now* wants them to accomplish.

All of the foregoing prevents Chubb from carrying its burden to establish it has proffered the *only* reasonable construction of the policy. It consequently is not entitled to Rule 91A dismissal.

II. PERTINENT FACTUAL AVERMENTS & POLICY PROVISIONS

A. The Averred Risk of COVID-19 Infection and Plaintiffs' Preventive Measures

In their First Amended Petition ("Pet."), the Lombardi Plaintiffs averred Chubb's policy of insurance number MCRD38196169 (the "Policy"), covered their properties from June 30, 2019 to June 30, 2020. *See* (Pet., p. 4, ¶¶ 8, 9).[3] They further averred on or about December 31, 2019, the World Health Organization ("WHO") reported a pneumonia-causing virus of unknown origin, now referred to as "COVID-19". *See* (*Id*. at p. 5, ¶ 14).

The progression of the virus, as well as understanding of its risks, have precipitated social and economic disruption of an extraordinary scale. By way of example:

[3] An excerpted and highlighted version of the Policy is attached as **Exhibit 1**, with "Appx." designations per page.

- On January 25, 2020, the WHO announced COVID-19 is a "global threat to human health . . . ." *See* (Pet., p. 5, ¶ 16).
- On March 11, 2020, the WHO formally characterized COVID-19 as the cause of a "pandemic" and lamented "alarming levels of spread and severity . . . ." (*Id*. at ¶ 18).
- The United States Centers for Disease Control followed suit, warning: "there is little to no pre-existing immunity against the new virus . . . ." (*Id*. at ¶ 21). *See also* (*id*. at p. 6, ¶ 28).
- Indeed, at least 6,546,143 Americans had been infected, *see* (*id*. at ¶ 23), and approximately 200,000 had died when the Amended Petition was filed, (*id*. at ¶ 24).
- Research moreover has substantiated the high probability of "asymptomatic" spread through transmission vectors such as "droplets from the nose or mouth" that "can land on objects and surfaces around the person such as tables, doorknobs and handrails." (*Id*. at pp. 6, 7, 8, ¶¶ 25, 29, 31, 33, 34).
- Once deposited on certain surfaces, the virus has been documented to persist for up to 17 days. (*Id*. at p. 7, ¶ 30).
- The scientific literature moreover has confirmed unique risks associated with "dining at a restaurant" where "[d]irection, ventilation, and intensity of airflow might affect virus transmission. . ."—irrespective of social distancing measures. (*Id*. at p. 9, ¶ 35).

The Lombardi Plaintiffs averred the federal government, *see* (*id*. at pp. 9 – 10, ¶¶ 36 – 38), followed by states and localities, early on recognized "the pandemic presents a clear and present danger because of the propensity of the virus to be deposited on surfaces and in the air in businesses such as the Lombardi Plaintiffs' restaurants . . .[,]" and "this situation . . . was causing *property*

damage and was presenting the danger of the virus continuing to be present in facilities such as restaurants and thus a danger to the *public health* through spread of the virus from those locations." (Pet., p. 12, ¶¶ 41, 42) (emphasis added).

The common theme of these averred findings has been in the absence of population immunity, limitations on physical activity and movement have been the only practical means to suppress COVID-19 spread. The Lombardi Plaintiffs therefore implemented restrictions regarding physical use and access to their properties "to *prevent* the ongoing danger of the virus." *See* (*Id*. at 22, ¶ 92) (emphasis added).

And although these preventative measures align with various governmental directives, they *independently* were necessary and implemented by the Lombardi Plaintiffs to mitigate the well-documented risk of "property damage" and "danger to the public health." Yet despite these averments, Chubb consistently has attempted to recast the Lombardi Plaintiffs' claims as if they have alleged "governmental edict[s], *standing alone*, constitute[d] a direct physical loss . . . ." to the Lombardi Plaintiffs' properties. *Cf*. (Rule 91A Motion, p. 11, n.16 & p. 9) (emphasis added).

The characterization is inaccurate (indeed disingenuous), given Chubb *concedes* the Lombardi Plaintiffs "identify *no* orders or restrictions in [certain] jurisdictions that restrict restaurant operations. *Nor* do [they] reference provisions that would affect *operation* of their restaurants in [still other jurisdictions]." (*Id*. at p. 4) (emphasis added). It consequently cannot be the case the Lombardi Plaintiffs have conditioned their claims on allegations governmental directives *standing alone* constituted the physical loss—when in many respects Chubb concedes the Lombardi Plaintiffs pled *no such* governmental directives.

Chubb's characterization of the Lombardi Plaintiffs' averments moreover is illogical, because the tactic makes superfluous the Lombardi Plaintiffs' comprehensive averments regarding

the documented risks of COVID-19 from sources *in addition to* governmental directives. Those averments would be denied required affect if the premise of the Lombardi Plaintiffs' claims had been governmental directives "standing alone" were dispositive.

Chubb even mischaracterizes the fundamental character of the directives, by referring to them as "ordinances" or "laws". *Cf*. (Rule 91A Motion, pp. 2, 7, 14, 18 – 19). Yet the Lombardi Plaintiffs have not averred the states or localities where their restaurants are located responded to COVID-19 risks by convening their legislatures or city councils to pass legislative directives of the kind. And within the averred jurisdictions, *only* the state legislatures are authorized to pass regulatory laws, and *only* the city councils may pass ordinances. *Cf.* TEX. CONST., Art. III, § 29; Dallas Code of Ordinances, Charter Chpt. XVIII, §§ 1, 3; Houston Code of Ordinances, Charter Art. II, § 2(a); Fort Worth Code of Ordinances, Charter Chpt. XXV, § 4; Austin Code of Ordinances, Charter Art. II, § 14; Plano Code of Ordinances, Pt. 1, Art. 3, § 3.10; GA. CONST., Art. III, § VI, ¶ I; Atlanta Code of Ordinances, Pt. 1(A), Art. 1, § 1-103(a), (b); NEV. CONST., Art. 4, § 23; Las Vegas Municipal Code, Charter Art. II, § 2.090(1).[4]

By contrast, the exigent risks presented by COVID-19 were the subject of executive (not legislative) directives, *see* (Pet., pp. 12 – 20, ¶¶ 43 – 77), which do not qualify as laws or ordinances. The Lombardi Plaintiffs averred, by way of example, the directives issued in Texas derived from authority in Texas Government Code Section 418.108, *see e.g.*, (*id*. at p. 12, ¶ 43), which delegates to "the *presiding officer* of the governing body of a political subdivision" authority to "declare a local state of disaster." TEX. GOV. CODE § 418.108(a) (emphasis added). Chubb has not cited any authority whereby those "presiding officers" are empowered to pass "laws" or

[4] Highlighted excerpts of the respective municipal code provisions are attached hereto as **Exhibit 2** – **Exhibit 8**.

"ordinances"; and more critically, Chubb's Policy does not *define* the term "law" or "ordinance" to be inclusive of the types of executive mandates averred by the Lombardi Plaintiffs.

B. Pertinent Policy Provisions

1. The Business Income Coverage

The losses the Lombardi Plaintiffs have alleged fall within the Policy section titled "BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM," sometimes herein, the "Business Income Coverage". *See* (Appx. 003). Pursuant to the principal coverage in the provision, Chubb contracted to:

> pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration." The "suspension" must be caused by direct physical loss *of* or damage *to* property at premises which are described in the Declarations and for which a Business Income Limit of Insurance is shown in the Declarations. The loss *or* damage must be caused by or result from a Covered Cause of Loss.

(Business Income Coverage, § A(1); Appx. 003) (emphasis added).

Pursuant to the plain language of this provision, there are four considerations pertinent to coverage: 1) whether there was "physical loss of" property; (2) whether there *alternatively* was physical "damage to" property; (3) whether there was an operational "suspension" at properties described in the "Declarations" with a "Limit of Insurance"; and 4) whether a "Covered Cause of Loss" provision operated to restrict coverage.

The concept "physical loss of" (consideration # 1) is *not* defined in the Policy, nor is the concept of "damage to" the properties (consideration # 2). Accordingly, the ordinary meanings of the phrases are pertinent to the coverage analysis, and as discussed herein, Chubb proposes a

construction that plainly is at odds with ordinary meaning—indeed basic logic. *See* pp. 21 – 23 *infra*.

With respect to operational suspensions at properties described in the "Declarations" (consideration # 3), a "SCHEDULE OF LOCATIONS" in the Policy lists all such properties. *See* (Appx. 001 – 002). All of the locations in turn are subject to coverage pursuant to sections of the Policy titled "COMMERCIAL PROPERTY COVERAGE PART SUPPLEMENTAL DECLARATIONS," (hereafter, the "Supplemental Declarations"), which include, *inter alia*, a section that applies to "BLANKET BUS. INCOME BY VALUE," with an $18,952,419 "Limit of Insurance." *See* (Appx. 006). By its plain language, the *first* sub-section in the Supplemental Declarations includes the covenant: "LOCATIONS: SEE BLANKET SCHEDULE", which is a reference *back* to the "SCHEDULE OF LOCATIONS" identifying all properties that are the focus of this litigation. (*Id*.).

That sub-section also is important, because it reflects there are *no* applicable "Covered Cause of Loss" restrictions regarding the recovery the Lombardi Plaintiffs seek (consideration # 4). The "Covered Cause of Loss" construct indeed is one of the more hopelessly confused artifices in Chubb's Policy, because the term does not (as a literal reading might suggest) convey discrete causality risks distinct from the "loss of *or* damage to" coverage term in the actual Business Income Coverage section.

To appreciate why, a reader must endure a series of "steps," *cf*. (Rule 91A Motion, p. 12)—each of which burdens the reader with confusing conventions Chubb utilized in the Policy. The reader must begin with section A(3) in the Business Income Coverage form, which is titled "COVERED CAUSES OF LOSS, EXCLUSIONS AND LIMITATIONS." *See* (Appx. 004). That

section provides: "See Applicable Cause of Loss form *as shown in the Declarations*." (Appx. 004) (emphasis added).

The referenced "Declarations" are the aforementioned Supplemental Declarations, which include a series of columns titled "Covered Causes of Loss." *See, e.g.*, (Appx. 006 – 009). None of those columns themselves, or through cross reference, identify conventional causality risks; for instance, wind, water, flooding, theft, or even more generic references such as accident or occurrence. The columns consequently do not in any conventional way identify "a Covered *Cause* of Loss." Chubb instead used the columns to cross-reference yet another section of the Policy that apparently was intended to specify whether any loss restrictions *circumscribed* the scope of coverage contractually covenanted in the Business Income Coverage section.

This is so, because "Applicable Cause of Loss form" is a reference to a separate Policy section titled "CAUSES OF LOSS – SPECIAL FORM," which contains, *inter alia*, exclusions that in certain specific instances limit coverages. *See* (Appx. 011). Chubb consequently assumed the duty through these Policy conventions to conspicuously designate in the "Covered Causes of Loss" columns whether or not an "Applicable Cause of Loss form" applied to specific coverages.

Accordingly, the *absence* of a designation in a "Covered Causes of Loss" column must be construed to convey the *absence* of restrictions that otherwise could have been conveyed by Chubb. And for purposes of the pertinent Business Income Coverage, there is *no* such designation, because the "Covered Causes of Loss" column that applies to the "BLANKET BUS. INCOME BY VALUE" sub-section of the Supplemental Declarations was left *blank*. (Appx. 006).

Chubb nonetheless has proffered an exceptionally convoluted, conflicting rationale for why it omitted a restricting designation from the "Covered Causes of Loss" column that applies to the "BLANKET BUS. INCOME BY VALUE" sub-section. It invites the Court to focus on a

different convention Chubb used in the Policy, whereby it identified certain specific physical *features* of properties (as opposed to the properties collectively, or even a single property in its entirety) and qualified coverage with respect to *only* those specific features. *Cf*. (Rule 91A Motion, p. 12). For instance, for the respective properties, Chubb identified physical features such as "JOISTED MASONRY," "AWNINGS OR CANOPIES," certain "FIRE-RESISTIVE" construction, or "NON-COMBUSTIBLE" construction. *See, e.g.*, (Appx. 006 – 009). And for *those* specific features, the "Covered Causes of Loss" designations read: "SPECIAL." (*Id*.).

That "SPECIAL" designation in turn directs the reader to the aforementioned "CAUSES OF LOSS – SPECIAL FORM, which by its terms applies only: "*When* Special is shown in the Declarations . . . ." (§ A; Appx. 011) (emphasis added). But *none* of the physical features for which Chubb made a "SPECIAL" designation in the Supplemental Declarations have been averred to relate to the "physical loss of"—or even "damage to"—property at issue in *this* litigation.

Chubb nevertheless insists this multi-step, internally inconsistent, and frankly confusing Policy structure, somehow *eliminates* confusion regarding why it made the peculiar choices to: 1) make unqualified reference to the "BLANKET BUS. INCOME BY VALUE" coverage for *all* of the Lombardi Plaintiffs' properties collectively, 2) make separate references to specific physical *features* of specific properties, but 3) *now* insist it intended no difference between the two sets of references. In so doing, Chubb proffers no explanation regarding what possibly could have been the logic of differentiating between all properties collectively, compared to specific features of separate properties, if Chubb intended uniform treatment of coverage restrictions. And more critically, Chubb has made no attempt to explain how these byzantine policy conventions *eliminate* confusion.

2. Operation of the Civil Authority Coverage

Within the Business Income Coverage, Chubb contracted to provide an "Additional Coverage" regarding business losses caused by "Civil Authority." *See* (Business Income Coverage, § A(5)(a); Appx. 004). Notably, "Civil Authority" is *not* defined by the Policy to equate with "laws" or "ordinances." Whereas laws and ordinances are formal legislative enactments in the pertinent jurisdictions—the Policy uses Civil Authority as a distinct concept, inclusive of emergency directives to eliminate imminent risks of "dangerous" conditions.

For instance, the Civil Authority coverage addresses a scenario in which governmental intervention is necessary to address exigent dangers caused by *surrounding* property damage (as opposed to damage at the Lombardi Plaintiffs' properties):

> When a *Covered Cause of Loss* causes damage to property other than property at the described premises, we will pay for *the actual loss of Business Income* you sustain . . . caused by action of civil authority that *prohibits access to* the described premises, provided that both of the following apply: (1) Access to the area immediately surrounding the damaged property is *prohibited by civil authority* as a result of the damage, and the described premises *are within that area* but are not more than one mile from the damaged property; and (2) The action of civil authority is taken in response to *dangerous physical conditions* resulting from the damage . . . .

(Appx. 004) (emphasis added).[5]

[5] Here as well, the coverage is conditioned on a "Covered Cause of Loss," although that concept yet again is incoherent relative to Policy structure. The "CAUSES OF LOSS – SPECIAL FORM" explains "Covered Causes of Loss *means direct physical loss* . . . ." *See* (§ A, Appx. 011) (emphasis added). It would be illogical to read this language to modify the language in the Civil Authority provision, because: 1) the Civil Authority provision uses the term "damage," whereas the SPECIAL FORM uses the term "loss"; and 2) the Civil Authority provision refers to *offsite* property damage that indirectly leads to business losses, whereas the SPECIAL FORM refers to "direct physical loss". Chubb nevertheless contends the two provisions can be reconciled if "direct physical loss" means "damage" wherever the phrases are used throughout the Policy, *cf*. (Rule 91A Motion, pp. 8 – 10, 12); but if that were so, it is not at all clear why Chubb used *different* language, in *separate* sections, to redundantly convey what it insists is the *same* concept.

The import of the governmental directives averred by the Lombardi Plaintiffs are that they are jurisdiction-wide declarations that COVID-19 "was causing *property damage* and was presenting the danger of the virus continuing to be present in facilities such as restaurants and thus a danger to the *public health* . . . ." (Pet., p. 12, ¶ 42) (emphasis added). But those risks were not isolated to *only* the Lombardi Plaintiffs' properties—which is why there was no cause for the Lombardi Plaintiffs to condition their claims on "orders or restrictions . . . that restrict restaurant *operations*." *Cf.* (Rule 91A Motion, p. 4) (emphasis added).

The *entirety* of each "area" was the focal point of the "damages," and the Lombardi Plaintiffs' properties are *within* each such area. Emergency access restrictions such as stay at home directives, crowd limits, and restrictions on restaurant patronage in turn caused the Lombardi Plaintiffs' business losses—which is precisely what is covered by the Civil Authority provision.

3. Chubb's Editorial Recasting of the "Period of Restoration"

Chubb proposes to look beyond the Policy's affirmative statements regarding the scope of *coverage*, to back into what it contends the coverage provisions purportedly mean based on the Policy's definition of the *temporal* concept, "Period of Restoration." *Cf.* (Rule 91 A Motion, pp. 14 – 15). This is a particularly dubious tactic, because as written, the definition of "Period of restoration" specifies a timing mandate that: "Begins . . . after the time of direct physical loss *or* damage . . . caused by or resulting from any Covered Cause of Loss at the described premises . . ." and potentially ends on the "date when the property at the described premises should be repaired, rebuilt *or* replaced . . . ." (emphasis added). Nowhere does this provision disclaim or narrow the Business Income Coverage covenant regarding "loss of *or* damage to" property. The definition indeed reaffirms that scope of coverage by referencing "the time of direct physical loss *or* damage." (emphasis added).

Yet Chubb editorializes the words as they appear, by proffering the following characterization of what it *wishes* the words meant, by describing the Period of restoration, "as the time it takes to physically repair ***physical damage*** to the insureds' premises." (Rule 91A Motion, p. 14). But that is not what the Policy definition says, because the plain language refers to "loss or damage," not "physical repair of physical damage." This consequently is a quintessential attempt by Chubb to gloss over contractual ambiguity by asking the Court to rewrite its Policy after-the-fact.

Indeed, Chubb attempts to extrapolate from the isolated phrase "repaired, rebuilt or replaced," that the Policy's consistent differentiation between loss of, versus damage to property, conveys no actual distinction. According to Chubb, "repaired, rebuilt or replaced" only make sense with respect to a remedy for a tangible manifestation of physical harm. *Cf.* (Rule 91A Motion, pp. 14 – 15). This contention is illogical for several reasons.

First, the phrase "repaired, rebuilt or replaced" itself would be the anomalous outlier if it was given import (as a purported reference to only physical damage) in the manner Chubb suggests, because that import is inconsistent with the Policy's repeated differentiation between "loss of" versus "damage to" properties. Second, in *other* Policy sections, Chubb demonstrated it knew how to define the concept of property damage in relation to only "Physical *injury* to *tangible* property . . . [,]" because it did so in a COMMERCIAL GENERAL LIABILITY COVERAGE FORM (which is not an averred basis for coverage in this litigation). *See* (§ V(17); Appx. 015) (emphasis added). Yet under the Business Income Coverage, Chubb elected *not* to similarly define property "loss" *or* even "damage" in this narrow manner.

And finally, the phrase "repaired, rebuilt *or* replaced" simply cannot carry the import Chubb proffers, because Chubb is proposing that the terms "repaired," "rebuilt," *and* "replaced"

redundantly serve as references to correction of tangible property damage. But if that were so, Chubb first should have defined the terms to actually express that sentiment (it did not), and it otherwise had no cause to use three different terms, to superfluously convey the exact same sentiment. The outlier import Chubb seeks to attribute to the phrase "repaired, rebuilt or replaced" consequently cannot displace (or even match) the more reasonable Policy construction proffered by the Lombardi Plaintiffs, whereby their preventive measures led to losses that should be covered.

4. The Contractually Disclaimed Exclusions

Chubb purports to invoke two contractual exclusions to avoid its coverage obligations: an "Ordinance Or Law" exclusion, and an "endorsement" exclusion titled "EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA," hereafter, the "Virus Exclusion." *Compare* (Rule 91A Motion, pp. 7; 13, n.18; 16; 18), *with* (Appx. 010, 011). The "Ordinance Or Law" exclusion reads in pertinent part: "We will not pay for loss or damage caused directly or indirectly by . . . [t]he enforcement of or compliance with any *ordinance* or *law* . . . . [r]egulating the . . . use . . . of any property . . . ." (CAUSES OF LOSS – SPECIAL FORM, § B(1)(a); Appx. 011) (emphasis added). And the "Virus Exclusion" provides: "[Chubb] will not pay for loss or damage *caused* by or *resulting* from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease." (Virus Exclusion § B; Appx. 010) (emphasis added).

Neither exclusion can foreclose coverage under the facts averred by the Lombardi Plaintiffs. With respect to the Ordinance Or Law exclusion, the Lombardi Plaintiffs quite simply have not averred any "ordinance" or "law," *see* pp. 6 – 7 *supra*, and it is unclear why Chubb cites to a case referencing a loss "sustained when [a] City enforced section 6-175 of [a] *City Code*." *Cf.* (Rule 91A Motion, p. 18, n.22) (referencing *Wong v. Monticello Ins. Co.*, No. 04-02-00142-CV, 2003 Tex. App. LEXIS 2481, *3 (March 26, 2003) (emphasis added)). None of the directives the

Lombardi Plaintiffs have averred are found in "City Codes"—precisely because they do *not* qualify as ordinances in the pertinent jurisdictions.

But even assuming *arguendo* the Lombardi Plaintiffs had averred an ordinance or law, the Ordinance Or Law exclusion is found in *only* the portion of the Policy titled "CAUSES OF LOSS – SPECIAL FORM." *See* (Appx. 011). And as discussed above, the "BLANKET BUS. INCOME BY VALUE" coverage invoked by the Lombardi Plaintiffs does *not* have a "SPECIAL" designation incorporating that Form. *See* pp. 8 – 10 *supra*. The Ordinance Or Law exclusion consequently has no bearing on the Business Income Coverage or additional Civil Authority coverage the Lombardi Plaintiffs have averred.[6]

Similar defects characterize Chubb's misreading of the Virus Exclusion. At best, there is a drafting ambiguity whether the exclusion even applies to the Business Income Coverage, because in one respect, the text of the exclusion self-limits itself to a purported "COMMERCIAL PROPERTY COVERAGE PART STANDARD PROPERTY POLICY," *see* (Appx. 010), which is *not* a discretely defined or an independently discernible section of the Policy. Arguably, the coverage the Lombardi Plaintiffs have invoked *colloquially* might be referred to as a type of commercial property coverage—but the actual title for the coverage is "BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM." (Appx. 003).

It is not at all clear how, or why, that specific coverage FORM should be presumed to be a sub-set of Chubb's ill-defined "STANDARD PROPERTY POLICY" reference. Instead of

[6] Without apparent irony, Chub cites a provision in the Ordinance Or Law exclusion that states it applies "even if the property has *not* been *damaged*." *See* (Rule 91A Motion, p. 18) (emphasis added). But there would *never* be a scenario in which a claim could be made *without* property damage if Chubb's Policy construction were accepted—which illumines Chubb's construction is illogical. *Cf. Nautilus Group, Inc. v. Allianz Global Risks US*, C11-5281BHS, 2012 U.S. Dist. LEXIS 30857, *19 (W.D. Wash. March 8, 2012) ("the Policy contains an exclusion for an employee's theft . . . . If theft was not a covered risk, then this provision would be unnecessary.").

discretely and conspicuously identifying the Policy sections to which Chubb intended the Virus Exclusion to apply, Chubb utilized a generic explanation in section "A" of the Virus Exclusion, stating it applies to "forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority." (Virus Exclusion, § A; Appx. 010). Yet it is left to the reader to infer whether these references encompass *specific* Policy sections or terms, because the quoted language does not reference titles to the specific sections, nor were specific titles listed under the introductory banner of the Virus Exclusion purporting to exhaustively identify coverages the "endorsement modifies . . . ." (*Id.*).[7]

But there is an additional (fatal) flaw with Chubb's purported reliance on the Virus Exclusion. As stated, the Lombardi Plaintiffs have averred claims under the Business Income Coverage, as well as the subsidiary Civil Authority provision. Their claims under the Civil Authority provision are the *only* claims dependent on a temporal sequence whereby the virus actually "caused" damage to surrounding properties, which in turn led to the Lombardi Plaintiffs' business losses. In the event the ambiguous application of the Virus Exclusion somehow can be resolved in Chubb's favor, there may be fact issues whether the surrounding properties indeed were damaged (as stated in various executive orders), implicating the Virus Exclusion's potential application to the Civil Authority coverage.

By contrast, with respect to the Lombardi Plaintiffs' claims under the broader Business Income Coverage, they have *not* (and need not) averred a temporal sequence contingent upon whether the actual virus was present *at* their properties. Instead, the documented risk of "property

[7] Chubb apparently thinks a reader should look to the "top right corner" of Policy pages to discern what Chubb did *not* convey in the covenant that purported to specify what specifically the "endorsement modifies."

damage" and "danger to the public health," (Pet., p. 12, ¶ 42), created an imminent *risk* to the health and safety of patrons and the public, as well as an imminent *risk* of property damage. Operational suspension was necessary "to *prevent* the ongoing danger of the virus." *See* (*Id*. at p. 22, ¶ 92) (emphasis added).

But Chubb did not draft its Policy to negate coverage for *preventive* measures of the kind and has proffered no explanation for the anachronistic notion that steps to *prevent* "loss or damage caused by or resulting from any virus," somehow can be characterized as the "loss or damage *caused* by or resulting *from* [the] virus." *Cf*. pp. 24 – 25 *infra*. Chubb indeed drafted parallel conditions in its "Bodily Injury" coverage, as well as the Business Income Coverage, to require precisely the preventive measures taken by the Lombardi Plaintiffs.

5. The Bodily Injury & Property Damage Prevention Mandates

The Policy includes a "Bodily injury" coverage provision in the parallel CGL Coverage. *See* (Appx. 012). But the Virus Exclusion, by its terms, applies to only the ill-defined "COMMERCIAL PROPERTY COVERAGE PART," *see* (Appx. 10)—*not* the CGL Coverage.

This is critical, because in the CGL Coverage, Chubb contracted to "pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' . . .[,]" with "Bodily injury" defined to include "bodily injury, sickness or disease sustained by a person, including [] death resulting from any of these at any time." *See* (CGL Coverage §§ I(A)(1)(a) & V(3); Appx. 012, 014, 016). And because the Virus Exclusion is inapplicable, the covered "injury," "sickness," or "disease" would *include* COVID-19 related illness.

Yet the CGL Coverage imposes a critical condition, which is the "bodily injury, sickness or disease" cannot be "*expected* or intended from the standpoint of the insured." *See* (§ I(A)(2)(a); Appx. 013) (emphasis added). Accordingly, an insured cannot ignore public health

pronouncements about the foreseeable risk of a virus for which "there is little to no pre-existing immunity . . . ." *cf*. (Pet., p. 5, ¶ 21); do nothing to prevent exposure to the class of persons foreseeably at risk; yet later claim CGL Coverage when the persons invariably suffer bodily injury.

Similarly, a condition in, *inter alia*, the Business Income Coverage imposes a mitigation mandate regarding the risk of property damage. Business Income Coverage § C addresses specified "Loss Conditions," and imposes "Duties in the Event Of Loss," including the duty to "[t]ake all reasonable steps to protect the Covered Property from further damage . . . ." (Business Income Coverage, § C & C(2)(a)(4); Appx. 005). The Lombardi Plaintiffs consequently did not have the luxury to ignore warnings like publicly disseminated declarations "the virus is physically causing *property damage* due to its proclivity to attach to surfaces for prolonged periods of time . . . ." (Pet. p. 15, ¶ 53) (emphasis added).

Chubb nevertheless proffers an illogical construction of its Policy as a whole. It first disregards the averred facts clearly fall within the scope of the Business Income Coverage—then presses a Hobson's choice whether an insured should yield to the need for preventive measures (actually mandated by the Policy), or forgo the preventive measures given Chubb's refusal to cover corresponding losses. This proposition is textually unsupported and illogical (indeed contrary to sound public policy).

III. APPLICABLE LAW

A. Rule 91A Principles

A "court may *not* consider evidence in ruling on [a Rule 91A] motion and must decide the motion based *solely* on the pleading of the cause of action, together with any pleading exhibits permitted by" Texas Rule of Civil Procedure 59. *See* TEX. R. CIV. P. 91a.6 (emphasis added). In so doing, a court must "construe the pleadings *liberally* in favor of the plaintiff, look to the

pleader's intent, and accept as true the factual allegations in the pleadings to determine if the cause of action has a basis in law or fact." *In re RNDC Tex., LLC*, No. 05-18-00555-CV, 2018 Tex. App. LEXIS 4186, *2 (Tex. App.—Dallas June 11, 2018, no pet.) (emphasis added).

B. Applicable Principles of Insurance Contract Construction

A contract of insurance is "controlled by rules of interpretation and construction which are applicable to contracts generally." *Richards v. State Farm Lloyds*, 597 S.W.3d 492, 497 (Tex. 2020) (quoting *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. CBI Indus., Inc.*, 907 S.W.2d 517, 520 (Tex. 1995)). Accordingly, a court should strive "to give meaning to every sentence, clause, and word to avoid rendering any portion inoperative." *Balandran v. Safeco Ins. Co. of Am.*, 972 S.W.2d 738, 741 (Tex. 1998). A court should also "consider the entire agreement and, to the extent possible, resolve any conflicts by harmonizing the agreement's provisions, rather than by applying arbitrary or mechanical default rules." 597 S.W.3d at 497.

When an insurance policy does not define its terms, a court should give those terms "their ordinary and generally-accepted meanings . . . ." *Gilbert Tex. Constr., L.P. v. Underwriters at Lloyd's London*, 327 S.W.3d 118, 126 (Tex. 2010). And if after applying the rules of construction, "a contract is subject to two or more reasonable interpretations, it is ambiguous[,]" with the consequences of the ambiguity charged against the insurer. *See* 972 S.W.2d at 741.

Pursuant to these principles, it is not enough for an insurer to ignore confusion caused by the manner in which it drafted its policy or adopt the hubristic stance its construction purportedly is the more erudite of *competing* constructions. The insurer instead must prove there is *no* other rational construction of the policy. *See National Union Fire Ins. Co. v. Hudson Energy Co.*, 811 S.W.2d 552, 555 (Tex. 1991) ("if a contract of insurance is susceptible of more than one reasonable interpretation, we must resolve the uncertainty by adopting the construction that most favors *the*

insured.") (emphasis added); 972 S.W.2d at 741, n.1 ("uncertain contractual language is construed against the party selecting that language."). Chubb has not come close to carrying this burden.

IV. RESPONSE ARGUMENTS

A. Chubb Promotes Confusion by Directing this Court to Non-Binding, Substantively Immaterial Cases

No court in Texas (or its appears elsewhere) has construed the language in the Chubb Policy *specifically* at issue in this litigation, relative to the grounds for coverage *specifically* averred by the Lombardi Plaintiffs. It consequently could not be the case "this exact issue" has been resolved anywhere; by any court. *Cf*. (Rule 91A Motion, p. 9). Chubb's superlatives regarding the "majority view across the country" and regarding what purportedly has been done by "[c]ourts across the country" therefore is specious. (*Id*. at 8, 9).

First, the insurances policies, underlying pleadings, and requests for coverage in the other cases are extraneous materials that do not qualify as *pleadings* or *attachments* that may be considered by the Court in this Rule 91A dispute. *See* 2018 Tex. App. LEXIS 4186 at *2. Chubb consequently cannot demonstrate whether the other policies share in common *all* of the material provisions of Chubb's Policy the Lombardi Plaintiffs have discussed herein. Nor can Chubb demonstrate the insureds in the other cases *factually* averred grounds for coverage that parallel what the Lombardi Plaintiffs have averred.[8]

The limited insight that can be discerned from reviewing the cases indeed suggests the opposite. For instance, the following cases cited by Chubb regarding the meaning of "loss"

[8] Chubb previously characterized these observations as "bizarrely unfounded" suggestions the Court is not allowed to consider cases from other courts. Chubb's commentary solely is a reflection of its misapprehension of Rule 91A evidentiary proscriptions. The fact that some court, somewhere, engaged in construction of some insurance policy, under the substantive law of those jurisdictions; means nothing. Coverage in *this* matter will depend upon the language in Chubb's Policy relative to bases for coverage asserted by the Lombardi Plaintiffs—based on Texas law. As discussed herein, the other cases do nothing to benefit Chubb in any of those respects.

construed policies that covered *only* physical loss to or damage to property, through principal coverage or incorporated restrictive provisions: *de Laurentis v. United Servs. Auto. Ass'n,* 162 S.W.3d 714, 721 (Tex. App.-Houston [14th Dist.] 2005, pet. filed); *Ross v. Harford Lloyd Ins. Co.*, No. 4:18-CV-00541-O, 2019 U.S. Dist. LEXIS 112175, *2 (N.D. Tex. July 4, 2019); *Diesel Barbershop, LLC v. State Farm Lloyds*, No. 5:20-CV-461-DAE, 2020 U.S. Dist. LEXIS 147276, *6 (W.D. Tex. Aug. 13, 2020); *Rose's 1, LLC v. Erie Ins. Exchange*, No. 2020 CA 002424 B, 2020 D.C. Super. LEXIS 10, * 1 (Sup. Ct. of D.C. Aug. 6, 2020); *Roundabout Theatre Co. v. Cont'l Cas. Co.*, 751 N.Y.S.2d 4, 5, 8 (N.Y.A.D. 1st Dept. 2002).[9] Chubb, by contrast, covenanted to cover "loss *of* or damage *to*" property.

Indeed, in *Turek Enterprises, Inc. v. State Farm Mutual Automobile Ins. Co.*, which Chubb cites without regard to its actual significance, *cf.* (Rule 91A Motion, p. 17), that court recognized precisely the distinction the Lombardi Plaintiffs make regarding the legal difference between the phrase "loss of" versus "damage to": "Plaintiff suggests that 'physical loss *to* Covered Property' includes the *inability to use* Covered Property. . . . This interpretation seems *consistent* with one definition of 'loss' but ultimately renders the word 'to' meaningless. . . . Plaintiff's interpretation *would* be plausible if, instead, the term at issue were 'accidental direct physical loss *of* Covered Property.'" Case No. 20-11655, 2020 U.S. Dist. LEXIS 161198, **16 – 17 (N.D. Mich. Sept 3, 2020) (emphasis added). *See also Source Food Tech., Inc. v. U.S. Fid. & Guar. Co.*, 465 F.3d 834, 838 (8th Cir. 2006) ("Source Food's argument might be stronger if the policy's language included the word 'of' rather than 'to,' as in 'direct physical loss *of* property' or even 'direct loss *of* property.'").

[9] The "transcripts" Chubb references (to skirt Rule 91A proscriptions on extraneous materials) also refer to policies that insured only "loss *to*" or possibly "damage *to*" property. *Cf.* (Rule 91A Motion, pp. 9, 10).

Moreover, other courts around the country—which Chubb has elected not to acknowledge—likewise have construed "loss" (particularly "loss of") to include loss of the ability to use.[10] This is conclusive Chubb has not proffered the *only* reasonable construction of its Policy language, because reasonable minds clearly have disagreed with Chubb's position.

Indeed, it appears only two cases Chubb has cited actually purported to construe coverage provisions containing the phrase "loss of," yet the plaintiffs in those cases alleged business disruptions *solely* to comply with governmental directives—*not* to preempt COVID-19 risks (as is *mandated* under language in Chubb's Policy). *See Malaube, LLC v. Greenwich Ins. Co.*, Case No. 20-22615-CIV, 2020 U.S. Dist. LEXIS 156027, **9 – 10 (S.D. Fla. Aug. 26, 2020); *10E, LLC v. Travelers Indem. Co.*, 2:20-cv-04418-SVW-AS, 2020 U.S. Dist. LEXIS 156827, **2 – 3 (Aud. 28, 2020). Whether or not the other courts' construction of *those* coverage averments was correct consequently is immaterial to the coverage averments asserted in *this* lawsuit, wherein the Lombardi Plaintiffs have averred imminent risk of person-to-person spread and property damage from COVID-19 necessitated their operational disruptions.

These considerations consequently are disqualifying of Chubb's feigned air of certainty, whereby it invites this Court to be the *first* indefinable court in the state (and perhaps the country) to rule *Chubb's* Policy has unambiguous import conclusively favoring Chubb. Chubb has not provided this Court any basis to conclude dismissal is warranted based on the current state of the law[11]—or facts averred by the Lombardi Plaintiffs.

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[10] *See, e.g., Blue Springs Dental Care v. Owners Ins.* No. 20-CV-00383-SRB, 2020 U.S. Dist. LEXIS 172639, ** 3, 19 – 20 (W.D. Miss. Sept. 21, 2020); *Total Intermodal Servs. v. Travelers Prop. Cas. Co. of Am.,* No.: CV 17-04908 AB, 2018 U.S. Dist. LEXIS 216917, **8 – 9 (D.C. Ca. July 11, 2018); *Manpower Inc. v. Ins. Co. of Pa.*, No. 08C0085, 2009 U.S. Dist. LEXIS 108626, ** 18 – 19 (E.D. Wis., Nov. 3, 2009).

[11] *Cf. Optical Servs. USA/JCI v. Franklin Mut. Ins. Co.*, BER-L-3681-20, 2020 N.J. Super. Unpub. LEXIS 1782, **24 – 25 ("The defendant argues that there is a plain meaning of 'direct physical loss' and the closure of the plaintiffs'

B. Chubb Disregards the Plain Language of the Policy

The common meaning of "loss of," as used in the business Income Coverage, is not limited to physical damage—as recognized by authority even Chubb cites. *See* p. 21 *supra*. *See also* D. Malecki, Commercial Property Coverage Guide, Sixth Edition (2015) ("Physical loss is not synonymous with damage or physical damage. Too often, when reference is made to an insuring agreement, physical loss is not mentioned, as if it does not exist. It does exist, and it is different from physical damage.") (Appx. 025);[12] *Second Injury Fund v. Conrad,* 947 S.W.2d 278, 284 (Tex. App.— Fort Worth 1997, no pet.) ("Loss is a generic and relative term. . . . It is not a word of limited, hard and fast meaning."). Accordingly, Chubb's use of the phrase at best creates uncertainty, which must be resolved in favor of the Lombardi Plaintiffs. *See* 811 S.W.2d at 555.

Similar failings characterize the Ordinance Or Law exclusion and Virus Exclusion, which are subject to the even more unforgiving principle of Texas law that applies to exclusionary provisions, whereby a court "must adopt the construction . . . urged by the *insured* as long as that construction is not unreasonable, *even if* the construction urged by the *insurer* appears to be *more* reasonable or a more accurate reflection of the parties' intent." 972 S.W.2d at 741 (quoting *National Union Fire Ins. Co.*) (emphasis added). Chubb, for instance, did not define "ordinance" or "law" in a manner that unambiguously embraces the executive directives alleged by the Lombardi Plaintiffs. *See* pp. 6 – 7 *supra*. It also failed to clearly and unambiguously subject the pertinent Business Income Coverage to "SPECIAL" restrictions as a threshold for incorporation of the Ordinance Or Law exclusion. *See* pp. 8 – 10 *supra*.

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business does not qualify . . . . This is a blanket statement unsupported by any common law in the State of New Jersey or by a blanket review of the policy language.").

[12] *See* **Exhibit 9** attached hereto.

Similarly, if Chubb intended the Virus Exclusion to at all apply to a Policy section titled, "BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM", Chubb was obligated to use non-obtuse language to clearly and unambiguously do so. *See* pp. 15 – 16 *supra*. *Cf. Urogynecology Specialist of Fa. LLC v. Sentinel Ins. Co., Ltd.*, Case No. 6:20-cv-01174-ACC-EJK, U.S. Dist. Ct. M.D. Fa., Dkt. 21, Page 6 of 8 ("the 'Limited Fungi, Bacteria or Virus Coverage' section of the Policy . . . starts by stating that it modifies certain coverage forms. Those forms are not provided in the Policy itself . . . .").[13] And if Chubb intended the language of the exclusion to foreclose something more than the causal effects of the *actual* virus—it was incumbent upon Chubb to utilize common industry language to do precisely that. For instance, in *Diesel Barbershop, LLC v. State Farm Lloyds*—as but one example in the cases Chubb cites—the court considered a comprehensive pandemic exclusion, excluding all conceivable virus implications irrespective of sequence:

> We do not insure under *any* coverage for *any* loss which would not have occurred in the absence of [the virus]. We do not insure for such loss *regardless* of: (a) the *cause* of the excluded event; or (b) *other causes* of the loss; or (c) whether other causes acted concurrently or in *any sequence* with the excluded event to produce the loss . . .

2020 U.S. Dist. LEXIS 147276, *7 (emphasis added). Chubb elected *not* to utilize a comprehensive exclusion of the kind and cannot have the Court rewrite its Policy after the fact.

Chubb moreover has ignored the over-breadth it attributes the Virus Exclusion is irreconcilable with the structure of its Policy as a whole, whereby it *mandated* precisely the preventative and mitigation steps taken by the Lombardi Plaintiffs. *See* pp. 17 – 18 *supra*. For

[13] The holding in *Urogynecology Specialist* also is significant because the insurer in the case apparently *conceded* operational disruptions attributable to COVID-19 qualified for coverage.

instance, in *Real Asset Management v. Lloyd's of London*, the United States Court of Appeals for the Fifth Circuit held: "The duty to mitigate is such a recognized defense in the recovery of damages that some courts have awarded insureds the expenses of mitigating when an insured has taken *protective* measures." 61 F.3d 1223, 1229, n.11 (5th Cir. 1995) (emphasis added). In so doing, the court cited with approval *Slay Warehousing Co. v. Reliance Ins. Co.*, wherein the Eighth Circuit held: "the obligation to pay the expenses of *protecting* the exposed property may arise from either the insurance agreement *itself*, . . . or an *implied duty* under the policy based upon general principles of law and equity . . . ." 471 F.2d 1364, 1367 – 68 (8th Cir. 1973) (emphasis added).

Chubb's Policy implicates *both* protection triggers. It consequently cannot now balk when the plain language of its coverage provisions, coupled with its prevention edicts, support coverage. The Rule 91A Motion consequently should be denied, and the Lombardi Plaintiffs should be awarded their response cost and attorneys' fees pursuant to Texas Rule of Civil Procedure 91a.7.

Respectfully Submitted,

MUNSCH HARDT KOPF & HARR, PC.

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served via E-Service on this 8th day of October 2020, to the following counsel of record:

Daniel M. "Neel" Lane, Jr.
Norton Rose Fulbright
111 W. Houston St., Suite 1800
San Antonio, TX 78205
ATTORNEYS FOR DEFENDANT

/s/ Nolan C. Knight
Nolan C. Knight

EXHIBIT 1

CHUBB®

Policy Number
MCRD38196169

SCHEDULE OF LOCATIONS

Indemnity Insurance Company of North America

Named Insured LOMBARDI FAMILY CONCEPTS INC

Effective Date: 06-30-19
12:01 A.M., Standard Time

Agent Name INNOVATIVE COVERAGE CONCEPTS LLC

Agent No. Z03347

Loc. No.	Bldg. No.	Designated Locations (Address, City, State, Zip Code)	Occupancy
001	001	3100 Monticello Ave #325, Dallas, TX 75205	Office
002	001	6815 Snider Plaza Blvd, DBA Penne Pomodoro Snider, Plaza (Penne 1), Dallas, TX 75205	Restaurant
003	001	11661 Preston Rd #143, DBA Penne Pomodoro, Preston/Forest (Penne 2), Dallas, TX 75230	Restaurant
004	001	3312 Knox St, DBA Taverna Dallas, Dallas, TX 75205	Restaurant
005	001	3314 Knox St, DBA Toulouse Cafe and Bar, Dallas, TX 75205	Restaurant
006	001	450 Throckmorton St, DBA Taverna Pizzeria and, Risotteria, Fort Worth, TX 76102	Restaurant
007	001	258 W Second St, DBA Taverna Austin, Austin, TX 78701	Restaurant
008	001	3663 Las Vegas Blvd S, #H087, DBA Lombardi Romagna Mia, Las Vegas, NV 89109	Restaurant
009	001	3315 Noble Ave, Dallas, TX 75204	Parking Lot
010	001	1924 Abrams Parkway, DBA Penne Pomodoro, Lakewood (Penne 3), Dallas, TX 75214	Restaurant
011	001	87 Highland Park Village, DBA Lounge 31 & Bistro 31, Dallas, TX 75205	Restaurant
012	001	4444 Westheimer, Suite E-100, DBA Toulouse Houston, Houston, TX 77027	Restaurant
013	001	3120 Palm Way, Suite 160, DBA Taverna Domain, Austin, TX 78758	Restaurant
014	001	3120 Palm Way, Suite 150, DBA Toulouse Domain, Austin, TX 78758	Restaurant
015	001	7400 Windrose Ave, Suite B130, DBA Taverna Legacy West, Plano, TX 75024	Restaurant

CHUBB®

Policy Number
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SCHEDULE OF LOCATIONS

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Effective Date: 06-30-19
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Agent Name INNOVATIVE COVERAGE CONCEPTS LLC

Agent No. Z03347

Loc. No.	Bldg. No.	Designated Locations (Address, City, State, Zip Code)	Occupancy
016	001	7301 Windrose Ave, Suite C150, DBA Toulouse Legacy, Plano, TX 75024	Restaurant
017	001	280 Buckhead Ave NE, Parcel C, DBA Taverna Atlanta, Atlanta, GA 30305	Restaurant
018	001	7301 Windrose Ave, Suite C200, DBA KAI, Plano, TX 75024	Restaurant

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F.** Definitions.

A. Coverage

1. Business Income

Business Income means the:

a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and

b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

(1) Business Income Including "Rental Value".

(2) Business Income Other Than "Rental Value".

(3) "Rental Value".

If option **(1)** above is selected, the term Business Income will include "Rental Value". If option **(3)** above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

(a) The portion of the building which you rent, lease or occupy;

(b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and

(c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

2. Extra Expense

a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.

b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

(1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

(2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Limitation – Interruption Of Computer Operations

a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.

b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.

c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.

d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

(1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and

(2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

(1) Four consecutive weeks after the date of that action; or

(2) When your Civil Authority Coverage for Business Income ends;

whichever is later.

(2) 30 days expire after you acquire or begin to construct the property; or

(3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;

2. Civil Authority;

3. Extra Expense; or

4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

a. Pay its chosen appraiser; and

b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

(1) Notify the police if a law may have been broken.

(2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.

(3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.

(4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.

(5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

(6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.

(7) Cooperate with us in the investigation or settlement of the claim.

(8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

CHUBB®

Policy Number
MCRD38196169

COMMERCIAL PROPERTY COVERAGE PART
SUPPLEMENTAL DECLARATIONS

Indemnity Insurance Company of North America

Named Insured LOMBARDI FAMILY CONCEPTS INC

Effective Date: 06-30-19
12:01 A.M., Standard Time

Agent Name INNOVATIVE COVERAGE CONCEPTS LLC

Agent No. Z03347

Item 1. Business Description: **RESTAURANT**

Item 2. Premises Described: **See Schedule of Locations**

Item 3. $500 Deductible unless otherwise indicated.

Item 4. Coverage Provided

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
		BLANKET BLDG. & PERS. PROPERTY GRP # 1	**$ 28,325,000**		90

Other Provisions

[X] **Agreed Value:** $ 28,325,000 **Expires:** [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: Earthquake Deductible: % Exceptions
LOCATIONS: SEE BLANKET SCHEDULE

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
		BLANKET BUS. INCOME BY VALUE GRP # 2	**$ 18,952,419**		90

Other Provisions

[X] **Agreed Value:** $ 18,952,419 **Expires:** [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: Earthquake Deductible: % Exceptions
LOCATIONS: SEE BLANKET SCHEDULE

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
017	001	**TENANTS IMPR & BETT JOISTED MASONRY**	**BLKT GRP 1**	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Item 5. Forms and Endorsements

Form(s) and Endorsement(s) made a part of this policy at time of issue:
See Schedule of Forms and Endorsements

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

CHUBB®

Policy Number
MCRD38196169

COMMERCIAL PROPERTY COVERAGE PART
EXTENSION OF SUPPLEMENTAL DECLARATIONS

Indemnity Insurance Company of North America

Named Insured LOMBARDI FAMILY CONCEPTS INC

Effective Date: 06-30-19
12:01 A.M., Standard Time

Agent Name INNOVATIVE COVERAGE CONCEPTS LLC
Agent No. Z03347

Item 4. Coverage Provided (applies only when a limit is shown below)

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
017	001	BUSINESS PERS PROP JOISTED MASONRY	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
017	001	BUS INC OTHER THAN RENTAL JOISTED MASONRY	BLKT GRP 2	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 2 **Expires:** 06/30/20 [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
017	001	AWNINGS OR CANOPIES OTHER	$ 60,000	SPECIAL	90

Other Provisions

[ ] **Agreed Value:** **Expires:** [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
008	001	TENANTS IMPR & BETT MOD.FIRE-RESISTIVE	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

CHUBB®

Policy Number
MCRD38196169

COMMERCIAL PROPERTY COVERAGE PART
EXTENSION OF SUPPLEMENTAL DECLARATIONS

Indemnity Insurance Company of North America

Named Insured LOMBARDI FAMILY CONCEPTS INC

Effective Date: 06-30-19
12:01 A.M., Standard Time

Agent Name INNOVATIVE COVERAGE CONCEPTS LLC
Agent No. Z03347

Item 4. Coverage Provided (applies only when a limit is shown below)

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
008	001	BUSINESS PERS PROP MOD.FIRE-RESISTIVE	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
008	001	BUS INC OTHER THAN RENTAL MOD.FIRE-RESISTIVE	BLKT GRP 2	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 2 **Expires:** 06/30/20 [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
001	001	BUSINESS PERS PROP JOISTED MASONRY	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
002	001	TENANTS IMPR & BETT JOISTED MASONRY	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

CHUBB®

Policy Number
MCRD38196169

COMMERCIAL PROPERTY COVERAGE PART
EXTENSION OF SUPPLEMENTAL DECLARATIONS

Indemnity Insurance Company of North America

Named Insured LOMBARDI FAMILY CONCEPTS INC

Effective Date: 06-30-19
12:01 A.M., Standard Time

Agent Name INNOVATIVE COVERAGE CONCEPTS LLC
Agent No. Z03347

Item 4. Coverage Provided (applies only when a limit is shown below)

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
003	001	BUSINESS PERS PROP NON-COMBUSTIBLE	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
003	001	BUS INC OTHER THAN RENTAL NON-COMBUSTIBLE	BLKT GRP 2	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 2 **Expires:** 06/30/20 [ ] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
004	001	TENANTS IMPR & BETT JOISTED MASONRY	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

Loc. No.	Bldg. No.	Coverage	Limit of Insurance	Covered Causes of Loss	Coins.
004	001	BUSINESS PERS PROP JOISTED MASONRY	BLKT GRP 1	SPECIAL	90

Other Provisions

[X] **Agreed Value:** BLKT GRP 1 **Expires:** 06/30/20 [X] **Replacement Cost**
[ ] Business Income Indemnity: Monthly Limit: Period: Maximum [ ] Inflation Guard: %
[ ] Reporting Extended Days BI Media
Extension of Recovery Period: Months Wind/Hail Deductible:
Deductible: $ 1,000 Earthquake Deductible: % Exceptions

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. The exclusion set forth in Paragraph **B.** applies to all coverage under all forms and endorsements that comprise this Coverage Part or Policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense or action of civil authority.

B. We will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.

However, this exclusion does not apply to loss or damage caused by or resulting from "fungus", wet rot or dry rot. Such loss or damage is addressed in a separate exclusion in this Coverage Part or Policy.

C. With respect to any loss or damage subject to the exclusion in Paragraph **B.**, such exclusion supersedes any exclusion relating to "pollutants".

D. The following provisions in this Coverage Part or Policy are hereby amended to remove reference to bacteria:

1. Exclusion of "Fungus", Wet Rot, Dry Rot And Bacteria; and

2. Additional Coverage – Limited Coverage for "Fungus", Wet Rot, Dry Rot And Bacteria, including any endorsement increasing the scope or amount of coverage.

E. The terms of the exclusion in Paragraph **B.**, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this Coverage Part or Policy.

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.** Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means direct physical loss unless the loss is excluded or limited in this policy.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of or compliance with any ordinance or law:

(1) Regulating the construction, use or repair of any property; or

(2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

(a) An ordinance or law that is enforced even if the property has not been damaged; or

(b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

(1) Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

(2) Landslide, including any earth sinking, rising or shifting related to such event;

(3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

(4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

(5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

(a) Airborne volcanic blast or airborne shock waves;

(b) Ash, dust or particulate matter; or

(c) Lava flow.

With respect to coverage for Volcanic Action as set forth in **(5)(a), (5)(b)** and **(5)(c),** all volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

This exclusion applies regardless of whether any of the above, in Paragraphs **(1)** through **(5),** is caused by an act of nature or is otherwise caused.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

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

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

The word "insured" means any person or organization qualifying as such under Section **II** – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **V** – Definitions.

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

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

(1) The amount we will pay for damages is limited as described in Section **III** – Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C.**

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B.**

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

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph **1.** of Section **II** – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph **1.** of Section **II** – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

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

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

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

b. Contractual Liability

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

(1) That the insured would have in the absence of the contract or agreement; or

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

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

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

c. Liquor Liability

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

(1) Causing or contributing to the intoxication of any person;

(2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or

(3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

(a) The supervision, hiring, employment, training or monitoring of others by that insured; or

(b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph **(1), (2)** or **(3)** above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

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

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

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

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

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

9. When We Do Not Renew

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

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

SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or

b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

a. The United States of America (including its territories and possessions), Puerto Rico and Canada;

b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or

c. All other parts of the world if the injury or damage arises out of:

(1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;

(2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or

(3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph **a.** above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

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

(1) Equipment designed primarily for:

(a) Snow removal;

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

(c) Street cleaning;

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

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

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

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

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

a. False arrest, detention or imprisonment;

b. Malicious prosecution;

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

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

e. Oral or written publication, in any manner, of material that violates a person's right of privacy;

f. The use of another's advertising idea in your "advertisement"; or

g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

15. "Pollutants" mean 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.

16. "Products-completed operations hazard":

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

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

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

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

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

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

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

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

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

17. "Property damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

Regardless of whether other insurance is available to an additional insured on a primary basis, this insurance will be primary and noncontributory if a written contract between you and the additional insured specifically requires that this insurance be primary.

10. EXTENDED DEFINITION OF "BODILY INJURY"

The definition of "bodily injury" in **SECTION V – DEFINITIONS** paragraph **3.** is replaced by the following:

"Bodily injury" means bodily injury, sickness or disease sustained by a person, including mental anguish or death resulting from any of these at any time.

11. EXTENDED DEFINITION OF "PERSONAL AND ADVERTISING INJURY"

The definition of "personal and advertising injury" in **SECTION V – DEFINITIONS** paragraph **14.** is amended to include the additional offense of abuse of process.

All other terms and conditions of this policy remain unchanged.

_____

Authorized Representative

EXHIBIT 2

Print

The Dallas City Code

CHAPTER XVIII. ORDINANCES AND RESOLUTIONS.

(Renumbered by Amend. of 6-12-73, Prop. No. 43)

SEC. 1. COUNCIL ACTION.

The city council shall evidence its official actions by written ordinances, resolutions or oral motion. The use of one method or the other shall not affect the validity of the action, except in those instances where one or the other is required by state law or this Charter.

SEC. 2. STYLE OF ORDINANCES AND RESOLUTIONS.

The style of all ordinances shall be: "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS", and the style of all resolutions shall be: "BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALLAS." In each case words of like import may be used, but such caption may be omitted when said ordinances are published in book form, or are revised and digested under the order of the council.

SEC. 3. PASSAGE.

All ordinances and resolutions of the city council, unless otherwise provided by state law, this charter, or the ordinance itself, shall be final on the passage or adoption by the required majority pursuant to one motion duly made, seconded and passed. Where the state law or this charter provides for a different procedure before the action of the council may become final, then in that event, the council shall follow the procedure required.

SEC. 4. VOTING.

The vote upon the passage of any ordinance, resolution or motion shall be taken by voice vote unless otherwise requested by a member of the city council, in which case a roll call vote shall be taken. The results of all voting shall be entered upon the minutes of the proceedings of the council. Every ordinance, resolution, or motion shall require on final passage the affirmative vote of a majority of the members present unless more is required by state law, this Charter, or ordinance. (Amend. of 6-12-73, Prop. No. 33; Amend. of 8-12-89, Prop. No. 13)

SEC. 5. EFFECTIVE DATE.

All ordinances and resolutions passed by the city council shall become effective immediately from and after final publication, except in the following instances:

(1) where the state law or other provisions of this Charter provide otherwise, in which case the effective date shall be the earliest time therein prescribed;

(2) where the ordinance or resolution prescribes a different effective date;

EXHIBIT 3

Section 2. - General powers.

(a) The City Council shall have power to enact and to enforce all ordinances necessary to protect life, health and property; to prevent and summarily abate and remove nuisances; to preserve and promote good government, order, security, amusement, peace, quiet, education, prosperity and the general welfare of said City and its inhabitants; to exercise all the municipal powers necessary to the complete and efficient management and control of the municipal property and affairs of said city to effect the efficient administration of the municipal government of said city; to exercise such powers as conduce to the public welfare, happiness and prosperity of said city and its inhabitants; and to enact and enforce any and all ordinances upon any subject; provided, that no ordinance shall be enacted inconsistent with the provisions of this charter; and, provided further, that the specification of particular powers shall never be construed as a limitation upon the general powers herein granted; it being intended by this charter to grant to and bestow upon the inhabitants of the City of Houston and the City of Houston full power of local self government, and it shall have and exercise all powers of municipal government not prohibited to it by its charter, or by the provisions of the Constitution of the State of Texas.

(b) The City shall have all powers that are or hereafter may be granted to municipalities by the Constitution or laws of Texas; and all such powers, whether expressed or implied, shall be exercised and enforced in the manner prescribed by this charter, or when not prescribed herein, in such manner as shall be provided by ordinance or resolution of the Council.

In addition to all the powers enumerated in this charter, implied thereby or appropriate to the exercise thereof, the City shall have and may exercise in the manner hereinbefore provided, all other powers which, under the Constitution and laws of this State, it would have been competent for this charter specifically to enumerate. (Act of 1905; amended October 15, 1913)

EXHIBIT 4

§ 4 ORDINANCES-APPROVAL OF MAYOR NOT NECESSARY.

The final passage of an ordinance by the council and the publication of the same when so required shall be all that is necessary to make such ordinances valid and effective. The approval or signature of the mayor shall not be necessary.

EXHIBIT 5

§ 14. - PROCEDURE TO ENACT LEGISLATION.

The council shall legislate by ordinance only, and the enacting clause of every ordinance shall be, "BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN." Before any ordinance shall be adopted, the city attorney shall approve such ordinance in writing or shall file with the city clerk his or her written legal objections thereto. Every ordinance enacted by the council shall be signed by the mayor, mayor pro tem, or by two council members, and shall be filed with and recorded by the city clerk before the same shall become effective. Unless otherwise provided by law or this Charter, no ordinance shall become effective until the expiration of 10 days following the date of its final passage, except where an ordinance relating to the immediate preservation of the public peace, health or safety, is adopted as an emergency measure by the favorable votes of at least two-thirds of the council members and contains a statement of the nature of the emergency.

Amendment note: *Section 14 appears as amended at the election of November 6, 2012, and later renumbered by Ord. 20121213-004. As former § 12, the section had previously been amended at the election of April 1, 1967.*

Source: Ord. No. 20180809-113 , Pt. 7, 8-20-18/election of 11-6-18.

EXHIBIT 6

Sec. 3.10. - Rules of procedure.

The city council shall determine its own rules of procedure and may compel the attendance of its members. A majority of the qualified voting members of the city council shall constitute a quorum to do business and the affirmative vote of a majority of those present shall be necessary to adopt any ordinance or resolution. Minutes of the proceedings of all meetings of the city council shall be kept, to which any citizen may have access at all reasonable times and which shall constitute one (1) of the archives of the city. The vote upon the passage of all ordinances and resolutions shall be taken by the "ayes" and "nays" and entered upon the minutes, and every ordinance or resolution, upon its final passage, shall be recorded in a book kept for that purpose under full caption, and shall be authenticated by the signature of the presiding officer and the person performing the duties of the city secretary.

(Res. No. 88-1-10(R), § 3, 1-18-88; ratified 1-16-88)

EXHIBIT 7

Section 1-103. - Legislative powers.

(a) All legislative powers of the city are hereby vested in the council (hereinafter at times referred to as the "governing body"), except those powers specifically reserved in this Charter to the electors of the city. The power to levy, assess, and provide for the collection of all taxes and fees authorized to be levied, assessed, and collected by the city by general law and this Charter shall be vested in the council.

(b) The council shall adopt and provide for the execution of such ordinances, resolutions and rules, not inconsistent with this Charter as shall be necessary or proper for the purpose of carrying into effect the powers and duties conferred by this Charter and may enforce all ordinances by imposing penalties and fines for the violation thereof not to exceed a $1000 fine or six months' imprisonment, or both.

(1996 Ga. L. (Act No. 1019), p. 4469)

EXHIBIT 8

Sec. 2.090 - Powers of City Council: Ordinances; resolutions and orders.

1. The City Council may make and adopt all ordinances, resolutions and orders, not repugnant to the Constitution of the United States or the Constitution of the State of Nevada or the provisions of NRS or of this Charter, which are necessary for the municipal government, the management of the affairs of the City and the execution of all of the powers which are vested in the City.
2. The City Council may enforce those ordinances by providing penalties which do not exceed those which are established by the Legislature for misdemeanors.
3. The City Council may not adopt any ordinance which provides for an increase or a decrease in the salary of any of its members to take effect during the term for which that member is elected or appointed, but the City Council may by ordinance increase or decrease the salary for the office of Mayor or City Councilman at any time before the day preceding the last day for filing a declaration of candidacy for that office for the next succeeding term to take effect on the first day of the next succeeding term.

(Amended by the Nevada Legislature, 1989)

EXHIBIT 9

6th Edition

Commercial Property Coverage Guide

Commercial Lines Series

George E. Krauss, D.Ed., CPCU, CLU, ChFC, ARM
Donald S. Malecki, CPCU
Susan L. Massmann, CPCU

The National Underwriter Company

thunderstorm blow shingles off a roof—that damage is directly caused. Contrast that to the same storm knocking out power to the building, allowing refrigerated chemicals to spoil. That damage—to the chemicals—is consequential. The cause of the loss was not the wind but the heating of the chemicals. If loss or damage is not direct, then it is consequential; it is the distinction between the two that dictates whether damage to property is covered. (There are endorsements and coverages for some consequential losses—see Chapter 13, Commercial Property Endorsements.)

While the meaning of *direct physical loss or damage* in a vacuum may be helpful, when coverage is not disputed and in making one's argument for or against coverage, much, as mentioned, will hinge on the facts. In that vein, this insuring agreement can be very troublesome.

Physical loss is not synonymous with damage or physical damage. Too often, when reference is made to this insuring agreement, physical loss is not mentioned as if it does not exist. It does exist, and it is different from physical damage. A case that appears to clarify this matter is *Manpower, Inc. v. Insurance Co. of the State of Pennsylvania*, No. 08C0085, 2009 WL 3738099 (E.D. Wisc. Nov. 3, 2009), which involved a dispute over a partial collapse of an office building in Paris, France. The question in dispute was whether the named insured suffered a loss within the meaning of the policy, which covered "all risk of direct physical loss of or damage to covered property." The named insured argued that the collapse rendered its property physically inaccessible and therefore resulted in a direct physical loss. The insurer contended that the named insured did not sustain a covered loss because the collapse did not physically damage, move, or alter the property in any way.

The court rejected the insurer's argument that a peril must physically damage property in order to cause a covered loss. The policy covered physical losses in addition to physical damage, explained the court, and if a physical loss could not occur without physical damage, then the policy would contain surplus language. The court said that a contract must, where possible, be interpreted so as to give reasonable meaning to each provision without rendering any portion superfluous. Thus, the court added that *direct physical loss* must mean something other than *direct physical damage*. Indeed, the court said that if "direct physical loss required physical damage, the policy would not cover theft, since one can steal property without physically damaging it; and ISOP did not contend that the policy did not cover theft."

Interestingly, *Ward General Ins. Services, Inc. v. Employers Fire Ins. Co.*, 114 Cal. App. 4th 548 (Cal. Ct. App. 2003) involved loss of stored computer data not accompanied by loss or destruction of the storage medium—a loss not covered by the policy. The court gratuitously explored

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